11/10/04

IN THE MATTER OF LYNCH PROPERTY /PDM X-404; GAYLORD BROOKS REALTY CO. - DEVELOPER N & S/S SWEET AIR RD, 355' SE OF MANOR KNOLL COURT 10TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	BEFORE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
RE: DEVELOPMENT PLAN APPROVAL and PETITION FOR SPECIAL HEARING	*	CASE NO. CBA-04-132 and CASE NO. 04-198-SPH

* * * * * * * * *

OPINION

This case comes to the Baltimore County Board of Appeals based on a decision of the Hearing Officer /Deputy Zoning Commissioner, and it involves both Case CBA-04-132, which is a development plan appeal, and Case 04-198-SPH, which is a request for special hearing. J. Carroll Holzer, Esquire, represented the Protestants /Petitioners, Long Green Valley Association; Charlotte Pine, individually; and individual property owners Stephen D. Preston and Gary M. Elser (hereinafter "Protestants"). Carole S. Demilio, Deputy People's Counsel for Baltimore County, appeared in these cases on behalf of the Office of People's Counsel. Mr. Howard L. Alderman, Jr. Esquire, represented Dorothy Surina, Jeanne Gough, et al, and Gaylord Brooks Realty Co., Inc. (hereinafter "Owner/Developer"). The cases were heard and concluded on September 7, 2004 followed by a public deliberation on October 26, 2004. At the conclusion of the hearing, the Board requested briefs from counsel summarizing their arguments related to the case.

In the Board hearing that was held on September 7, 2004, both the Protestants and Owner/Developer agreed to present the special hearing case prior to presenting the case on the development plan.

The Protestants' first witness was Stephen Preston. Mr. Holzer introduced the red line

development plan as well as an aerial photograph of the property as Protestants' Exhibits #1 and #2. Mr. Preston proceeded to identify both his property and that of another neighbor, Mr. Elser, on these two exhibits. He indicated that his house is off the cul de sac on Old Farm Road. Mr. Preston indicated that his home was served by both a well and septic system. Under questioning, Mr. Preston offered that Mr. Elser's property is actually served by four wells. According to Mr. Preston, the Lynch property runs off into Gunpowder State Park and to the west through the neighboring properties. He indicated that his property is lower than the Lynch property. The witness opined that most of the land surrounding the Lynch property was rural in nature. Mr. Holzer asked Mr. Preston to review his background for the Board, and he testified that he worked for the Chesapeake Bay Programs, specializing in bay restoration work. Mr. Preston also has a Ph.D. in civil engineering, specializing in environmental engineering. The witness also had a Bachelor's and Master's Degree in biology.

In response to a question from Mr. Holzer, Mr. Preston testified that, as a result of objections raised before the Deputy Zoning Commissioner, the Commissioner remanded the development plan for a traffic study on sight distance. As a result of that action, the entrance to the site was modified to improve the site distance. Mr. Preston identified a number of pictures showing his property and the Lynch property, identifying the flow of water in the area. As part of his questioning of Mr. Preston, Mr. Holzer asked him to review the questions he presented for the special hearing. His first question was whether or not a road that supports R.C. 5 residential development permitted within an R.C. 2 zone. Mr. Preston indicated that he raised this question because he thought the development plan was trying to maximize the density on the subject property. The witness was able to identify that the two zoning classifications on the property in question were R.C. 5 and R.C. 2. Mr. Preston testified that he was concerned about runoff coming

through his property. He was also concerned about the pressures on the wells in the area.

The second question that Mr. Preston raised was whether a storm water management facility that solely supports R.C. 5 development can be placed in an R.C. 2 zone. Upon questioning, he indicated that the stormwater management facility would "almost entirely" support the development in the R.C. 5 portion of the property.

The third question was whether or not the R.C. 2 zones on the north side of Sweet Air Road support both lots six and seven. Mr. Preston opined that he thought the proposed development exceeded the two lots allowed in a R.C. 2 zone.

Question four asked whether or not the R.C. 2 parcel on the north side of Sweet Air Road supports lot seven and lot six along with the stormwater management facility, as well as lot eight on the south side of Sweet Air Road. Again, Mr. Preston indicated that it was his understanding that R.C. 2 zoning could only support two parcels.

The final question was whether or not the creation of non-density parcels as part of residential lots shown on the development plan requires a separate special hearing request.

At the conclusion of Mr. Holzer's direct examination, Carol Demilio, Deputy People's Counsel, had several questions. Ms. Demilio introduced into evidence a zoning map of Baltimore County. Mr. Alderman pointed out that it was not the official map. Ms. Demilio responded that the official map was not available. The zoning map was accepted and entered as People's Counsel's Exhibit #1. Mr. Preston testified that, as a result of the zoning process, the parcel in question remained split zoned, R.C. 2 and R.C. 5.

Mr. Alderman proceeded to cross-examine Mr. Preston. In response to a question from Mr. Alderman, Mr. Preston testified that neither he nor his community had sought to rezone the subject property during the 2004 Comprehensive Zoning Map Process. Mr. Preston also testified that the

majority of the road serving the parcel is located in the R.C. 5 portion of the property. Mr. Preston also indicated that the home proposed for lot six is located in the R.C. 5 portion of the property. He testified that there are two houses proposed in the R.C. 2 portion of the subject property. Under questioning, he also indicated that number of homes proposed in the R.C. 5 portion of the property does not exceed the allowed density.

Mr. Holzer then presented Protestants' second witness, Mr. Dennis J. O'Leary. Mr. O'Leary's resume was presented into evidence, and he was accepted as an expert in civil engineering, with a specialty in stormwater management. In preparation for the hearing, Mr. O'Leary testified that he reviewed the stormwater management hydrology computations for the Lynch property as well as the schematic landscape plan with red line revisions. Mr. Holzer asked Mr. O'Leary if he was familiar with the location of lot seven on the property. He indicated that he was. Mr. O'Leary testified that he did not believe that lot seven drained into the stormwater management facility, but rather drained east and off the property. Mr. O'Leary testified that the stormwater management facility only supported the road and a small portion of the driveway that serves lot seven. He did not think the stormwater management facility needed to be in the R.C. 2 zone to support the proposed development. Ms. Demilio followed up on this line of questioning, and Mr. O'Leary repeated his claim that the stormwater management facility in the R.C. 2 zone did not support much of the building in the R.C. 2 zone. Mr. O'Leary testified that the stormwater management facility could be relocated to the R.C. 5 zone, but he testified that if that were done it might require a reduction in the number of homes constructed.

Under cross-examination by Mr. Alderman, Mr. O'Leary indicated that, if the stormwater management facility were relocated from the R.C. 2 zone to the R.C. 5 zone, there would be a more uncontrolled flow of water. Mr. Alderman asked Mr. O'Leary if, in the design of a stormwater

management facility, one calculated the hydrology and design based on zoning lines, or was it designed based on the impervious surfaces. Mr. O'Leary responded, "Impervious surfaces." In further cross-examination, Mr. O'Leary acknowledge that designing these structures based on impervious surfaces is required by the Code of Maryland Regulations.

On redirect examination by Mr. Holzer, Mr. O'Leary stated that if there were no development on this property other than the proposed home on lot seven there would be no need for a stormwater management facility.

In response to a question from Mr. Alderman, Mr. O'Leary testified that the stormwater management facility was incidental to the development planned for the subject property.

Mr. Holzer then proceeded to call his second witness, Mr. Paul Solomon. Mr. Solomon was accepted as an expert witness in the area of planning. He had worked for the Baltimore County Office of Planning and Zoning from 1970 until 1986. He testified that while in the planning office he was in charge of the development of the R.C. zones. Under questioning by Mr. Holzer, Mr. Solomon provided some historical perspective on the R.C. zones, indicating that in 1970 the Baltimore County Council passed Bill 100-70 which established these zoning classifications. Mr. Solomon left the county in 1992, and he testified that since that time he has been serving as a consultant on planning issues. He also testified that he feels an emotional connection to the R.C. zones and that he feels the integrity of the zones must be preserved.

Mr. Solomon further testified that the basic framework of the R.C. zones is to encourage rural development within the R.C. 5 designations and that in most cases this zoning classification is located around villages, although there are some exceptions to that. He stated that the major purpose of the R.C. 2 zone is to create conditions favorable to continued agricultural use of the productive agricultural areas of Baltimore County by preventing incompatible forms and degrees of

urban use. It was Mr. Solomon's opinion that roads that support an R.C. 5 development should not be placed in an R.C. 2 zone. Mr. Solomon put the stormwater management facility into that same category. He stated, "The infrastructure can be placed in R.C. 2 only if it applies to what's allowed in the R.C. 2."

A key portion of Mr. Solomon's testimony referenced § 1A00.5 of the *Baltimore County Zoning Regulations* (BCZR). It is this section that states that the total number of dwellings or density units shall apply to each tract individually. He went on to opine that § 1A00.5.a states that density should be allocated and utilized by each zoned parcel. Mr. Solomon stated that the placement of roads and stormwater management facilities in the R.C. 2 portion of the subject property violated County zoning regulations. He stated that it amounted to "de facto" rezoning of R.C. 2 to R.C. 5.

Under cross-examination by Mr. Alderman, Mr. Solomon testified that his belief that streets and roads in R.C. 2 that support development in R.C. 5 are not allowed is not stated in the BCZR, but rather is implied. When pressed on this issue, Mr. Solomon stated that he could point to no specific reference in the statute that prohibited such infrastructure. Mr. Alderman asked Mr. Solomon how many development plan review hearings he had participated in at the Hearing Officer's level since he left the County in 1992. Mr. Solomon stated that he had not participated in any. Mr. Solomon indicated that both *Jones (Long Green Valley Association, Inc.)* and *Leimbach v. City of Baltimore* (two cases used to support Mr. Solomon's view that infrastructure may not be placed in R.C. 2 zones to support R.C. 5) were not truly relevant to the instant case before the Board. *Jones* dealt with lots owned by two different owners and *Leimbach* dealt with two parcels, one residential and one commercial.

Mr. Holzer called the Protestants' third witness, Ms. Charlotte Pine. Ms. Pine identified

herself as the President of the Long Green Valley Association. She presented Rule 8 Papers allowing her to represent the association. Ms. Pine testified that her organization was very much opposed to allowing R.C. 2 land to be used to support development in an R.C. 5 zone. Ms. Pine stated that her organization has been very successful in preserving Baltimore County farmland. She stated that although the parcel in question may appear insignificant to some it is not insignificant to the farmer. She also testified that her group did not try to have the subject property rezoned due to political realities. Since this project was in the pipeline, she stated that her organization knew that a councilman would not downzone a property with a development on the books. At the conclusion of Ms. Pine's testimony, the Protestants rested their case.

Mr. Alderman called the first witness on behalf of the Developer/Owner, Mr. Charles V. Main. Mr. Main was accepted as a registered engineer with an emphasis in planning and zoning matters in Baltimore County. Mr. Main testified that he had visited the subject property two or three times. He testified that the roadway proposed for the development and located in both R.C. 2 and R.C. 5 is a permitted use according to the BCZR. Mr. Main also testified that stormwater management facilities are not listed as "uses" in Baltimore County. In discussing the design of stormwater management facilities, Mr. Main testified that planners examine the drainage by design points which are determined by the topography of the land. He stated that there are no constraints from a zoning point of view as to where a stormwater management facility may be located. Under questioning from Mr. Alderman, Mr. Main also indicated that landscaping for proposed developments is also not identified as a principal use in Baltimore County. Mr. Alderman questioned Mr. Main as to the number of lots being proposed in the R.C. 5 portion of the subject property. He responded that six lots were being proposed. On further questioning, he indicated that under zoning regulations, seven lots are allowed in this portion of the subject property. Mr.

Alderman asked Mr. Main if non-density areas or non-density parcels shown on a development plan are required to be considered only by way of a special hearing. Mr. Main indicated that was not correct because those items can be brought up by the zoning staff and considered by the Hearing Officer as an outstanding issue. He indicated that the Deputy Zoning Commissioner considered the issue of non-density parcels and the comments of the zoning staff at the development plan conference. Mr. Alderman asked Mr. Main whether or not a storm water management facility was "incidental to the development, or is the development incidental to the storm water management facility." Mr. Main responded that the facility is incidental to the development.

At this point, the Chairman of the Board of Appeals stated that the special hearing case was now complete. The Board then proceeded to hear argument from both the Protestants and the Owner/Developer on the Development Plan.

In addressing the Development Plan, Mr. Holzer indicated that Mr. Elser is concerned about the water situation and the availability of water in the area. He stated that four properties are served by the well on his property. Mr. Alderman objected to this point, stating that it was not an issue raised on appeal of the Development Plan. The Board allowed Mr. Holzer to proceed. Mr. Holzer reiterated his statement that the concern related to whether or not Mr. Elser's well would be affected by the development, and whether or not the Hearing Officer took this information into consideration when making his ruling. Mr. Holzer stated that the Hearing Officer's finding, that there was no problem with water, is in opposition to the testimony presented. Mr. Holzer also raised Mr. Preston's concern that stormwater will be coming onto his property and presenting a problem. Mr. Holzer stated that the Hearing Officer did not take Mr. Preston's credentials into consideration and in fact was demeaning to his background. Mr. Holzer pointed out, however, that the Hearing Officer did heed Mr. Preston's warnings about the traffic engineering related to the

subject property.

In support of Mr. Holzer, People's Counsel stated that if the Board were to rule in favor of the Petitioners/Protestants on the special hearing, then the Development Plan could not be approved.

Mr. Alderman opined that the Hearing Officer has an obligation to "assess the quality, credibility, and sufficiency of any evidence" which is offered before him. Mr. Alderman stated that a careful review of the tapes of the testimony before the Hearing Officer will show that he listened to what each of the witnesses had to say, and when he found their testimony compelling, he acted on that testimony—for example, in revising the traffic pattern. Regarding the well and septic reserve issues raised by Mr. Preston, Mr. Alderman opined that the Code of Maryland Regulations and the Department of the Environment have specific regulations related to the location of these items. According to Mr. Alderman, the Hearing Officer considered all of this information. In summary, Mr. Alderman stated, "I don't doubt that the folks don't want to see this land developed, but that's not the issue here today. The issue is, is it being developed in accordance with the zoning regulations and development regulations of Baltimore County, and we suggest to this Board that, upon review, you will find that, in fact, they are."

The brief submitted by Peter Max Zimmerman, People's Counsel for Baltimore County, and Carole S. Demilio, Deputy People's Counsel for Baltimore County, requested that the Board consider five issues when considering the special hearing request. The Board was asked to:

1. Answer the question whether an R.C. 2 zoned property can be used to support the development of R.C. 5 property, including density, stormwater management (SWM), and a road or driveway?

2. Consider two prior cases: *Long Green Valley Assn.* (Case No. 93-93- SPH) and *Beth Tfiloh* (Case No. 01-468-SPH).

3. Consider the testimony of neighboring property owner, Steven Preston, regarding the negative environmental impact on his home of the subject development.

4. Review carefully the testimony of Mr. Daniel O'Leary. Mr. O'Leary made the following points: the storm water management facility that supports only R.C. 5 development must be located in the R.C. 5 zone; the location of the stormwater management facility in the R.C. 5 zone would generate a negligible increase of unmanaged flow; the stormwater management system is a structure under density calculations, complete with pipes and concrete risers; and a single residence proposed in the R.C. 2 zone would not require a stormwater management facility.

5. Grant the special hearing because the support facilities for R.C. 5 development must be located on the R.C. 5 property; the development violates the spirit and intent of the R.C. 2 zone; the proposed development creates serious adverse impacts on neighboring properties; and the proposed development is de facto rezoning of the subject property.

In his brief, Mr. Holzer raised several other issues for the Board to consider:

1. Can the R.C. 2 zone on the north and south sides of Sweet Air Road support both proposed lots six and seven?

2. Can the density of an R.C. 2 zoned parcel on the north and south sides of Sweet Air Road support lots six and seven along with a storm water management facility, and lot eight on the south side of Sweet Air Road?

3. Whether the creation of non-density parcels as part of residential lots shown on a Development Plan require a separate special hearing request, and specifically, a portion of proposed Lot seven in the R.C. 2 zone?

4. Other and further issues as may be developed by testimony presented at the hearing.

In its public deliberation on October 26, 2004, the Board reviewed the entire case before it, focusing on the issues listed above:

Answer the question whether an R.C. 2 zoned property can be used to support the development of R.C. 5 property, including density, stormwater management (SWM), and a road or driveway?

The Board found compelling testimony that the stormwater management facility in this case will not solely support the development in R.C. 5 but will also be used to support the development in the R.C. 2 zone. Also, the Board noted case *Glascock v. Baltimore Co.*, 321 Md. 118 (1990),

which ruled that a stormwater management facility is a "public facility" thus exempt from provisions of the BCZR. The Board also cited compelling testimony that stormwater management facilities are like landscaping and not identified as a principal use in any zone. The Board also cited BCZR § 101 to support the concept that stormwater management facilities are uncontrolled excavations and incidental to the development of land. According to BCZR §§ 1A01.2B.9.a & 1A04.2A.11.a, uncontrolled excavations are a "permitted accessory use" in the R.C. 2 and R.C. 5 zones. The Board also rejected the testimony of Mr. Solomon that infrastructure in one zone could not support development in another zone. Mr. Solomon indicated that there were no specific references in the statute to that effect, but rather that standard was implied by the statute. In *UPS v. Comptroller of Treasury*, 69 Md. App. 458, 469-70 (1986), the Court of Special Appeals ruled that "the court should confine itself to construing the statute according to the ordinary and natural signification of the words used without resorting to subtle or forced interpretations designed to limit or extend the operation of the statute." The Board found this argument to be compelling. This argument was also supported by the Maryland Court of Appeals in *Marzullo, et al v. Peter A. Kahl*, 366 Md. 158, 179 (2001).

Consider two prior cases: *Long Green Valley Assn.* (Case No. 93-93- SPH) and *Beth Tfiloh* (Case No. 01-468-SPH).

The Board did not find either of these cases relevant to the discussion of the case before it. Both of these cases involved issues dealing with a mix of residential and commercial zoning that the Board did not see as applicable in this case. The Board also rejected a similar argument put forth by Mr. Solomon in his testimony which referenced *Long Green Valley Assn*, involving a High's Dairy Store.

Consider the testimony of neighboring property owner, Steven Preston, regarding the negative environmental impact on his home of the subject development.

The Board did not find this argument compelling and cited *Schultz v. Pritts*, 291 Md. 1, 21 (1981) which states that uses "permitted as of right may be developed, as a matter of zoning, regardless of the kind and extent of adverse impact (from a land use perspective) it will create in the particular location proposed."

Review carefully the testimony of Mr. Daniel O'Leary. Mr. O'Leary made the following points: the stormwater management facility that supports only R.C. 5 development must be located in the R.C. 5 zone; the location of the stormwater management facility in the R.C. 5 zone would generate a negligible increase of unmanaged flow; the stormwater management system is a structure under density calculations, complete with pipes and concrete risers; and a single residence proposed in the R.C. 2 zone would not require a stormwater management facility.

The Board rejected the notion that the stormwater management facility is a structure under density calculations, and also cited testimony indicating the if the stormwater management facility were moved from the R.C. 2 zone to the R.C. 5 zone, runoff would actually be increased.

Grant the special hearing because the support facilities for R.C. 5 development must be located on the R.C. 5 property; the development violates the spirit and intent of the R.C. 2 zone; the proposed development creates serious adverse impacts on neighboring properties; and the proposed development is de facto rezoning of the subject property.

The Board did not find the "spirit and intent" argument to be compelling, and the reasons are summarized above. The Board did not find the development to be *de facto* rezoning of the property. Once again, the Board relied on *Schultz v. Pritts* to reject the "adverse impact on neighboring properties" argument.

Can the R.C. 2 zone on the north and south sides of Sweet Air Road support both proposed lots six and seven?

The Board found that only one lot is proposed on the north and south sides of Sweet Air Road.

Can the density of an R.C. 2 zoned parcel on the north and south sides of Sweet Air Road support lots six and seven along with a stormwater management facility, and lot eight on the south side of Sweet Air Road?

The Board ruled that there is no density associated with the stormwater management facility making this a moot point.

Whether the creation of non-density parcels as part of residential lots shown on a Development Plan require a separate special hearing request, and specifically, a portion of proposed Lot seven in the R.C. 2 zone?

The Board considered this argument but did not find any statutory support, and thus rejects the argument that non-density parcels require a special hearing.

Other and further issues as may be developed by testimony presented at the hearing.

The Board has determined that the density being proposed for the subject Development Plan, which is a key issue in this case, does not exceed the density allowed in the BCZR.

Having carefully reviewed all of the testimony presented, as well as the comprehensive briefs provided by counsel, the Board denies the Petition for Special Hearing filed by the Protestants in this case.

Argument on Development Plan

At the public deliberation, the Board then turned its attention to the Development Plan review. Mr. Holzer summarized the Development Plan issues as follows. The Hearing Officer erred in basing conclusions regarding water supply impacts on facts that are not in evidence and in fact not true; the Hearing Officer ordered additional landscaping to protect the privacy of adjacent

land owners, but failed to specify the details of that plan and how it would be enforced; the Hearing Officer failed to fully consider the credentials of Preston in interpreting his testimony regarding runoff onto his property; the Hearing Officer failed to consider evidence describing environmental impacts to adjacent State Park property; and the Hearing Officer failed to consider environmental impacts to the Sweet Air Road Scenic Corridor as designated under the "Scenic Resources Map" in the Master Plan 2010.

The Board carefully reviewed the decision of the Hearing Officer and concluded that he gave each of the issues above serious consideration.

The responsibility of the Board on appeal is defined in § 32-4-281 of the 2003 Baltimore County Code (formerly BCC § 26-209). The Board's role in an appellate setting is to review the complete file and determine whether or not there is any reason to exercise authority granted under § 32-4-281(e).

The Board is not permitted to substitute its judgment for that of the Hearing Officer. The standard of review is deferential. Although the Board must make an independent evaluation as to whether the decision of the Hearing Officer exceeded his authority, resulted from unlawful procedure, or was affected by any other error of law, the Board's review of the factual basis for the Hearing Officer's decision is based on the traditional standard of whether substantive evidence supports the decision.

The Board in its review of this case finds that competent, material, and substantive evidence existed to support the decision made by the Hearing Officer; and that he did not act in any arbitrary or capricious manner.

Again, the Board can find no rationale to substitute its judgment for that of the Hearing Officer who was exposed to extensive testimony in public hearings, had the opportunity to listen to

both sides of the development issue, and very clearly and succinctly stated his views and opinions within the context of his Opinion and Order. For that reason, the Board upholds the decisions of the Hearing Officer issued on December 16, 2003 and June 3, 2004.

ORDER

IT IS THEREFORE THIS 10th day of November, 2004, by the County Board of Appeals of Baltimore County

ORDERED that the Petition for Special Hearing filed by the Protestants, Long Green Valley Association, Inc., et al, in Case No. 04-198-SPH, addressing the issues raised by the Protestants as outlined above, be and is hereby **DENIED**; and it is further

ORDERED that the Decision of the Hearing Officer in Case No. CBA-04-132 (PDM File No. X-404) in which the Development Plan for the Lynch Property was approved be and the same is hereby **AFFIRMED**

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*.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence M. Stahl, Panel Chairman

Margaret Brassil, Ph.D.

Donald I. Mohler III

1/20/05

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY	*	
	*	
PETITION OF: LONG GREEN VALLEY ASSN., INC. CHARLOTTE PINE, PRESIDENT; AND INDIVIDUALS CHARLOTTE PINE; STEVE PRESTON AND GARY ELSER	*	
FOR JUDICIAL REVIEW OF THE OPINION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY OLD COURTHOUSE, ROOM 49 400 WASHINGTON AVENUE TOWSON, MARYLAND 21204	*	CIVIL ACTION No. **3-C-04-12588**
	*	
IN THE MATTER OF LYNCH PROPERTY/PDM X-404 GAYLORD BROOKS REALTY CO. – DEVELOPER SWEET AIR ROAD 355' SE OF MANOR KNOLL COURT	*	
10TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	
BOARD OF APPEALS CASE NO.: CBA-04-132 AND 04-198-SPH	*	

RECEIVED AND FILED
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CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

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PROCEEDINGS BEFORE THE DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT AND THE BOARD OF APPEALS OF BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now comes the County Board of Appeals of Baltimore County and, in answer to the Petition for Judicial Review directed against it in this case, herewith transmits the record of proceedings had in the above-entitled matter, consisting of the 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 THE DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT OF BALTIMORE COUNTY

PDM X-404

January 31, 2003	Request for the Hearing Officer to approve a development plan, submitted by Gaylord Brooks Realty Co., Developer, for development of 47.0 +- acre tract of land with 8 single family dwelling units (7 proposed and 1 existing). Project Name: Lynch Property – Sweet Air Road
February 24	Concept Plan Conference held.
March 27	Community Input Meeting held at the Jacksonville Elementary School School.
August 13	Development Plan Conference held.

04-198-SPH

October 20	Petition for Special Hearing filed by Long Green Valley Association, Charlotte Pine, Individually, Steve Preston and Gary Elser, through their attorney, J. Carroll Holzer, Esquire, requesting: 1) Road supporting RC 5 permitted within RC2 2) Storm Water Management supports RC 5 permitted in RC 2 3) Can RC2 support both lots 4) Density issues 5) Creation of non-density parcels
November 6	Entry of Appearance filed by People's Counsel for Baltimore County.
November 16	Certificate of Posting
November 20	Certificate of Publication

X-404 (CBA-04-132) w/ 04-198-SPH

December 2	Hearing Day #1 held by the Hearing Officer.
December 3	Hearing Day #2 held by the Hearing
December16	Hearing Officer's Opinion and Development Plan Order issued; that within ninety (90) days of the date of this Order, the Developer shall submit the requisite written traffic analysis and that this matter shall thereafter be scheduled for further proceedings before the Hearing Officer.

June 3, 2004	Supplemental Hearing Officer's Opinion and Development Plan Order issued: that the red-lined development plan for the Lynch Property, identified as Developer's Exhibit 2 is APPROVED; and that all terms and conditions of the prior Order dated December 16, 2003, except as expressly modified herein, are incorporated and made a part hereof.
June 18	Notice of Appeal filed by J. Carroll Holzer, Esquire, on behalf of the Long Green Valley Association and Individuals Charlotte Pine, Steve Preston and Gary Elser.
June 18	Petition on Appeal filed by J. Carroll Holzer, Esquire.
July 20	The Board of Appeals convened for hearing; Mr. Holzer and Mr. Alderman appeared; case was opened and continued to September 7, 2004.

Appellant Exhibits

1 Letter dated July 15, 2004 from Daniel J. O'Leary, P.E. to Mr. Carroll Holzer; re: scheduled conflict

2 Letter, not dated, from Paul J. Solomon to Mr. Carroll Holzer; re: scheduled conflict

September 7	The Board of Appeals convened for hearing and the hearing was concluded by the Board of Appeals.

Developer Exhibits

1 Résume – Charles V. Main, II – 1 page

People's Counsel Exhibits

1 200' Zoning Map, dated January1986

Petitioner's Exhibits

1 Aerial Photo

2 Red-line Development Plan

3 Stephen D. Preston Resume – 9 pages

4 Location of Lynch Property and Surrounding Area - pamphlet / photographs consisting of 20 pages

5 a –b –c Audio Tapes

6 Daniel J. O'Leary, P.E. – Resume – 2 pages

7 Inter-Office Memo dated November 12, 2003 from R. Bruce Seeley to Tim Kotroco

8 Resolution – Long Green Valley Association – 3 pages

October 15	Memorandum of Protestants in Lieu of Final Argument filed by J. Carroll Holzer, Esquire.
October 15	Owner/Developer's Post-Hearing Memorandum filed by Howard L. Alderman, Jr., Esquire.
October 15	People's Counsel for Baltimore County's Argument Outlined filed by Carole S. Demilio, Deputy People's Counsel.
October 26	Public deliberation conducted by the Board of Appeals.
November 16	Opinion and Order issued by the Board of Appeals; decision of the Hearing Officer approving the development plan for the Lynch Property is AFFIRMED; Petition for Special Hearing filed in case 04-198-SPH is DENIED.
December 6	Petition for Judicial Review filed by J. Carroll Holzer, Esquire, on behalf of: Long Green Valley Association and individuals Charlotte Pine, Steve Preston and Gary Elser.
December 8	Received Petition for Judicial Review from Circuit Court Civil Action Case No.: C-04-12588.
December 10	Certificate of Notice filed.

December 18	Second Petition for Judicial Review filed in the Circuit Court (under existing case number) by People's Counsel for Baltimore County. Appropriate copies mailed.
January 19, 2005	Transcript of testimony filed.
January 20, 2005	Record of Proceedings filed in the Circuit Court for Baltimcre County.

Record of Proceedings pursuant to which said Board acted are permanent records of the originating agency in Baltimore County. These records are hereby forwarded to the Court together with exhibits entered before the Hearing Officer.

Theresa R. Shelton

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

c: Howard Alderman Jr, Esquire
J. Carroll Holzer, Esquire
People's Counsel for Baltimore County

PETITION OF:

LONG GREEN VALLEY, ASSO.

CIVIL ACTION NO.: 3-C-04-12588

MATTER OF: LYNCH PROPERTY

RECEIVED FROM THE COUNTY BOARD OF APPEALS EXHIBITS AND THE BOARD'S RECORD EXTRACT AND TRANSCRIPT FILED IN THE ABOVE-ENTITLED CASE, AND ZONING COMMISSIONER'S FILE AND EXHIBITS.

CLERK'S OFFICE

DATE: January 20, 2005

4/27/4

FILE COPY

IN RE: **IN THE MATTER OF LYNCH PROPERTY DEVELOPMENT PLAN & ZONING SPECIAL HEARING N & S/S Sweet Air Road, S/E of Manor Knoll Ct.**	**IN THE** **CIRCUIT COURT** **FOR** **BALTIMORE COUNTY** **Case No.:03-C-04-12588**
Long Green Valley Assoc., Inc., et al., ***Appellants/Petitioners*** ***Dorothy Surina, et al.,*** ***Appellees/Respondents*** **[CBA-04-132/PDM X-404 & 04-198-SPH]**	

2004 DEC 20 P 1:12

RESPONSE TO PETITION FOR JUDICIAL REVIEW

Dorothy Surina, Jeanne Gough, *et al* and Gaylord Brooks Realty Co., Inc., a Maryland corporation, all of whom were parties below before the County Board of Appeals for Baltimore County, by and through the undersigned legal counsel and in accordance with Maryland Rule 7-204 hereby serve notice that they intend to participate in the above-captioned appeal.

LEVIN & GANN, P.A.

By: _____
Howard L. Alderman, Jr.
Levin & Gann, P.A.
8th Floor, Nottingham Centre
502 Washington Avenue
Towson, Maryland 21204
410.321.0600 [voice]
410.296.2801 [fax]
halderman@LevinGann.com [e-mail]

Attorneys for Appellees

RECEIVED
DEC 21 2004
BALTIMORE COUNTY
BOARD OF APPEALS

[*Certificate of Service on Next Page*]

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of December, 2004, a copy of the foregoing Response to Petition for Judicial Review was mailed via First-Class, United States Mail to the following:

J. Carroll Holzer, Esquire
Holzer & Lee, PA
508 Fairmount Avenue
Towson, Maryland 21286

and

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

and

Baltimore County Office of People's Counsel
400 Washington Avenue, Room 47
Towson, Maryland 21204

Howard L. Alderman, Jr.

12/10/-1

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY

*

PETITION OF:
LONG GREEN VALLEY ASSN., INC. *
CHARLOTTE PINE, PRESIDENT; AND
INDIVIDUALS *
CHARLOTTE PINE; STEVE PRESTON
AND GARY ELSER *

FOR JUDICIAL REVIEW OF THE OPINION OF * CIVIL ACTION
THE COUNTY BOARD OF APPEALS No. 3-C-04-12588
OF BALTIMORE COUNTY *
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE *
TOWSON, MARYLAND 21204

*

IN THE MATTER OF
LYNCH PROPERTY/PDM X-404 *
GAYLORD BROOKS REALTY
CO. – DEVELOPER *
SWEET AIR ROAD 355' SE OF MANOR
KNOLL COURT *

10TH ELECTION DISTRICT *
3RD COUNCILMANIC DISTRICT

*

BOARD OF APPEALS CASE NO.: CBA-04-132
AND 04-198-SPH *

RECEIVED AND FILED
2004 DEC 10 A 10:48
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

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

CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the Provisions of Rule 7-202(d) of the *Maryland Rules*, 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:

J Carroll Holzer Esquire
Holzer And Lee, 508 Fairmount Avenue, Towson Md 21286

Charlotte Pine, President
Long Green Valley Association, 13310 Fork Road, Baldwin Md 21013

Charlotte Pine
607 Baltimore Avenue, Towson, Md 21204

Steve Preston
4408 Old Farm Road, Baldwin Md 21013

Gary Elser
4407 Old Farm Road, Baldwin Md 21013

Howard Alderman Jr Esquire
Levin & Gann, 502 Washington Avenue, Suite 800,
Towson, Md 21204

Dorothy E Surina
Jeanne Gough
4601 Sweet Air Road, Baldwin Md 21013

Steve Smith
Gaylord Brooks Realty Co., Po Box 400,
Phoenix Md 21131

Charles Main
Kristy Bischoff
Daft Mccune Walker Inc., 200 E Pennsylvania Ave
Towson, Md 21286

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

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

A copy of said Notice is attached hereto and prayed that it may be made a part hereof.

Theresa R. Shelton, Legal Secretary
County Board of Appeals, Room 49
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410-887-3180)

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to J Carroll Holzer Esquire, Holzer And Lee, 508 Fairmount Avenue, Towson Md 21286; Charlotte Pine, President, Long Green Valley Association, 13310 Fork Road, Baldwin Md 21013; Charlotte Pine, 607 Baltimore Avenue, Towson, Md 21204; Steve Preston, 4408 Old Farm Road, Baldwin Md 21013; Gary Elser, 4407 Old Farm Road, Baldwin Md 21013; Howard Alderman Jr Esquire, Levin & Gann, 502 Washington Avenue, Suite 800, Towson, Md 21204; Dorothy E Surina, Jeanne Gough, 4601 Sweet Air Road, Baldwin Md 21013; Steve Smith, Gaylord Brooks Realty Co., Po Box 400, Phoenix Md 21131; Charles Main, Kristy Bischoff, Daft Mccune Walker Inc., 200 E Pennsylvania Ave, Towson, Md 21286; Peter Max Zimmerman, People's Counsel for Baltimore County, Old Courthouse, Room 47, 400 Washington Avenue, Towson, Maryland 21204; Carole S. Demilio, Deputy People's Counsel for Baltimore County, Old Courthouse, Room 47, 400 Washington Avenue, Towson, Maryland 21204, this 10th day of December, 2004.

Theresa R. Shelton

Theresa R. Shelton, Legal Secretary
County Board of Appeals, Room 49
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410-887-3180)

County Board of Appeals of Baltimore County

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

December 10, 2004

J Carroll Holzer Esquire
Holzer And Lee
508 Fairmount Avenue
Towson Md 21286

RE: Circuit Court Civil Action No. 3-C-04-12588
Petition for Judicial Review
Lynch Property (PDM X-404)
Board of Appeals Case Nos.: CBA-04-132 and 04-198-SPH

Dear Mr. Holzer:

In accordance with the Maryland Rules, the County Board of Appeals is required to submit the record of proceedings of the Petition for Judicial Review that 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 and must be paid in time to transmit the same to the Circuit Court within the sixty day timeframe, as stated in the Maryland Rules.

The Court Reporter that you need to contact to obtain the transcript and make arrangement for payment is as follows:

CAROLYN PEATT
TELEPHONE: 410- 486-8209

DATES:
July 20, 2004 – Opened on the record
September 7, 2004 – Hearing Date

This office has also notified Ms. Peatt that a transcript on the above captioned matter is due by January 31, 2005, for filing in the Circuit Court. A copy of your Petition, which includes your telephone number, has been provided to the Court Reporter, which enables her to contact you for payment provisions.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,
Theresa R. Shelton
Theresa R. Shelton
Legal Secretary

/trs
Enclosure
c: Carolyn Peatt, Court Reporter
Charlotte Pine, President
Long Green Valley Association
Charlotte Pine
Steve Preston
Gary Elser
Howard Alderman Jr Esquire

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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

December 9, 2004

Howard Alderman Jr Esquire
Levin & Gann
502 Washington Avenue
Suite 800
Towson, Md 21204

RE: Circuit Court Civil Action No. 3-C-04-12588
Petition for Judicial Review
Lynch Property (PDM X-404)
Board of Appeals Case Nos.: CBA-04-132 and 04-198-SPH

Dear Mr. Alderman:

Notice is hereby given, in accordance with the Maryland Rules, that a Petition for Judicial Review was filed on December 6, 2004, in the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petition must file a response within 30 days after the date of this letter, pursuant to the Maryland Rules.

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-04-12588.**

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Theresa R. Shelton
Legal Secretary

/trs
Enclosure

c: J. Carroll Holzer, Esquire
Office of Peoples Counsel for Baltimore County
Pat Keller, Director/Planning
David Carroll, Director / DPW
Robert J. Barrett, Director / Rec & Parks
Project Manager / PDM
Zoning Commissioner
Timothy Kotroco, Director/PDM

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12/9/04

PETITION OF PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, Old Courthouse, Room 47, 400 Washington Avenue, Towson, MD 21204	*	IN THE
	*	
	*	CIRCUIT COURT
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	*	FOR
	*	
IN THE MATTER OF THE APPLICATION OF **LYNCH PROPERTY/PDM X-404 GAYLORD BROOKS REALTY CO, DEVELOPER** FOR A DEVELOPMENT PLAN APPROVAL AND PETITION FOR SPECIAL HEARING for property located on the N & S/S SWEET AIR RD, 355' SE OF MANOR KNOLL CT **(4501 Sweet Air Road)** 10th Election District, 3rd Councilmanic District	*	BALTIMORE COUNTY
	*	Civil No. 03-C-04-12588
	*	
Case No. CBA-04-132 and 04-498-SPH before the County Board of Appeals of Baltimore County	*	

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

PETITION FOR JUDICIAL REVIEW

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY hereby requests judicial review of the Opinion by the County Board of Appeals dated November 10, 2004 in the above case. PEOPLE'S COUNSEL was a party to the proceeding before the County Board of Appeals of Baltimore County in this matter.

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

Peter Max Zimmerman

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 9th day of December, 2004, a copy of Petition for Judicial Review was mailed, postage prepaid, to J. Carroll Holzer, Esquire, Holzer & Lee, 508 Fairmont Avenue, Towson, MD 21286 and Howard L. Alderman, Jr. Esquire, Levin & Gann, P.A., 502 Washington Avenue, 8th Floor, Towson, MD 21204, Attorney for Petitioners.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL
Room 47, Old CourtHouse
400 Washington Ave.
Towson, MD 21204

410-887-2188
Fax: 410-823-4236

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

December 9, 2004

RECEIVED
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BALTIMORE COUNTY
BOARD OF APPEALS

Chief Clerk, Civil Division
Circuit Court for Baltimore County
County Courts Building
401 Bosley Avenue
Towson, MD 21204

Hand-delivered

Re: Petition for Judicial Review of the Decision
of the County Board of Appeals
In the Matter of Lynch Property
Case Number: 03-C-04-12588

Dear Sir or Madam:

Enclosed please find a Petition for Judicial Review to be filed with regard to this case. If you have any questions or concerns, please contact my office.

Thank you for your consideration.

Very truly yours,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

PMZ/rmw
Enclosures

cc: Howard L. Alderman, Jr. Esquire
J. Carroll Holzer, Esquire
Kathleen C. Bianco, Administrator

12/3/04

PETITION OF:	*	IN THE
LONG GREEN VALLEY ASSN, INC.; CHARLOTTE PINE, PRESIDENT; AND INDIVIDUALS CHARLOTTE PINE; STEVE PRESTON; AND GARY ELSER	*	CIRCUIT COURT
	*	FOR
	*	BALTIMORE COUNTY
IN THE MATTER OF: LYNCH PROPERTY/PDM X-404 GAYLORD BROOKS REALTY CO., DEVELOPER N & S/S SWEET AIR ROAD 355' SE OF MANOR KNOLL COURT	*	Case No.
	*	
10th ELECTION DISTRICT 3rd COUNCILMANIC DISTRICT	*	
BEFORE THE COUNTY BOARD OF APPEALS 400 WASHINGTON AVE., ROOM 49 TOWSON, MD 21204 410-887-3180 RE: DEVELOPMENT PLAN APPROVAL and PETITION FOR SPECIAL HEARING Case No. CBA-04-132 Case No. 04-198-SPH	*	
	*	
	*	
	*	
	*	

RECEIVED
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BALTIMORE COUNTY
BOARD OF APPEALS

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

PETITION FOR JUDICIAL REVIEW

Pursuant to Rule 7-202, Petitioners Long Green Valley Association, Inc. and President, Charlotte Pine; and individuals Charlotte Pine, 13310 Fork Road, Baldwin, MD 21013; Steve Preston, 4408 Old Farm Road, Baldwin, MD 21013; and Gary Elser, 4407 Old Farm Road, Baldwin, MD, 21013, by and through their attorney, J. Carroll Holzer, Holzer & Lee, request Judicial Review of the Opinion of the County Board of Appeals of Baltimore County in Case No. CBA-04-132 and 04-198-SPH rendered on November 10, 2004 and attached hereto.

LAW OFFICE
HOLZER AND LEE
THE 508 BUILDING
508 FAIRMOUNT AVENUE
TOWSON MARYLAND
21286

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

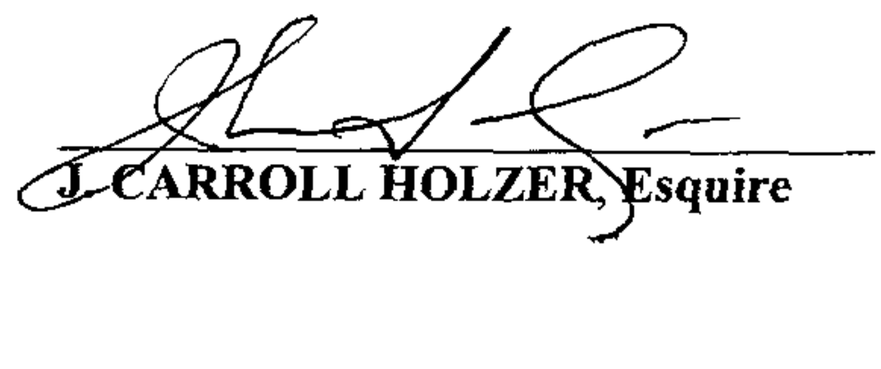
Petitioners were parties before the County Board of Appeals and fully participated in the proceedings.

Respectfully submitted,

J. CARROLL HOLZER, Esquire
508 Fairmount Avenue
Towson, Maryland 21286
410-825-6961
Attorney for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3RD day of December, 2004, a copy of the foregoing Petition for Judicial Review was mailed first class, postage pre-paid to: Howard Alderman, Jr., Levin & Gann, 502 Washington Ave., Suite 800, Towson, Maryland, 21204; County Board of Appeals, Basement, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204; People's Counsel for Baltimore County, Basement, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204.



J. CARROLL HOLZER, Esquire

C:\My Docs\Petitions 2004\Lynch Property Cir Ct. 12-3-04

County Board of Appeals of Baltimore County

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

November 10, 2004

J. Carroll Holzer, Esquire
508 Fairmount Avenue
Towson, MD 21286

RE: *In the Matter of: Lynch Property Development Plan and Petition for Special Hearing /Long Green Valley Assn., Inc.*
Case No. CBA-04-132 /PDM X-404 and Case No. 04-198-SPH

Dear Mr. Holzer:

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

Kathleen C. Bianco /ths
Kathleen C. Bianco
Administrator

Enclosures

c: Long Green Valley Association, Inc.
Charlotte Pine
Steve Preston
Gary Elser
Howard L. Alderman, Jr., Esquire
Steve Smith /Gaylord Brooks Realty Co.
Dorothy E. Surina and Jeanne Gough
c/o Howard Alderman, Jr., Esq.
Charles Main; Kristy Bischoff /Daft McCune Walker Inc
Office of People's Counsel
Pat Keller, Director /Planning
David Carroll, Director /DPM
Edward Adams, Jr., Director /DPW
Robert J. Barrett, Director /Rec & Parks
William J. Wiseman III /Zoning Commissioner
Don Rascoe /PDM
Timothy M. Kotroco, Director /PDM

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10/15/04

DEVELOPMENT PLAN HEARING AND PETITION FOR SPECIAL HEARING
(LYNCH PROPERTY – Sweet Air Road)
N & S/S Sweet Air Road, 355' SE the c/l Manor Knoll Ct (4501 Sweet Air Road)

10th Election District
3rd Councilmanic District

Legal Owner(s): Dorothy Surina & Jeanne Gough, Owners, Gaylord Brooks Realty Co., Dev/Applicants Long Green Valley Assoc., Charlotte Pine, Steve Preston & Gary Elser, Petitioners.

*** BEFORE THE**

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OCT 15 2004
COUNTY BOARD OF APPEALS
BALTIMORE COUNTY
BOARD OF APPEALS

*** FOR**

*** BALTIMORE COUNTY**

*** CASE #:CBA-04-132 & 04-198-SPH**

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

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY'S ARGUMENT OUTLINE

I. Preliminary

1. This is a special hearing case filed by the opponents to a development plan proposed on R.C. 2 and R.C. 5 property in northern Baltimore County at 4501 Sweet Air Road. Therefore, the opposing citizens, the Long Green Valley Association and People's Counsel for Baltimore County are the "Petitioners" in this case.

2. The Petition for Special Hearing identified five specific legal issues. These issues were reiterated in the Petition for Appeal before the County Board of Appeals.

II. Issues

1 The issues identified in the Petition are before the Board in this *de novo* appeal and center around a general underlying question: ***Can RC 2 zoned property be used to support the development of R.C. 5 property, including density, storm water management (SWM), and a road or driveway?***

A. It is important to note at the onset that this Board denied a petition to rezone this site from RC 2 to RC 5. In the Matter of Michael James Lynch, DVM, et al. Case No.: R-01-455 dated May 6, 2002. The Board recognized, among other things, that (i) the ridge line serves as a natural geographic boundary between the RC 2 and R.C. 5 zones on the site; and (ii) the RC 2 was placed on the site for a purpose, that is, as a buffer to the Gunpowder State Park, also R.C. 2, that adjoins the site; Wally Lippincott, a long-time employee from Baltimore County Department of Environmental Protection and Resource Management, testified on this position and opposed the rezoning.

B. The proposed development of the RC 2 property undermines and circumvents the rezoning denial and attempts to accomplish indirectly what the CBA denied in its 2002 decision.

C. The owner's proposal violates the spirit and intent of the RC 2 zone; the stated purposes of the RC zones in BCZR 1A00.2. are to prohibit "undesirable forms of development," and "protect . .. resources from compromising effects of . . densities of development,".

D. The development proposed here cannibalizes the RC 2 zone to maximize density on the RC 5 portion of the site; quite simply, the accessory uses associated with development and residential density within the RC 5 zone must be located within the boundaries of the RC 5; if the density on the RC 5 is reduced accordingly, so be it. A property owner is not guaranteed the maximum density but must abide by all zoning and development regulations and statutes.

E. The developer's position contradicts a decision by the Court of Appeals. When presented with a similar factual scenario, including a request to use a residential roadway to service a commercial use, the Court of Appeals denied the use of a driveway and culvert across the corner of a residential lot for limited truck traffic of the adjoining business, located in a commercial zone. Both lots were in single ownership. The owner there also made the argument that the zoning ordinance does not expressly prohibit the use of the driveway as an "access route" to the commercial lot. The Court rejected the argument, quoting with approval the language of the circuit court judge that the zoning ordinance permits only those uses prescribed in the statute. See Leimbach Const. Co. v. City of Baltimore, 257 Md. 635 (1970)(attached).

F. BCZR is in accord with Leimbach. 1A005 states: **Whenever a single tract is divided by a zone boundary so that portions of such a tract lie within R.C. zones of different classifications, the total number of dwellings or density units permitted shall apply to each tract individually and, for the purposes of these regulations, shall be considered as separate parcels."**

G. The Zoning Commissioner's Policy Manual (ZCPM) discusses this section as well on page 1A-3.1 (attached): **" If R.C. zoned land under the same ownership is separated by a different R.C. zone, then the density should be calculated and utilized by each zone parcel."** (emphasis added). The expert land planner, Mr. Paul Solomon, testified that the word "utilized" particularly means the supporting facilities as well as the house itself must be located within the zone. (T. 84).

H. "Density" means more than just the house. It includes all accessory and integral structures and improvements. For example, further down on page 1A-3.1, ZCPM also states: **"The well and septic system must be located in the same zone as the house."**

I. In this spirit, the owners' position that the road here is permitted by right as a "street or way" under 1A01.2 B.5 (attached) is in error. As explained by Paul Solomon, who the Court of Appeals quoted at length approvingly as an expert land planner with particular expertise on the R.C. zones in Marzullo v. Kahl, 366 Md. 158 (2001), the "streets and ways" permitted by right in the R.C. 2 zone refer to the roads constructed in conjunction with development on an R.C. 2 site. It does not permit a private developer to construct a road or

driveway across RC 2 land to support development in the RC 5 zone. (T. 82). As the Court in Leimbach stated: **"We agree with Judge Sodaro** [Circuit Court for Baltimore City] **that the use Litty** [Petitioner] **proposes to make of the driveway shown in the plat would be a "business" use of land in a residential use district."**

(i) Furthermore, statutory construction requires that related provisions should be integrated so as to give function and meaning to each. The Court of Appeals stated this in Hope v. Baltimore County, 288Md. 656, 666-67 (1980): **"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."**

J. The developer's use of the phrase "non-density" is a misnomer and red herring. In violation of statutes and policies, the R.C. 2 portion of the site clearly supports the residential development in the R.C. 5 zone a prohibited practice. Mr. Solomon explained the driveway and the storm water management system are certainly aspects of density and development. (T. 84). Regardless of the developer characterizing this as inoffensive and harmless, the unmistaken purpose in creating the "non-density" portions in this subdivision is to create more uniform lots for home sites, which is a prohibited purpose under Baltimore County zoning. See ZCPM 1A01.3.B.1 d. attached.

K. The developer's engineer, Mr. Main, admitted the storm water management system could be located solely in the R.C. 5 zone by changing the plan. (T. 140). Thus the proposal clearly violates the purpose of the RC zones by maximizing residential development at the expense of the RC 2 zone. Also, while he stated he agreed with Mr. O'Leary's testimony about uncontrolled runoff, it is important to recognize that Mr. Main did not dispute Mr. O'Leary's testimony that the runoff would be negligible. (T. 141). Thus there is no environmental justification to locate storm water management on the R.C.2 property.

L. Likewise, the claim that the storm water management system required for the RC 5 houses would benefit and support the residence is the RC 2 zone is without merit. The developer did not dispute the testimony that a single house on the RC 2 site would not likely require a storm water management system, but merely a septic tank and septic reserve area. (T.65). Thus it is clear the storm water management system is driven by the proposed dwellings in the R.C. 5 zone, and not the existing farmhouse nor the proposed dwelling in the R.C. 2.

M. The opponent's expert land planner, Mr. Solomon, described the history and appropriateness of residential development in the R.C. zones. He explained the R.C. 2 zone was established primarily for agricultural uses, and that minimal density for 2 homes on sites between 2-100 acres was allowed as an accommodation to the public good. He emphasized

it was never intended that the R.C. 2 zone would be used to support homes and related facilities in the R.C. 5 zone. He pointed out his position is based on his experience in generating the R.C. legislation, and the language in BCZR 1A.01.1B and 1A00.5. (See attached regulations).

(i) Mr. Solomon explained the line is drawn at the zoning line for permitted uses and structures. The integrity of the R.C. 2 is not protected if a road and storm water management for R.C. 5 development are located in the R.C. 2 zone. (T. 80-84).

(ii) In further violation of zoning classifications, Mr. Solomon explained the proposed development plan in effect utilizes density that it does not have under the Regulations. In other words, by locating support facilities for the R.C. 5 homes on the R.C. 2 property, the proposal actually attributes more density to the R.C. 2 than the two density units it has under the zoning regulations. In addition to the existing farmhouse and the house proposed in the R.C. 2, which together utilize the maximum density, at least two R.C. 5 lots depend on supporting facilities in the RC 2 zone. Thus the R.C. 2 zoned property, which is allowed 2 dwellings per 100 acres, supports at least four dwellings. (T. 94-95).

(iii) Mr. Solomon correctly concluded the proposed development is a *de facto* rezoning of the site. (T. 85). A spill-over of RC 5 development into the RC 2 zone violates the spirit and intent of the R.C. zones. It reduces available farmland, and thus compromise the purpose of the RC 2 zone to protect and promote agriculture; it provides developers with a tool to circumvent density limitations in the R.C. zones; it creates amorphous, and therefore, meaningless zoning boundaries.

2. The Board should be aware of two of its decisions that address issues similar to those in this case - Long Green Valley Assn. (Case No. 93-93-SPH) and Beth Tfiloh (Case No. 01-468-SPH). In both case, the Board denied the developer's request to extend accessory or supporting facilities across zoning boundaries.

A. In Long Green Valley Assn. the property owner attempted to use adjoining R.C. 2 property under an easement agreement for a septic system for a commercial use permitted on his B.L. property. The Board stated on page 8: **"The septic system in the R.C. –2 zone to support a commercially-zoned property is simply not allowed."** The Circuit Court (Case No. 94-CV-10257) affirmed on the merits, holding that the septic system is an accessory use which, under the definition in BCZR 101, must be **"located on the same lot as the principal use or structure served . . ."**

B. In Beth Tfiloh, the developer proposed the use of R.C. 4 property for athletic fields for a school located on the adjoining D.R. 1 property. On page 12 of its Opinion, the Board defined the issue: **". .. the essential question . . . is whether or not Beth Tfiloh, on the single lot of record, can have activities on the R.C. 4 zoned portion of this tract which are incidental or accessory to the permitted uses of right in the D.R. 1 portion of the tract."** The Board answered the question on page 15: **"It is obvious to this Board that,**

where a tract is divided into varying R.C. zones, each part must be regulated by its own requirement relative to the number of dwellings or units that are permitted."

3. It the case at hand, there was also significant testimony from a neighboring property owner, Steve Preston, who is opposed to the development because of the negative environmental impacts on his home. Mr. Preston, who has degrees in biology and a Ph.D in environmental engineering, submitted as Petitioner's Exhibit 4, a packet of photo's and illustrations of the drainage and water flow due to the topography and streams at the site. (T. 15). He explained his property sits lower than the subject site and is concerned that development will result in run-off and erosion. (T. 10). Mr. Preston also testified that the development will put stress on the existing wells. He noted that a neighboring homeowner just south of his residence required 4 digging wells and easements to service his home. (T. 9).

4. Mr. Daniel O'Leary, an expert civil engineer, testified for protestants against the development. He pointed out that contrary to the developer's position:

A. The home on the proposed Lot 7 in the R.C. 2 zone does not drain into the storm water management pond, as claimed by developer as justification of its location in the R.C. 2 zone. Rather, the contours of Lot 7 indicate the drainage is easterly and off the property. (T. 47-48). The only improvement on the R.C. 2 lot that may drain into the pond is the driveway/road, which opponents to the development argue is illegal on the R.C. 2. (T. 49-52). This witness stated unequivocally that the storm water management system, which in reality services only the R.C. 5 development, could be located within the R.C. 5 zone.

B. The witness was also clear that locating the storm water management system on the R.C. 5 property would generate a negligible increase, if any, of unmanaged flow. (T. 50-52, 61-62). The difference would not be significant enough to justify the location on the R.C. 2 site and would not present an adverse environmental situation.

C. Mr. O'Leary also pointed out unequivocally that the SWM system is a structure under density calculations, complete with pipes and concrete risers. (T. 63-64).

D. Mr. O'Leary also confirmed that the single residence proposed in the R.C. 2 zone would not require a storm water management system; instead storm water management is being driven by the R.C. 5 development and should be located in the R.C. 5 zone. (T. 65-66).

5. In **summary,** the Petition for Special Hearing should be granted for the following reasons:

A. The support facilities for the R.C. 5 development, including the road and storm water management must be located on the R.C. 5 property. This is required by BCZR 1A005, ZCPM 1A-3.1, and Leimbach, *supra.* The Board's prior decisions in Long Green and Beth Tfiloh also support the Petition.

B. The proposed development violates the spirit and intent of the R.C. 2 zone.

C. The proposed development creates serious adverse impacts on neighboring properties and the environment.

D. The proposed development is a *de facto* rezoning in violation of general principles of rezoning and the rezoning process before the Board in BCC 32-3-501-515.

Peter Max Zimmerman 10/15/04

Peter Max Zimmerman Date
People's Counsel for Baltimore County

Carole S. Demilio 10-15-04

Carole S. Demilio Date
Deputy People's Counsel for Baltimore County

CERTIFICATE OF SERVICE

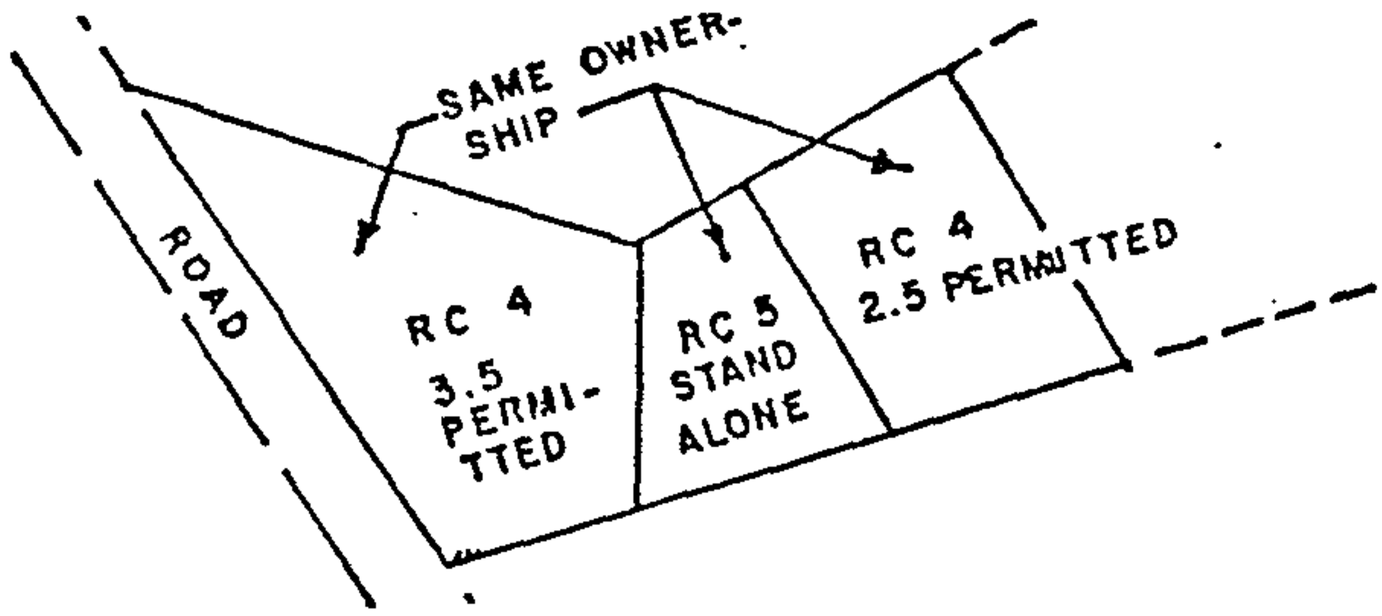
I hereby certify that on this 15th day of October, 2004, a copy of the People's Counsel for Baltimore County's Argument Outline was mailed, postage prepaid, to J. Carroll Holzer, Esquire, Holzer & Lee, 508 Fairmont Avenue, Towson, MD 21286 and Howard L. Alderman, Jr. Esquire, Levin & Gann, P.A., 502 Washington Avenue, 8th Floor, Towson, MD 21204, Attorney for Petitioners.

Carole S. Demilio

CAROLE S DEMILIO
Deputy People's Counsel
County

1A00.5.a TRACTS DIVIDED BY ZONE BOUNDARIES - If R.C. zoned land under the same ownership is separated by a different R.C. zone, then the density should be calculated and utilized by each zone parcel. In the following example the R.C. 4 density would be two for one parcel and three for the other. The five lots would have to be located in the respective permitted density parcels of the property. The R.C. 5 area would be figured and utilized separately.

(1) If R.C. zoned land is proposed to be clustered in the same zone, on the same property, across another zone, a special hearing would be required before the Zoning Commissioner. In the following example a special hearing would be required to request that density units be clustered in either of the R.C. zoned land.



1A00.5.b LOTS DIVIDED BY ZONE LINES - The following guidelines have been formulated so that this matter can be handled consistently:

(1) CONDITIONS:

a. A house may not straddle an R.C. zone line.

b. Any lot must meet the minimum lot area, width and setback requirements of the zone in which the house is to be located.

c. The well and septic system must be located in the same zone as the house.

i. setbacks are measured to the property or street right-of-way and not the zone line.

d. When calculating density, if a lot contains enough area to meet the minimum lot size in each of the R.C. zones into which it extends; it counts as two density units used and not just one (i.e. one density unit subtracted from that allowed in each separate R.C. zone.)

(2) INTERPRETATION - This determination may be subject to a special hearing at the discretion of the Zoning Commissioner.

(3) See the following case: 89-52-SPH

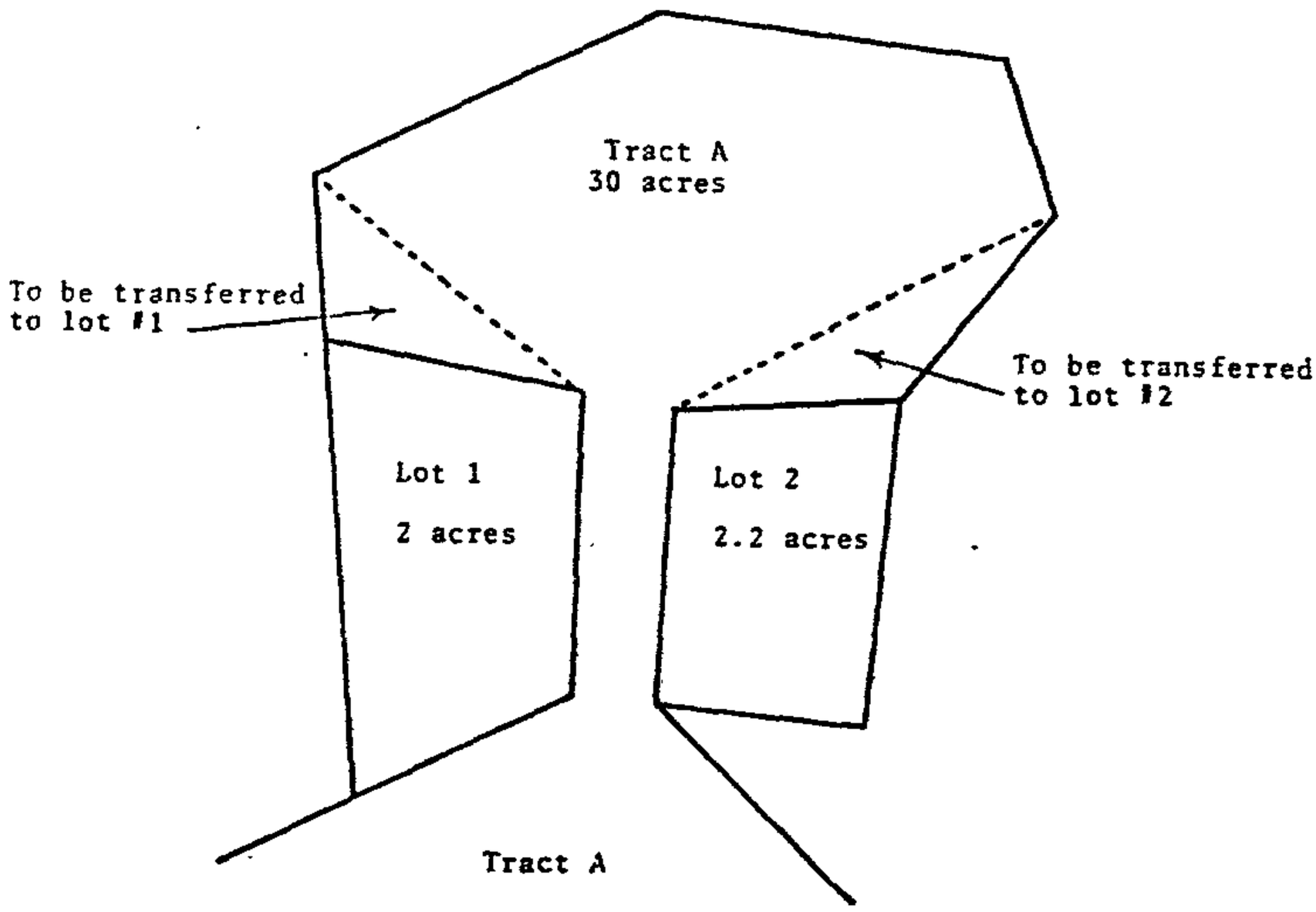
1A00.4.a AMENDMENTS TO DEVELOPMENT PLANS - INDIVIDUAL LOT OWNERS
(See Section 1B01.3.A.7.C Z.C.P.M., Page 1B-21)

1A00.4.b SALE OR TRANSFER OF SMALL PARCELS

(1) The sale or transfer of small R.C. zoned parcels, usually too small to meet the minimum lot size, for non-density purposes such as access, or agriculture, may be permitted.

(2) In an R.C. 2 zone, a parcel could possibly be transferred from the overall development tract to an adjacent existing lot of record provided that the end result does not permit a re-subdivision into a greater number of lots.

(3) Depending on the use and the size of the parcels, a special hearing before the Zoning Commissioner may be required to determine if a non-density transfer is permitted.



Tract A

(4) Persons shall be advised to read both the Circuit Court and Special Appeals Cases for Steven H. Gudeman, et ux, All Parties v. People's Counsel for Baltimore County.

1A01.3.B.1 SUBDIVIDING EXISTING LOTS

a. Subdivision or further subdividing of legally existing R.C.-2 zoned lots of record prior to Bill 178-79 (effective 11/25/79) is permitted provided that:

(1) only the most recent deed shall be used to determine the number of lots of record and that;
(2) the lots recorded met the existing zoning regulations at that time.

b. If the property is recorded by multiple deeds or the deed contains multiple parcels, or the subdivision needs further clarification, the following information must be provided:

(1) A scaled site plan showing the boundaries of the parcel as they were on November 25, 1979 with the zone line plotted upon it.
(2) Drawings showing any changes in boundary and/or ownership since that time.
(3) All deeds recorded that show change in boundaries or ownership.
(4) A letter stating the devolution of title and what is being requested.
(5) Drawings should be color-coded to match accompanying deed.
(6) All of the above should be signed and sealed by a surveyor, engineer or title attorney and must be submitted for review at least 15 working days prior to zoning approval or the C.R.G. meeting.

c. When legally existing parcels or deeds qualify to be subdivided or resubdivided, each separate parcel must be subdivided individually.

→ d. If the intent is to reconfigure the existing lots, the main purpose must be for the protection and preservation of farm land and not to create "more uniform" lots for homesites.

e. Persons shall be advised to read both the Circuit Court and the Court of Special Appeals Cases for Steven H. Gudeman, et ux, All Parties v. People's Counsel for Baltimore County.

1A01.3.B.3 See 103.3.A, ZCPM, Method of Measuring Setbacks, Page 1-43.1

from the Director of the Department of Environmental Protection and Resource Management.

(2) The recommendations shall be provided to the Board of Appeals within 30 days after the Department is notified by certified mail, return receipt requested, by the petitioner of the filing of the petition for reclassification, unless the Department by written request to the Board of Appeals, with good cause shown, moves that additional time not to exceed an additional 30 days is required to prepare and file said recommendations with the Board of Appeals.

B. The meeting of criteria established in this article for the filing of zoning reclassification petitions shall not in itself be sufficient grounds to reclassify property.

1A00.4 Plans and plats. Development plans and final subdivision plats shall be required in the manner prescribed under Section 1B01.3, and, for the purpose of this section, all references to D.R. Zones shall include the R.C. Zones.

→ 1A00.5 Application to tract divided by zone boundary. Whenever a single tract is divided by a zone boundary so that portions of such a tract lie within R.C. Zones of different classifications, the total number of dwellings or density units permitted shall apply to each tract individually and, for the purpose of these regulations, shall be considered as separate parcels.

I. That effective implementation of the resource conservation area requirements in the Chesapeake Bay Critical Area criteria requires additional resource conservation zoning classifications to accommodate strictly controlled growth while conserving habitat and water quality within the Critical Area. **[Bill No. 32-1988]**

1A00.2 Purposes. Pursuant to the above findings, it is the purpose of the Resource Conservation Zones to:

A. Discourage present land use patterns of development and to create a framework for planned or orderly development;

B. Provide sufficient and adequate areas for rural-suburban and related development in selected and suitable areas;

C. Protect both natural and man-made resources from compromising effects of specific forms and densities of development;

D. Protect areas desirable for more intensive future development by regulating undesirable forms of development within these areas until such time as intensive development commences.

E. Help achieve the goals of the Chesapeake Bay Critical Area Protection Law[2] by enacting land use policies to control development within the Critical Area by conserving the land and water resource base for agriculture, forestry and other natural resource uses; minimizing adverse effects on water quality; and conserving fish, wildlife and plant habitat. **[Bill No. 32-1988]**

1A00.3 Rezoning. **[Bill No. 32-1988]**

A. Filing of rezoning petitions.

1. No petition to reclassify an R.C. Zone or portion thereof as other than an R.C. Zone may be accepted for filing by the Zoning Commissioner unless:

a. The capital program, duly adopted Baltimore County Master or Comprehensive Plans, and the "county plan" required under Subtitle 5 of Title 9 in the Environment Article of the Annotated Code of Maryland 1987, as amended, show that the property under petition is to be serviced by public sewerage and water supply systems within two years after the date the petition is submitted; and

b. Required recommendations.

(1) No zoning reclassification may be granted for property zoned R.C.20 or R.C.50 by the Board of Appeals of Baltimore County unless the Board has received, in addition to any other recommendations from county agencies required by law or regulations, a recommendation on such requested reclassification

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2 **Editor's Note: See Title 8, Subtitle 18, of the Natural Resources Article of the Annotated Code of Maryland.**

Section 1A01
R.C.2 (Agricultural) Zone

1A01.1 General provisions.

A. Legislative statement of findings.

1. Declaration of findings. It is found:

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

b. That the agricultural industry is an integral part of the Baltimore economy and that a continued conversion of agricultural land will continue to undermine this basic industry;

c. That scattered development is occurring in a sporadic fashion in areas of Baltimore County containing productive agricultural land;

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

e. That heretofore Baltimore County has been unable to effectively stem the tide of new residential subdivisions in productive agricultural areas of Baltimore County;

f. That Baltimore County has certain wetlands along Chesapeake Bay and its tributaries which serve as breeding grounds and nursery areas for the bay's biotic life; and

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

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 agricultural areas of Baltimore County by preventing incompatible forms and degrees of urban uses.

1A01.2 Use regulations.

A. Preferred use permitted as of right. Agricultural operations, when conducted in accordance with good and reasonable husbandry practices, shall be afforded preferential treatment over and above all other permitted uses in R.C.2 Zones.

B. Uses permitted as of right.[1] The following uses only are permitted as of right in all R.C.2 Zones: **[Bill No. 178-1979]**

1. Dwellings, one-family detached. **[Bill No. 178-1979]**

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1 **Editor's Note: "Churches and schools for agriculture training," originally included in this section by Bill No. 98-1975, were moved to Section 1A01.2.C by Bill No. 178-1979.**

2. Farms and limited acreage wholesale flower farms (Section 404). **[Bill Nos. 178-1979; 51-1993]**

3. Open space, common. **[Bill No. 178-1979]**

4. Public schools. **[Bill Nos. 63-1980; 47-1982; 47-1985]**

5. Streets and ways. **[Bill No. 178-1979]**

6. Telephone, telegraph, electrical-power or other lines or cables, provided that any such line or cable is underground; underground gas, water or sewer *mains or storm drains; or other underground conduits, except interstate or* international pipelines. **[Bill No. 178-1979]**

7. Trailers, provided that any trailer allowed under this provision must be used or stored in accordance with the provisions of Subsection B, C, E or F of Section 415.1 and Section 415.2.A.1 or 415.3.C.1, as applicable. **[Bill No. 178-1979]**

8. Antennas used by CATV systems operated by companies franchised under Title 8, Article II, Division 1, of the Baltimore County Code, 1988 Edition, as revised, if situated on property owned by the county, state or federal government or by a governmental agency. **[Bill No. 220-1981]**

9. Accessory uses or structures, including, but not limited to, the following:

   a. Excavations, uncontrolled. **[Bill No. 178-1979]**

   b. Farmer's roadside stand and produce stand, subject to the provisions of Section 404.4. ***[Bill Nos. 178-1979; 41-1992]***

   c. Home occupations (see Section 101). **[Bill Nos. 124-1978; 178-1979]**

   d. Offices or studios of physicians, dentists, lawyers, architects, engineers, artists, musicians or other professional persons, provided that any such office or studio is established within the same building as that serving as the professional person's primary residence at the time of application; does not occupy more than 25% of the total floor area of that residence; and does not involve the employment of more than one nonresident employee. **[Bill Nos. 78-1979; 105-1982; 65-1999]**

   e. Parking space, including residential-garage space and space for recreational vehicle (Section 415A). **[Bill No. 178-1979]**

   f. Piers, wharves, docks and bulkheads, subject to the provisions of Section 417. **[Bill No. 178-1979]**

   g. Radio operator antennas, subject to Section 426A. **[Bill Nos. 178-1979; 30-1998]**

   h. Swimming pools, tennis courts, garages, utility sheds, satellite receiving dishes (subject to Section 429) or other accessory structures or uses (subject to the height and area provisions for buildings as set forth in Section 400). **[Bill No. 178-1979; Bill No. 71-1987]**

257 Md. 635

LEIMBACH CONSTRUCTION COMPANY

v.

Mayor and CITY Council OF BALTIMORE et al.

No. 271.

Court of Appeals of Maryland.

April 13, 1970.

Appeal from decision of Board of Municipal and Zoning Appeals disapproving application for permit to install driveway and culvert across corner of residential lot. The Baltimore City Court, Anselm Sodaro, J., affirmed action of the Board and appeal was taken. The Court of Appeals, McWilliams, J., held that construction of driveway and culvert across corner of residential lot so as to permit two to ten trucks daily to enter applicant's commercial property would constitute impermissible "business" use of land in residential district.

Affirmed.

1. Zoning ⇐417

Where property owner could accomplish access to his property on foot or on horseback, fact that he could not drive motor vehicle onto his property did not render action of Board of Zoning and Zoning Appeals in refusing to permit construction of driveway and culvert in residential area confiscatory.

2. Zoning ⇐280

Construction of driveway and culvert across corner of residential lot so as to permit two to ten trucks daily to enter applicant's commercial property would constitute impermissible "business" use of land in residential district.

See publication Words and Phrases for other judicial constructions and definitions.

Charles C. W. Atwater, Baltimore (Mylander & Atwater, Baltimore, on the brief) for appellant.

Simon Schonfield, Asst. City Sol. (George L. Russell, Jr., City Sol., and Clayton A. Dietrich, Chief Asst. Sol., Baltimore, on the brief) for Mayor and City Council part of appellees.

Marvin M. Polikoff, Baltimore, for Bettie O. Summers, other appellee.

Argued before HAMMOND, C. J., and McWILLIAMS, SINGLEY, SMITH and DIGGES, JJ.

McWILLIAMS, Judge.

The boundaries of the triangular enclave within which lies the land of the appellant (Litty) [1] are Wilkens Avenue on the south, Caton Avenue on the east and the Pennsylvania Railroad on the northwest. On the opposite side of Wilkens Avenue are the spacious grounds of St. Agnes Hospital. On the other side of the railroad is Loudon Park Cemetery. Maiden Choice Run flows through the enclave, from west to east, continuing to its confluence with Gwynn's Falls, a half mile or so farther east. An occasional reference to the accompanying plat will facilitate comprehension of the facts.

Litty, a general contractor, has outgrown his present place of business. Sometime prior to March 1969 he acquired an option to purchase the three acres of commercially zoned property designated Lot 10 and Lot 21 on the plat. Although legal access thereto is provided by Primson Avenue, vehicular access is, in fact, impossible because the bridge over Maiden Choice Run fell down fifteen, "maybe even forty" years ago. It seems that city officials displayed a massive indifference to Litty's suggestion that the bridge be rebuilt inspired, no doubt, by an estimated cost of $50,000 to $55,000. There were vague mutterings about splitting the cost but Litty had a notion that a crossing could be ac-

1. Ernest J. Litty, the president and apparently the principal owner of the appellant, Leimbach Construction Company.

complished at a point about 100 feet southwest of Primson Avenue for about $12,000. He thereupon obtained an option to buy the irregularly shaped one acre of residentially zoned land designated P on the plat. He had in mind building a 30 foot driveway from Primson Avenue across the easternmost panhandle thereof and thence over a bridge to Lots 10 and 21.

On 19 March 1969 Litty applied for a permit to "install [a] driveway and culvert across [the] corner of [the residential] lot." The application was disapproved by the zoning commissioner "for the reason that it violates [Section 11 of] the zoning ordinance." The Board of Municipal and Zoning Appeals took up Litty's appeal on 15 April. Bettie Owings Summers, the chairman of the St. Agnes Neighborhood Association, testified that of the 127 householders in the community at least 113 opposed Litty's application. She spoke, with obvious relish, of the defeat of an earlier (1960) attempt to rezone Lot P from residential to commercial. She expressed fears that Litty's tractor-trailer trucks, two to ten daily, would create a traffic hazard and be an "additional nuisance." Litty testified that he proposed to spend $300,000 to $400,000 improving Lots 10 and 21. Some mention was made of pedestrian access to the cemetery through a tunnel under the railroad which it seems is on a 30 foot fill. Lots 10 and 21 were described as a "mess," a "jungle" and a "wilderness."

The Board found that the "testimony shows that the only access to Lot[s] 21 and 10 * * * is on Primson Avenue." It noted that "the operation of the [proposed] business would necessitate anywhere from two to ten trucks daily entering the area and that these trucks would be of the tractor-trailer type." It noted also that the opposition of the St. Agnes Neighborhood Association was based on a claim that the proposed use "would be an encroachment to the residential character of the neighborhood." The Board's resolution, dated 18 April, goes on to say:

"The premises is vacant land on which it is proposed to construct a 30 foot driveway and metal culvert for ingress and egress to the adjoining commercial lot.

"Under the provisions of Sections 10 and 11 of the Zoning Ordinance, a business and a yard for the storage of motor vehicles are uses excluded from the Residential Use District. The proposal in this case is to construct a driveway and culvert and use that portion of the lot for ingress and egress to the commercially zoned property."

* * * * * *

"The Board is of the opinion that no sufficient reason was shown to make an exception to the use regulations as proposed in this appeal. The Board also finds that the proposal would be detrimental to the health, safety and welfare of the community.

"In accordance with the above facts and findings, the Board disapproves the application."

Litty's appeal from the decision of the Board came on for a hearing, before Sodaro, J., in the Baltimore City Court, on 11 June. Miss Summers testified there was a time when there were a few houses on Lot 21 access to which was by "a foot bridge across Maiden Choice Run * * * [which was] never wide enough for any vehicle to go across." Litty's testimony before Judge Sodaro was brief. He said, as he did at the hearing before the Board, that there was no access to the property. His revelation that he had exercised the options to purchase Lots 10, 21 and P in May, *after* the decision of the Board, was something of a surprise to the court and counsel and it is not, to be sure, without significance. The consideration for Lots 10 and 21 was said to be $26,000; for Lot P, $12,000.

In affirming the action of the Board, Judge Sodaro said:

"The court is of the opinion that the proposed driveway would be a commercial use of residentially-zoned land in violation of the Zoning Ordinance. The Appellant contends that Sections 10 and

11 of the Zoning Ordinance do not expressly prohibit the use of the driveway as an access route to the commercial lot; that the Ordinance should be strictly construed and should not be applied to interfere with the beneficial use of the property in question unless the restriction appears on the face of the Ordinance or by clear implication. This contention is without merit. The language of the pertinent sections of the Ordinance provides that only the uses prescribed in the Ordinance may be made of land in each zone classification. There is really nothing left for interpretation. * * *."

I.

Section 11 of the zoning ordinance, Baltimore City Code, Art. 30 (1966), is as follows:

"In a Residential Use District, no use of land or building shall be excluded, except that

(a) no land or building shall be used; [for]

* * * * * *

(1) Uses excluded from Residential and Office Use Districts [Section 10]

(2) Business offices

(3) Professional offices, except as provided in section 12."

Section 10 prohibits the use of land in a residential district for "business" and for "storage yards for building or structural materials or equipment."

[1] As Litty concedes, we seem never to have considered the precise question here presented; nor, we are told, have the courts of our sister states. Both Litty and the appellee (the City) have cited a number of cases but they all seem to deal either with different kinds of ordinances or else the properties in question were without access requiring consideration of the question whether the enforcement of the ordinance would be confiscatory. Of course, Litty insists the denial of his application is tantamount to confiscation but we do not see it quite that way. It is clear, we think, that Litty's legal access to Lots 10 and 21 is by way of Primson Avenue. That he can't drive a motor vehicle onto the property is quite beside the point. Access can be accomplished on foot or on horseback; materials can be fetched by pack-train. A bridge would be far more convenient, of course, and, in the long run, much less expensive. But this is none of our concern and, what is somewhat more to the point, Litty knew the circumstances when he exercised his options and committed his company to the purchase of Lots 10 and 21.

[2] The question then is not whether the action of the Board amounts to confiscation but simply whether the proposed use of Lot P is prohibited by the ordinance. We agree with Judge Sodaro that the use Litty proposes to make of the driveway shown in the plat would be a "business" use of land in a residential use district.

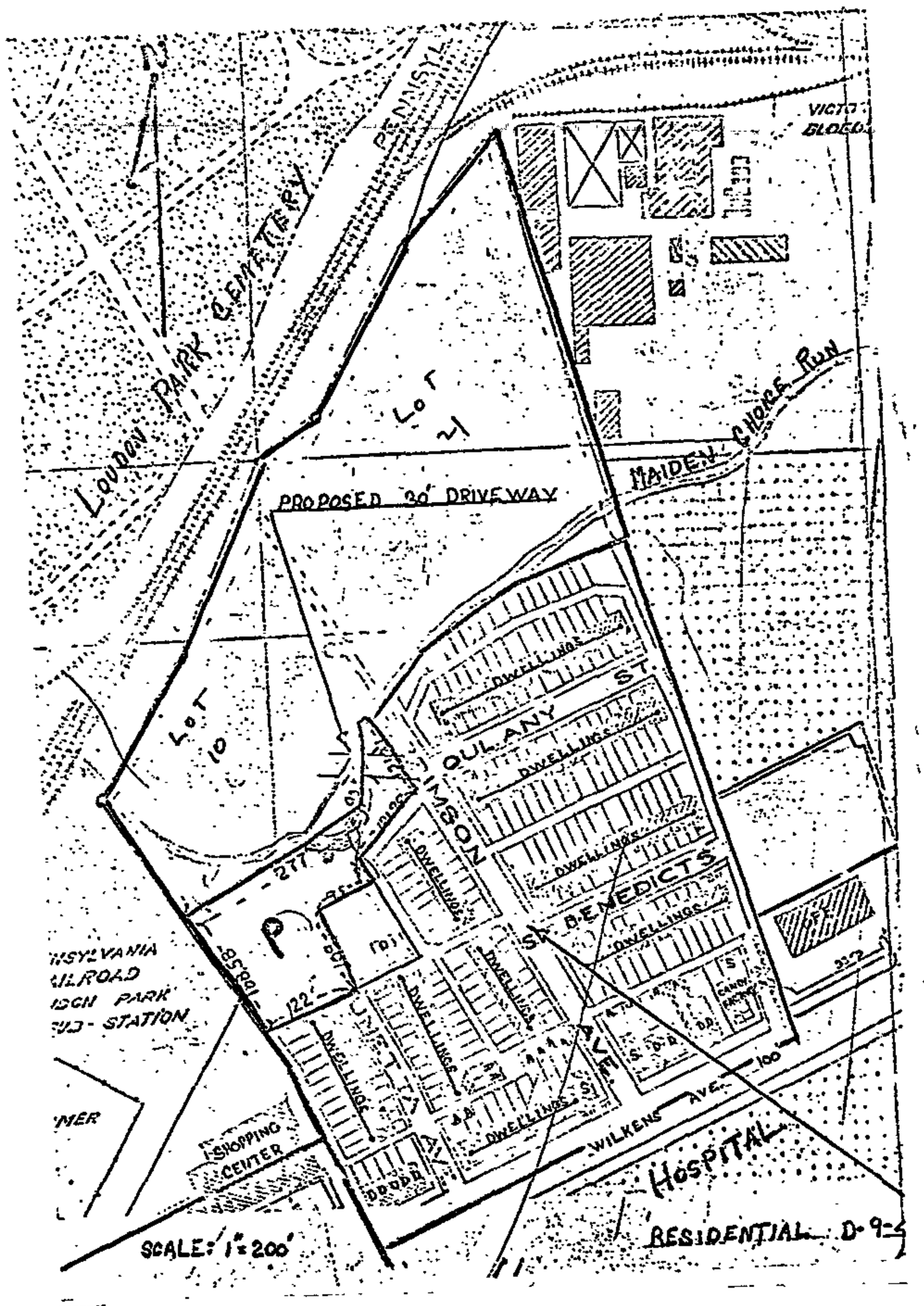
II.

There is about this case a faint bouquet suggesting that Litty may be the victim of a little hanky-panky. We can understand the desire of the residents to preserve the insularity of their little quarter. To be able to thwart any use of Lots 10, 21 and P inures to their benefit, providing them, in effect, with a park or a playground at no expense to them or to the City. And in this, thus far at least, they have been successful. The City, on the other hand, having created value in the land by classifying it for commercial use, derives tax revenues from it without having to provide much, if anything, in the way of service. But Litty is entitled to enjoy any of the uses for which the land has been zoned and if his proposed use is neither prohibited nor unreasonable he ought not to be frustrated by a dog in the manger attitude on the part of the City and the neighborhood in respect of the bridge and the passage of a few trucks each day over Primson Avenue. As we see it there is no reason why Litty and the City should not be able to arrive at a mutually satisfactory arrangement in respect of the bridge pro-

vided negotiations looking to such an arrangement are undertaken in the utmost good faith. All concerned should understand that any litigation which may develop in the future will be subject to careful scrutiny by the courts to see if there is any lack of good faith.

Affirmed.

Costs to be paid by appellant.



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Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL
Room 47, Old CourtHouse
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Towson, MD 21204

(410) 887-2188

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

October 15, 2004

RECEIVED
OCT 15 2004
BALTIMORE COUNTY
BOARD OF APPEALS

Kathleen Bianco, Administrator
County Board of Appeals
of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, MD 21204

Re: In the Matter of the Development Plan and Petition for Special Hearing
Lynch Property – Sweet Air Road
Case Nos.: CBA-04-132 and 04-198-SPH

Dear Ms. Bianco:

Enclosed please find the original People's Counsel for Baltimore County's Argument Outline along with three copies of such for filing with regard the above-referenced case.

Thank you for your consideration.

Sincerely,

Carole S. Demilio
Deputy People's Counsel for Baltimore County

PMZ\rmw

cc: J. Carroll Holzer, Esquire
Howard L. Alderman, Jr. Esquire

10/15/04

IN THE MATTER OF: LYNCH PROPERTY - SWEET AIR RD. DEVELOPMENT PLAN HEARING & PETITION FOR SPECIAL HEARING 4501 SWEET AIR ROAD, BALDWIN, MARYLAND 10th Election District 3rd Councilmanic District	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
GAYLORD BROOKS REALTY CO. Developer	*	CASE NO.: CBA-04-132 CASE NO.: 04-198-SPH PDM NO.: X-404

RECEIVED
OCT 15 2004
BALTIMORE COUNTY
BOARD OF APPEALS

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

MEMORANDUM OF PROTESTANTS
IN LIEU OF FINAL ARGUMENT

Protestants, Long Green Valley Association; Charlotte Pine, individually; and individual property owners Stephen D. Preston and Gary M. Elser, by ***J. Carroll Holzer, Esquire***, Holzer and Lee, hereby submit this Memorandum as requested by the County Board of Appeals of Baltimore County concerning the December 16, 2003 and June 3, 2004 Order of Hearing Officer and Zoning Commissioner, who APPROVED the Development Plan with restrictions/conditions for the Lynch Property.

STATEMENT OF THE CASE

The Applicant, Gaylord Brooks Realty Company – Developer, Steve Smith. and Dorothy Surina and Jeanne Gough as Owners, submitted a Development Plan for approval with Baltimore County under the project name "Lynch Property –

Sweet Air Road" and Project Number X-404. The site consists of 32.3 acres on the south side of Sweet Air Road and 14.7 on the north side for a total of 47.0 acres. The property is zoned RC 2 and RC 5, where the primary land use is agricultural in a Rural Protection and Resource Conservation area of Northern Baltimore County. The entire portion of the property on the south side is zoned RC 2. The portion on the north side includes 10.8 acres which are zoned RC 5 and located along the west side of the parcel and 3.9 acres which are zoned RC 2 and which form a wedge shaped area along the east side of the parcel. The project proposes eight (8) single-family detached dwellings including six (6) new dwellings on the RC 5 portion, 1 new dwelling on the RC 2 portion north of Sweet Air Road and 1 existing dwelling on the RC 2 portion south of Sweet Air Road. Located to the north and east of the property is Gunpowder State Park, which is lower in elevation than the Lynch property, causing runoff from the Lynch property to drain into the park. A free flowing stream is located on the north side of the property and flows eastward into Gunpowder State Park. Water also drains along the east side of the Lynch property into intermittent streams that exist on Gunpowder State Park property. The Lynch property forms a low ridge so that all drainage is off the property to adjacent parcels. To the west, the Lynch property drains to the properties of Elser and Preston.

RECENT ZONING HISTORY

Questions initially arose regarding this property when the developer and owners sought to change the zoning of the RC 2 portion of the northern parcel through an "Out of Cycle" reclassification (Case # - R-01-455). The case was heard before the Board on August 22, 2001 and continued on February 14, 2002. The petitioners asserted that the parcel in question was mistakenly assigned a zoning classification of RC 2 and should have been assigned a classification of RC 5. However, the petitioners provided no testimony by persons with direct knowledge of the zoning boundaries on the subject property and the owners did not attempt to correct any zoning classification "errors" despite numerous Comprehensive Rezonings that occurred between the original classification and the current time. The protestants, Stephen D. Preston, Gary M. Elser and the Long Green Valley Association, contended that there were many reasons why the boundaries could have been drawn as they were, including the possibility of defining buffer zones for protection of preserved areas such as a State Park. This assertion was later supported by the testimony of Wally Lippincott of Baltimore County DEPRM who stated that when he worked in the Planning Department to establish the RC zones in the 1960's and 1970's, it was common practice to establish buffer zones to protect State Park areas. It was later ruled by the Board that there was insufficient evidence to conclude that a mistake was made in the zoning designations on the subject property and the matter was better resolved through the Comprehensive Rezoning Process.

CURRENT DEVELOPMENT PLAN

Despite the recommendation of the Board of Appeals, the developer apparently decided to proceed with the preparation of a Development Plan without waiting for the next Comprehensive Rezoning cycle (2004) and based on the existing zoning designations. The Development Plan was submitted to the County and the Concept Plan Conference, Community Input Meetings, and Development Plan conferences were all held as required. This Development Plan proposed to use the RC2 property to support the RC 5 development and in effect, seeks to accomplish what was denied by the Board in the earlier rezoning case.

The Hearing Officer Hearing began on October 17, 2003 and was continued for a second day on December 2, 2003. The Hearing Officer Hearing Order was issued on December 16, 2003 in which the hearing officer declined to approve the plan, but ordered a traffic study to determine if the proposed road entrance actually met sight distance requirements. The developer was ordered to complete the traffic study within 90 days, after which further proceedings would take place and a final decision would be rendered. The traffic study confirmed that indeed the sight distance was inadequate to meet County requirements despite testimony to the contrary by Mr. Charles Main, project engineer, and Mr. Larry Gredlein of the State Highway Administration. As a result, changes were made to the

Development Plan in which the road entrance was moved 80 feet to the west to improve sight distance. The Development Plan approval hearing was reconvened on May 27, 2004 and a decision was rendered on June 3, 2004. In that decision, the hearing officer determined that the "traffic issue" was adequately addressed and the Development Plan was approved.

PROTESTANTS' SPECIAL HEARING REQUEST

The Protestants, believing that the Development Plan unjustly utilized the RC 2 zoned property to support RC 5 development, filed their own request for Special Hearing. This part of the case was held concurrently with the hearing on the Development Plan. The special hearing was intended to seek a determination of the following six issues: 1) Is a road that supports RC 5 residential development permitted within an RC 2 zone? 2) Is a storm water management facility that solely supports RC 5 development permitted within an RC 2 zone? 3) Can the RC 2 zone on the north and south sides of Sweet Air Road support both proposed Lots 6 and 7? 4) Can the density of an RC 2 zoned parcel on the north and south sides of Sweet Air Road support proposed Lots 6 and 7 along with a storm water management facility, and Lot 8 on the south side of Sweet Air Road? 5) Whether the creation of non-density parcels as part of a residential lots shown on a Development Plan require a separate special hearing request, and specifically, a portion of proposed Lot 7 in the RC 2 zone? and, 6) such other and further issues

as may be developed by the testimony presented at the hearing. The hearing on the Development Plan and the Special Hearing on the zoning issues were combined and held jointly. It was decided that the hearing would be continued and reconvened on December 2, 2003 for the combined Development Plan hearing and special hearing, and a second day (December 3, 2003) was set aside in case more than one day was needed.

At the onset of the informal portion of the reconvened hearing, the Hearing Officer, Mr. Lawrence Schmidt, polled each Baltimore County Department and asked if there were any outstanding or open issues. One-by-one each Department representative making up the Zoning Advisory Committee (ZAC) responded by saying that there were no outstanding or open issues. However, Mr. Bruce Seeley of DEPRM presented a comment to the Hearing Officer that indicated that his department believed that the storm water management facility should be removed from the RC2 portion of the property because it was an inappropriate use (Petitioner's Exhibit No. 7). This comment was consistent with the questions raised as part of the special hearing regarding the use of RC 2 zoned areas to support the development of RC 5 land.

The Hearing Officer proceeded with the formal portion of the Hearing wherein he swore-in Mr. Charles V. Main, II of Daft, McCune,and Walker, Inc. Mr. Main testified, under oath, as a registered civil engineer in

Maryland, that he is responsible for land survey and property development for DMW. Mr. Main testified that the Concept Plan and Development Plan were developed under his direction (See Tapes – Petitioner's Exhibit No. 5). Mr. Main testified that the red-line plan, as submitted, was compliant with all rules, policies, guidelines, codes and regulations of the Baltimore County Zoning, Planning and met all DEPRM requirements.

Ms. Charlotte Pine, President of the Long Green Valley Association (LGVA), testified that her Association had concerns about this development because of its impact on the Long Green Valley Conservancy area, which includes much of the Lynch property. Ms. Pine testified as to concerns with additional traffic and with impacts to scenic vistas in the area. Sweet Air Road is designated as a "Scenic Corridor" on the "Scenic Resources Map" in the Master Plan 2010. Ms. Pine testified that a development such as the one proposed in this plan on the border of the State Park would undoubtedly impact the scenic vistas of the area (See Tapes – Petitioner's Exhibit No. 5).

Gary M. Elser testified as an adjacent neighbor about his concerns with regard to impacts on water supply from the proposed development. Elser testified as to his knowledge of the difficulty of finding water in the area. As evidence of that, he described the situation on his property where there are four wells including his and those of three of his neighbors. Apparently, water could only be found on a small portion of his property and, as a result, the wells of three of his neighbors were placed there along with easements providing the neighbors with access to

those wells. Elser's concern is that the additional new wells resulting from this development would add pressure to an already tenuous situation, possibly causing the failure not only of his well, but also of that of his three neighbors (See Tapes – Petitioner's Exhibit No. 5).

Stephen D. Preston testified as to multiple concerns and impacts on surrounding property including environmental impacts to preserved State Park property and increased runoff and erosion on his own property. Preston's credentials include a PhD in environmental engineering and he currently works for the Chesapeake Bay Program, which is a consortium of State and federal agencies charged restoration of the water quality and ecological health of the Chesapeake Bay. Preston's credentials were submitted to the hearing officer to confirm his environmental expertise, but he was not sworn in as an expert witness. Preston testified that his general concern was that this Development Plan called for maximizing the allowable density on a small irregular parcel and that would result in impacts to most of the adjacent property because the direction of runoff is from the Lynch property to the neighbors on the west side and to the State Park on the north and east sides. Preston testified that there was scientific evidence of ecological impacts to streams with as little as two percent (2%) impervious area in the watershed and presented a report written by Maryland Department of Natural Resources and the U.S. Environmental Protection Agency that documented the basis of that information. Preston asserted that this Development Plan would entail much more than two percent (2%) impervious area and would directly

impact adjacent streams to the north and east that were currently protected by inclusion in the Gunpowder State Park. Preston also testified that there was no storm water management planned for the west side of the proposed development and, as a result, runoff would likely increase, causing the worsening of existing erosion problems. Finally, Preston testified that he specifically purchased this property because of the privacy it afforded. He contended that this Development Plan would completely destroy that privacy since a typical two story home would tower more than 30 feet over his back yard because of the sharp difference in elevation between the Lynch property and his. Preston stated that most of these issues were due the developers desire to maximize the allowable number of houses on the property and that many of these likely problems would not occur if a lower density were proposed (See Tapes – Petitioner's Exhibit No. 5).

On December 16, 2004 and June 3, 2004, the hearing officer rendered a decision in which he ultimately approved the Development Plan and an appeal was taken to this Board from the approval of the Development Plan and the denial of Protestants Special Hearing requests.

CBA FACTS

SECIAL HEARING ISSUES

While this Board reviews the sufficiency of the evidence before the Hearing Officer on the approval of the Development Plan, it must hear the Petition for Special Hearing *de novo*. If the issues raised by the Special Hearing are upheld, the Development Plan cannot be approved and the issues raised in the appeal of

the Development Plan need not be reviewed. However, if the issues of the Special Hearing are not upheld, the Board must consider the issues raised by the appeal of the Development Plan. Thus the facts of the Special Hearing are summarized first, followed by the issues of the approval of the Development Plan.

At the beginning of the Board's hearing, Preston provided testimony describing the basis of the Protestants' request for Special Hearing. Preston testified that, as a layperson, he had concerns about the use of agricultural zoned land (RC 2) to support the residential development proposal on the RC 5 portion. (T. 6-23). Preston further testified that this was only necessitated by the developer's desire to maximize the density on this small irregularly shaped parcel (T. 22 - 23). The Development Plan calls for the placement of six (6) homes on the RC 5 portion of the property, leaving little room for the support structures such as the road and storm water management facility. For that reason, the developer is seeking to use the RC 2 zoned property for those support structures and that is the

basis for Special Hearing Questions 1 and 2. Preston testified that the storm water management facility is located in the agricultural preservation zone (RC 2), but functions "almost entirely in support of the houses in the RC 5 section." Preston further testified that it was his understanding, as a layperson, that the RC 2 zoning designation allows for only two (2) homes per 50-100 acres, but the plan called for multiple subdivisions of the RC2 portion including subdivisions for parts of three lots and a subdivision for the storm water management facility (T. 24 - 27). That concern formed the basis for Special Hearing Questions 3 and 4.

Daniel J O'Leary, professional engineer, was sworn in as an expert witness and provided testimony on the drainage patterns of the parcel and on the storm water management facility proposed as part of the Development Plan. (T. 39-52). Mr. O'Leary testified that the drainage from lot #7, located on the RC 2 portion of the property, would by-pass the storm water management facility and flow eastward into Gunpowder State Park (T. 48 - 49). He further testified that the only portion of the RC 2 zone that would be served by the storm water management facility would be from that part of the road located in the RC 2 zone and a small portion of the driveway on lot 7 (T. 50). O'Leary testified that the drainage going into the storm water management facility located in the RC 2 zone "is predominantly from the RC 5 area and the impervious (area) that's generated

on the RC 5 area that the storm water management pond serves" (T. 52). O'Leary was asked if "it was the density of the housing on the RC 5 (portion of the property) along with the road system that requires the (storm water management) facility that's proposed on the Petitioner's Exhibit No. 2." His reply was "yes" (T. 65 - 66).

Paul J. Solomon then testified for the Protestants. Solomon has extensive experience and education with planning including a Masters degree from Pennsylvania State University and 36 years experience working in the Planning Departments of York County, Pennsylvania and Baltimore County, Maryland. (T. 71-115). While working in the Baltimore County Office of Planning and Zoning (1970 – 1986), Mr. Solomon was the planner in charge of the development of the RC zones, meaning that he played a significant role in the definition of the RC 2 and RC 5 zoning categories including what they allowed and disallowed. (T. 77-95). Solomon was accepted by the Board as an expert witness (T. 71 - 77).

Solomon testified that the intent of the RC zones is to encourage development around "existing villages" and prevent "the development sprawl out over the farmland" (T. 79). Solomon quoted from the BCZR, Item 1A01.1.b, that the RC 2 zone is designated "In order to foster conditions favorable to a continued agricultural use of the productive agricultural areas of Baltimore County by preventing incompatible forms and degrees of urban use." (T. 80). When

asked about the Special Hearing Questions #1 and 2 regarding storm water management facilities and roads, Solomon stated that "you obviously are not going to preserve farmland if you if you allow lots which are really basically established in the RC 5, but would then spill over into the RC 2. We are not preserving agricultural land when you allow an access road to, in part, or entirely, be placed in RC 2 instead of RC 5. The same way with storm water management. It could be true of parking and a lot of other uses which are needed in conjunction with the RC 5 or any other development." (T. 79 - 82). Solomon further stated that building lots in the RC 2 zone are allowed only in a very limited way and streets and "infrastructure can be placed in RC 2 only if it applies to what's allowed in the RC 2" (T. 82).

With regard to Special Hearing Question #1 (roads and ways), Solomon stated that roads and ways are "only for those uses like an agricultural development using the lots which are allocated to that parcel, or some special exception use, like a farmer's roadside stand, or whatever other use allowed by special exception" (T. 82). When asked about the Zoning Commissioner's analysis which stated that "Any street or way is permitted by right in the RC 2 zone. There is no requirement within the BCZR that a street or way in an RC 2 zone provide access only to RC 2 zoned lots." (Decision Memo,

December 16, 2004, page 6), Solomon replied that he did not agree because it was inconsistent with the policy established in the Hearing Officer's office referred to above. Solomon testified that the Zoning Commissioner's Policy Manual Section 1A00.5.a states:

> "If RC zoned land under the same ownership is separated by a different RC zone then the density should be allocated and utilized by each zoned parcel."

Solomon testified that "whatever density is generated from that parcel of land, whatever RC zone it is in, it must be applied and utilized within that zone. And that would mean all the infrastructure and other needs required by the County, so forth, such as, again, storm water management, roads, parks, whatever else is required" (T. 84). When asked if the placing of the road and the storm water management facility in the RC 2 violated the zoning regulations in this case, Mr. Solomon stated "Yes. I would say that it is actually a *de facto* rezoning of RC 2 to RC 5. You're taking RC 2 land, which has a very specific purpose, and you're really making it RC 5 land" (T. 85).

More broadly, Solomon referred to the Baltimore County Zoning Map and pointed out that the RC 2 zones in the County interface enormously with RC 5 and other types of zones, including some of the more urban and industrial zones. Solomon stated that "if you accept the concept that you can take development, land that's zoned for development, be it DR 1, RC 5 or whatever, and you can

maximize your use by putting your homes or factory, or whatever in those appropriate zones, and then all of the related access infrastructures, everything else would go within the RC 2, which would cost you a lot less to buy RC 2 land, obviously, than to buy industrial or commercial or even RC 5, so you maximize the use of RC 5 in this case by putting all the infrastructure on adjacent RC 2, so that's going to open up the door." (T. 86-88). Solomon further stated that "I'm not aware of any major cases where this has occurred before, where RC 2 land is utilized to complement and supplement development." (T. 86 - 87). Solomon referred to two cases in which Petitioner's were disallowed from using RC 2 land to support other zones (*Leimbach v City of Baltimore* and the *Orville Jones* cases) and indicated that, like those cases there is a unique question being presented to the Board that could be precedent setting. He stated "the implications are significant" (T. 88 - 90).

Solomon further testified that it is not only that the Development Plan calls for the use of RC 2 land to support the infrastructure of RC 5, but it also calls for the intrusion of multiple lots from the RC 5 portion into the RC 2 (T. 90).

Solomon stated that "this is basically developing four lots in the RC 2, although these aren't lots necessarily in every case for the construction of a home. Only #8 and #7 are really RC 2 lots. But the other, the storm water management

facility and part of lot six are also, in effect, subdividing this property into basically four (4) sections. Solomon then reiterated that even a more basic question than that is the issue of putting RC 5 development in an RC 2 zone." (T. 94-95).

Charles V. Main, II testified on behalf of the developer as the project engineer. Main described his qualifications which include a Bachelor of Arts degree and more than twenty (20) years as a professional engineer. It should be noted that Main has no educational background in planning, nor has he been employed by the County to develop comprehensive plans or interpret zoning regulations (Appellee's No. 1). However, he was accepted by the Board as an expert registered engineer (T. 128). Main testified generally about his familiarity with the Lynch property, his participation in the generation of the Development Plan and his understanding of zoning regulations. In direct contrast to Solomon, Main based on his experience as a professional engineer, contended that all proposed uses were appropriate as indicated in the Development Plan. Main testified that he was "not aware" of any prohibition of a storm water management facility that would treat water generated in another zone.

DEVELOPMENT PLAN ISSUES

In addition to the Special Hearing issues, the appellants also believe there are *significant errors in the decision to approve the Development Plan.* Those issues can be outlined as follows:

1. The Hearing Officer erred in basing conclusions on water supply impacts on facts that are not in evidence and in fact not true;
2. The Hearing Officer ordered additional landscaping to protect the privacy of adjacent land owners, but failed to specify the details of that plan and how it would be enforced;
3. The Hearing Officer failed to fully consider the credentials of Preston in interpreting his testimony regarding runoff onto his property;
4. The Hearing Officer failed to consider evidence describing environmental impacts to adjacent State Park property;
5. The Hearing Officer failed to consider environmental impacts to the Sweet Air Road Scenic Corridor as designated under the "Scenic Resources Map" in the *Master Plan 2010.*

Development Plan Issue Number 1: In the Decision Memo dated December 16, 2003, the Hearing Officer, Lawrence Schmidt, referred to the apparent lack of ground water for water supply in the area as described by Elser. As

summarized above, Elser's property has four wells located on it including his and that of three of his neighbors. It is apparent that ground water was difficult to find and could only be found in one small area of Elser's property. Elser expressed concern that additional wells placed in close proximity to his property could cause the failure of his and his neighbor's wells, especially in light of the many well failures that have occurred in this area of Baltimore County in recent years.

In the decision memo, Zoning Commissioner Schmidt stated "the existence of these four wells in close proximity on a single property belies the argument that there may be insufficient ground water in the area" and "the fact that four wells so close together work properly would suggest the availability of adequate ground water." For multiple reasons these statements represent errors in the Development Plan approval. First, Schmidt is not a ground water hydrologist and unqualified to make such statements and there was no evidence in the record to support that hypothesis. It is merely a supposition on his part and should not be used to draw conclusions regarding the adequacy of this Development Plan. Second, there was no evidence presented to support such statements. Again, this is Schmidt's supposition. Third, the statements are incorrect. Schmidt apparently assumes that if four wells placed closely together provide adequate supply, then other wells placed in nearby locations will also provide adequate supply. In fact the opposite

is true. As Elser testified, these wells were placed closely together specifically because adequate supplies could not be found elsewhere in the area. Given that, it is counterintuitive to assume that the fact that they currently provide adequate supply to four homes means that there is adequate supply generally. The fact that they are placed closely together implies that supplies are limited and additional pressure from new homes, if hydraulically connected to the current limited supply, could in fact impact existing supplies and the availability of water to the existing homes.

The Hearing Officer's Opinion and Development Plan Order was arbitrary and not based upon evidence in the record and should be reversed.

Development Plan Issue Number 2: In the HO's Opinion and Development Plan Order, dated December 16, 2003, he ordered additional landscaping to protect the privacy of adjacent land owners. However, he failed to specify the details of that plan and how it would be enforced. As such, there is no indication that the developer will actually follow through with such plans and no way of enforcing them once the Development Plan is approved and all appeals exhausted. To provide an unenforceable provision in the HO's Order is deceptive and unfair to those it is supposed to protect.

The Hearing Officer's decision should be remanded for clarification as to the condition imposed.

Development Plan Issue Number 3: The HO's Decision of December 16, 2003 failed to fully consider the credentials of Preston in interpreting his testimony regarding runoff onto his property. Preston's credentials include education in hydrology, environmental engineering up to the PhD level, as well as fourteen (14) years of experience as a hydrologist with the U.S. Geological Survey and three (3) years as the Monitoring Coordinator for the Chesapeake Bay Program which integrates the environmental work of six (6) States and at least five (5) federal agencies. Mr. Preston did not contend that he has experience with specific State and County regulations on storm water management. However, he did say that he has the experience to understand the basis of the regulations and the information used to derive them. On that basis, his testimony should have been given more weight than to simply say: "With all due respect, I do not believe that Mr. Preston appreciates the County's storm water management regulations and the expected result of the application to this project." In fact, Preston has more experience with the basis and need for such regulations than does the Hearing Officer.

Preston presented testimony on the runoff that will be increased as a result of the development on the Lynch property, and potential for worsening existing erosion problems. In response, the Hearing Officer simply states: "The property is currently farmed. There is no storm water management in place."

"Although areas of impervious surface will be developed, the developer has submitted a storm water management plan to Baltimore County" and "It is the essence of that plan that water will be captured and directed to the storm water management cells shown on the plan. The water will be filtered and discharged at a controlled rate." (Decision Memo, December 16, 2003, page 11). The Hearing Officer failed to understand the hydrologic issues on the property and referred to storm water management for water flowing to the eastern boundary. But Preston's testimony referred to runoff flowing to the western boundary. There is **NO** storm water management proposed to control runoff flowing to the western boundary and onto the properties of Preston and Elser.

Preston also testified as to the potential impacts of septic reserve areas which are located at the top of a steep hill just above his property and a mere ten (10) feet from his property line. Preston's concern is that if the proposed septic tanks fail and begin to discharge to the surface, there is only one direction that water could flow, which is directly on to his property. Preston testified in the Hearing Officer hearing that the only reason for placing septic reserve areas so close to his property is that the developer seeks to maximize the density of development on this small irregularly shaped parcel. The Hearing Officer in his Decision and Order simply refers to the septic reserve areas meeting the County

requirements. Preston contended that while the septic reserve areas in question may meet the requirements, they only JUST meet the requirements for proximity to a steep slope and that location represents a potential problem that should be addressed as part of this Development Plan.

For the above reasons, the Hearing Officer's decision should be reversed.

Development Plan Issue Number 4: Preston presented direct evidence of potential environmental impacts to the adjacent State Park property, which is a protected area. That evidence is in the form of a report published by Maryland Department of Natural Resources and the U.S. Environmental Protection Agency. Preston is familiar with the report and the work on which it based from his daily interaction at the Chesapeake Bay Program. That report documents data gathered throughout the State of Maryland and reports that environmental and ecological impacts to streams can be detected in areas with as little as two percent (2%) impervious area. Preston testified that this development called for much more than 2% impervious area and that it is counterintuitive to him that such impacts should be allowed in the very headwaters of a protected area like a State Park. The Hearing Officer did not refer to the evidence presented in his Decision and apparently did not consider it in making his decision.

The Hearing Officer's failure to address this issue should cause the Development Plan to be remanded for consideration of this issue.

Development Plan Issue Number 5: Ms. Charlotte Pine, President of the Long Green Valley Association, testified of her concern and that of her Association that this development would impact the scenic beauty of the area given that the Lynch property is located in a Scenic Corridor as designated under the "Scenic Resources Map" in the *Master Plan 2010*. There was no attempt to mitigate such impacts in the Development Plan. And the Hearing Officer did not address the issue in his Decision implying that he did not consider it in his approving the Plan. Such impacts deserve consideration for the welfare of the community and it is a disservice to the community for them to be ignored in the approval of a Development Plan.

For the above reason, this Development Plan should be remanded to address this issue.

SPECIAL HEARING LEGAL ARGUMENT

It is obvious that the resolution of the Special Hearing requested by the Protestants will ultimately cause disapproval or approval of the Development Plan. If a road that supports RC 5 residential development is not permitted in a RC 2 zone, or if a storm water management facility that supports RC 5 development is likewise not permitted, then the Development Plan fails.

The Protestants hereby adopt the arguments in this regard set forth by the People's Counsel of Baltimore County in its Memorandum in Lieu of Final Argument.

The significance of the Questions Presented by the Protestants in this case is highlighted by the testimony of Paul Solomon whose qualifications and prior involvement in Baltimore County with the RC zones need not be restated here. Solomon's experience as a Planner goes back thirty-six (36) years and whose involvement with the creation of the RC zones has often earned him the designated title of "the father of the RC zones." Opposing counsel recognized Mr. Solomon's expertise and many appearances before the Board (T. 77). He testified as to the significance of this issue relating to approval of the developer's proposal here would have a vast impact on the RC 2 zones (T. 97).

Solomon began his testimony by setting forth the history from 1970 in regard to the County Council and acting Bill 100 which provided for the Rural Deferred Zone and then ultimately the historical background that led the County Council to enact the RC zone legislation. (T. 73-75).

After testifying to the documents and the Baltimore County Zoning Regulations he reviewed, (T. 78-79) Solomon read BCZR 1A.01.1.b, the RC 2 zoning classification to the Board. (T. 80). He summarized the purpose of the RC 2 legislation as "to foster conditions favorable to a continued agricultural use of the production of the agricultural areas of Baltimore County by preventing incompatible forms and degrees of urban use." (T. 80).

He then testified that "it is clear, from the purpose of the legislation, that you are not going to preserve farmland if you allow lots which are really basically established in the RC 5 (zone), but would then spill over into the RC 2." He testified that we are not preserving agricultural land when you allow an access road to in part or entirely, be placed in RC 2 instead of RC 5. (T. 81).

That is also true for storm water management. He testified that the Zoning Commissioner did not have it correct in his Opinion in regard to the road being permitted in this case. Solomon testified that when the Zoning Regulations talk about streets and ways, when it says they are allowed as a matter of right, it is only for those uses like a rural agricultural development using lots which are allocated to that parcel, or some Special Exception use, like a farmer's roadside stand or whatever the uses allowed by Special Exception. He clarified by saying, "that infrastructure can be placed in RC 2 only if it applies to what is allowed in the RC 2 zone." (T. 82).

Solomon reinforced his opinion by reference to the Zoning Commissioner's Policy Manual, §1A.00.5.a where it refers to tracts divided by zoned boundaries. It states: if RC zoned land under the same ownership as separated by different RC zone, then density should be allocated and utilized by each zoned parcel. (T. 84). Solomon amplified on the word "applied" and "utilized" in both of these documents and that they reinforce his argument. He testified that is very clear that whatever density is generated from that parcel of land, whatever RC zone it is in must be applied and utilized in that zone and that would mean all the infrastructure

and other needs required by the County, such as storm water management, roads, parks, etc. (T. 84).

Solomon further concluded that the approval of this Development Plan is actually a *de facto* rezoning of RC 2 to RC 5. "You are taking RC 2 land which has a very specific purpose and you are really making it RC 5 land." (T. 85). (which this Board declined to do in the earlier case involving this property).

Solomon then addressed the question of the significance of this case even though this appears to be a small parcel of land with relatively few lots involved. He approached the County Zoning Map and testified that the RC 2 land is a significantly large zone and that it interfaces with urban zones, DR zones and industrial zones. (T. 86). He testified that if you accept the concept that you can take development land that is zoned for development be it DR 1, RC 5 or whatever and you can maximize your use by putting your homes or factory or whatever in those appropriate zones and then all of the related access, infrastructures and every thing else would go within the RC 2, it would cost you a lot less to buy RC 2 land than to buy industrial or commercial so that you could maximize those uses. That is going to open the door for abuse of the RC 2 zone. (T. 86-87).

He further testified that in twenty-six (26) years these zones have been in effect, this has never occurred before. The theory of the Developer has always been rejected by this Board in other cases he was familiar with - the *Leimbach* case that occurred in Baltimore City and then the *Jones* case involving the High's Store in Long Green. In the *Jones* case this Board refused to permit the type of encroachment requested here by the Developer. (T. 87-89).

Solomon further testified that not only does the road intrude within the RC 2 Zone and the storm water management facility, but four (4) or five (5) of these lots also intrude and encompass land areas in the RC 2 zone, particularly lot 6. (T. 90).

Solomon concluded by testifying that the RC 2 zone makes it very clear that the purpose of that zone is to protect and foster agricultural land use and that you do not protect agricultural land by putting a storm water management facility on RC 2 land that supports residential use in a different Zone. (T. 92).

Solomon then referred to Petitioner's Exhibit #7, the report of Wally Lippincott, who presented comments to the Zoning Commissioner which were ignored by the Zoning Commissioner in his Opinion and Decision. Solomon concluded that the comments of Lippincott support his testimony and opinion in regard to this issue.

Solomon then turned his attention to the issue of whether or not the additional parcels or lots, allegedly non-density, in the RC 2 zone totaling four (4) lots. He testified that only #8 and #7 are really RC 2 lots. The storm water management facility and part of lot 6 are also in effect sub-dividing his property into basically four (4) sections. (T. 95).

For all of the reasons set forth herein, Protestants respectfully believe that this case, as the *Jones* case involving Long Green Valley and the High's Store, present a unique and special argument concerning the use of the RC 2 zones. It is clear that the purpose of the RC 2 legislation was to protect and preserve agricultural land and it is just as clear that in placing a road and a storm water management facility within that area does nothing to "foster or preserve or protect agriculture." It is quite the opposite. It diminishes the use of that area for agricultural purposes.

Therefore, Protestants respectfully request that the Board answer their Special Hearing request and deny the approval of the Development Plan.

CONCLUSION

WHEREFORE, the Appellants request the Board to deny the approval of the Development Plan as a matter of law based upon the testimony and record.

A. ***Special Hearing*** - For all the reasons set forth in the proceeding paragraphs, Protestants respectfully request that the Special Hearing Questions posed by the Protestants be answered by the Board in the respect that

the road and storm water management facilities to support an RC 5 zone are not permitted in an RC 2 zone.

B. ***Development Plan*** – For the reasons set forth in the proceeding paragraphs, the Protestants in addition to this Special Hearing aspect, request reversal of the Hearing Officer's Decision for the reasons herein stated.

Respectfully submitted,

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Attorney for Appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 15th day of October, 2004, a copy of the foregoing Memorandum was mailed first class, postage pre-paid to Howard Alderman, Esquire, Levin & Gann, Nottingham Centre, 502 Washington Avenue, 8th Floor, Towson, Maryland 21204 and People's Counsel for Baltimore County, for Baltimore County, Old Courthouse, Room 47, 400 Washington Avenue, Towson, Maryland 21204.

J. CARROLL HOLZER, Esquire

C:\My Docs\Memos 2004\Lynch Property CBA 04-132 PDM No. X-404 Memo in Lieu of Final Argument

BEFORE THE

COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY

Case Nos. X-404/CBA-04-132 & 04-198-SPH

Dorothy Surina, Jeanne Gough, *et al.*, *Owner*
Gaylord Brooks Realty Co., Inc., *Developer*

N/S Sweet Air Road, S/E Manor Knoll Court
10th Election District
3rd Councilmanic District

OWNER'S/DEVELOPER'S POST-HEARING MEMORANDUM

Dorothy Surina, Jeanne Gough, *et al.* (referred to collectively as the "Owner") and Gaylord Brooks Realty Co., Inc. ("Developer"), by and through their undersigned legal counsel, hereby submit this Post-Hearing Memorandum in accordance with the direction of the County Board of Appeals for Baltimore County ("Board") at the conclusion of the hearing held on the above-referenced appeal, in lieu of closing argument.

STATEMENT OF THE CASE

This case involves the appeal, by certain neighbors and a community organization (collectively, the "Appellants") of a *Hearing Officer's Opinion and Development Plan Order*, dated December 16, 2003 (the "Interlocutory Order") and the *Supplemental Hearing Officer's Opinion and Development Plan Order*, dated June 3, 2004 (the

"Supplemental Order") (the Interlocutory Order and the Supplemental Order are referred to collectively herein as the "Order") approving a plan of development for eight (8) single-family residential lots (1 existing and 7 proposed) (the "Development Plan"), on split-zoned [RC-5/RC-2] land, located on the north and south sides of Sweet Air Road, east of Manor Knoll Court (the "Property"). Lot 8, located on the south side of Sweet Air Road, comprised of approximately 32.3 ± acres and improved with a single-family dwelling, is zoned RC-2 in its entirety and is designated on the approved Development Plan as continuing in agricultural use. The balance of the acreage, located on the north side of Sweet Air Road is comprised of approximately 14.7 ± acres, approximately 3.9 acres of which is zoned RC-2 and the balance is zoned RC-5. There are a total of two lots that can be created in the RC-2 zoned portions of the Property, the existing on the south side of Sweet Air Road and the other on the north side. Within the RC-5 zoned portion, a total of seven (7) lots are permitted and six (6) are proposed on the approved Development Plan. All of the new lots will be served by a roadway that intersects with the north side of Sweet Air Road. All required landscaping, stormwater management and private drives to serve the new lots will be located on the north side of Sweet Air Road.

Once the original development plan had been filed with the County, the Appellants (through their legal counsel) filed a Petition for Zoning Special Hearing, presenting six

issues for consideration by the Zoning Commissioner.[1] Those six issues as framed by the Appellants were: 1) is a road that supports RC 5 residential development permitted within a RC 2 zone; 2) is a stormwater management facility "that solely supports" RC 5 development permitted within a RC 2 zone; 3) Can the RC 2 zone on the north and south sides of Sweet Air Road support both Lots 6 and 7; 4) can the density of a RC 2 zoned parcel on the north and south sides of Sweet Air Road support Lots 6 and 7, along with the stormwater management facility and Lot 8 on the south side of Sweet Air Road; 5) is a separate special hearing request necessary when non-density parcels are shown on a proposed development plan; and 6) such further issues as may be developed from the testimony at the hearing.

At the original Hearing Officer's Hearing, all County and State reviewing agencies recommended approval of the rubricated Development Plan presented, after determining that the Development Plan presented complied with the respective portions of the development regulations and applicable policies, rules and regulations administered by those review agencies. After conducting a hearing on the proposed development plan and the Zoning Special Hearing Petition, the Hearing Officer/Zoning Commissioner issued an interlocutory Order on December 16, 2003 addressing the Special Hearing issues of the

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[1] In a combined development plan/zoning hearing issues are considered by the Hearing Officer who is also sitting as the Zoning Commissioner. For purposes of this Memorandum, reference to the **Hearing Officer** shall mean the Hearing Officer and/or the Zoning Commissioner. *Baltimore County Code* § 32-4-230.

Appellants and most matters relating to the proposed development plan. In the opinion of the Hearing Officer, after considering evidence/testimony from Mr. Preston (one of the Appellants), the Developer was required to conduct a traffic study to determine if appropriate and safe sight distance existed at the intersection of Sweet Air Road and the proposed road to serve the homes shown on the development plan then under consideration.

Following the completion of the required traffic study, an amended redline development plan was submitted for consideration by the Hearing Officer. The intersection of the proposed roadway and Sweet Air Road was shown shifted 80 feet to the west to accommodate the sight distance requirements based on observed speed of traffic on Sweet Air Road as opposed to the distance requirements show on the original development plan which were based on posted speed limits. At the reconvened hearing, the Developer's expert engineer and traffic consultant were the only witnesses who testified [2], with the Developer's traffic study being accepted as Developer's Exhibit No. 4. The Protestants below, Appellants before this Board offered no testimony or evidence at the reconvened hearing. On June 3, 2004, the Hearing Officer issued his Supplemental Order approving the amended, redlined Development Plan as submitted. Thereafter, the

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[2] No reviewing County/State agency had any comment that the amended, redlined Development Plan failed to comply with all applicable portions of the development regulations and applicable policies, rules and regulations administered by those review agencies.

Appellants noted an appeal to this Board asserting that approval of the Development Plan was erroneous based on the underlying issues specifically raised by Special Hearing before the Zoning Commissioner.

This Board conducted a hearing on the issues presented on appeal and heard from a total of five (5) witnesses. Thereafter, in lieu of closing argument, the Board required memoranda from counsel addressing the issues raised.

PROCEDURAL POSTURE

Apparently dissatisfied with the Order granting final approval of the Development Plan, which resolved in favor of development approval all issues raised in the Appellants' Petition for Special Hearing, the Appellants noted an appeal to this Board where that Petition was considered in a *de novo* proceeding. Given that the Appellants filed the Petition, they were charged with the burden of proof, the burden of production and the burden of persuasion in support of each issue identified in their appeal. The Appellants' presented extremely limited argument on appeal of the Development Plan approval, electing to focus on the Special Hearing/zoning issues presented by them. As noted in the appeal filed, the Appellants assert that the "Development Plan should not have been approved because of the noncompliance of the underlying zoning issues." (*Petition of Appellants Before the County Board of Appeals* at 1.)

THE EVIDENCE

UNDERLYING ZONING ISSUES ALLEGED BY THE APPELLANTS

Stormwater Management Supporting Development

Perhaps the single most contentious issue before the Board in this case was the assertion of the Appellants that the stormwater management facility to serve the development was designed to "serve solely" the RC-5 zoned portion of the Development and, therefore, could not be located within the RC-2 zoned portion of the Property on the north side of Sweet Air Road. In support of their contention, the Appellants presented Mr. Daniel O'Leary, a licensed professional engineer and Mr. Paul Solomon, a land planner and former Baltimore County Planning employee.

Mr. O'Leary was accepted as an expert civil engineer, related to stormwater management. On *voir dire*, Mr. O'Leary testified that his limited experience in Baltimore County development and that his "involvement has been limited to stormwater management design." (Tr. 44:4)[3] Mr. O'Leary has remained involved on some projects through the construction phase. (Tr. 44:21) In preparation for his testimony before the Board, Mr. O'Leary visited the subject property on a single occasion (Tr. 46:19) and viewed it from an adjoining neighbor's property and Sweet Air Road. (Tr: 47:4) Mr. O'Leary testified that the stormwater management facility treated stormwater from the

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[3] References to the Transcript of the proceedings before the Board will be referenced by Page:Beginning Line Number for Reference.

development site, with the majority of the water flowing to it originating on land zoned RC-5 by the County Council and the remainder from the proposed Lot which i s zoned RC-2. (Tr. 50:2) In Mr. O'Leary's analysis, moving the stormwater management facility to the area of the development zoned RC-5 by the County Council would result in the facility being located at a higher elevation and capturing less drainage area (Tr. 52:14; 50:12) and would result in more uncontrolled flow or unmanaged flow (Tr. 54:18) To ensure that the record was clear on this point, Board Member Mohler again posed the same question to the witness and received the same answer of more uncontrolled runoff if the facility were moved to the RC-5 zoned portion of the Property. (Tr. 62:6) On cross-examination, Mr. O'Leary acknowledged that the zoning line has no impact on the flow of stormwater. (Tr. 53:12)

Mr. O'Leary has designed stormwater management facilities similar to those proposed on the Property (Tr. 57:19), which are primarily land forms (Tr. 56:6; 64:11) designed for water quality purposes through a pre-treatment bay (fore bay) for collection of particulate and sediment (Tr. 57:8) and some management of volume (Tr. 57:13). The design proposed, as well as those like it designed by Mr. O'Leary are recognized within the current State stormwater management regulations. (Tr. 58:1) Those same stormwater management regulations require that stormwater management facilities be designed based on impervious surfaces associated with the proposed development, rather than locally adopted zoning lines which may change. (Tr. 60:13) In response to a question from Board

Member Brazzi, Mr. O'Leary opined that getting the stormwater from the proposed roadway [irrespective of zoning] to the stormwater facility "is the most important aspect because that generates the most runoff." (Tr. 63:3) In Mr. O'Leary's opinion, it would be unusual to have a stormwater management facility required for the single new home that can be constructed in the RC-2 zoned portion of the Property on the north side of Sweet Air Road. (Tr. 65:8)

Mr. O'Leary was most candid when he acknowledged that the stormwater management facility is incidental to the proposed development. (Tr. 68:16) Mr. O'Leary acknowledged that without the development of the Property with houses a stormwater management facility is not necessary. (Tr. 68:18)

Mr. Solomon, testifying on behalf of the Appellants, "thinks" that it "is very clear" that features of the development including the improvements in the RC-5 zoned area are not to be placed in the RC-2 zone because they do not preserve agriculture. (Tr. 81:8) Compare his answer when asked about how cable T.V. facilities (permitted as of right in the RC-2 zone) support agriculture, Mr. Solomon acknowledged that the regulations allow "transmission lines, pipelines and roads, so forth." (Tr. 97:8)

Moreover, Mr. Solomon believes that *Baltimore County Zoning Regulations* ("BCZR") § 1A00.5 and the *Zoning Commissioner's Policy Manual* ("ZCPM") § 1A00.5.a, which both require that density on split-zoned lots is to be calculated separately with each zone to support only the density generated by that zone, also mean that "all the

infrastructure and other needs required by the county, so forth, such as, again, stormwater management, road, parks, whatever else is required" must be located in each zone on the property proposed for development. (Tr. 83:17; 91:13) When Mr. Solomon was cross-examined about the ZCPM being applicable only for the calculation of density, he replied that "I think it seems to go further than that. It talks about not just the number of units, but talks about where they can be utilized or applied as well." (Tr. 103:14) A copy of the referenced section of the ZCPM is included in the Appendix to this memorandum for use by the Board.

Mr. Solomon acknowledged on cross-examination that the density for proposed Lot No. 7 [located within the RC-2 zoned portion of the Property] was derived only from the RC-2 zone and that the lot met the minimum size requirements of the BCZR. (Tr. 104:6) When questioned about the six proposed lots in the RC-5 zoned portion of the Property, Mr. Solomon acknowledged that those lots derived their density from "the R.C. 5 and only the R.C. 5" zone. (Tr. 106:10)

Although Mr. Solomon has never been to the Property (Tr. 111:3), he stated without equivocation that the RC-2 zoned portion of the Property on the south side of Sweet Air Road was only used for farming. (Tr. 107:15) However, when confronted with the fact that Developer's Exhibit 2, the approved, redlined Development Plan, shows an existing house on the Property south of Sweet Air Road, Mr. Solomon attempted to support his testimony by: "So when I say it's a farm, it's implicit again that it includes the necessary

structures to accommodate that use." (Tr. 109:12) Mr. Solomon did agree that the RC-2 zoned acreage of the Property generates density for two dwellings; one for the existing [implicit] farm dwelling and one other, which "would be better served if it was on the north side where you have established it as lot seven." (Tr. 111:17)

On re-direct examination by Deputy People's Counsel, Mr. Solomon was queried further about the issue of commercial film production, a use permitted as of right in the RC-2 zone. Mr. Solomon was shown a definition of that use and opined that since there are "no structures or buildings even for a temporary situation" the "agricultural use of the land" would not be encumbered. (Tr. 113:14) As will be shown in argument below, the stormwater management facility is also one of the defined, permitted uses in the RC-2 zone to support the development of land.

In an attempt to support his thoughts and beliefs, Mr. Solomon made reference to situations where residentially zoned property was proposed to be utilized for aspects of commercial development ["Leimbach versus City of Baltimore] (Tr. 88:1; 102:17) and the "Jones case" involving a "High's dairy". (Tr. 89:1; 102:5) No portion of the Property is zoned commercially or proposed to be used for commercial purposes.

Roadway Supporting Proposed Lots

Mr. Preston elaborated on his concern about the proposed roadway running through both zones on the Property on direct examination as follows: it's "mostly the fact that there's so many houses being placed in such a small area. There were concerns about

runoff coming down through my property." (Tr. 22:14) While Mr. Preston[4] was, purportedly concerned about the number of lots that the County Council dictated could be placed on the Property, he did not seek to have the zoning of the Property changed to a classification that would only permit fewer lots. (Tr. 32:6) On cross-examination, Mr. Preston was required to concede that the majority of the proposed roadway is located in the RC-5 zoned portion of the Property. (Tr. 33:16)

According to Mr. Solomon, streets and ways[5] are permitted in the RC-2 zone only if they support rural agricultural development. (Tr. 82:11) Mr. Solomon's unsupported position is that, otherwise, the streets and roads permitted as of right in the RC-2 zone result in the non-preservation of agricultural land when placed "in part, or entirely" in the RC-2 zone instead of the RC-5 zone. (Tr. 81:17) Mr. Solomon added language to the codified use of "streets and ways" when he testified that such use was "only" for rural agricultural development or special exception use. (Tr. 82:11) According to Mr. Solomon, "infrastructure can be placed in R.C. 2 only if it applies to what's allowed in R.C. 2" (Tr. 82:17) or "if the state or county decided to put a major road through R.C. 2." (Tr. 96:8) However, when asked to support his position with reference to the *Baltimore County Zoning Regulations*, Mr. Solomon was completely unable to point to any authority and,

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[4] Mr. Preston's property and that of his neighbors is zoned RC-5 and developed in accordance with that classification.

[5] Streets and ways are uses permitted as of right in the RC-2 zone BCZR § 1A01.2B.5

instead, merely replied that his position is "implicit" in those regulations. (Tr. 96:17)

Utilization of Density; Non-Density Parcels

None of the witnesses who testified about density before the Board were able to show that allowable density was exceeded: the RC-2 zoned portion of the Property has acreage/density for two homes (one existing and one proposed) and that the RC-5 zoned portion of the Property was comprised of more than sufficient acreage to support the six homes proposed.

A summary of the testimony of the witnesses on this issue is outlined below:

Mr. Preston	Two in the RC-2 (Tr. 35:17); the homes proposed in the RC-5 do not exceed the number allowed. (Tr. 38:11)
Mr. Solomon	The density for Lot 7 [RC-2 zone - north side] is generated by the allocation of density only within the RC-2 zone (Tr. 104:2); the six lots proposed in the RC-5 obtain density only from the land zoned RC-5 (Tr. 106:3)
Mr. Main	RC-2 land area on north side of Sweet Air Road is not being used to support more than one lot (Tr. 133:17); a non-density parcel zoned RC-2 will also be added to the overall acreage of Lot 6, but no houses can be built in the non-density area and the RC-2 area is not being used to support the density (RC-5) on Lot 6 (Tr. 135:11); Seven lots can be created in the RC-5 zoned area (Tr. 135:1), but only six are proposed (Tr. 134:18)

As to the issue of non-density parcels, the only testimony or evidence from the Appellants was the comment by Mr. Preston that he "thought that it [the issue of non-density parcels] required a special hearing to raise those issues and that is why we [Appellants] included that question." (Tr. 27:10) In fact, on cross-examination, Mr.

Preston admitted that he did not know anything about zoning Special Hearings; rather he raised issues and a Special Hearing was suggested by his legal counsel. (Tr. 37:3)

Mr. Main, testifying on behalf of the Owner and Developer, testified that the non-density parcels were just that – parcels without density upon which no home could be constructed. (Tr. 135:14). Moreover, Mr. Main, who has familiarity with the BCZR and the development process as practiced in Baltimore County opined that a zoning Special Hearing is not the only means of having the creation of non-density parcels considered by the Hearing Officer. (Tr. 136:10) In the instant case, the non-density areas shown on the Property on the north side of Sweet Air Road were outstanding issues raised during the development review process for review and resolution by the Hearing Officer. (Tr. 136:18) Mr. Main testified that the Hearing Officer/Zoning Commissioner covered the issue of non-density parcels and the comments received at the development plan conference. (Tr. 137:7) Although the issue of non-density parcels was required to be considered by the Hearing Officer/Zoning Commissioner, the Appellants actually filed the Special Hearing presenting the issue in a duplicative manner, effecting compliance with the very procedure that they believe must be followed.

Upon conclusion of the presentation of the testimony of witnesses, brief oral arguments were offered by counsel and a briefing schedule for memoranda was agreed upon.

ARGUMENT

The Stormwater Management Facility and Roadway Supporting the Development Are Proper in All Respects

The basic thrust of the Appellants' contention is that a stormwater management facility for a development, located on land zoned RC-2 by the County Council can not "solely accept" or receive any runoff from the rest of the development land zoned other than RC-2. The Appellants' expert engineering witness, Mr. O'Leary, testified that the stormwater management facility would not handle "solely" stormwater for the RC-5 zoned portion of the development. (Tr. 48:17) Therefore, Appellants' issue on appeal fails immediately by their own evidence.

The Hearing Officer concluded that the stormwater facility would be "a public facility that is part of the infrastructure of the development." (Original Order at 7.) (Emphases added.) Relying on the case of *Glascock v. Baltimore Co.*, 321 Md. 118 (1990), the Hearing Officer determined that as a County-owned, "public facility, it is exempt from the provisions of the B.C.Z.R." (Original Order at 8.)

The interrelationship of the Development Regulations and the BCZR cannot be ignored in the review of a Development Plan. The BCZR governs the types of principal and accessory uses that can be developed and the bulk and area regulations associated with each use. A development plan describes the principal and any accessory uses proposed and how they are situated on the land relative to the bulk and area regulations. Facilities for the management of stormwater, like landscaping, are associated with the development, not

any particular zone. (Tr. 53:12) In fact, stormwater management (like landscaping) is not listed as a principal use in any zone. (Tr. 130:14) Water wells, like landscaping and stormwater management facilities, are not principal uses described in the BCZR. However, if one were to accept the argument of Appellants that stormwater from RC-5 or RC-2 zoned land must be addressed only on like-zoned land, would it follow that a water well for a home in the RC-5 zone could not utilize water that percolated down through RC-2 zoned land and may travel (underground) to the land zoned RC-5?

In other cases, stormwater management facilities have been considered to be uncontrolled excavations. Such excavations are defined as:

> EXCAVATIONS, UNCONTROLLED -- The digging of soil, sand, gravel, rock, minerals, clay or other earthen material from a land surface for any of the following purposes:
>
> > When incidental to the operation of a permitted business or manufacturing use located on the same property, but excluding any digging of material for sale, exchange, processing or manufacture;
> >
> > For grading or other purposes incidental to improvement of the land; and
> >
> > When incidental to the development of land or to grading for public improvements. [Resolution, November 21, 1956]

BCZR § 101 (Emphases added.)

The substantial testimony above, from witnesses on both sides, acknowledge that the stormwater management facility on the Property will be a land form, created by grading, it will be incidental to the development of the Property and, as shown on the approved Development Plan and as found by the Hearing Officer, it is to be dedicated to

the public. Uncontrolled excavations are a permitted accessory use in the RC-2 and the RC-5 zones. (BCZR §§ 1A01.2B.9.a & 1A04.2A.11.a, respectively)

Mr. Solomon, testifying for the Appellants, admitted that he had not participated in any development plan review hearings before the Hearing Officer since his retirement fourteen (14) years ago. (Tr. 101:18) Perhaps the passage of time explains why Mr. Solomon was completely unable to point to any specific provision of law or regulation to support his position that a stormwater management facility for split-zoned land proposed for development could not accept stormwater from any resource conservation zone except that in which it is located. When asked to support that proposition or the proposition that the proposed road could not traverse the zoning line, with reference to either the Development Regulations or the BCZR, Mr. Solomon could only reply that it was "implicit" in those regulations. (Tr. 96:20; 109:12) Mr. Solomon could point to no authority to support his position other than to rely on the proverbial stance that his unstated authority "is very clear". (Tr. 81:8) If one were to apply Mr. Solomon's "clear" authority to the development on the Property, relocation of the stormwater management facility would do nothing to preserve the farmland on the Property – the Board should note that the RC-2 zoned areas on the north side of Sweet Air Road are too small to be farmland in any event. (Tr. 81:12) Likewise, as found by the Hearing Officer, if streets/ways were prohibited as suggested by the Appellants' witness, "an absurdity would result. Public and private streets would end at zone lines as opposed to intersections." (Original Order at 6.)

In contrast to Mr. Solomon who has been retired for many years, Mr. Main who

works daily with the BCZR and the Development Regulations and who regularly participates as an expert witness in development/zoning cases (beginning at Tr. 126:5), in reliance on the BCZR and the Development Regulations offered his uncontradicted, expert opinion that:

- a roadway, located in both the RC-2 and RC-5 zones, designed to serve the overall development is a permitted use (Tr. 129:14)

- the stormwater management facility is not a principal use in the RC zones (Tr. 130:7; 130:16); it is incidental to the development (Tr. 139:1)

- the development regulations require that drainage in a development must be examined by design points for the development and not by zoning classification (Tr. 132:7)

- there are no zoning constraints on where a stormwater management facility can be located (Tr. 132:19)

- landscaping is not a specified, permitted use in any zone under the BCZR, but it, like stormwater management is integrated with the entire development (Tr. 133:9)

The Maryland Court of Appeals held, nearly 35 years ago, that the "prevailing general rule, almost universally followed, is that an expert's opinion is of no greater probative value then the soundness of his reasons given therefor will warrant." *Surkovich v. Doub* 258 Md. 263, 272 (1970). The opinion of an expert must be "legally sufficient to sustain the opinion of the expert." *Days Cove Reclamation Co. v. Queen Anne's County*, 146 Md. App. 469, 489 (2002); *Accord, People's Counsel for Baltimore County v. Beachwood I Ltd. Partnership*, 107 Md. App. 627 (1995). Mr. Solomon relied upon his "implicit" interpretation of the BCZR and his "clear belief" that because the proposed

roadway and/or stormwater management facility would not promote agricultural preservation neither is to be located in the RC-2 zone. Additionally, Mr. Solomon was apparently confused when he relied on cases that where the owner proposed to use residentially zoned land for commercial purposes. All of the Property in this case is zoned Resource Conservation and none of it is zoned or proposed for commercial uses.

In a further attempt to bootstrap a legally and factually deficient argument, Mr. Solomon relied on BCZR § 1A00.5 and ZCMP § 1A00.5.a and suggested that these provisions prohibited the stormwater management facility and roadway shown on the approved Development Plan. To accept that argument, this Board must disregard the plain meaning of that regulation and adopted policy which applies only to the calculation and utilization of density on a development tract that is split zoned. There is no ambiguity in the statutory scheme for the calculation and utilization of density. The Court of Special Appeals of Maryland has held that:

> When engaged in statutory construction, it is well settled that not only should this Court begin its investigation with the words of the statute, but we are bound by those words if their import is clear and unambiguous: The statutory language itself provides the clearest indication of the legislative intent and is thus the primary source for all statutory construction. We also adhere to the principle that the court should confine itself to construing the statute according to the ordinary and natural signification of the words used without resorting to subtle or forced interpretations designed to limit or extend the operation of the statute. When the words used convey a clear and plain meaning, there is no need to look beyond the statute to ascertain the legislative intent. Stated differently, when the statute is free from ambiguity, the court may not disregard the natural impact of the words so as to make the statute express an intention which is different from its plain meaning.

UPS v. Comptroller of Treasury, 69 Md. App. 458, 469-70 (1986) (Citations omitted.)

(Emphasis added.)

The Maryland Court of Appeals, called upon to determine whether or not a snake is a farm animal under the BCZR, concurred:

> We have said that '[t]he cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature. Legislative intent must be sought first in the actual language of the statute. Where the statutory language is plain and free from ambiguity, and expresses a definite and simple meaning, courts normally do not look beyond the words of the statute to determine legislative intent.'

Marzullo et al. v. Peter A. Kahl, 366 Md. 158, 179 (2001) (Citations omitted.)

The attempt to extrapolate regulations pertaining to lot density generated by acreage within a zone into an argument that stormwater facilities or roadways are not permitted, should be rejected by this Board as a blatant attempt by Mr. Solomon to read language, intent and meaning into the regulations that neither exists nor is "implied".

Non-Density Areas

Given the irregular shape of the development tract and the existing topography, there are <u>non-density</u> areas proposed. Given the required location of the proposed roadway, there is a small sliver of Lot No. 3 (that Lot is 1.5± acres in size) zoned RC-2 on the south side of the roadway. To provide the required, direct frontage on a public roadway, there is a small sliver of Lot No. 5 (under the paved portion of the proposed roadway) that is zoned RC-2 and which is far too small to support a dwelling with density. There is a non-density portion of Lot No. 6 which is zoned RC-2 in that area at the northern end of the Property where it tapers to its most narrow point – again too small to

support a dwelling with density and which is part of the forest conservation easement. The other non-density portion of Lot No. 6 is the triangular area north of the stormwater management facility, too small and too narrow to support a dwelling with density and a portion of which is also in the forest conservation area. These "non-density" areas are just that – land areas not used to generate density or the minium lot size required for a dwelling within a zone, but included as part of the lot for locational, design or topographic reasons. As such, there is no provision of the BCZR that is violated.

The non-density areas shown on the Development Plan were the subject of an unresolved comment/outstanding issue raised by one or more County review agencies (Tr. 136:18) and were, therefore, properly before the Hearing Officer, irrespective of whether or not a Petition for Special Hearing was filed. The Development Regulations provide that:

> The Hearing Officer shall take testimony and receive evidence regarding any unresolved comment or condition that is relevant to the proposed Development Plan, including testimony or evidence regarding any potential impact of any approved development upon the proposed plan.

BCC § 32-4-228(a)(1) (Emphasis added.)

The Hearing Officer properly considered and decided the non-density issue. (Original Order at 8-9.)

The Development Proposed Does Not Exceed Available Density

Without any basis in fact or law, the Appellants appear to argue in their written pleadings that the lot density of the proposed development is improper or exceeded. As

noted in the table above, even Mr. Solomon agrees that the RC-2 lot density and the RC-5 lot density has not been exceeded and that each of the proposed lots meets, at a minimum, the lot size within the zone in which it is located. The Owner and Developer are not attempting to "double count" land or density on the north side of Sweet Air Road. (Tr. 136:5) *Accord*, BCZR § 102.2. The proposed residential uses which are permitted as of right are each supported by the required land area within the zone in which each is located. The RC-2 zoned land on the north side of Sweet Air Road does not support "both lots 6 and 7" as suggested by the Appellants and the issue was properly considered, reasoned and decided by the Hearing Officer. (Original Order at 8.)

The leading case on how to calculate lot density, especially in the RC-2 zoned areas of Baltimore County is the Court of Special Appeals' decision in *Hayfields, Inc. v. Valleys Planning Council, Inc.* , 122 Md. App. 616 (1998). In its review of how density was to be allocated to a proposed country club and residential community within the RC-2 zone in Baltimore County, the Court held that "density in the R.C.-2 zone is determined by number of lots, as opposed to number of dwelling units. Thus, for all intents and purposes, 'residential density' in the R.C.-2 zone is 'subdivision lot density,' particularly because only one dwelling unit is permitted per lot in the R.C.-2 zone." *Hayfields* at 635. Moreover, that same Court held that "the calculation of 'subdivision lot density' does not contemplate subdivision based on distinctions among land uses" *Hayfields* at 636. (Emphasis added.)

There Will Be No Adverse Impact of the Proposed Development

Although Mr. Solomon would have this Board believe otherwise, in Maryland, uses "permitted as of right may be developed, as a matter of zoning, regardless of the kind and extent of adverse impact (from a land use perspective) it will create in the particular location proposed." *Schultz v. Pritts*, 291 Md. 1, 21 (1981); *Hayfields* at 639. Here, there will be no adverse impact of the development proposed. That is, unless the stormwater management facility is moved to higher ground as suggested by Messrs. Preston and Solomon. In that event, there will be more uncontrolled flow or unmanaged flow as testified to by Mr. O'Leary, Appellants' professional engineering witness (Tr. 54:18), as verified by the Owner/Developer's professional engineer Mr. Main. (Tr. 141:1)

APPELLANTS' QUESTIONS ANSWERED

- Is a road that supports RC 5 residential development permitted within a RC 2 zone? **Yes**; such a road is permitted as of right and would lead to an absurd result otherwise.

- Is a stormwater management facility "that solely supports" RC 5 development permitted within a RC 2 zone? **Not applicable**. The stormwater management facility treats water from development in both the RC-2 and RC-5 zones. In either event such a required, integral component of the development is a permitted [public] facility.

- Can the RC 2 zone on the north and south sides of Sweet Air Road support both Lots 6 and 7? **Not applicable**. Only one lot is proposed on the north side of Sweet Air Road [Lot 7] and one on the south side [existing home on Lot 8].

- Can the density of a RC 2 zoned parcel on the north and south sides of Sweet Air Road support Lots 6 and 7, along with the stormwater management facility and Lot 8 on the south side of Sweet Air Road? **Not applicable**. There is no density associated with a stormwater management facility. Lot

6 is supported by the density from the RC-5 zone in which it is located. Lot 7 and Lot 8 are the two lots (one on the north, the other on the south] supported by the RC-2 zone.

- Is a separate special hearing request necessary when non-density parcels are shown on a proposed development plan? **No**, especially as in this case when that issue was raised during the development review process and remained an issue to be decided by the Hearing Officer

The Development Plan Approval Must be Affirmed

The Appellants relied, primarily, on their contention that the "underlying zoning issues" rendered the Development Plan non-compliant. Those issues are dealt with and refuted in the discussion above.

In brief, oral argument, counsel for the Appellants raised generally, concerns about water wells, stormwater and septic systems. As this Board is well aware, the issue of water wells must be subjected to the State Department of the Environment's Water Appropriation Permit process as part of the overall development process, which the appellate courts have described as an "'ongoing process,' and the hearing officer's affirmation of the plan is just the first step." *Monkton Preservation Association, et al v Gaylord Brooks Realty*, 107 Md. App. 573, 584 (1995)

The issue of stormwater is described and discussed, *ad nauseam*, above. As noted previously, if the Appellants were to have their way, relocation of the stormwater management facility would result in unmanaged, uncontrolled stormwater runoff.

On the issue of septic systems, there is absolutely no testimony or evidence that the septic systems as reviewed and recommended for approval by the Residential Sanitation

Division of the Baltimore County Department of Environmental Protection and Resource Management fail to meet the requirements of State and County regulations. In fact, counsel for the Appellants argued to the contrary, noting that those requirements are met. (Tr. 148:3)

The Hearing Officer addressed all relevant issues and ruled appropriately when he approved the amended, redlined Development Plan. No testimony or evidence exists to negate the findings of the Hearing Officer, therefore the approved Development Plan must be affirmed.

SUMMARY and CONCLUSION

The approved Development Plan proposes a total of 7 lots on the north side of Sweet Air Road. The existing home (Lot No. 8) and the existing farm uses will continue on the south side of Sweet Air Road. Each of the lots is supported by density generated within the zone in which the lot is located and each lot meets all size and dimensional standards for the zone in which it is located. For those lots which also include "non-density" portions of land, the land area designated as "non-density" was not used to calculate either the minimum lot size or the density for the dwelling.

Stormwater management, landscaping and the roadway providing ingress and egress are integral to the overall development of the land. None of these three factors is identified as a principal use, permitted in the RC-2 or the RC-5 zone, yet all three are absolute requirements for any residential development. Stormwater management regulations and design guidelines are based on drainage and topography and zoning boundaries do not

affect how the water flows, is managed or treated for water quality purposes. The proposed roadway is designed to meet the County/State requirements. If Appellants were to have their way, two separate roadways and two separate stormwater management facilities would be required because of a zoning line that has no bearing on either one.

Talk about adverse impact!

The review of the Development Plan was conducted in accordance with the development regulations and all applicable laws and regulations. Once the access roadway was relocated to the west, all reviewing agencies, both County and State, recommended approval, subject to the decision of the Hearing Officer on the outstanding issue of several, small, non-density parcels. The Hearing Officer was correct with respect to the issues regarding density, roadway and stormwater management. Whether the publicly owned stormwater management facility is permitted under the case law cited by the Hearing Officer, as the permitted uncontrolled excavation under the BCZR or, most appropriately, a mandated element common to the entire development approval, it is located where it will provide the most benefit.

The Development Plan meets all requirements of the Development Regulations and the rules, policies and standards applicable to residential development projects. The Hearing Officer/Zoning Commissioner correctly decided the points raised by the Appellants pursuant to the Petition for Special Hearing that they filed. The Order of the Hearing Officer/Zoning Commissioner must be affirmed on appeal to this Board.

Respectfully submitted,

Howard L. Alderman, Jr.
Levin & Gann, P.A.
8th Floor, Nottingham Centre
502 Washington Avenue
Towson, Maryland 21204
410.321.0600 [voice]/410.296.2801 [fax]
Attorneys for Developer/Owner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of October, 2004, a copy of the foregoing Developer's Post-Hearing Memorandum, was mailed, postage prepaid, First Class United States Mail to the following:

J. Carroll Holzer, Esquire
Holzer & Lee, PA
508 Fairmount Avenue
Towson, Maryland 21286

and

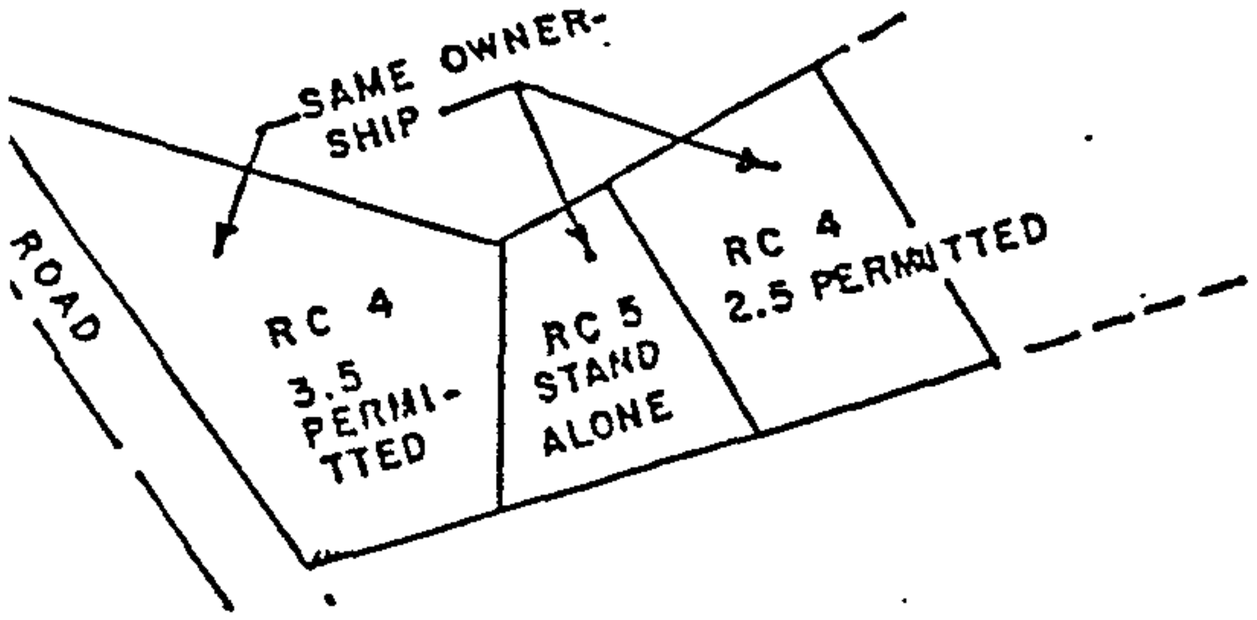
Carole M. Demilio, Deputy People's Counsel
Baltimore County Office of People's Counsel
400 Washington Avenue, Room 47
Towson, Maryland 21204

Howard L. Alderman, Jr.

APPENDIX

DIVIDED BY ZONE BOUNDARIES - If R.C. zoned land under
e ownership is separated by a different R.C. zone,
e density should be calculated and utilized by each
rcel. In the following example the R.C. 4 density
e two for one parcel and three for the other. The
ts would have to be located in the respective
ed density parcels of the property. The R.C. 5 area
e figured and utilized separately.

R.C. zoned land is proposed to be clustered in the
me zone, on the same property, across another zone, a
ecial hearing would be required before the Zoning
mmissioner. In the following example a special
aring would be required to request that density units
clustered in either of the R.C. zoned land.



IN RE: DEVELOPMENT PLAN HEARING and PETITION FOR SPECIAL HEARING	*	BEFORE THE
N & S/S Sweet Air Road, 355' SE of Manor Knoll Court	*	ZONING COMMISSIONER
(Lynch Property-4501Sweet Air Road)	*	OF BALTIMORE COUNTY
10th Election District		
3rd Councilmanic District	*	
Dorothy Surina & Jeanne Gough, Owners	*	Case Nos.: X-404 & 04-198-SPH
Gaylord Brooks Realty Co., Inc., Developer		

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

NOTICE OF APPEAL

Long Green Valley Association, Inc. and President, Charlotte Pine, and individuals Charlotte Pine, 13310 Fork Road, Baldwin, MD 21013; Steve Preston, 4408 Old Farm Road, Baldwin, MD 21013; and Gary Elser, 4407 Old Farm Road, Baldwin, MD, 21013, Appellants in the above captioned case, by and through their attorney, J. Carroll Holzer and Holzer and Lee, feeling aggrieved by the decision of the Zoning Commissioner hereby note an appeal to the County Board of Appeals from Findings of Fact and Conclusions of Law of the Zoning Commissioner of Baltimore County dated June 3, 2004 and attached hereto, and incorporated herein as **Exhibit #1**.

Filed concurrently with this Notice of Appeal is Appellants' Petition and a check made payable to Baltimore County to cover the costs of the appeal. Appellants were parties below and fully participated in the proceedings.

RECEIVED

JUN 18 2004

Per KLM

JUN 18 2004

Respectfully submitted,

J. CARROLL HOLZER, Esquire
Holzer & Lee
508 Fairmount Avenue
Towson, Maryland 21286
410-825-6961
Attorney for Appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17th day of June, 2004, a copy of the foregoing Notice of Appeal and Petition were mailed first class, postage pre-paid to Howard Alderman, Jr., Levin & Gann, 502 Washington Ave., Suite 800, Towson, MD 21204; County Board of Appeals, Basement Old Court House, 400 Washington Ave., Towson, MD 21204; and People's Counsel for Baltimore County, Basement, Old Courthouse, 400 Washington Ave., Towson, MD 21204.

J. CARROLL HOLZER, Esquire

C:\My Docs\Notices 2004\Lynch Property-6-16-04

IN RE: DEVELOPMENT PLAN HEARING and PETITION FOR SPECIAL HEARING N & S/S Sweet Air Road, 355' SE of Manor Knoll Court **(Lynch Property-4501Sweet Air Road)** 10th Election District 3rd Councilmanic District	*	BEFORE THE ZONING COMMISSIONER OF BALTIMORECOUNTY
Dorothy Surina & Jeanne Gough, Owners Gaylord Brooks Realty Co., Inc., Developer	*	Case Nos.: X-404 & 04-198-SPH

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

PETITION OF APPELLANTS BEFORE

THE COUNTY BOARD OF APPEALS

Appellants, Long Green Valley Association, and President, Charlotte Pine, and individuals Charlotte Pine, 13310 Fork Road, Baldwin, MD 21013; Steve Preston, 4408 Old Farm Road, Baldwin, MD 21013; and Gary Elser, 4407 Old Farm Road, Baldwin, MD, 21013, by and through their attorney, J. Carroll Holzer and Holzer and Lee, hereby submit this Petition as required by the Development Regulations of Baltimore County attached to the Notice of Appeal of the decision of the Zoning Commissioner for Baltimore County rendered on June 3, 2004.

Appellants intend to raise the following legal errors before the County Board of Appeals:

1. The subject Development Plan should not have been approved because of the noncompliance of the underlying zoning issues.
2. The underlying zoning issues are:
   a. Is a road that supports RC 5 residential development permitted within an RC 2 zone?

b. Is a Storm Water Management facility that solely supports RC 5 development permitted within a RC 2 zone?

c. Can the RC 2 zone on the N/side of Sweet Air Road support both lots #6 and #7?

d. Can the density of an RC 2 parcel on the N/side of Sweet Air Road support lot # 7 and lot # 6 along with the Storm Water Management facility, and also lot # 8 on the S/side of Sweet Air Road?

e. Whether the creation of non-density parcels as part of residential lots shown on a Development Plan require a Special Hearing, specifically the issue of the portion of lot # 7 in the RC 2 zone?

3. Such other relief as may be presented at the time of the hearing before the Board of Appeals

Respectfully submitted,

J. Carroll Holzer

IN RE: DEVELOPMENT PLAN HEARING and PETITION FOR SPECIAL HEARING
N&S/S Sweet Air Road, 355' SE of Manor Knoll Court
(Lynch Property – Sweet Air Road)
10th Election District – 3rd Council District

Dorothy Surina & Jeanne Gough, Owners;
Gaylord Brooks Realty Co., Inc., Developer*

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case Nos. X-404 & 04-198-SPH

SUPPLEMENTAL HEARING OFFICER'S OPINION AND DEVELOPMENT PLAN ORDER

This matter comes before this Hearing Officer/Zoning Commissioner for continued proceedings, pursuant to the Opinion and Order issued by the undersigned on December 16, 2003. The project under consideration is for the proposed residential development of the subject property with eight (8) single-family dwelling lots. The subject property consists of a gross area of 47.0 acres, more or less, split zoned R.C.2 and R.C.5, and is located on both sides of Sweet Air Road near its intersection with Manor Knoll Court in the vicinity of the Gunpowder Falls State Park in northern Baltimore County.

The matter initially came before the undersigned Hearing Officer/Zoning Commissioner for consideration of the development plan for the proposed residential development of the subject property by Dorothy Surina and Jeanne Gough, property owners, and Gaylord Brooks Realty Company, Inc., Developer, at a public hearing held on October 17, 2003. The case was continued on October 17, 2003 to allow consolidation of the development plan case with a Petition for Special Hearing that was filed by the Long Green Valley Association and certain individuals. The Petition for Special Hearing raised six separate questions regarding the proposed development of the subject property and compliance with the B.C.Z.R. The hearing was reconvened on December 2, 2003 and after testimony and evidence was taken, was concluded on that date.

Following the conclusion of the hearing on December 2, 2003, the undersigned issued an interlocutory opinion and Order on December 16, 2003. That Order addressed the issues presented within the Protestants' Petition for Special Hearing and many of the issues relating to the development plan. For example, issues regarding landscaping/buffering, storm water

Exh. #1

management and septic reserve areas were resolved. However, a final issue relative to traffic remained unresolved and in my judgment, required further study and resolution. In accordance with the Hearing Officer's Opinion and Development Plan Order of December 16, 2003, I required that the Developer conduct a traffic analysis to determine whether a safe sight distance existed from the proposed means of access/egress. I further required that a copy of this analysis be provided to all parties and that the matter would be reconvened for further proceedings. In accordance therewith, the traffic analysis was undertaken and a copy provided to all interested parties. A copy of that report has been submitted for the case file and marked as Developer's Exhibit 4. The matter was then scheduled for further proceedings on May 27, 2004.

Appearing on that date were Steve Smith, principal with Gaylord Brooks Realty Co., Inc., Developer, Charles Main, III and Kristy Bischoff on behalf of Daft-McCune-Walker, Inc., the consultants who prepared the development plan, and Howard L. Alderman, Esquire, attorney for the Owners/Developer. Also appearing and testifying on behalf of the Owners/Developer was Michael Ulrich, a traffic engineer. Numerous representatives of the various Baltimore County agencies who reviewed the plan attended the hearing, including the following individuals from the Department of Permits and Development Management (DPDM): Walt Smith, Project Manager; Bob Bowling, Development Plans Review; Don Stires, Land Acquisition; and Lloyd Moxley, Zoning Review. Also appearing on behalf of the County were Mark Cunningham, Office of Planning (OP), and R. Bruce Seeley, Department of Environmental Protection and Resource Management (DEPRM). Gary Elser, Charlotte Pine, Steven Preston and Carol Shaw appeared as Protestants and were represented by J. Carroll Holzer, Esquire.

On behalf of the Developer, Mr. Main testified and offered an amended redlined development plan (Developer's Exhibit 2). He indicated that as a result of the traffic analysis, the proposed access road is to be relocated 80 feet to the west. He described the relatively minor changes that were made to the plan as a result of the relocation of this road. Specifically, the road itself is shown, as are the in-fee strips that serve each of the proposed lots. Those strips are located within the right-of-way for the private road. Additionally, the minor change to the acreage

of the lots is shown, as is an additional percolation test for Lot 1, which meets County standards. Finally, several minor notes reflecting the undersigned's original Order were added to the plan.

Testimony was also received from Mr. Ulrich. He testified about his written report (see Developer's Exhibit 4). He indicated that he visited the site on two occasions, once to conduct a speed study and the second to determine sight distance. The details of his analysis are set forth in his report. Based upon that analysis, he recommended the relocation of the access road a distance of 80 feet from where it was initially proposed. He indicated that if the road were relocated, a sufficient sight distance in excess of 800 feet would be obtained in both directions. He opined that his analysis met all the American Association of State Highway and Transportation Officials' Design Manuals (AASHTO) and further met all requirements of the Maryland SHA.

The Protestants did not offer any testimony and there was limited cross-examination. Finally, each of the County representatives present indicated that the revised plan met all County requirements.

Based upon the testimony and evidence presented, I find that the "traffic issue" that generated the need for a traffic analysis has been satisfactorily addressed by the revised plan. In my judgment, the plan now complies with all appropriate County standards and requirements and thus, should be approved. Additionally, except those expressly modified herein, all of the findings of fact and conclusions of law set out in my initial Order of December 16, 2003 are incorporated herein. It is my intent to provide the Protestants or any other interested party with the opportunity to file a single appeal of my decision as incorporated herein.

Pursuant to the zoning and development plan regulations of Baltimore County as contained within the B.C.Z.R. and Subtitle 26 of the Baltimore County Code, the revised red-lined development plan shall be approved consistent with the comments contained herein and the restrictions set forth hereinafter.

THEREFORE, IT IS ORDERED by this Zoning Commissioner/Hearing Officer for Baltimore County this 3rd day of June 2004 that the red-lined development plan for the Lynch Property, identified herein as Developer's Exhibit 2, be and is hereby APPROVED; and,

IT IS FURTHER ORDERED that all of the terms and conditions of the prior Order dated December 16, 2003, except as expressly modified herein, are incorporated and made a part hereof.

Any appeal of this decision must be taken in accordance with Section 26-209 of the Baltimore County Code.

LAWRENCE E. SCHMIDT
Zoning Commissioner/Hearing Officer
for Baltimore County

LES:bjs

6/3/04

IN RE: DEVELOPMENT PLAN HEARING and * BEFORE THE
PETITION FOR SPECIAL HEARING
N&S/S Sweet Air Road, 355' SE of * ZONING COMMISSIONER
Manor Knoll Court
(Lynch Property – Sweet Air Road) * OF BALTIMORE COUNTY
10th Election District – 3rd Council District
* Case Nos. X-404 & 04-198-SPH
Dorothy Surina & Jeanne Gough, Owners;
Gaylord Brooks Realty Co., Inc., Developer*

SUPPLEMENTAL HEARING OFFICER'S OPINION AND DEVELOPMENT PLAN ORDER

This matter comes before this Hearing Officer/Zoning Commissioner for continued proceedings, pursuant to the Opinion and Order issued by the undersigned on December 16, 2003. The project under consideration is for the proposed residential development of the subject property with eight (8) single-family dwelling lots. The subject property consists of a gross area of 47.0 acres, more or less, split zoned R.C.2 and R.C.5, and is located on both sides of Sweet Air Road near its intersection with Manor Knoll Court in the vicinity of the Gunpowder Falls State Park in northern Baltimore County.

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Following the conclusion of the hearing on December 2, 2003, the undersigned issued an interlocutory opinion and Order on December 16, 2003. That Order addressed the issues presented within the Protestants' Petition for Special Hearing and many of the issues relating to the development plan. For example, issues regarding landscaping/buffering, storm water

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Date 6/3/04
By JEG

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Appearing on that date were Steve Smith, principal with Gaylord Brooks Realty Co., Inc., Developer, Charles Main, III and Kristy Bischoff on behalf of Daft-McCune-Walker, Inc., the consultants who prepared the development plan, and Howard L. Alderman, Esquire, attorney for the Owners/Developer. Also appearing and testifying on behalf of the Owners/Developer was Michael Ulrich, a traffic engineer. Numerous representatives of the various Baltimore County agencies who reviewed the plan attended the hearing, including the following individuals from the Department of Permits and Development Management (DPDM): Walt Smith, Project Manager; Bob Bowling, Development Plans Review; Don Stires, Land Acquisition; and Lloyd Moxley, Zoning Review. Also appearing on behalf of the County were Mark Cunningham, Office of Planning (OP), and R. Bruce Seeley, Department of Environmental Protection and Resource Management (DEPRM). Gary Elser, Charlotte Pine, Steven Preston and Carol Shaw appeared as Protestants and were represented by J. Carroll Holzer, Esquire.

On behalf of the Developer, Mr. Main testified and offered an amended redlined development plan (Developer's Exhibit 2). He indicated that as a result of the traffic analysis, the proposed access road is to be relocated 80 feet to the west. He described the relatively minor changes that were made to the plan as a result of the relocation of this road. Specifically, the road itself is shown, as are the in-fee strips that serve each of the proposed lots. Those strips are located within the right-of-way for the private road. Additionally, the minor change to the acreage

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Date 6/3/04
By

of the lots is shown, as is an additional percolation test for Lot 1, which meets County standards. Finally, several minor notes reflecting the undersigned's original Order were added to the plan.

Testimony was also received from Mr. Ulrich. He testified about his written report (see Developer's Exhibit 4). He indicated that he visited the site on two occasions, once to conduct a speed study and the second to determine sight distance. The details of his analysis are set forth in his report. Based upon that analysis, he recommended the relocation of the access road a distance of 80 feet from where it was initially proposed. He indicated that if the road were relocated, a sufficient sight distance in excess of 800 feet would be obtained in both directions. He opined that his analysis met all the American Association of State Highway and Transportation Officials' Design Manuals (AASHTO) and further met all requirements of the Maryland SHA.

The Protestants did not offer any testimony and there was limited cross-examination. Finally, each of the County representatives present indicated that the revised plan met all County requirements.

Based upon the testimony and evidence presented, I find that the "traffic issue" that generated the need for a traffic analysis has been satisfactorily addressed by the revised plan. In my judgment, the plan now complies with all appropriate County standards and requirements and thus, should be approved. Additionally, except those expressly modified herein, all of the findings of fact and conclusions of law set out in my initial Order of December 16, 2003 are incorporated herein. It is my intent to provide the Protestants or any other interested party with the opportunity to file a single appeal of my decision as incorporated herein.

Pursuant to the zoning and development plan regulations of Baltimore County as contained within the B.C.Z.R. and Subtitle 26 of the Baltimore County Code, the revised red-lined development plan shall be approved consistent with the comments contained herein and the restrictions set forth hereinafter.

THEREFORE, IT IS ORDERED by this Zoning Commissioner/Hearing Officer for Baltimore County this 3rd day of June 2004 that the red-lined development plan for the Lynch Property, identified herein as Developer's Exhibit 2, be and is hereby APPROVED; and,

ORDER RECEIVED FOR FILING
Date 6/3/04
By BJG

IT IS FURTHER ORDERED that all of the terms and conditions of the prior Order dated December 16, 2003, except as expressly modified herein, are incorporated and made a part hereof.

Any appeal of this decision must be taken in accordance with Section 26-209 of the Baltimore County Code.

LAWRENCE E. SCHMIDT
Zoning Commissioner/Hearing Officer
for Baltimore County

LES:bjs

ORDER RECEIVED FOR FILING
Date 4/23/04
By BJS

Zoning Commissioner

Suite 405, County Courts Building
401 Bosley Avenue
Towson, Maryland 21204
Tel: 410-887-3868 • Fax: 410-887-3468

Baltimore County

James T. Smith, Jr., County Executive
Lawrence E. Schmidt, Zoning Commissioner

June 3, 2004

Howard Alderman, Jr., Esquire
Levin & Gann
502 Washington Avenue, Suite 800
Towson, Maryland 21204

RE: DEVELOPMENT PLAN HEARING and PETITION FOR SPECIAL HEARING
N & S/S Sweet Air Rd., 355' SE of the c/l Manor Knoll Ct. (4501 Sweet Air Rd.)
(Lynch Property – Sweet Air Road)
10th Election District – 3rd Council District
Dorothy Surina & Jeanne Gough, Owners; Gaylord Brooks Realty Co., Developer/Applicants
Long Green Valley Assoc., Charlotte Pine, Steve Preston & Gary Elser, *Petitioners*
Case Nos. X-404 & 04-198-SPH

Dear Mr. Alderman:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The revised development plan has been approved, in accordance with the attached Order.

Very truly yours,

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Mr. Steve Smith, Gaylord Brooks Realty Co., P.O. Box 400, Phoenix, Md. 21131
Mr. Charles Main & Ms. Kristy Bischoff, Daft-McCune-Walker, Inc.
200 E. Pennsylvania Avenue, Towson, Md. 21286
Mr. Larry Gredlein, State Highway Admin., 707 N. Calvert Street, Baltimore, Md. 21203
J. Carroll Holzer, Esquire, 508 Fairmount Avenue, Towson, Md. 21204
Mr. Gary Elser, 4407 Old Farm Road, Baldwin, Md. 21013
Ms. Charlotte Pine, 607 Baltimore Avenue, Towson, Md. 21204
Ms. Carol Shaw, 7 Country Hill Court, Fork, Md. 21051
Mr. Steven Preston, 4408 Old Farm Road, Baldwin, Md. 21013
Don Rascoe, DPDM; DEPRM; DPW; OP; R&P; People's Counsel; Case File

Printed on Recycled Paper

IN RE: DEVELOPMENT PLAN HEARING and PETITION FOR SPECIAL HEARING
N&S/S Sweet Air Road, 355' SE of Manor Knoll Court
(Lynch Property – Sweet Air Road)
10th Election District – 3rd Council District

Dorothy Surina & Jeanne Gough, Owners;
Gaylord Brooks Realty Co., Inc., Developer*

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case Nos. X-404 & 04-198-SPH

HEARING OFFICER'S OPINION AND DEVELOPMENT PLAN ORDER

This matter comes before this Hearing Officer/Zoning Commissioner for consideration of a development plan prepared by Daft-McCune-Walker, Inc. for the proposed residential development of the subject property by the Owners/Developer with eight (8) single family dwelling lots. The subject property consists of a gross area of 47.0 acres, more or less, split zoned R.C.2 and R.C.5, and is located on both sides of Sweet Air Road near its intersection with Manor Knoll Court in the vicinity of the Gunpowder Falls State Park in northern Baltimore County. The proposed subdivision is more particularly described on the redlined development plan submitted and marked into evidence as Developer's Exhibit 1.

In addition to consideration of the redlined development plan, a Petition for Special Hearing was filed in this case. Interestingly, the Owners/Developer did not file the Petition; rather it was filed by certain neighbors who object to the proposed development. The Petitioners include the Long Green Valley Association, and three individuals, namely Charlotte Pine, Steve Preston and Gary Elser, all of who were represented by J. Carroll Holzer, Esquire. The Petitioners request a special hearing seeking a determination of the following six issues: **1)** Is a road that supports R.C.5 residential development permitted within an R.C.2 zone; **2)** Is a storm water management facility that solely supports R.C.5 development permitted within an R.C.2 zone; **3)** Can the R.C.2 zone on the north and south sides of Sweet Air Road support both proposed Lots 6 and 7; **4)** Can the density of an R.C.2 zoned parcel on the north and south sides of Sweet Air Road support proposed Lots 6 and 7 along with the storm water management facility, and Lot 8 on the south side of Sweet Air Road; **5)** Whether the creation of non-density parcels as part of residential lots shown on a development plan require a separate special hearing request, and specifically, a portion of

ORDER RECEIVED FOR FILING
Date 12/4/03
By

proposed Lot 7 in the R.C. 2 zone; and, **6)** such other and further issues as may be developed by the testimony presented at the hearing.

Insofar as development plan review, the subject proposal has been reviewed in accordance with the development review regulations codified in Title 26 of the Baltimore County Code. The process described therein is initiated by the filing of a concept plan, which is a schematic representation of the proposed development. The concept plan is submitted for review at a conference held by and between representatives of the Developer and the County at a Concept Plan Conference (CPC), which in this case was conducted on February 24, 2003. Thereafter, as required, a Community Input Meeting (CIM) is conducted during evening hours at a public facility in the vicinity of the proposed development. The CIM provides an opportunity for residents of the locale to review and offer comment on the proposal. The CIM for this project was held at the Jacksonville Elementary School on March 27, 2003. Subsequently, a development plan is submitted for review and comment at a conference held again between the Developer and County agency representatives. Often the development plan has been revised to incorporate changes suggested at the CPC and/or CIM. The Development Plan Conference (DPC) in this case was held on August 13, 2003. Following the DPC, a public hearing on the proposal is conducted before the Zoning Commissioner/Deputy Zoning Commissioner. Originally, the matter was scheduled for September 4, 2003; however, was rescheduled to October 17, 2003. When the hearing was opened on that date, Counsel for the neighbors advised that the above-described Petition had been filed. Section 26-206.1 of the Baltimore County Code allows an applicant (Owner/Developer) to combine the hearing required for zoning relief with the Hearing Officer's Hearing. Counsel for the Owners/Developer advised that the applicants consented to a single public hearing on all issues and thus, the matter was continued and rescheduled for December 2, 2003, with a second hearing date of December 3, 2003, if necessary. However, the hearing was completed in its entirety on December 2, 2003.

Appearing at one or both hearing dates in support of this project were Steve Smith with Gaylord Brooks Realty Co., Inc., Developer, Charles Main, III and Kristy Bischoff on behalf of Daft-McCune-Walker, Inc., the consultants who prepared the development plan, and Howard

ORDER RECEIVED FOR
Date 12/12/03
By

L. Alderman, Esquire, attorney for the Owners/Developer. Numerous representatives of the various Baltimore County agencies who reviewed the plan attended the hearing, including the following individuals from the Department of Permits and Development Management (DPDM): Walt Smith, Project Manager; Bob Bowling, Development Plans Review; Don Stires, Land Acquisition; and, John Lewis and Lloyd Mosley, Zoning Review. Also appearing on behalf of the County were Anne Roane, Office of Planning (OP); R. Bruce Seeley, Department of Environmental Protection and Resource Management (DEPRM); Jan Cook, Department of Recreation and Parks (R&P), and Lt. Jim Mezick, Fire Department. Larry Gredlein appeared on behalf of the Maryland State Highway Administration. Gary Elser and Charlotte Pine, who as noted above, are co-Petitioners in the Petition for Special Hearing, appeared as interested persons and were represented by J. Carroll Holzer, Esquire. Maria Bredehoeft, Sharon Rohrbaugh and Carol Shaw appeared at the first hearing.

As noted above, the subject property is an irregularly shaped parcel that straddles Sweet Air Road and abuts the Gunpowder Falls State Park in the Carroll Manor community of northern Baltimore County. The property contains 47 acres in area, more or less, split zoned R.C.2 and R.C.5 and is divided into two distinct parcels by Sweet Air Road. The larger portion of the property is located on the south side of Sweet Air Road and contains 32.33 acres in area, entirely zoned R.C.2. That area of the property is improved with a single-family dwelling, known as 4501 Sweet Air Road, and features a number of agricultural-type outbuildings. In addition, a portion of that area of the property is used for agricultural operations and the remainder contains environmentally sensitive areas, including woods, slopes, and wetlands. It is also to be noted that there will be no change to this area of the property. This portion of the overall tract will remain as a single lot and retain the existing single family dwelling, which is owned by Ms. Sarina and Ms. Gough.

The proposed subdivision will be located entirely on that part of the property that is situated on the north side of Sweet Air Road. This area of the property is approximately 15 acres in area and has been used for agricultural operations. It also contains some areas of forest and slopes. A small triangular shaped portion of this area is zoned R.C.2, while the remainder of the

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property is zoned R.C.5. As more particularly shown on the plan, the Owners/Developer propose one single-family lot (1.27 acres) in the R.C.2 zoned area of the property. Additionally, there are six single-family dwellings (Lots 1 through 6) proposed for the R.C.5 zoned portion of the property. Lots 1 through 5 are each approximately 1.5 acres in area and Lot 6 is a larger lot, approximately 4 acres in size. Vehicular access to the subdivision will be by way of a private road leading into the property from Sweet Air Road. The road enters that portion of the property zoned R.C.5, crosses into that part of the site zoned R.C.2 and then dead-ends within the R.C.5 zoned portion of the property as a turn-around/cul-de-sac. The development plan also shows two storm water management cells to accommodate runoff. These cells are located within the R.C.2 zoned portion of the tract, to the rear of the R.C.2 lot (Lot 7).

The scheme of the proposed development surely cannot be approved if the Petitioners prevail in their arguments within the Petition for Special Hearing. As noted above, six issues were raised within the Petition, including a "catchall" (Issue #6). In that the plan can only be approved if a favorable resolution of these questions is reached from the Developer's perspective, the issues in the Petition shall be addressed first in numerical order.

Question 1: "Is a road that supports R.C.5 residential development permitted within an R.C.2 zone?"

As noted above, the private access road leading into the interior of the proposed subdivision from the north side of Sweet Air Road extends across an internal zone line. The road enters at a point where the property is zoned R.C.5, crosses over the zone line into R.C.2 zoned land, and then back again into the R.C.5 zone. This road will provide access to the R.C.5 lots. Motorists exiting some of those lots will drive across the R.C.2/R.C.5 zone line. Obviously, this zone line is of no practical application in terms of on-site field conditions; however, raises a legal issue.

The Petitioners opposed to this subdivision aver that the road serving the R.C.5 lots cannot be constructed in the R.C.2 zoned portion of the property. As authority for this position, the Petitioners cite, In Re: The property of Orville Jones/aka Long Green Hotel, Case No. 93-93-SPH and Circuit Court Case No. 94-CV–10257 (hereinafter referred to as "Jones"). The

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undersigned Zoning Commissioner/Hearing Officer is familiar with that matter in that I presided over the initial hearing in that case. That matter related to a commercially zoned property (B.L.-C.R.), approximately 1.056 acres in area, in the Kingsville area of Baltimore County. The property had been used for many years as a commercial operation known as the Long Green Hotel; however, when Mr. Jones acquired the site, he razed the old building and was determined to replace that structure with another commercial use. He proposed a new building to be occupied by a High's Dairy Store, a dentist's office, and a laundromat. The essence of Jones related to the septic reserve system, which was required to support the commercial uses on that property. Obviously, given the rural location of the site, public water and sewer facilities were not available. Additionally, as a result of construction activities on the site, a septic reserve system could not be installed within the 1.056-acre lot. Due to this situation, Mr. Jones entered into an arrangement with the owner of an adjacent property zoned R.C.2. He purchased an easement and proposed to install the required septic reserve system on the adjacent property. Wastewater from the uses on Mr. Jones' property would be piped offsite and disposed of on the adjacent property.

In a written decision which followed the public hearing, I held that the matter was properly before the Zoning Commissioner and that the septic reserve system was a use of land as contemplated by the B.C.Z.R. I further found that the use was not permitted as a principle use on the R.C.2 property, either by right or as an accessory. However, I determined that the septic system (which had been implemented by the time of the hearing) could remain under the doctrine of estoppel.

An appeal of my decision was filed with the County's Board of Appeals. Although conducting a de novo hearing, the Board reached similar conclusions and entered a nearly identical decision. The matter was then appealed to the Circuit Court of Maryland for Baltimore County. That appeal was considered by then Judge James T. Smith, Jr., who has gone on to greener pastures since his term as a Circuit Court Judge. A reading of then Judge Smith's decision indicates that he generally concurred with the prior determinations of the Zoning Commissioner and Board of Appeals relating to the use aspects of the septic reserve system. That

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is, he confirmed that a septic system is a use and that it was not permitted in the R.C.2 zone as a specifically identifiable principle use, either by right or as an accessory use. However, Judge Smith's decision primarily focused upon the estoppel/laches issue. In this respect, he affirmed in part and reversed in part the Board's decision, determining that Baltimore County was estopped from bringing about any zoning enforcement proceedings against Mr. Jones; however, that the neighbors and private citizens could pursue an action for injunction or other relief. Utilizing the spirit of the Jones decision, the Petitioners in the instant case aver that the road cannot be permitted to cross the zone line.

This issue is easily resolved by a review of Section 1A01.2 of the B.C.Z.R., which establishes the use regulations in the R.C.2 zone. Sub-section 1A01.2.B.5 thereof specifically identifies "streets and ways" as uses permitted by right in the R.C.2 zone. Although there might be an argument advanced that "street" means a County-owned street, there is no doubt that the private road proposed here is, at the very least, a "way." Moreover, the private road is a street under the commonly accepted definition and understanding of that word. Thus, to the question "Is a road that supports R.C.5 residential development permitted within the R.C.2 zone," the answer is obviously "yes." Any street or way is permitted by right in the R.C.2 zone. There is no requirement within the B.C.Z.R. that a street or way in an R.C.2 zone provide access only to R.C.2 zoned lots. If such a prohibition were required, an absurdity would result. Public and private streets would end at zone lines as opposed to intersections. There would be no consistent street pattern or road network. Obviously, there are many streets in the rural areas of Baltimore County that cross zone lines.

Question 2: Is a storm water management facility that solely supports R.C.5 development permitted within a R.C.2 zone?

In addressing this question, it is first to be noted that the question is not accurate insofar as the facts presented in this case. The storm water management cells, which are proposed in the R.C.2 zoned portion of the site, do not "solely" support R.C.5 development. It was clear from the testimony and evidence presented by both Mr. Main and Mr. Preston that storm water runoff from development in both the R.C.2 and R.C.5 zones will be directed to this

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facility. Thus, the cells do not solely support the R.C.5 development, but also the road and the house proposed in the R.C.2 zoned portion of the tract.

Nonetheless, the question is a fair one, given that the R.C.5 runoff will be directed and ultimately discharged into a storm water management system located in the R.C.2 zone. As with the first issue, the neighbors rely upon the logic set out in Jones. In response, the Developer again points to the use regulations for the R.C.2 zone set out in Section 1A01.2 of the B.C.Z.R. Specifically, Sub-section 1A01.2.B.6 thereof lists as a use of right in the R.C.2 zone, "telephone, telegraph, electrical-power or other lines or cables, provided that any such line or cable is underground; underground gas, water or sewer mains or storm drains; or other underground conduits except interstate or international pipe lines." The Developer avers that the storm water management system proposed here is akin to a storm drain or underground conduit.

Although a storm drain and a storm water management facility are similar, they are not identical land uses. As noted in the body of my opinion in Jones, a septic reserve system is not the same thing as a sewer main, for the purposes of identifying a use regulated by the B.C.Z.R. Similarly, I find that a storm water management facility is not the same thing as a storm drain. Nonetheless, the facts and logic employed in Jones can be distinguished. Specifically, the storm water management facility proposed here is a "public" facility, as opposed to a private facility. In Jones, the septic reserve area was to serve a specific, privately owned lot; that is, the ownership of both the septic system and land on which it was to be located was private (i.e., Mr. Jones owned the property on which the commercial building was located). In this case, the storm water management facility is not associated with any single lot, but will serve a number of privately owned lots. It is a public facility that is part of the infrastructure of the proposed development. Moreover, the development plan depicts what this property will look like when built out, including the lots, roads, storm water management areas, etc.

The controlling factor in this case, I believe, is the ultimate ownership of the storm water management facility. After construction, it will be conveyed to and maintained by Baltimore County and the underlying fee ownership held by Baltimore County.

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It is well settled that property owned by Baltimore County is not subject to the B.C.Z.R. (see Glascock vs. Balto. Co., 321 Md. 118 (1990). Therefore, given that this is to be a public facility, it is exempt from the provisions of the B.C.Z.R. The answer to the second question is "yes" because this County-owned facility is not subject to the R.C.2 (or any other) zoning regulations.

Question 3: Can the R.C.2 zone on the north side of Sweet Air Road support both Lots 6 and 7?

The premise presented by this question is factually inaccurate. As noted above, the overall property is split zoned R.C.2 and R.C.5. The R.C. 2 zoned portion of the property contains 36.2 acres in area. Under the R.C.2 zoning regulations, any R.C.2 zoned lot between 2 and 100 acres in area may be subdivided once so as to create two lots. The plan shows such a subdivision whereby two lots have been created. The largest of the R.C.2 lots is on the south side of Sweet Air Road and encompasses the existing dwelling in which the owners reside. The second R.C.2 lot is located on the north side of Sweet Air Road and contains 1.278 acres in area, larger than the *minimum area required for a single lot.*

The Petitioners apparently question the fact that a portion of the R.C.2 zoned property on the north side of Sweet Air Road is part of proposed Lot 6, which is primarily zoned R.C.5. The building envelope for that lot is entirely within the R.C.5 zone. The R.C.2 zoned portion of Lot 6 serves as yard area and no buildings are proposed thereon. The plan shows that area as a "non-density portion" of Lot 6.

There is nothing inappropriate or illegal about the plan in this respect. There is sufficient density for this project, both in terms of development on the R.C.2 and R.C.5 zoned portions of the tract and the overall parcel. The R.C.2 zoned portion of Lot 6 does not support the density needed to create that lot, but is only a part thereof. There is sufficient land within the R.C.2 zoned portion of Lot 6 to support the density and lot area required for that lot.

Question 4: Can the density of an R.C.2 zoned parcel on the north and south sides of Sweet Air Road support proposed Lots 6 and 7 along with the storm water management facility and Lot 8 on the south side of Sweet Air Road?

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The answer to this question utilizes the same reasoning set forth above in Question 3. Essentially, the acreage of the R.C.2 zoned land on the north side of Sweet Air Road is used for three purposes. First, part of that acreage will be a privately owned lot (Lot 7) containing 1.27 acres in area. Part of that land will also be utilized as the storm water management reservation area and will ultimately be conveyed to Baltimore County. The remaining area of that land will be designated as the non-density portion of an R.C.5 lot. This approach is appropriate and permissible under the R.C.2 zoning regulations. Simply stated, the project is not over-density, the plan does not double-count areas of land for multiple purposes (as prohibited by Section 102.2 of the B.C.Z.R.), and the minimum area requirements are met. Designating the R.C.2 zoned land as "non-density" is appropriate.

<u>Question 5</u>: Whether the creation of non-density parcels as part of residential lots shown on a development plan require a separate special hearing request, and specifically, a portion of proposed Lot 7 in the R.C. 2 zone?

This question presents a moot issue. The issue of the use of R.C.2 and R.C.5 zoned land as discussed in the questions presented above can be raised either through a Petition for Special Hearing or as an "unresolved issue" in the context of the review of the development plan. The petitioning neighbors and community members have raised it in the Petition for Special Hearing. It is likewise identified as an issue in the context of the review of the development plan. The issue is properly framed and presented to the Zoning Commissioner/Hearing Officer.

Question 6: Such other and further issues as may be developed by the testimony presented at the hearing.

There were no other issues raised at the hearing.

Having resolved the issues presented within the Petition for Special Hearing, attention is next turned to those issues that were identified as unresolved in the context of the development plan review.

One issue that was raised came from Mr. Elser and Mr. Preston. As noted on the plan, these gentlemen both own adjacent property to the west of the subject site. Their houses abut the rear of Lots 2, 3, 4 and 5 of the proposed subdivision. Concerns were expressed regarding

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screening and privacy. The plan shows an area of woodlands between these neighbors' homes and the proposed subdivision; however, the neighbors testified that this wooded area is not a sufficient buffer. Photographs submitted show that those trees are somewhat scrub brush.

On the one hand, I am appreciative of the fact that the Elser and Preston homesites are a significant distance from the common property line and that there are existing trees in that area. On the other hand, the plan shows landscaping to be provided to the rear of Lot 1 between the proposed dwelling thereon and the Bredehoeft property. In my judgment, supplemental screening along the rear of the Elser and Preston properties is appropriate. That landscaping should incorporate the existing vegetation. Although I will not require a strict landscaping buffer as described in the County's Landscape Manual, I will require that the Developer submit a plan to the County's Landscape Architect, Avery Harden, for review and approval. A copy of that plan shall also be furnished to Mr. Preston and Mr. Elser for their comment. It is not my intention by imposing this restriction to require landscaping to a degree that would otherwise be required to buffer a commercial or urban residential property; however, the existing screening should be supplemented by non-deciduous trees to provide a better buffer. I will leave the details of that screening to Mr. Harden.

A second issue raised with respect to the development plan relates to well availability. The neighbors expressed concerns as to whether adequate groundwater exists for this subdivision. The simple answer to that concern is if the Developer cannot drill wells on the subject properties in compliance with the County's well standards, building permits will be not be released for construction. The County has stringent requirements for wells regarding yield, location, etc. Mr. Elser's testimony regarding the wells on his property is of note. Apparently, these wells were drilled prior to the adoption of the County's present ordinance that imposes greater standards for new wells. It is significant that there are four working wells on the Elser property. Apparently, these function to provide sufficient yield to the properties that they serve. The existence of these four wells in close proximity on a single property belies the argument that there may be insufficient groundwater in the area. That is, the fact that four wells so close together work properly would suggest the availability of adequate groundwater. In any event, I decline to deny

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the plan on this basis. As noted above, the Developer need comply with the County's well water regulations in order for permits to be issued.

Mr. Preston also raised an issue regarding storm water management and potential drainage. All testimony regarding this issue is reflected in the record in this case. He also submitted a packet of materials (collectively identified as Protestants Exhibit 6) regarding this issue. I have considered Mr. Preston's testimony and reviewed his exhibit. With all due respect, I do not believe that Mr. Preston appreciates the County's storm water management regulations and the expected result of their application to this project.

Essentially, Baltimore County applies State regulations that have been enacted to insure appropriate storm water management quantity and quality. Quality relates to the cleanliness of the water being discharged (i.e., the requirement that oil and other impurities from roadways and houses be filtered). The quantity issue relates to the rate of discharge, the amount of same, and whether there is the potential for off-site or downstream erosion. Presently, the property is farmed. There is no storm water management system in place. Moreover, it is known that row crops can result in uncontrolled volumes/rates of storm water discharge from a given site. Although areas of impervious surface will be developed, the Developer has submitted a storm water management plan to Baltimore County. That plan has been reviewed and approved by the County's Department of Environmental Protection and Resource Management (DEPRM). It is the essence of that plan that water will be captured and directed to the storm water management cells shown on the plan. The water will be filtered and discharged at a controlled rate.

The issue of storm water management is a frequent concern in development plan cases. DEPRM's storm water management division enforces stringent regulations regarding this issue. I am confident that their review of the proposal in this case was thorough. Although appreciative of Mr. Preston's concerns, I believe that the plan adequately provides for storm water protection.

Another issue raised by Mr. Preston relates to the septic reserve areas for this property. The resolution of this issue is similar to that relating to wells. Baltimore County has in place

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regulations regarding the required size of a septic reserve area, the capacity thereof, the distance from adjacent wells and other septic reserve systems, etc. These regulations have all been applied to this development plan and the plan complies with those regulations in all respects. There is no credible evidence in the record that the septic reserve systems proposed for the lots in this case will cause detrimental impacts to adjacent properties. As noted above, the septic reserve areas have been determined to be appropriate through percolation tests. I decline to deny the plan on this issue.

The final issue raised at the hearing relates to traffic. Testimony on this issue was received from Mr. Larry Gredlein on behalf of the SHA and Mr. Preston. Mr. Gredlein testified that the location of the proposed private road leading into the interior of this property from Sweet Air Road was appropriate. He indicated that he had visited the site to undertake an analysis as to whether adequate sight distance exists. Apparently, there is no dispute that there is adequate sight distance to the east of the property along Sweet Air Road; however, the Protestants are concerned about adequate sight distance to the west. In this regard, Mr. Gredlein indicated that when he initially visited the site, he incorrectly identified the location of the proposed entrance road. Thus, he produced a written concept plan comment expressing concerns about the sight distance. Later he revisited the site and correctly located the access road. Mr. Gredlein testified that he undertook an analysis of sight distance, utilizing two different methods. The first was to determine whether sufficient sight distance exists from the intersection towards the west (hereinafter referred to as the "intersectional analysis"). In this regard, he indicated that sight distance was limited because of a vertical rise (hill) in Sweet Air Road. Mr. Gredlein stated that this hill limited sight distance and that under the intersectional analysis, the proposed sight distance was insufficient under SHA standards. However, he then opined that he undertook a second analysis to determine stopping distance. This analysis was undertaken to determine whether traffic eastbound (from the west) on Sweet Air Road could stop for traffic entering that road from the proposed private road. Mr. Gredlein opined that there was adequate stopping distance. Mr. Gredlein's testimony may be summarized as follows: that although a motorist entering Sweet Air Road from the proposed private road might not be able to see an adequate

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distance to the west, traffic proceeding from that direction would be able to stop to avoid a collision with a vehicle entering Sweet Air Road from the private road.

Mr. Preston undertook his own study and took a series of photographs. The results of his study and photographs taken are explained in Protestants' Exhibit 6. Essentially, his lay analysis concluded that the rise in Sweet Air Road limited the view to the west of the intersection.

The development regulations require that a safe system of roads and streets be provided. Collectively, the testimony and evidence offered was not persuasive that this issue is properly addressed in the proposed plan. Thus, I decline to approve the plan based on the record of this case. I am concerned about Mr. Gredlein's testimony that insufficient sight distance exists under the intersectional analysis, notwithstanding that he believes that adequate stopping distance is available. Although the speed limit posted on Sweet Air Road is 40 mph, the uncontradicted testimony was that traffic routinely exceeds the speed limit along that stretch of road. Although no traffic study was completed, the testimony and evidence was persuasive to a finding that traffic routinely is often 5 - 10 mph faster than the posted limit. Mr. Gredlein's conclusions regarding stopping distance were based upon the posted speed limit and not actual field conditions. Finally, although Mr. Preston's lay analysis was not scientific (i.e., he measured distances not by field measurements but based on the site plan) it does indicate a diminished view to the west. This is not to take issue with his attempt, but he is a lay person and not a traffic engineer.

Under these circumstances, I decline to approve the plan in its current form. It is my judgment that this issue needs further study and resolution. I simply cannot approve a plan that establishes a potentially dangerous traffic condition and the record of the case is insufficient to determine, what, if any, changes are possible and/or can be made to eliminate this situation. It is to be noted that the vertical rise which blocks sight distance to the west is along this property's frontage. A requirement that the Developer undertake road improvements to reduce the height of that rise as part of its development of this property may be appropriate. However, whether that is actually required is unclear at this time. I therefore direct that the Developer undertake a traffic analysis to determine what, if any, road improvements or other revisions to the plan may be

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required. That analysis should obviously include an accurate determination of the safe sight distance to the east and based upon a determination of the routine speeds in this area. Upon completion, this study shall be reduced in writing and a copy provided to the Protestants and to this Hearing Officer, after which the Hearing Officer's Hearing will be reconvened for further proceedings.

This decision is rendered in a similar fashion to the opinion issued by the undersigned in the matter of Bethel AME Church, Case No. II-597. In that case, I initially declined to approve or deny the plan and ordered a further traffic analysis. Appeals were taken of that decision and the appellants contended that my decision was illegal under law as the Hearing Officer must issue a final decision and not an interlocutory order. The Board of Appeals, Circuit Court and Court of Appeals rejected this claim and confirmed the Hearing Officer's authority to require additional analysis. Therefore, this matter will be scheduled for further proceedings when the required traffic analysis is complete, after which a decision will be issued by this Hearing Officer. Any party may appeal that decision and such an appeal can include any and all issues raised in connection with this case, including those identified as part of both the development plan and Petition for Special Hearing.

Pursuant to the zoning and development plan regulations of Baltimore County as contained within the B.C.Z.R. and Subtitle 26 of the Baltimore County Code, the advertising of the property and public hearing held thereon,

IT IS ORDERED by this Zoning Commissioner/Hearing Officer for Baltimore County this 16th day of December 2003 that within ninety (90) days of the date of this Order, the Developer shall submit the requisite written traffic analysis described hereinabove; and,

IT IS FURTHER ORDERED that this matter shall thereafter be scheduled for further proceedings before this Hearing Officer.

LAWRENCE E. SCHMIDT
Zoning Commissioner/Hearing Officer
for Baltimore County

LES:bjs

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Date 12/16/03
By BJS

Zoning Commissioner

Suite 405, County Courts Building
401 Bosley Avenue
Towson, Maryland 21204
Tel: 410-887-3868 • Fax: 410-887-3468

Baltimore County

James T. Smith, Jr, County Executive
Lawrence E. Schmidt, Zoning Commissioner

June 3, 2004

Howard Alderman, Jr., Esquire
Levin & Gann
502 Washington Avenue, Suite 800
Towson, Maryland 21204

RE: DEVELOPMENT PLAN HEARING and PETITION FOR SPECIAL HEARING
N & S/S Sweet Air Rd., 355' SE of the c/l Manor Knoll Ct. (4501 Sweet Air Rd.)
(Lynch Property – Sweet Air Road)
10th Election District – 3rd Council District
Dorothy Surina & Jeanne Gough, Owners; Gaylord Brooks Realty Co., Developer/Applicants
Long Green Valley Assoc., Charlotte Pine, Steve Preston & Gary Elser, Petitioners
Case Nos. X-404 & 04-198-SPH

Dear Mr. Alderman:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The revised development plan has been approved, in accordance with the attached Order.

Very truly yours,

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Mr. Steve Smith, Gaylord Brooks Realty Co., P.O. Box 400, Phoenix, Md. 21131
Mr. Charles Main & Ms. Kristy Bischoff, Daft-McCune-Walker, Inc.
200 E. Pennsylvania Avenue, Towson, Md. 21286
Mr. Larry Gredlein, State Highway Admin., 707 N. Calvert Street, Baltimore, Md. 21203
J. Carroll Holzer, Esquire, 508 Fairmount Avenue, Towson, Md. 21204
Mr. Gary Elser, 4407 Old Farm Road, Baldwin, Md. 21013
Ms. Charlotte Pine, 607 Baltimore Avenue, Towson, Md. 21204
Ms. Carol Shaw, 7 Country Hill Court, Fork, Md. 21051
Mr. Steven Preston, 4408 Old Farm Road, Baldwin, Md. 21013
Don Rascoe, DPDM; DEPRM; DPW; OP; R&P; People's Counsel; Case File

Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 4501 Sweet Air Road

which is presently zoned RC-2 + RC-5

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, neighbor (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

(See attached supplemental sheet)

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above Special Hearing, advertising, posting, etc. and further agree to and are to be bounded 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.

(See attached signature page)

Name - Type or Print

Signature

Address Telephone No.

City State Zip Code

Legal Owner(s):

Dorothy Suring + Jeanne Gough

Name - Type or Print

Signature

Name - Type or Print

Signature

Address Telephone No

City State Zip Code

Attorney For Petitioner:

J. Carroll Holzer

Name - Type or Print

Signature

J. Carroll Holzer, P.A.
508 Fairmount Ave.
Towson, MD 21286

410-825-6961
Telephone No.

City State Zip Code

Representative to be Contacted:

J. Carroll Holzer, P.A.

Name

508 Fairmount Ave. 410-825-6961

Address Telephone No.

Towson MD 21286

City State Zip Code

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Case No. 04-198-SPH

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Reviewed By LTM Date 10/20/03

ATTACHMENT "A"

Names and addresses of Petitioners in the matter of the Lynch Property, 4501 Sweet Air Road, Petition for Special Hearing:

1. Long Green Valley Association Charlotte W. Pine
   c/o Charlotte Pine, President
   13310 Fork Road
   Baldwin, MD 21013
   Phone No. 410-592-7711

2. Charlotte Pine, Individually Charlotte W Pine
   13310 Fork Road
   Baldwin, MD 21013
   Phone No. 410-592-7711

3. Steve Preston Steve Preston
   4408 Old Farm Road
   Baldwin, MD 21013
   Phone No. 410-

4. Gary Elser Gary M. Elser
   4407 Old Farm Road
   Baldwin, MD 21013
   Phone No. 410-592-9186

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C:Petitions/Lynch Property-Names

SUPPLEMENTAL SHEET: PETITION FOR SPECIAL HEARING

PETITIONERS: LONG GREEN VALLEY ASSN., ET AL.

4501 SWEET AIR ROAD

Issues:

1. Is a road that supports RC 5 residential development permitted within an RC 2 Zone?
2. Is a Storm Water Management facility that solely supports RC 5 development permitted within a RC 2 Zone?
3. Can the RC 2 Zone on the N/s of Sweet Air Road support both lots #6 and #7?
4. Can the density of an RC 2 parcel on the N/s of Sweet Air Road support lot #7 and lot #6 along with the Storm Water Management facility, and also lot # 8 on the S/s of Sweet Air Road?
5. Whether the creation of non-density parcels as part of residential lots shown on a Development Plan require a separate Special Hearing request; and specifically a portion of lot #7 in the RC 2 Zone?
6. And such other and further issues as may be developed by the testimony presented at the Hearing.

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By [signature]

#198

PATTON

Patton Consultants Ltd. Engineering & Site Planning

ZONING DESCRIPTION

FOR

4501 SWEET AIR ROAD (LYNCH PROPERTY) BALDWIN, MD 21013

Beginning at a point in the centerline of Sweet Air Road which is proposed to be eighty (80') feet wide at a point which is 355 feet +/- southeast of the intersection with Manor Knoll Court which is fifty (50') feet wide. As recorded in Deed 110376 , Folio 399, the following courses and distances:

South 82° 55' 00" East	10.73'
North 27° 28' 23" East	1,416.72'
South 55° 59' 55" East	255.29'
South 07° 18' 03" West	1,203.51'
South 02° 00' 30" East	839.85'
North 85° 07' 00" West	154.00'
South 12° 37' 00" East	577.50'
South 45° 37' 00" East	375.38'
South 46° 05' 00" West	273.16'
North 50° 34' 50" West	1,632.15'
North 27° 38' 55" East	1,000.54'

to the place of beginning, containing 2,047,320.00 square feet, more or less, or 47.000 acres, more or less. Also known as 4501 Sweet Air Road, Baldwin, MD, 21013 and located in the 10th Election District, and the 3rd Councilmanic District.

#1900

305 West Chesapeake Avenue, Suite 118, Towson, Maryland 21204
410-296-2140 Fax 410-296-0419

TIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 29966

DATE 10/20/03 ACCOUNT R001 0066150

AMOUNT $ 325.00

RECEIVED FROM: J. CARROLL HOLZER

FOR: 04-198-SPH

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT

BUSINESS	ACTUAL	TIME	DRW
10/20/2003	10/20/2003	10:44:14	2

REG WS02 MAIL JEVA JEE
RECEIPT # 302414 10/20/2003 DFLT
Dept 5 528 ZONING VERIFICATION
CR NO. 029966
Recpt Tot $325.00
325.00 CK .00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION

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: #04-198-SPH
4501 Sweet Air Road
Centerline Sweet Air Road 355 feet +/- southeast of intersection Manor Knoll Court
10th Election District – 3rd Councilmanic District
Legal Owner(s): Dorothy E. Surina and Jeanne M. Gough

Special Hearing(s): 1. Is a road that supports RC5 residential development permitted within a RC 2 Zone? 2. Is a Storm Water Management facility that solely supports RC 5 development permitted within a RC zone? 3. Can the RC 2 zone on the N/s of Sweet Air Road support both lots #6 and #7? 4. Can the density of a RC 2 parcel on the N/s of Sweet Air Road support lot #7 and #6 along with the Storm Water Management facility, and also lot #8 on the S/s of Sweet Air Road? 5. Whether the creation of non-density parcels as part of residential lots shown on a Development Plan require a separate Special Hearing request, and specifically a portion of Lot #7 in the RC 2 zone? 6. And such other and further issues may be developed by the testimony presented at the

Hearing(s): Tuesday and Wednesday, December 2 and 3 at 2:00 p.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 Contact the Zoning Commissioner's Office at (410) 887-4386.
(2) For information concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391.

JT 11/771 Nov 18 C637768

CERTIFICATE OF PUBLICATION

Nov. 20, 2003

THIS IS TO CERTIFY, that the annexed advertisement was published in the following weekly newspaper published in Baltimore County, Md., once in each of _____ successive weeks, the first publication appearing on Nov. 20, 2003.

- ☑ The Jeffersonian
- ☐ Arbutus Times
- ☐ Catonsville Times
- ☐ Towson Times
- ☐ Owings Mills Times
- ☐ NE Booster/Reporter
- ☐ North County News

S. Wilkinson

LEGAL ADVERTISING

Gerhold, Cross & Etzel, Ltd.
Registered Professional Land Surveyors • Established 1906

Suite 100 • 320 East Towsontown Boulevard • Towson, Maryland 21286
Phone: (410) 823-4470 • Fax: (410) 823-4473 • www.gcelimited.com

CERTIFICATE OF POSTING

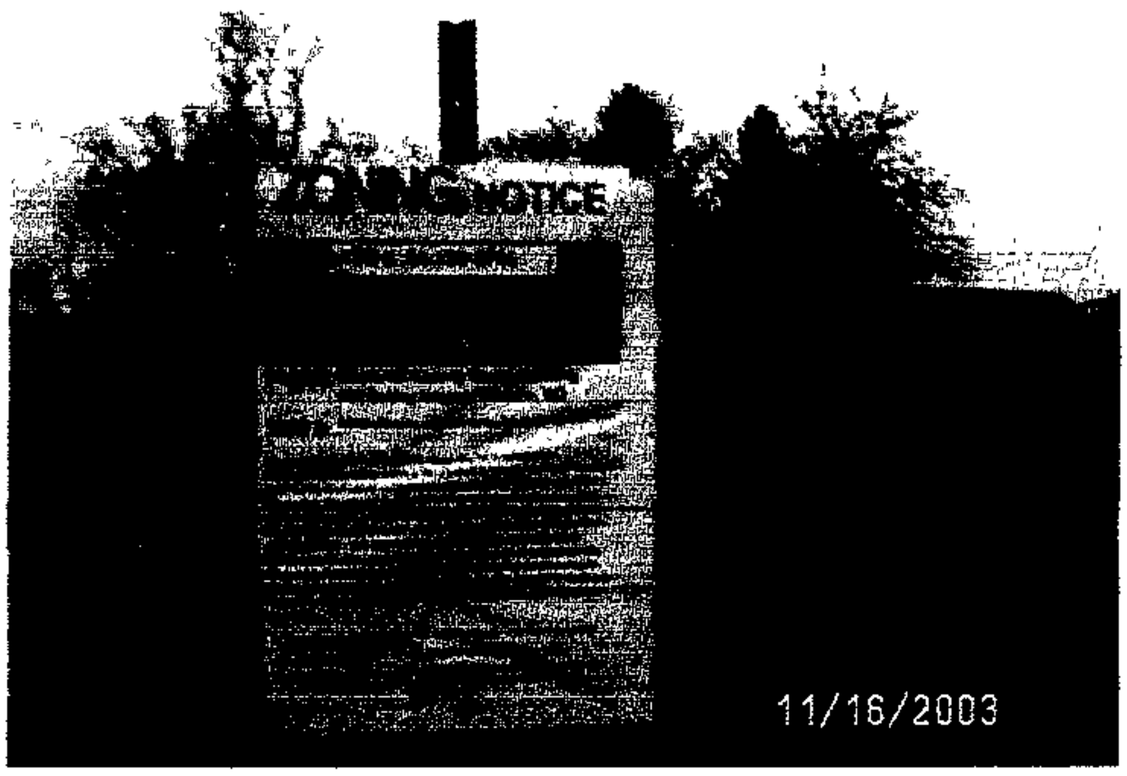
RE: CASE # 04-198-SPH
PETITIONER/DEVELOPER:
Dorithy E. Surina & Jeanna M. Gough
DATE OF HEARING:
December 2 & 3, 2002

BALTIMORE COUNTY DEPARTMENT OF
PERMITS AND DEVELOPMENT MANAGEMENT
COUNTY OFFICE BUILDING, ROOM 111
111 WEST CHESAPEAKE AVE.
TOWSON, MARYLAND 21204

ATTENTION: REBECCA HART

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



POSTED ON : November 16, 2003

LOCATION
4501 Sweet Air Road
Centerline Sweet Air Road, 355 feet +/-
Southeast intersection Manor Knoll Court

DATE
November 17, 2003

SIGNATURE OF SIGN POSTER

BRUCE DOAK

GERHOLD, CROSS & ETZEL, LTD
SUITE 100
320EAST TOWSONTOWN BLVD
TOWSON, MARYLAND 21286
410-823-4470 PHONE
410-823-4473 FAX

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT

ZONING REVIEW

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

The Baltimore County Zoning Regulations (BCZR) 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 the petitioner) and placement of a notice in a newspaper of general circulation in the County, both at least fifteen (15) days before the hearing.

Zoning Review will ensure that the legal requirements for advertising are satisfied. However, the petitioner is responsible for the costs associated with these requirements. The newspaper will bill the person listed below for the advertising. This advertising is due upon receipt and should be remitted directly to the newspaper.

OPINIONS MAY NOT BE ISSUED UNTIL ALL ADVERTISING COSTS ARE PAID

For Newspaper Advertising:

Item Number or Case Number: 04-198-SPH

Petitioner: LONG GREEN VALLEY ASSOCIATION ET AL

Address or Location: 13310 FORK RD, BALDWIN, MD 21013

PLEASE FORWARD ADVERTISING BILL TO:

Name: J. CARROLL HOLZER

Address: 509 FAIRMOUNT AVENUE
TOWSON MD 21286

Telephone Number: 410 825-6961

Department of Permits and Development Management

Development Processing
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Baltimore County

James T. Smith, Jr., County Executive
Timothy M. Kotroco, Director

November 10, 2003

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: 04-198-SPH
4501 Sweet Air Road
Centerline Sweet Air Road 355 feet +/- southeast of intersection Manor Knoll Court
10th Election District – 3rd Councilmanic District
Legal Owner: Dorothy E. Surina and Jeanne M. Gough

Special Hearing: 1. Is a road that supports RC 5 residential development permitted within a RC 2 Zone? 2. Is a Storm Water Management facility that solely supports RC 5 development permitted within a RC zone? 3. Can the RC 2 zone on the N/s of Sweet Air Road support both lots #6 and #7? 4. Can the density of a RC 2 parcel on the N/s of Sweet Air Road support lot #7 and #6 along with the Storm Water Management facility, and also lot #8 on the S/s of Sweet Air Road? 5. Whether the creation of non-density parcels as part of residential lots shown on a Development Plan require a separate Special Hearing request; and specifically a portion of Lot #7 in the RC 2 zone? 6. And such other and further issues may be developed by the testimony presented at the

Hearings: ~~Monday,~~ December 2 + 3, 2003 at 2:00 p.m. in Room 407, County Courts Building, 401 Bosley Avenue

Timothy Kotroco
Director

TK:rlh

C: J. Carroll Holzer, 508 Fairmount Avenue, Towson 21286

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY SATURDAY, NOVEMBER 15, 2003**
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

COPY

Department of Permits and Development Management

Director's Office
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204
Tel: 410-887-3353 • Fax: 410-887-5708

Baltimore County

James T. Smith, Jr., County Executive
Timothy M. Kotroco, Director

November 10, 2003

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: 04-198-SPH
4501 Sweet Air Road
Centerline Sweet Air Road 355 feet +/- southeast of intersection Manor Knoll Court
10th Election District – 3rd Councilmanic District
Legal Owner: Dorothy E. Surina and Jeanne M. Gough

Special Hearing: 1. Is a road that supports RC 5 residential development permitted within a RC 2 Zone? 2. Is a Storm Water Management facility that solely supports RC 5 development permitted within a RC zone? 3. Can the RC 2 zone on the N/s of Sweet Air Road support both lots #6 and #7? 4. Can the density of a RC 2 parcel on the N/s of Sweet Air Road support lot #7 and #6 along with the Storm Water Management facility, and also lot #8 on the S/s of Sweet Air Road? 5. Whether the creation of non-density parcels as part of residential lots shown on a Development Plan require a separate Special Hearing request; and specifically a portion of Lot #7 in the RC 2 zone? 6. And such other and further issues may be developed by the testimony presented at the

Hearings: Monday, December 1, 2003 at 2:00 p.m. in Room 407, County Courts Building, 401 Bosley Avenue

Timothy Kotroco
Director

TK:rlh

C: J. Carroll Holzer, 508 Fairmount Avenue, Towson 21286

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY TUESDAY, NOVEMBER 16, 2003**
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

Printed on Recycled Paper

County Board of Appeals of Baltimore County

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

Hearing Room - Room 48

Old Courthouse, 400 Washington Avenue July 20, 2004

NOTICE OF ASSIGNMENT – [Rescheduled date]

CASE #: CBA-04-132
(PDM # X-404)

and

CASE #: 04-198-SPH

IN THE MATTER OF: LYNCH PROPERTY
Development Plan Appeal
Gaylord Brooks Realty Co. - Developer
N & S/s Sweet Air Rd, 355' SE of Manor Knoll Court
10th Election District; 3rd Councilmanic District

SPH – Petition filed by Long Green Valley Association, et al

6/03/04 – Decision of the Hearing Officer (ZC); Plan Approved.

As agreed by the parties on 7/20/04, this matter has been reassigned to the following date and time (PLEASE NOTE EARLY START TIME):

REASSIGNED FOR: **TUESDAY, SEPTEMBER 7, 2004 at 9:00 a.m.**

As to CBA-04-132: This matter has been assigned for hearing in accordance with Section 26-209 of the *Baltimore County Code.*

As to 04-198-SPH: *Assigned for evidentiary hearing.*

NOTE: The Board's Rules of Practice & Procedure are found in *Baltimore County Code, Appendix C.*

If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

Kathleen C. Bianco
Administrator

c: Counsel for Appellants /Protestants : J. Carroll Holzer, Esquire
Appellants /Protestants : Long Green Valley Association, Inc.
Charlotte Pine
Steve Preston
Gary Elser

Counsel for Developer : Howard L. Alderman, Jr., Esquire
Developer : Steve Smith /Gaylord Brooks Realty Co.
Property Owners : Dorothy E. Surina and Jeanne Gough
Charles Main; Kristy Bischoff /Daft McCune Walker Inc
Office of People's Counsel
Pat Keller, Director /Planning
David Carroll, Director /DPM
Edward Adams, Jr., Director /DPW
Robert J. Barrett, Director /Rec & Parks
Lawrence E. Schmidt /Zoning Commissioner
Don Rascoe /PDM
Timothy M. Kotroco, Director /PDM

Printed with Soybean Ink
on Recycled Paper

County Board of Appeals of Baltimore County

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

Hearing Room - Room 48

Old Courthouse, 400 Washington Avenue

June 30, 2004

NOTICE OF ASSIGNMENT

CASE #: CBA-04-132
(PDM # X-404)
and
CASE #: 04-198-SPH

IN THE MATTER OF: LYNCH PROPERTY
Development Plan Appeal
Gaylord Brooks Realty Co. - Developer
N & S/s Sweet Air Rd, 355' SE of Manor Knoll Court
10th Election District; 3rd Councilmanic District

SPH – Petition filed by Long Green Valley Association, et al

6/03/04 – Decision of the Hearing Officer (ZC); Plan Approved.

ASSIGNED FOR: **TUESDAY, JULY 20, 2004 at 10:00 a.m.**

As to CBA-04-132: This matter has been assigned for hearing in accordance with Section 26-209 of the *Baltimore County Code.*
As to 04-198-SPH: Assigned for evidentiary hearing.

NOTE: The Board's Rules of Practice & Procedure are found in *Baltimore County Code, Appendix C.*

If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

Kathleen C. Bianco
Administrator

c: Counsel for Appellants /Protestants : J. Carroll Holzer, Esquire
Appellants /Protestants : Long Green Valley Association, Inc.
Charlotte Pine
Steve Preston
Gary Elser

Counsel for Developer : Howard L. Alderman, Jr., Esquire
Developer : Steve Smith /Gaylord Brooks Realty Co.
Property Owners : Dorothy E. Surina and Jeanne Gough
Charles Main; Kristy Bischoff /Daft McCune Walker Inc.

Office of People's Counsel
Pat Keller, Director /Planning
David Carroll, Director /DPM
Edward Adams, Jr., Director /DPW
Robert J. Barrett, Director /Rec & Parks
Lawrence E. Schmidt /Zoning Commissioner
Don Rascoe /PDM
Timothy M. Kotroco, Director /PDM

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on Recycled Paper

County Board of Appeals of Baltimore County

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

September 8, 2004

NOTICE OF DELIBERATION

IN THE MATTER OF:

***LYNCH PROPERTY* /PDM X-404**
Case No. CBA-04-132 and 04-198-SPH

Having heard this matter on 9/07/04, deliberation has been scheduled for the following date and time:

DATE AND TIME : TUESDAY, OCTOBER 26, 2004 at 9:00 a.m.

LOCATION : Hearing Room 48, Basement, Old Courthouse

NOTE: Closing briefs are due on Friday, October 15, 2004
(Original and three [3] copies)

NOTE: ALL PUBLIC DELIBERATIONS ARE OPEN SESSIONS; HOWEVER, ATTENDANCE IS NOT REQUIRED. A WRITTEN OPINION /ORDER WILL BE ISSUED BY THE BOARD AND A COPY SENT TO ALL PARTIES.

Kathleen C. Bianco
Administrator

c: Counsel for Appellants /Protestants : J. Carroll Holzer, Esquire
Appellants /Protestants : Long Green Valley Association, Inc.
Charlotte Pine
Steve Preston
Gary Elser

Counsel for Developer : Howard L. Alderman, Jr., Esquire
Developer : Steve Smith /Gaylord Brooks Realty Co.
Property Owners : Dorothy E. Surina and Jeanne Gough
Charles Main; Kristy Bischoff /Daft McCune Walker Inc

Office of People's Counsel
Pat Keller, Director /Planning
David Carroll, Director /DPM
Edward Adams, Jr., Director /DPW
Robert J. Barrett, Director /Rec & Parks
Lawrence E. Schmidt /Zoning Commissioner
Don Rascoe /PDM
Timothy M. Kotroco, Director /PDM

FYI copy: 2-1-5

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on Recycled Paper

Department of Permits and Development Management

Development Processing
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Baltimore County

James T. Smith, Jr., County Executive
Timothy M Kotroco, Director

May 17, 2004

J. Carroll Holzer, P.A.
508 Fairmount Avenue
Towson, Maryland 21286

Dear Mr. Holzer:

RE: Case Number:04-198-SPH, 4501 Sweet Air Road

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on October 20, 2003.

The Zoning Advisory Committee (ZAC), which consists of representatives from several approval agencies, has reviewed the plans that were submitted with your petition. All comments submitted thus far from the members of the ZAC are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to ensure 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. All comments will be placed in the permanent case file.

If you need further information or have any questions, please do not hesitate to contact the commenting agency.

Very truly yours,

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR: clb

Enclosures

c: People's Counsel
Long Green Valley Association, Charlotte Pine 13310 Fork Road Baldwin 21013
Steve Preston, 4408 Old Farm Road, Baldwin 21013
Gary Esler, 4407 Old Farm Road, Baldwin 21013

Baltimore County
Fire Department

700 East Joppa Road
Towson, Maryland 21286-5500
410-887-4500

November 5, 2003

County Office Building, Room 111
Mail Stop #1105
111 West Chesapeake Avenue
Towson, Maryland 21204

ATTENTION: Rebecca Hart

Distribution Meeting of: November 3, 2003

Item No.: 195, 197-211 198

Dear Ms. Hart:

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.

7. The Fire Marshal's Office has no comments at this time.

LIEUTENANT JIM MEZICK
Fire Marshal's Office
PHONE 887-4881
MS-1102F

cc: File

Printed with Soybean Ink
on Recycled Paper

Robert L. Ehrlich, Jr., *Governor*
Michael S. Steele, *Lt. Governor*

Robert L. Flanagan, *Secretary*
Neil J. Pedersen, *Administrator*

MARYLAND DEPARTMENT OF TRANSPORTATION

Date: 11.7.03

Ms. Rebecca Hart
Baltimore County Office of
Permits and Development Management
County Office Building, Room 109
Towson, Maryland 21204

RE: Baltimore County
Item No. 198 JCM

Dear Ms. Hart:

We have reviewed the referenced item and have no objection to approval, as a field inspection reveals that the existing entrance(s) on to MD/US 146.
are acceptable to the State Highway Administration (SHA) and this development is not affected by any SHA projects.

Should you have any questions regarding this matter, please contact Larry Gredlein at 410-545-5606 or by E-mail at (lgredlein@sha.state.md.us).

Very truly yours,

K. A. McDonald

Kenneth A. McDonald Jr., Chief
Engineering Access Permits Division

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits and
Development Management

DATE: December 2, 2003

RECEIVED
DEC 2 2003
ZONING COMMISSIONER

FROM: Arnold F. 'Pat' Keller, III
Director, Office of Planning

SUBJECT: 4501 Sweet Air Road

INFORMATION:

Item Number: 04-198

Petitioner: J. Carroll Holzer

Zoning: RC 2, RC 5

Requested Action: Special Hearing

SUMMARY OF RECOMMENDATIONS:

Limit the proposed building restriction line to within the RC 5 portion of lot 6.

Prepared by: Anne Roane

Section Chief: Mark A Cunningham for

AFK/LL:MAC: Lynn Lanham

RECEIVED
DEC 2 2003
ZONING COMMISSIONER

W:\DEVREV\ZAC\04-198 doc

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits &
Development Management

DATE: November 13, 2003

FROM: Robert W. Bowling, Supervisor
Bureau of Development Plans
Review

SUBJECT: Zoning Advisory Committee Meeting
For November 10, 2003
Item Nos. 195, 196, 197, 198, 199,
200, 202, 203, 204, 205, 206, and 211

The Bureau of Development Plans Review has reviewed the subject-zoning items, and we have no comments.

RWB:CEN:jrb

cc: File

ZAC-11-10-2003-NO COMMENT ITEMS 195-206 AND 211-11132003

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

DATE: January 22, 2008

TO: Timothy Kotroco, Director
Permits & Development Management
Attn.: Donald T. Rascoe

FROM: Linda B. Fliegel
Board of Appeals

SUBJECT: **Lynch Property**
Case Nos.: CBA-04-132 and 04-498-SPH
Circuit Court Case Nos.: 03-C-04-12588

On July 21, 2005 the Honorable Judge Cavanaugh Ordered that the decision of the Baltimore County Board of Appeals be *REVERSED*; and it was further ordered that all further proceedings in this matter be *REMANDED* to the Board of Appeals. On August 5, 2005 an Order for Appeal was filed by Howard L. Alderman, Jr., Esq. on behalf of Dorothy Surina, *et al.*

On October 4, 2006 the Court of Special Appeals *REMANDED* the case back to the Circuit Court for entry of judgment *AFFIRMING* the Board of Appeals decision.

On August 23, 2007 the Court of Appeals for Maryland *AFFIRMED* the judgment of the Court of Special Appeals.

Department of Permits and Development Management

Director's Office
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204
Tel: 410-887-3353 • Fax: 410-887-5708

Baltimore County

James T. Smith, Jr, County Executive
Timothy M Kotroco, Director

July 1, 2004

Howard Alderman, Jr. Esquire
Levin & Gann
502 Washington Avenue, Ste. 800
Towson, MD 21204

Dear Mr. Alderman:

RE: Case: 04-198-SPH, Lynch Property, (4501 Sweet Air Road)

Please be advised that J. Carroll Holzer filed an appeal of the above-referenced case in this office on June 18, 2004. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

If you are the person or party taking the appeal, you should notify other similarly interested parties or persons known to you of the appeal. If you are an attorney of record, it is your responsibility to notify your client.

If you have any questions concerning this matter, please do not hesitate to call the Board at 410-887-3180.

Sincerely,

Timothy Kotroco
Director

TK:klm

c: Lawrence E. Schmidt, Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel
J. Carroll Holzer, 508 Fairmount Avenue, Towson 21204
Steve Smith, Gaylord Brooks Realty, Co., P.O. Box 400, Phoenix 21131
Charles Mann, Kristy Bischoff, DMW, 200 E. Pennsylvania Ave., Towson 21286
Gary Elser, 4407 Old Farm Road, Baldwin 21013
Charlotte Pine, 607 Baltimore Avenue, Towson 21204
Sharon Rohrbaugh, 13558 Fork Road, Baldwin 21013
Carol Shaw, 7 Country Hill Court, Fork 21051
Larry Gredlein, SHA, 707 N. Calvert St., Baltimore 21203

APPEAL

Petition for Special Hearing
4501 Sweet Air Road
N&S/s of Sweet Air Rd., 355 S/e of Manor Knoll Ct.
10th Election District – 3rd Councilmanic District
Dorothy Surina & Jeanne Gough - Owners
Gaylord Brooks Realty, Co., Inc., Developer

Case No.: 04-198-SPH

RECEIVED
JUL 0 8 2004
BALTIMORE COUNTY
BOARD OF APPEALS

✓ Petition for Special Hearing (October 20, 2003)

✓ Zoning Description of Property

✓ Notice of Zoning Hearing (November 10, 2003)

✓ Certification of Publication (November 20, 2003 – The Jeffersonian)

✓ Certificate of Posting (November 16, 2004) by Bruce Doak

✓ Entry of Appearance by People's Counsel (November 6, 2003)

Petitioner(s) Sign-In Sheet
None

Protestant(s) Sign-In Sheet
None

Citizen(s) Sign-In Sheet
None

✓ Zoning Advisory Committee Comments

Petitioners' Exhibit
None

Protestants' Exhibits:
None

Miscellaneous (Not Marked as Exhibit)
✓ 1. Plat to accompany Petition for Special Hearing
✓ 2. 200' Zoning Map

✓ Zoning Commissioner's Order (Original Order Dated December 16, 2003; ✓ Supplemental Order Dated June 3, 2004)

✓ Notice of Appeal received on June 18, 2004 from J. Carroll Holzer

c: People's Counsel of Baltimore County, MS #2010
Zoning Commissioner/Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
Howard Alderman, 502 Washington Ave., Ste. 800, Towson 21204
J. Carroll Holzer, 508 Fairmount Ave., Towson 21204
Steve Smith, Gaylord Brooks Realty, Co., P.O. Box 400, Phoenix 21131
Charles Mann, Kristy Bischoff, DMW, 200 E. Pennsylvania Ave., Towson 21286
Gary Elser, 4407 Old Farm Rd., Baldwin 21013
Charlotte Pine, 607 Baltimore Ave., Towson 21204
Sharon Rohrbaugh, 13558 Fork Road, Baldwin 21013
Carol Shaw, 7 Country Hill Ct., Fork 21051
Larry Gredlein, SHA, 707 N. Calvert St., Baltimore 21203

date sent July 2, 2004, klm

E

Case No. CBA-04-132

Development Plan – Lynch Property /PDM X-404
Gaylord Brooks Realty Co - Developer
and Petition for Special Hearing (filed by Protestants)
N & S/s Sweet Air Road; 355' SE of Manor Knoll Ct
10th E; 3rd C

6/03/04 – Hearing Officer's Decision (ZC) in which Plan was approved and issues raised by Petitioners /Protestants were addressed.

6/16/04 – Letter from J. Carroll Holzer – will be away and unavailable from 6/17 through 6/26/04; also 7/05 through 7/09/04; and 8/02 through 8/10/04.

6/30/04 –Notice of Assignment sent to following parties; matter scheduled for hearing on Tuesday, July 20, 2004 at 10:00 a.m.:

J. Carroll Holzer, Esquire
Long Green Valley Association, Inc.
Charlotte Pine
Steve Preston
Gary Elser
Howard L. Alderman, Jr., Esquire
Steve Smith /Gaylord Brooks Realty Co.
Dorothy E. Surina and Jeanne Gough
Charles Main; Kristy Bischoff /Daft McCune Walker Inc.
Office of People's Counsel
Pat Keller, Director /Planning
David Carroll, Director /DPM
Edward Adams, Jr., Director /DPW
Robert J. Barrett, Director /Rec & Parks
Lawrence E. Schmidt /Zoning Commissioner
Don Rascoe /PDM
Timothy M. Kotroco, Director /PDM

7/20/04 – Board convened for hearing (Stahl, Mohler, Brassil); H. Alderman for Developer; C. Holzer for Appellants; and C. Demilio for People's Counsel. Protestants' expert witnesses were unavailable – letters entered confirming same; with agreement of all parties, hearing will be adjourned and reset, by agreement, to Tuesday, September 7, 2004 **at 9:00 a.m**. Parties to this matter have agreed to waive the mandated time frame with the hearing to be scheduled and the matter concluded as quickly as possible and as close to the time frame as the docket and schedules will permit. Notice of Assignment sent this date; reassigned to Tuesday, September 7, 2004 at **9:00 a.m**. FYI copy to 2-1-5 this date emphasizing the earlier start time on 9/07/04.

9/07/04 – Board convened for hearing (2-1-5); concluded this date; memos to be filed Friday 10/15/04. (Confirmed with counsel this date via telephone that date of deliberation will be outside the 30-day period for conclusion of the hearing in this development plan appeal.) Deliberation assigned for 10/26/04 (confirmed that "1" can be here on that date for deliberation). Notice to be sent.

9/08/04 – Notice of Deliberation sent to parties; assigned for Tuesday, October 26, 2004 at 9:00 a.m. FYI copy to Stahl, Mohler, Brassil.

10/15/04 – People's Counsel for Baltimore County's Argument Outline filed by Carole S. Demilio, Deputy People's Counsel; and Owner /Developer's Post-Hearing Memorandum filed by Howard L. Alderman, Jr., Esquire; Memorandum of Protestants in Lieu of Final Argument filed by J. Carroll Holzer, Esquire. Copies prepared for 2-1-5; deliberation assigned for 10/26/04 – to be given to 2-1-5 when they convene for hearing on 10/20/04 in another matter in lieu of mailing due to closeness to deliberation date.

10/26/04 – Board convened for deliberation (2-1-5); unanimous decision – Protestants' Petition for Special Hearing is DENIED; Hearing Officer's approval of development plan is AFFIRMED. (1-D) Appellate period to run from date of written Opinion /Order – to be issued within 15 days from today's date (no later than 11/10/04).

04-198-SPH	N&S S/S Sweet Air Road SE of Manor Knoll Court	Dorothy Surina and Jeanne Gough - Owners
with ***CBA-04-132***	***N&S S/S Sweet Air Road*** ***SE of Manor Knoll Court***	***Lynch Property*** ***Gaylord Brooks*** ***Realty - Devloper***
June 30, 2003	***Development Plan submitted for 8 single dwelling homes on 47 acres by Gaylord Brooks Realty – Inc. – Developer***	
October 20, 2003	Petition for Special Hearig filed by Long Green Valley Association, Charlotte Pine, Individually, Steve Preston and Gary Elser, through their attorney, J. Carroll Holzer, Esquire requesting: 1)Road supporting RC 5 permitted within RC2 2)Storm Water Management supports RC 5 permitted in RC 2 3) Can RC2 support both lots 4) Density issues 5)creation of non-density parcels	
December 16, 2003	Zoning Commissioner's Order - Within 90 days from date of Order, the Developer shall submit the requisite written traffic analysis.	
June 3, 2004	Supplemental Zoning Commissioner's Order / Red-lined Development Plan for the Lynch Property identified as Developer's Exhibit #2 is APPROVED	
June 18, 2004	Notice of Appeal filed by Long Green Valley Association and Individuals Charlotte Pine, Steve Preston and Gary Elser, by their attorney J. Carroll Holzer, Esquire	
July 8, 2004	Appeal received BOA	
November 10, 2004	Opinion Issued By The Board Of Appeals / Special Hearing DENIED – Development Plan for Lynch Property AFFIRMED	
December 6, 2004	Petition for Judicial Review filed byJ. Carroll Holzer on behalf of: Long Green Valley Association and individuals Charlotte Pine, Steve Preston and Gary Elser.	
December 8, 2004	Received Petition from Circuit Court Case No.: C-04-12588.	
December 10, 2004	Certificate of Notice filed.	

RE:	PETITION FOR SPECIAL HEARING 4501 Sweet Air Road; C/line Sweet Air Rd, 355' +/- SE intersection Manor Knoll Court 10th Election & 3rd Councilmanic Districts Legal Owner(s): Dorothy E Surina & Jeanne M. Gough Petitioner(s)	*	BEFORE THE ZONING COMMISSIONER FOR BALTIMORE COUNTY 04-198-SPH

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

ENTRY OF APPEARANCE

Please enter the appearance of People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and the passage of any preliminary or final Order. All parties should copy People's Counsel on all correspondence and documentation filed in the case.

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

RECEIVED
NOV 0 6 2003
Per.....

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of November, 2003, a copy of the foregoing Entry of Appearance was mailed to J. Carroll Holzer, Esquire, 508 Fairmount Avenue, Towson, MD 21286, Attorney for Petitioner(s).

Peter Max Zimmerman
PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

TO: Donald Rascoe
Department of Permits & Development Mgmt.

DATE: March 17, 2004

FROM: Lawrence E. Schmidt
Zoning Commissioner

SUBJECT: DEVELOPMENT PLAN HEARING and PETITION FOR SPECIAL HEARING
N & S/S Sweet Air Rd., 355' SE of the c/l Manor Knoll Ct. (4501 Sweet Air Rd.)
(Lynch Property – Sweet Air Road)
10th Election District – 3rd Council District
Dorothy Surina & Jeanne Gough, Owners;
Gaylord Brooks Realty Co., Developer/Applicants
Long Green Valley Assoc., Charlotte Pine, Steve Preston & Gary Elser, Petitioners
Case Nos. X-404 & 04-198-SPH

Enclosed please find a copy of a letter dated March 12, 2004 from Howard Alderman concerning the above-captioned property. Attached to his letter is a copy of the requisite traffic analysis and a revised red-lined development plan incorporating that analysis' recommendations.

In this regard, it appears that the entrance road was moved 80' to eliminate the site distance problem along Sweet Air Road. Please arrange to have copies of this plan forwarded to the appropriate County agencies for their review to insure that the movement of this road does not create any "new" issues. I do not think that another Development Plan Conference will be necessary; however, I will defer to your judgment.

In the meantime, since the file was returned to the Development Management office, please arrange to have the Hearing Officer's Hearing rescheduled for continued proceedings before me and notify all parties to the case. Should you have any questions concerning this matter, please do not hesitate to call me.

LES:bjs
Attachments
cc: File

LTM
Intake Planner

10/17/03
Date Assigned

DROP-OFF PETITIONS
PROCESSING CHECK-OFF

☐ **Two Questions Answered on Cover Sheet:**
- Any previous reviews in the zoning office?
- Any current building or zoning violations on site?

☐ **Petition Form Matches Plat in these areas:**
- Address
- Zoning
- Legal Owner(s)
- Contract Purchaser(s)
- Request (if listed on plat)

☐ **Petition Form (must be current PDM form) is Complete:**
- Request:
  - Section Numbers
  - Correct Wording (must relate to the code, especially floodplain and historical standard wording. Variances must include the request in lieu of the required code quantities.
  - Hardship/Practical Difficulty Reasons
- Legal Owner/Contract Purchaser:
  - Signatures (originals)
  - Printed/Typed Name and Title (if company)
- Attorney (if incorporated)
- Signature/Address/Telephone Number of Attorney

☐ **Correct Number of Petition Forms, Descriptions and Plats**

☐ **200 Scale Zoning Map**

☐ **Check:** Amount Correct? Signed?

☐ **ZAC Plat Information:**

Location (by Carl) N+S/S Sweet Air Rd. 350 ft. E Manor Knoll Ct. (4501 Sweet Air Rd.)

Zoning: _____ Acreage: _____ Previous Hearing Listed With Decision

Election District ____ Councilmanic District _____ Case # _____

Check to See if the Subject Site or Request is:
- CBCA
- Floodplain
- Elderly
- Historical
- Pawn Shop
- Helicopter
- *If Yes, Print Special Handling Category Here
- *If No, Print No

_____ Item Number Assigned

_____ Date Accepted for Filing

WCR/SCJ – 9/5/00

CIRCUIT COURT FOR BALTIMORE COUNTY
DCM OFFICE
401 Bosley Avenue
County Courts Building
P.O. Box 6754
Towson MD, 21285-6754

N O T I C E O F N E W C I V I L T R I A L D A T E

Case Number:03-C-04-012588 AE

Case Title: In The Matter of: Long Green Valley Assn Inc, et al

To: County Board Of Appeals
400 Washington Avenue
Room 49
Towson MD 21204

A postponement of the Trial Date has been granted in this case. A new trial date has been scheduled on:

Civil Non-Jury Trial on 06/13/05 at 09:30AM
1 1/2 HOUR ADMINISTRATIVE APPEAL AGREED DATE

Please Note: Scheduling Order Deadlines: This Notice does not alter or extend those deadlines set forth in the current Scheduling Order, except that the Deadline for the exchange of lists of all exhibits and copies of paper exhibits and the Deadline for Motions in Limine, including objections to exhibits, will remain, respectively, fifteen (15) and five (5) prior to the New Trial date in this Notice.

If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the Americans with Disabilities Act, please contact the Court Administrator's Office at (410)887-2687 or use the Court's TDD line, (410)887-3081, or the Voice/TDD M.D. Relay Service, (800)735-2258.

Please refer to the Information Desk for Court Room designation.

Date Issued: 05/06/05

Honorable John Grason Turnbull
County Administrative Judge

CC: J Carroll Holzer Esq
Peter M Zimmerman Esq
Carole S Demilio Esq
Howard L Alderman Jr

RECEIVED
BALTIMORE COUNTY
BOARD OF APPEALS

CIRCUIT COURT FOR BALTIMORE COUNTY
DCM OFFICE
401 Bosley Avenue
County Courts Building
P.O. Box 6754
Towson MD, 21285-6754

Lynch Prop.

N O T I C E O F N E W C I V I L T R I A L D A T E

Case Number:03-C-04-012588 AE

Case Title: In The Matter of: Long Green Valley Assn Inc, et al

To: County Board Of Appeals
400 Washington Avenue
Room 49
Towson MD 21204

A postponement of the Trial Date has been granted in this case. A new trial date has been scheduled on:

Civil Non-Jury Trial on 05/26/05 at 09:30AM
1 1/2 HOUR ADMINISTRATIVE APPEAL AGREED DATE

Please Note: Scheduling Order Deadlines: This Notice does not alter or extend those deadlines set forth in the current Scheduling Order, except that the Deadline for the exchange of lists of all exhibits and copies of paper exhibits and the Deadline for Motions in Limine, including objections to exhibits, will remain, respectively, fifteen (15) and five (5) prior to the New Trial date in this Notice.

If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the Americans with Disabilities Act, please contact the Court Administrator's Office at (410)887-2687 or use the Court's TDD line, (410)887-3081, or the Voice/TDD M.D. Relay Service, (800)735-2258.

Please refer to the Information Desk for Court Room designation.

Date Issued: 04/20/05

Honorable John Grason Turnbull
County Administrative Judge

CC: J Carroll Holzer Esq
Peter M Zimmerman Esq
Carole S Demilio Esq
Howard L Alderman Jr

RECEIVED
APR 22 2005
BALTIMORE COUNTY
BOARD OF APPEALS

NOTICE OF CIVIL TRACK ASSIGNMENT AND SCHEDULING ORDER

CIRCUIT COURT FOR BALTIMORE COUNTY
CIVIL ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 BOSLEY AVENUE
P.O. BOX 6754
TOWSON, MARYLAND 21285-6754

County Board Of Appeals
400 Washington Avenue
Room 49
Towson MD 21204

Assignment Date: 02/01/05

Case Title: In The Matter of: Long Green Valley Assn Inc, et al
Case No: 03-C-04-012588 AE

The above case has been assigned to the EXPEDITED APPEAL TRACK. Should you have any questions concerning your track assignment, please contact: Joy M Keller at (410) 887-3233.
You must notify this Coordinator within 15 days of the receipt of this Order as to any conflicts with the following dates:

SCHEDULING ORDER

1. Motions to Dismiss under MD. Rule 2-322(b) are due by..... 02/16/05
2. All Motions (excluding Motions in Limine) are due by..... 03/24/05
3. TRIAL DATE is..... 05/03/05
   Civil Non-Jury Trial; Start Time 09 30AM; To Be Assigned. 1/2 HOUR ADMINISTRATIVE APPEAL

Honorable John Grason Turnbull II
Judge

Postponement Policy: No postponements of dates under this order will be approved except for undue hardship or emergency situations. All requests for postponement must be submitted in writing with a copy to all counsel/parties involved. All requests for postponement must be approved by the Judge

Settlement Conference (Room 507): All counsel and their clients MUST attend the settlement conference in person. All insurance representatives MUST attend this conference in person as well. Failure to attend may result in sanctions by the Court Settlement hearing dates may be continued by Settlement Judges as long as trial dates are not affected (Call [410] 887-2920 for more information)

Special Assistance Needs: If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the Americans with Disabilities Act, please contact the Court Administrator's Office at (410) 887-2687 or use the Court's TDD line, (410) 887-3018, or the Voice/TDD M.D Relay Service, (800) 735-2258.

Voluntary Dismissal: Per Md. Rule 2-506, after an answer or motion for summary judgment is filed, a plaintiff may dismiss an action without leave of court by filing a stipulation of dismissal signed by all parties who have appeared in the action. The stipulation shall be filed with the Clerk's Office Also unless otherwise provided by stipulation or order of court, the dismissing party is responsible for all costs of the action

Court Costs: All court costs MUST be paid on the date of the settlement conference or trial.

cc: J Carroll Holzer Esq

RECEIVED
FEB 02 2005
BALTIMORE COUNTY
BOARD OF APPEALS

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

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

Case Number: 03-C-04-012588 AE
Administrative Agency : 04 198 SPH
Administrative Agency : CBA 04 132
C I V I L

In The Matter of: Long Green Valley Assn Inc, et al

Notice

Pursuant to Maryland Rule 7-206(e), you are advised that the Record of Proceedings was filed on the 20th day of January, 2005.

RECEIVED
JAN 27 2005
BALTIMORE COUNTY
BOARD OF APPEALS

Suzanne Mensh
Clerk of the Circuit Court, pet

Date issued: 01/26/05

TO: COUNTY BOARD OF APPEALS
400 Washington Avenue
Room 49
Towson, MD 21204

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

Case Number: 03-C-04-012588

TO: COUNTY BOARD OF APPEALS
400 Washington Avenue
Room 49
Towson, MD 21204

IN THE MATTER OF	*	BEFORE THE
LYNCH PROPERTY	*	COUNTY BOARD OF APPEALS
Development Plan Appeal	*	BALTIMORE COUNTY
N & S/side Sweet Air Road	*	Case No. CBA-04-132 and 04-198-SPH PDM # X-404
Gaylord Brooks Realty Co., Developer		

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

SUBPOENA

Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on Tuesday, July 20, 2004 at 10:0 a.m. at Room 48, located at Basement, Old Courthouse, 400 Washington Ave., Towson and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board.

Witness: Paul Solomon
Address: 2473 Steltz Rd.
New Fredom, PA 17349

Name: J. Carroll Holzer (See attached Notice)
Firm: Holzer & Lee
Address: 508 Fairmount Ave. Towson, 21286 **410-825-6961**

The witness named above is hereby ordered to so appear before the County Board of Appeals and bring any and all files and documents referenced in above cases. The Board requests the Sheriff to issue the summons set forth herein.

Kathleen C. Bianco
County Board of Appeals of
Baltimore County

Cost: $

Summoned: _____, 2000

Not Served: _____, 2000

Sheriff of Baltimore County

C:Subpoenas 2004-O'Leary Lynch

RECEIVED
JUL 16 [illegible]
BALTIMORE COUNTY
BOARD OF APPEALS

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF:	Lynch Property /Case No. 04-198-SPH and PDM X-404 /Case No. CBA-04-132	
DATE :	Tuesday, October 26, 2004	
BOARD /PANEL :	Lawrence M. Stahl Donald I. Mohler III Margaret Brassil	(LMS) (DM) (MB)
RECORDED BY :	Kathleen C Bianco /Administrator	

PURPOSE: To deliberate Case No. CBA-04-132 /Development Plan Lynch Property /PDM X-404 and Case No. 04-198-SPH /special hearing filed by Protestants.

To be discussed:

- Petition for Special Hearing filed by the Protestants / denied by the Hearing Officer /Zoning Commissioner /appealed by Protestants through Mr. Holzer
  - "de novo" hearing – burden on Petitioner (in this case, the Protestants)
- Development Plan /approved by the Hearing Officer /appeal filed by Protestants through Mr. Holzer
  - Laid out standard of review for the Development Plan portion of case
  - If the special hearing were granted, then the Development Plan would fail
  - Three closing Briefs filed: Howard Alderman for the Developer; Carroll Holzer for the Appellants /Protestants (and, as to 04-198-SPH, the Petitioners); and People's Counsel.

As to Petition for Special Hearing:

- Issue raised – what you can do on R.C. 2 that's connected to R.C. 5
- Can R.C. 2 be used to support the development of R.C. 5
- Whether or not stormwater management facility is allowed outside that zone to support development of the other zone; is it considered a density item; principal use or incidental to development

Discussion and review of Briefs filed, evidence and testimony:

- Discussed location of stormwater management pond; per Mr. Alderman, has to be considered uncontrolled excavation; allowed and can be used to support the development; not considered a way around density rights as defined by the BCZR.

- One way minimized and one way maximized detrimental effect of relocating it; bottom line: if you changed it, there would be a detrimental effect

- Referred to Mr. O'Leary's testimony, page 7 of Mr. Alderman's Brief re moving stormwater management facility – would then higher and catch less drainage

- Protestants did not establish that the law prohibits what the Developer is trying to do

- Also reviewed Mr. Solomon's testimony at length; when pressed by Mr. Alderman, could not come up with anything. Solomon's testimony – the only thing on which he hung his hat was that it's implicit in the regs – he could not cite one regulation that says that

- Word used by Mr. Solomon – "implicit"

- Stormwater management pond as public facility; cited *Glascock v. Baltimore County* (quoted by both the Hearing Officer and Mr. Alderman); SWM is a public facility and therefore exempt from provisions of BCZR

- Also cited *UPS v. Comptroller of the Treasury* (Mr. Alderman) – in reviewing statutes, consider according to natural significance of words without resorting to interpretation

- Density – lots divided by zoning line – not at issue here

- SWM pond is not analogous to well and septic system

- Developer has met the density requirements

- Mr. Holzer's memo, bottom of p 15 – quoted from Mr. Solomon's testimony

- In order to support Appellants, would have to accept argument that SWM is density item

- All other testimony indicates that in this case the Developer has met the requirements of density

  - Discussion by Mr. Alderman of SWM facilities as uncontrolled excavation
  - As incidental to development /improvement of land
  - Permitted in R.C. zones
  - Developer has moved forward in accordance with Baltimore County regulations and has not exceeded allowed density of RC 2 and RC 5 portions

✓ As to above, unanimous decision of the Board that SWM is not considered density

Discussion of cases cited; Long Green and Beth Tfiloh

- R.C and D.R. zones and the other R.C. and commercial; unlike this case – where both are R.C.
- Does not add to density; no Beth Tfiloh problems

Discussed runoff to Gunpowder and property

- *Schultz v. Pritts* 291 Md. 1, 432 A.2d 1319 (1981) – Uses permitted as of right may be developed regardless of impact

- Directly addresses item #3

- Protestants' testimony re runoff into Gunpowder

- Environmental issues raised will have to be satisfied as the project goes forward

- Will have to meet all State and County regulations; approval needed from DEPRM
- Other County agencies will enforce law as it pertains to environmental impact
- *Monkton Preservation*, page 23 by Mr. Alderman – the development process is an "ongoing" process, etc.
- Discussed issue #4 a to d; environmental issues are dealt with by appropriate County agencies; except for 4c – which the Board has rejected – SWM not considered structure under density calculations
- page 5 of Mr. Holzer's memo – roads support the development
- SWM permitted in RC
- Went through list of Mr. Holzer's issues and what both sides agree to: The proposal meets the density requirements; i.e., no question the Owner /Developer is not attempting to erect more houses than allowed
- Discussed Chart in Mr. Alderman's Brief; answers 3, 4 and 5.

Regarding need for additional special hearing

- The Hearing Officer considers Agency comments; he considers "unresolved" issues as to those comments; reviews evidence and testimony taken by the Hearing Officer
- The Hearing Officer can decide unresolved issues at the Hearing Officer's hearing; and he did

Reviewed People's Counsel's Memo – page 5

- a. The Board finds that this does not apply as to this item
- b. The Board does not agree that it violates the spirit of R.C. 2
- c. The Board rejected this argument as to impact; cited *Schultz v. Pritts*; environmental issues dealt with in permit process
- d. Rejected by Board

➢ Unanimous decision of the Board – will deny Protestants' Petition for Special Hearing.

As to Development Plan:

- Second part of deliberation – Development Plan approval
- The Hearing Officer's decision was not arbitrary or capricious
- He had sufficient evidence /testimony to support his decision
- It was not contrary to law; the special hearing relief filed by Protestants was DENIED by this Board as it was by the Hearing Officer; not contrary to law. He listened but came to another conclusion.

➢ Unanimous decision of the Board – will AFFIRM the Hearing Officer's approval of the Development Plan.

FINAL DECISION/VOTE:

L. Stahl : Deny Petition for Special Hearing filed by Protestants; affirm Hearing Officer's approval of Plan.
D. Mohler : Deny – Special Hearing; AFFIRM – Hearing Officer; Plan approved.
M. Brassil : Deny special hearing request; AFFIRM Hearing Officer and plan approval.

NOTE: These minutes, which will become part of the case file, are intended to indicate for the record that a public deliberation took place this date regarding this matter. The Board will issue a written Opinion and Order based upon its deliberation as summarized herein. The appellate period from the Board's decision will run from the date of the Board's written Order and not today's date.

Respectfully submitted

Kathleen C. Bianco, Administrator
County Board of Appeals

HOWARD L. ALDERMAN, JR.
halderman@LevinGann.com

DIRECT DIAL
410-321-4640

LAW OFFICES
LEVIN & GANN
A PROFESSIONAL ASSOCIATION
NOTTINGHAM CENTRE
502 WASHINGTON AVENUE
8th Floor
TOWSON, MARYLAND 21204
410-321-0600
TELEFAX 410-296-2801

ELLIS LEVIN (1893-1960)
CALMAN A. LEVIN (1930-2003)

October 15, 2004

HAND DELIVERED
Ms. Kathleen Bianco, Administrator
County Board of Appeals for Baltimore County
400 Washington Avenue, Suite 49
Towson, Maryland 21204

RE: *Lynch Property - Development Plan & Special Hearing*
Case Nos. X-404/CBA-04-132 & 04-198-SPH
Owner/Developer's Post-Hearing Memorandum

Dear Ms. Bianco:

In accordance with the direction received from the Board at the conclusion of the hearing on the above-referenced matter, I am pleased to provide to the Board an original and three (3) copies of the *Owner/Developer's Post-Hearing Memorandum*. Should you or any member of the Board desire additional information or additional copies, please do not hesitate to contact me.

Very truly yours,

Howard L. Alderman, Jr.

HLA/gk
Enclosures (4)
c (w/one encl.): J. Carroll Holzer, Esquire
Carole M Demilio, Deputy People's Counsel

RECEIVED
OCT 15 2004
BALTIMORE COUNTY
BOARD OF APPEALS

HOLZER & LEE

LAW OFFICES

J. CARROLL HOLZER, PA

J. HOWARD HOLZER
1907-1989

THOMAS J. LEE
OF COUNSEL

THE 508 BUILDING

508 FAIRMOUNT AVE.
TOWSON, MD 21286
(410) 825-6961
FAX: (410) 825-4923
E-MAIL: JCHOLZER@BCPL.NET

October 15, 2003
 # 7287

HAND DELIVERED
Carl Richards
Department of Permits &
Development Management
Towson, MD 21204

Re: In the Matter of Petition for Special Hearing, 4501 Sweet Air Road
Petitioners: Long Green Valley Assn., et al.

Dear Mr. Richards:

Attached are three (3) original Petitions for Special Hearing, three (3) sealed property descriptions, 12 sets of plats and a zoning map of the subject site. Petitioners do not own the property subject of the Special Hearing, but are adjacent and/or adjoining property owners. The property is owned by Dorothy Surina and Jeanne Gough, and Petitioners raise at least six issues relating to the use of the property.

To the best of the Petitioners' information and knowledge, there are presently no zoning or BCC violations, but the property is the subject of a development plan.

For advertising purposes, of the six issues we raised, the following is the language to be used for posting and advertising purposes only:

"Do the BCZRs permit RC 2 land to be used to support development in a RC 5 zone for such things as roads & SWM facility? And does creation of nondensity parcels as part of a development plan require a Special Hearing request?

I appreciate your assistance in this matter and if you need to call, I can be reached at 410-825-6961

Very truly yours,

J. Carroll Holzer

J. Carroll Holzer

JCH:clh

H:\Letters\Carl Richards-Lynch Property-10-15-03.doc

#198

9/07/04
Verified 9-07-04

Petitioner's Exhibits

(1)

CBA-04-132 Lynch Property
04-198-SPH

Pet 1 Aerial Photo

Pet. 2 Red line Plan

3 Presten Resume

4 Set of Photos of Presten and Lynch Properties (Pages with X do not count - are irrelevant)

5 Tapes of Hearings from Below
LA, BC - 3 tapes

6. Resume O'Leary - 2 pages

7. Memo DEPRM Nov 12, 2003

8 - Long Green Valley Assoc Docs.
3 pages

CBA Pet. Exhibit 3

STEPHEN D. PRESTON

OFFICE ADDRESS:
Chesapeake Bay Program Office
410 Severn Avenue, Suite 109
Annapolis, Maryland 21403
410-267-9875

HOME ADDRESS:
4408 Old Farm Road
Baldwin, Maryland 21213
410-592-7698

EDUCATION

PhD Environmental Engineering, 1990
University of Notre Dame, Notre Dame, Indiana

MS Environmental Engineering Sciences, 1983
University of Florida, Gainesville, Florida

BA Biology, 1977
Shippensburg State University, Shippensburg, Pennsylvania

PROFESSIONAL EXPERIENCE

U.S. Environmental Protection Agency – Chesapeake Bay Program
Monitoring Coordinator, 2000 – present

Prot No 5

United States Geological Survey, Baltimore, Maryland
Chesapeake Bay Placed-Based Studies Program
Hydrologist, 1996 - 2000

As part of the U.S. Geological Survey Chesapeake Bay Studies team, led the effort to develop SPARROW models to provide cooperating agencies with information regarding the spatial distribution of factors affecting stream nutrient loading. That effort included the compilation of stream loading data collected by monitoring programs throughout the Chesapeake Bay watershed. The monitoring data was then used to develop a stream nutrient loading data base that was used for calibration of SPARROW models. The development of SPARROW models also included the compilation of multiple geographic data sets that documented nutrient source loads and basin characteristics that affect the delivery of loads. Two versions of SPARROW models have been successfully completed and are being utilized by agencies in the Chesapeake Bay community.

United States Geological Survey, Baltimore, Maryland
USEPA EMAP / USGS NAWQA Joint Assessment Program
Hydrologist, 1998

Participated in a study of the potential for joint monitoring designs between the EMAP and NAWQA programs. As part of that effort, performed studies to evaluate the relative advantages of the two monitoring designs. Regression analyses indicated that differences in the types of basins selected for monitoring by each program affected the precision and accuracy of some water quality conclusions. That information is now being used by the NAWQA program to evaluate potential monitoring-design changes.

United States Geological Survey, Towson, Maryland
Patuxent Nonpoint Source Study
Hydrologist, 1990 - 1996

In cooperation with Maryland Department of the Environment, acted as project leader for a large study designed to evaluate water quality and simulate nonpoint source nutrient loading in the Patuxent watershed. Participated in the design and construction of a hydrologic and water-quality model of the Patuxent basin using the HSPF watershed modeling framework. Organized and managed a broad scale hydrologic and water-quality monitoring effort in the Patuxent basin. Utilized various types of software to perform the data management and data analysis for evaluating nonpoint source loading in the State of Maryland.

United States Geological Survey, Towson, Maryland
Maryland Stream-Gaging Network Evaluation Study
Hydrologist, 1995

Performed an evaluation study of the stream-gaging network in the State of Maryland. Results indicated that large areas of the state were not represented by established stream gages. Furthermore the overall number of gages with moderate record lengths had consistently decreased over the previous 10 years. This information has been used by the Maryland Department of Natural Resources and the U.S. Geological Survey to redesign and expand the stream-gage network in Maryland.

United States Geological Survey, Towson, Maryland
Maryland Ungaged Basin Study
Hydrologist, 1992 - 1994

Designed and conducted a study of the use of regional geographic information for estimating nonpoint source nutrient loading from ungaged subbasins of the Chesapeake Bay watershed. Utilized a GIS in conjunction with watershed models to investigate the effects of geographic characteristics on nutrient loadings to the Chesapeake bay.

University of Maryland Baltimore County, Baltimore, Maryland
Department of Geography,
Adjunct Professor, 1996 - 2000

Taught undergraduate level course in water quality.

University of Notre Dame, Notre Dame, Indiana
Department of Civil Engineering,
PhD Program, September, 1986 - June, 1990

Conducted research to evaluate statistical techniques for the estimation of stream contaminant loads. Organized and wrote two successful proposals for USGS research funds. Participated in teaching responsibilities by performing lectures and grading exams and assignments.

Barr Engineering Company, Minneapolis, Minnesota
Water Chemist/ Env. Engineer, April, 1986 - September, 1986

Designed and implemented laboratory and in situ experiments to investigate water-quality controls in Minnesota lakes. Evaluated environmental impact statement for a large proposed copper mine. Performed on site inspection of hazardous waste sites.

University of Minnesota, Minneapolis, Minnesota
Department of Civil and Mineral Engineering,
Research Associate/ Assistant, November, 1983 - April, 1986

Organized, managed and carried out research concerning the effect of sediment resuspension on water quality in a fresh water harbor. Collected field samples for detailed characterization of sediment and water chemistry. Performed laboratory analysis of collected samples. Carried out sorption studies to quantify release/ uptake of contaminants by sediments.

Environmental Science and Engineering Inc., Gainesville, FL.
Water Resources Engineering, September, 1982 - October, 1983

Provided interpretation of water quality data for a number of project reports. Performed statistical analysis of well data for development of radium criteria. Employed multivariate and regression techniques to investigate morphometric controls of water quality in Florida lakes.

University of Florida, Gainesville, Florida
Department of Environmental Engineering Sciences,
Graduate Program, March, 1980 - April, 1983

Performed analysis of a large water-quality data base for a eutrophic lake chain in central Florida. Utilized multivariate techniques for choosing water-quality variables for temporal trend analysis. Calculated hydrologic and nutrient budgets and applied loading models to predict the effect of nutrient load reduction.

Water and Air Research Inc., Gainesville, Florida
Engineering Technician, August, 1979 - March, 1980

PUBLICATIONS

Alexander, R.B., Smith, R.A., Schwarz, G.E., Preston, S.D., Brakebill, J.W., Srinivasan, R., and Pacheco, P.A., In Press, Atmospheric Nitrogen Flux from the Watersheds of Major Estuaries of the United States: An Application of the SPARROW Watershed Model, in Assessing the Relative Nitrogen Inputs to Coastal Waters from the Atmosphere, American Geophysical Union Water Monograph, Valigura, R., Paerl, H.W., Meyers, T., Castro,M.S., Turner, R.E., Alexander, R.B., Brock, D., and Stacey, P.E. (editors).

Preston, S.D., and Brakebill, J.W., 1999, Application of spatially referenced regression modeling for the evaluation of total nitrogen in the Chesapeake Bay watershed: U.S. Geological Survey Water-Resources Investigations Report 99-4054, p. 12.

Brakebill, J.W., and Preston, S.D., 1999, Digital data used to relate nutrient inputs to water quality in the Chesapeake Bay watershed, Version 1.0: U.S. Geological Survey Open-File Report 96-60, at URL http://md.usgs.gov/publications/ofr-99-60.

Preston, S.D., Smith, R.A., Schwarz, G.E., Alexander, R.B., and Brakebill, J.W., 1998, Spatially referenced regression modeling of nutrient loading in the Chesapeake Bay watershed, in Proceedings of the First Federal Interagency Hydrologic Modeling Conference, Las Vegas, NV, p. 8.

Preston, S.D., and Summers, R.S., 1997, Estimation of nutrient and suspended-sediment loads in the Patuxent River Basin, Maryland, Water Years 1986-90: U.S. Geological Survey Water-Resources Investigations Report 96-4175, p. 69.

Preston, S.D., 1997, Evaluation of the stream-gaging network in Maryland, Delaware and Washington, D.C.: U.S. Geological Survey Fact Sheet 97-126, p. 4.

Preston, S.D., 1996, Study of nonpoint source nutrient loading in the Patuxent River Basin, Maryland: U.S. Geological Survey Water-Resources Investigations Report 96-4273, p. 6.

Preston, S.D., V.J. Bierman Jr and S.E. Silliman. 1992. Impact of Flow Variability on Error in the Estimation of Tributary Mass Loads. ASCE Journal of Environmental Engineering. 118(3): 402 - 419.

Preston, S.D., 1990, An evaluation of methods for the estimation of tributary mass loads. The University of Notre Dame, Department of Civil Engineering, Ph.D. Dissertation p.261.

Preston, S.D., V.J. Bierman Jr and S.E. Silliman. 1989 Evaluation of Methods for the Estimation of Tributary Mass Loading Rates. Report submitted to the U.S. Geological Survey, Reston, VA. Project No. G1561-04. Technical Report No. 187. p. 50.

Preston, S.D., V.J. Bierman Jr and S.E. Silliman. 1988. An Evaluation of Methods for the Estimation of Tributary Mass Loads. Water Resources Research. 25(6): 1379 - 1389.

Bierman Jr, V.J., S.D. Preston and S.E. Silliman. 1988 Development of Estimation Methods for Tributary Loading Rates of Toxic Chemicals. Report submitted to the U.S. Geological Survey, Reston, VA. Project No. G1421-04. Technical Report No. 183. 158 pp.

Preston, S.D., and P.L. Brezonik. 1985 Water Quality in the Oklawaha Chain of Lakes: A Case Study on Problems and Limitations in Compiling Long-Term Data Bases. Proceedings of the Fourth Annual Conference and International Symposium on Lake and Reservoir Management. North American Lake Management Society.

Preston, S.D., S.E., 1983, Numerical analyses of a Eutrophic Lake Chain, The University of Florida, Department of Environmental Engineering Sciences, Master's Thesis, 194 p.

Huber, W.C., P.L. Brezonik, J.P. Heaney, R.E. Dickinson, S.D. Preston, D.S. Dwornik and M.A. DeMaio. 1983. A Classification of Florida Lakes. Report to Florida Department of Environmental Regulation, Tallahassee. Report no. ENV-05-82-1, Department of Environmental Engineering Sciences, University of Florida, Gainesville, Florida.

Brezonik, P.L., S.D. Preston and T.L. Crisman. 1981. Limnological Studies on Lake Apopka and the Oklawaha Chain of Lakes: 4. Water Quality in 1980 and a Summary of the Four Year Data Base. Report no. ENV-07-81-02, Department of Environmental Engineering Sciences, University of Florida, Gainesville, Florida. 140 pp.

PRESENTATIONS Meeting with EPA Region III and State Officials for identifying methods for establishing Nutrient Criteria, Baltimore, Maryland. Spatially Referenced Regression Modeling of Nutrient Loading in the Chesapeake Bay Watershed. December, 1999.

Workshop on Agriculture and Coastal Resources: Issues in Measuring the Economic Dimensions of Problems and Policies, Washington, DC. Modeling the Spatial Distribution of Nutrient Loads in the Chesapeake Bay Watershed. June 1999.

Meeting of the Lake Nutrient Assessment Team of the New England Integrated Water Pollution Control Commission and EPA Region I, Lowell, Massachusetts. Spatially Referenced Regression Modeling of Nutrient Loading in the Chesapeake Bay Watershed. May, 1999.

Federally Supported Science in the Chesapeake Bay Program Workshop, Laurel, Maryland. Spatially Referenced Regression Modeling of Nutrient Loading in the Chesapeake Bay Watershed. December, 1998.

Meeting of the Advisory Committee on Water Information, Denver, Colorado. Spatially Referenced Regression Modeling of Nutrient Loading in the Chesapeake Bay Watershed. August, 1998.

First Federal Interagency Hydrologic Modeling Conference. Las Vegas, Nevada. Spatially Referenced Regression Modeling of Nutrient Loading in the Chesapeake Bay Watershed. April, 1998.

Watershed `96, A National Conference on Watershed Management, Baltimore, Maryland. Generation and Comparison of Watershed Management Scenarios Patuxent River. June, 1996.

American Geophysical Union, 1994 Fall Meeting, San Francisco, California. Relations Between Land Use and Nitrogen Loading in the Patuxent River Basin and Chesapeake Bay Piedmont Area, Maryland. December, 1994.

United States Environmental Protection Agency Nonpoint Source Watershed Monitoring Conference, Northbrook, Illinois. Use of a Ratio Estimator to Estimate Nutrient Loads in the Patuxent River Basin, Maryland. August, 1994.

Chesapeake Research Consortium 1994 Conference, Norfolk, Virginia. Geographic Variations in Nitrogen Loading Within the Patuxent River Basin, Maryland. June, 1994.

United States Environmental Protection Agency Marine and Estuarine Shallow Water Science and Management in the Mid-Atlantic Region Conference, Atlantic City, New Jersey. Nutrient Loading to Estuarine Water from the Patuxent River Basin, Maryland. March, 1994.

United States Geological Survey. Presentation to the Chief Hydrologist, WRD, Reston, Virginia. Nonpoint Source Nutrient and Sediment Loading in the Patuxent River Basin, Maryland. September, 1993.

United States Geological Survey Chesapeake Bay Workshop, Harrisburg, Pennsylvania. Nonpoint Source Nutrient Loading in the Patuxent River Basin. January, 1992

Surface Water Hydrology, Geomorphology and Sediment Transport Joint Discipline Research Workshop, Hood River, Oregon. Nonpoint Source Nutrient and Sediment Loading in the Patuxent River Basin, Maryland. September, 1991.

American Geophysical Union, 1991 Spring Meeting, Baltimore, Maryland. Compilation of a Long-Term Water-Quality Data Base for the Assessment of Nonpoint Source Nutrient Loading in the Patuxent River Basin, Maryland. May, 1991.

American Geophysical Union, 1989 Fall Meeting, San Francisco, California. Analysis of Error in the Estimation of Tributary Mass Loads. December, 1989.

International Association for Great Lakes Research 32nd Annual Conference, Madison, Wisconsin. Evaluation of Methods for the Estimation of Tributary Mass Loading Rates. May, 1989.

United States Geological Survey, Reston, Virginia. An Evaluation of Methods for Estimating Tributary Contaminant Loads. May, 1988.

North American Lake Management Society Annual Conference. Water Quality in the Oklawaha Chain of Lakes: A Case Study on Problems and Limitations in Compiling Long Term Data Bases. 1985.

SCIENTIFIC LEADERSHIP

U.S. Geological Survey Representative to the Chesapeake Bay *Modeling Subcommittee, 1997 – 2000*

Member U.S. Geological Survey Chesapeake Bay Place-Based Study Interdivisional Technical Team, 1997 - 2000

USGS representative on the Watershed Modeling Workgroup *sponsored by the Maryland Department of Natural Resources* (MDNR), 1996-97.

USGS representative on Technical Advisory Committee of the Washington Suburban Sanitary Commission (WSSC), 1996-97.

AWARDS

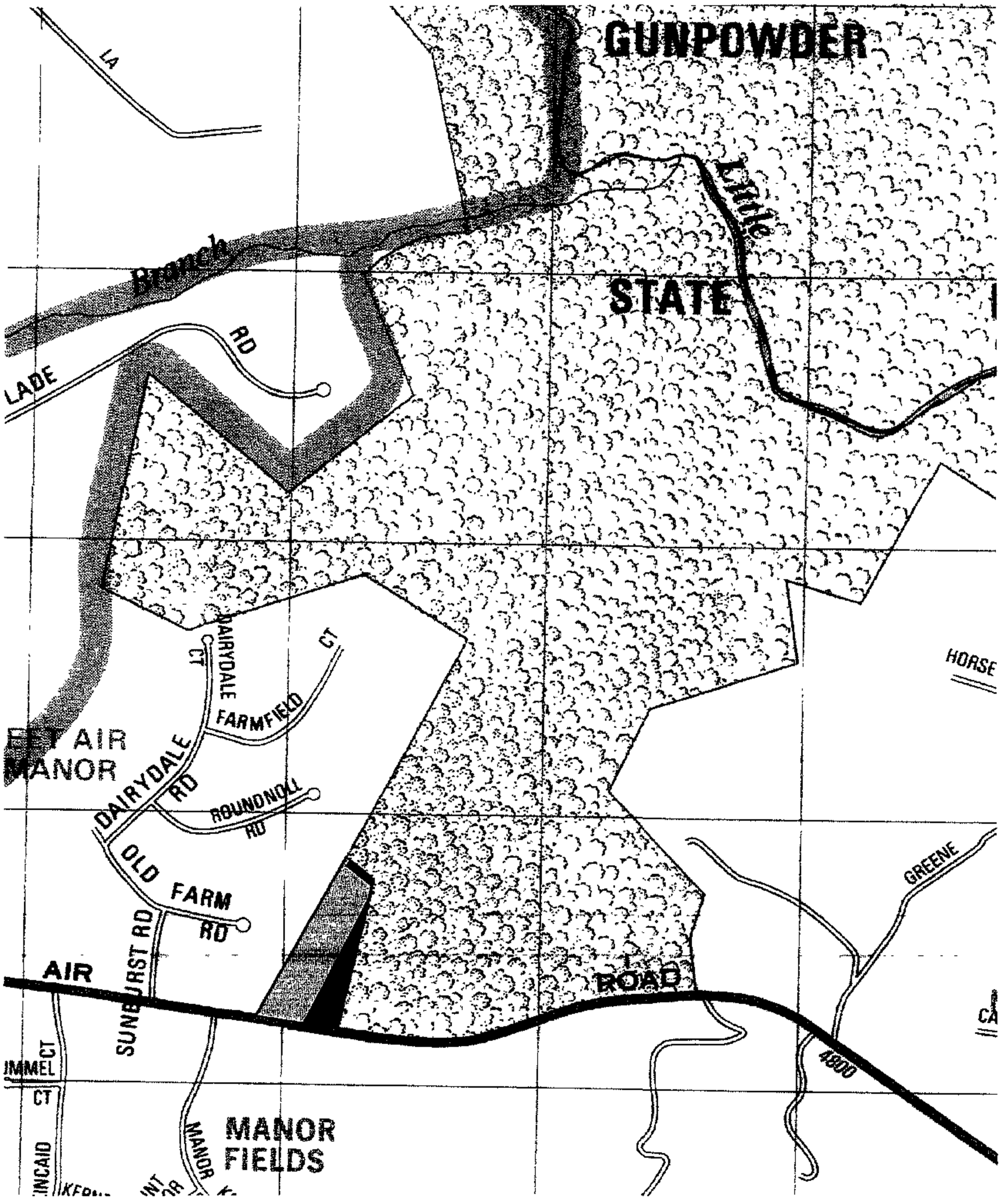
USGS STAR Award (December, 1998)
USGS QSI Award (January, 1998)
USGS QSI Award (January, 1996)
National Wildlife Federation Fellowship 1988/ 89
Sea Grant Traineeship 1984/ 85

GRADUATE COURSEWORK

Environmental Engineering	25 Credits
Water/ Soil Chemistry	16 Credits
Statistics	16 Credits
Environmental Science	5 Credits

Pet Exhibit #4

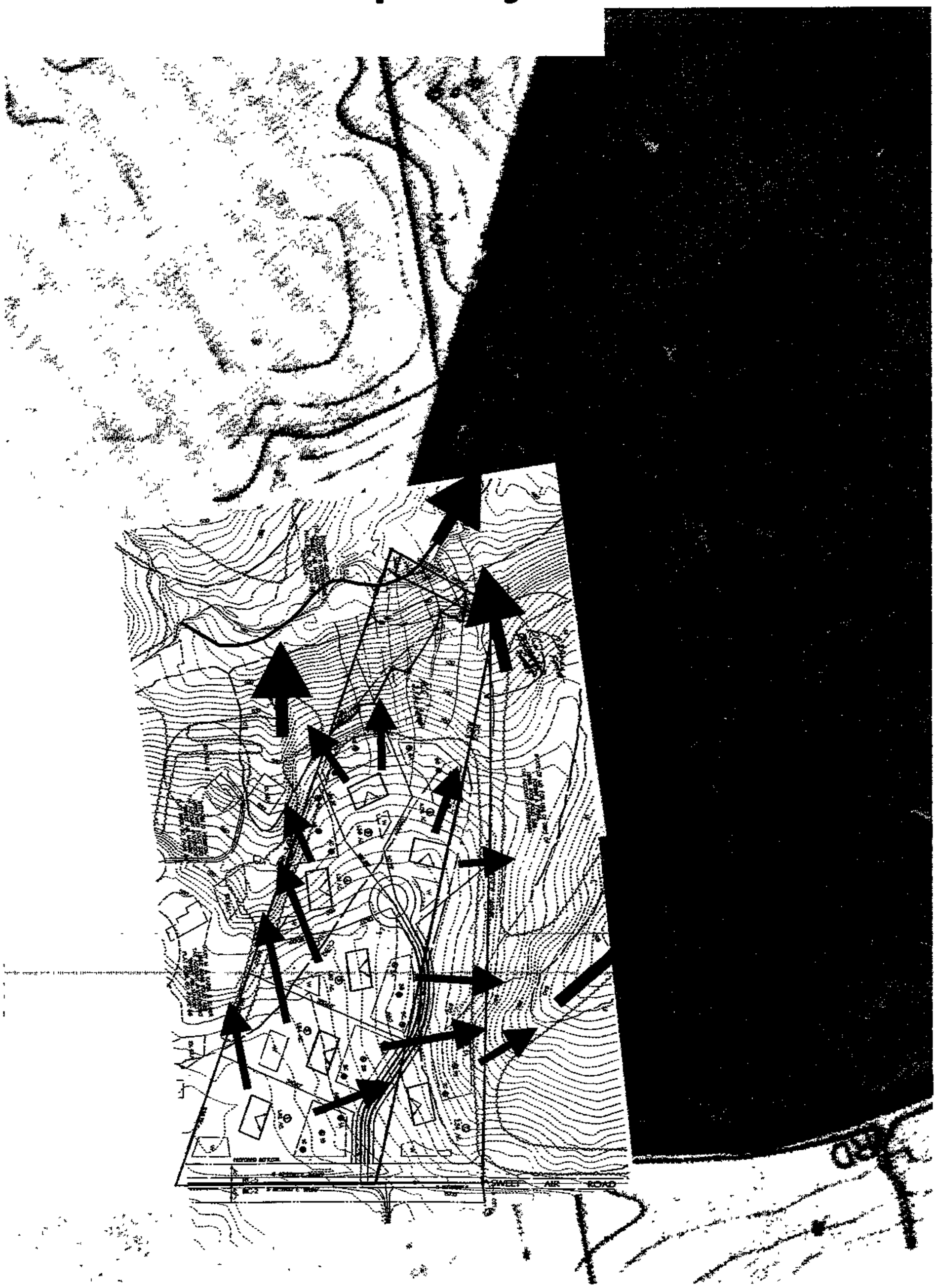
Location of Lynch Property and Surrounding Area



Pet NO6

Detailed Drainage of Lynch Property

Drainage to Protected State Park Property



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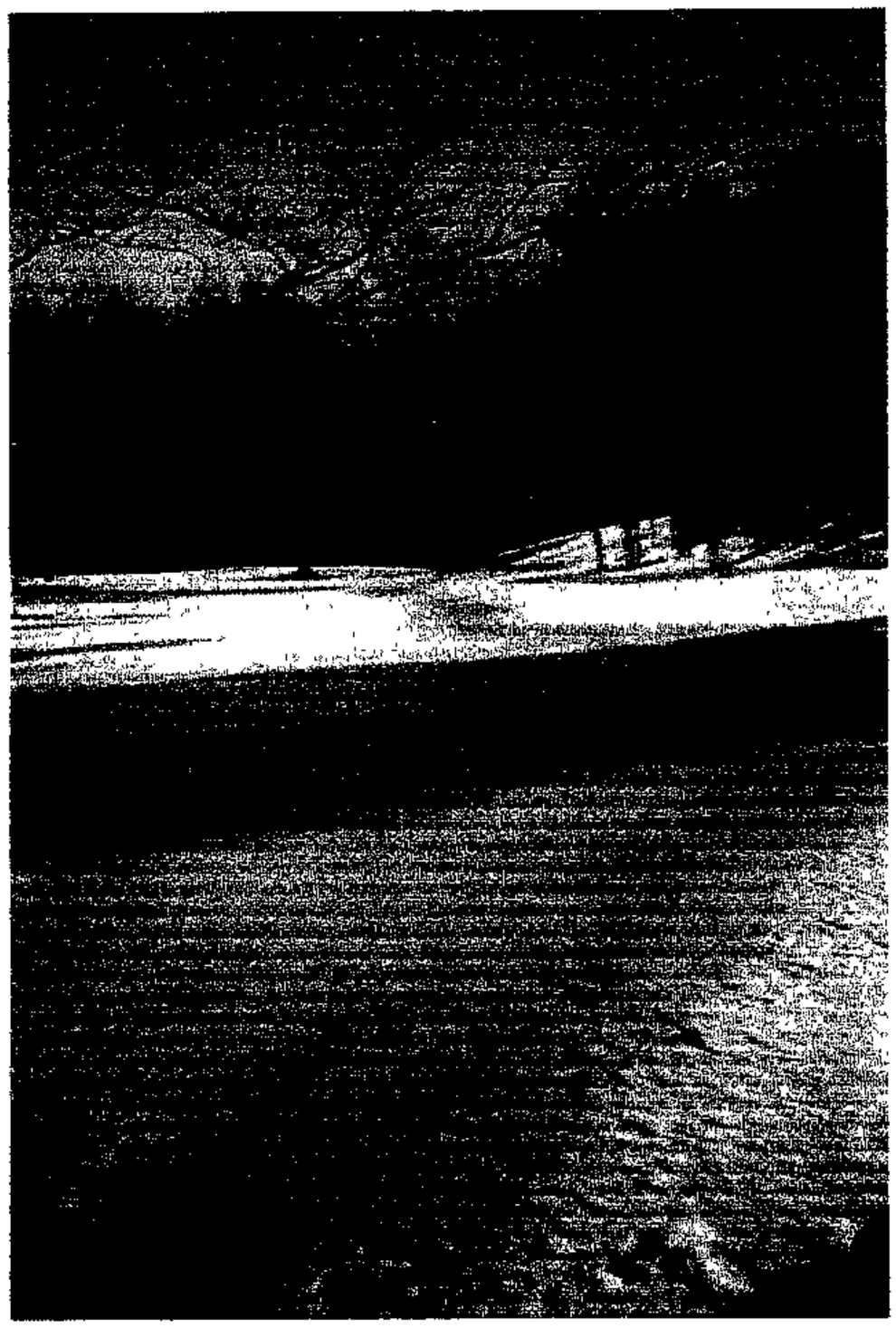
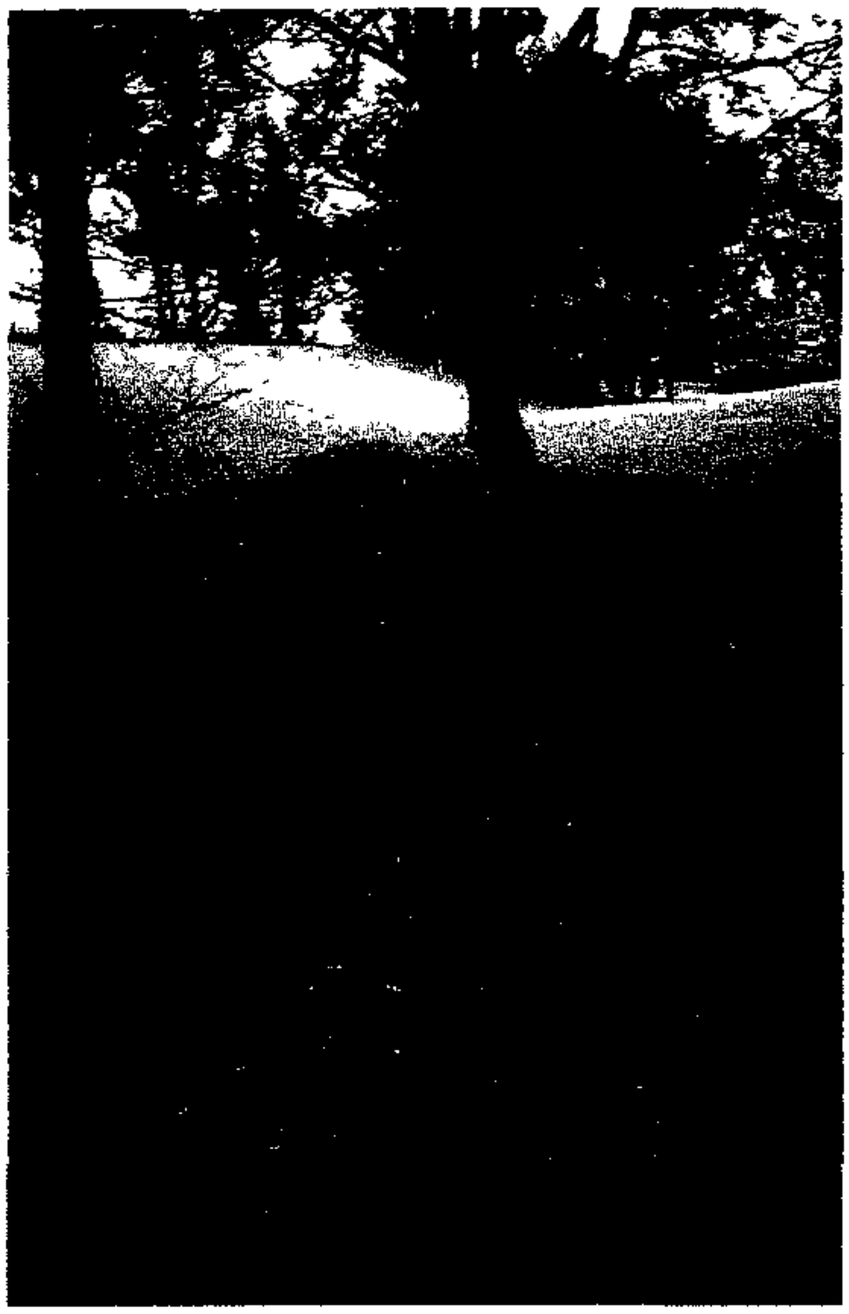
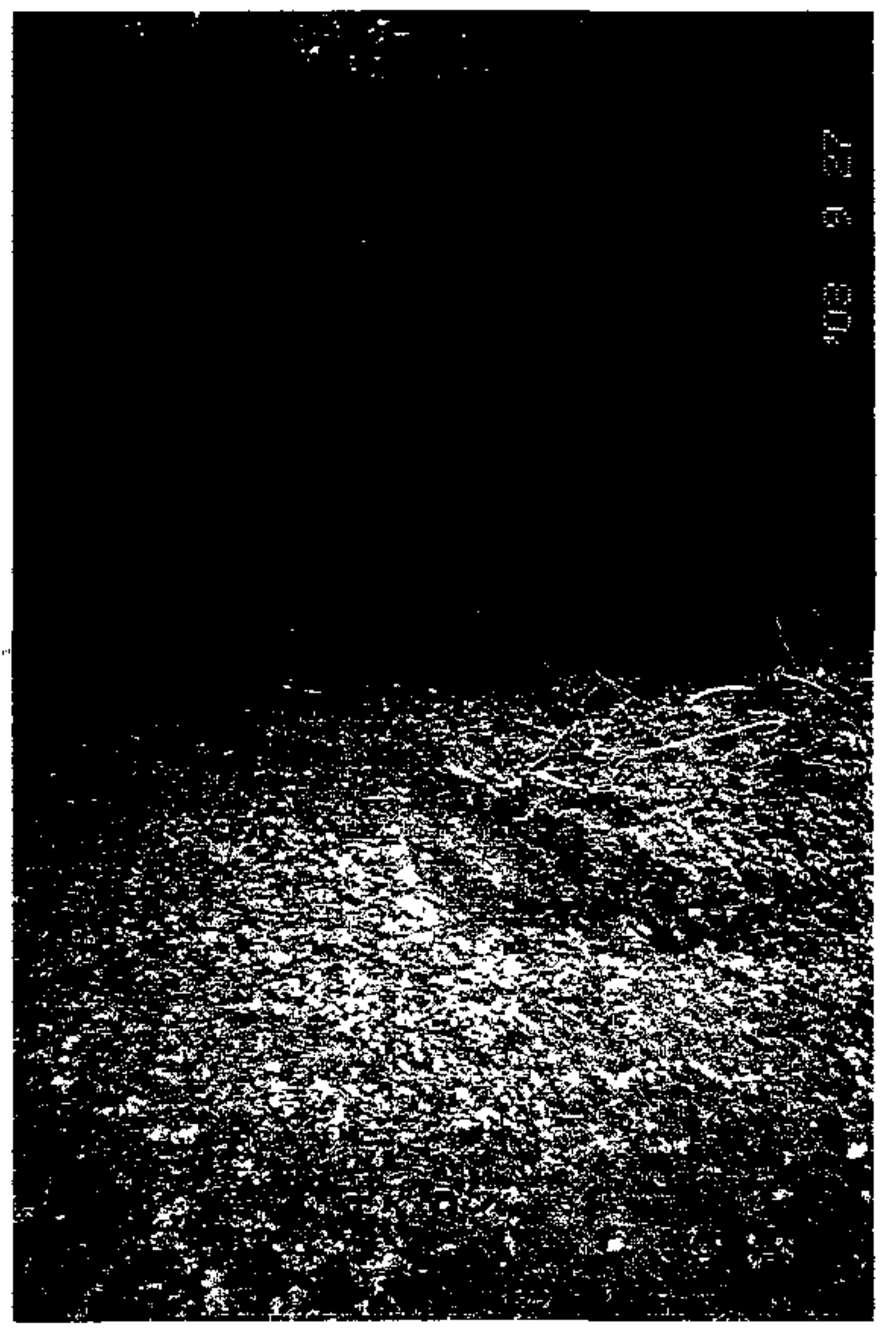


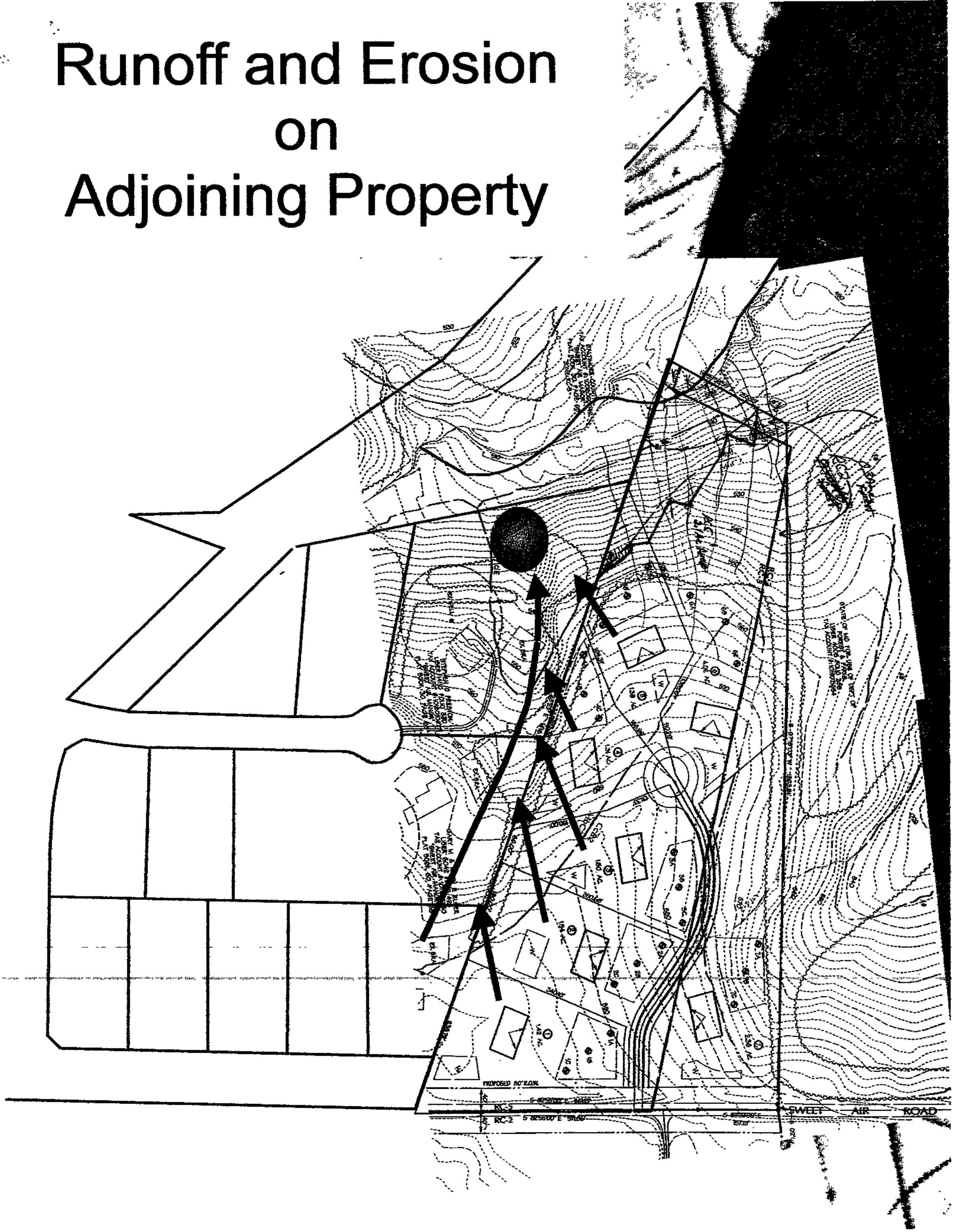
Photo Set 2

Photo Set 3





Runoff and Erosion on Adjoining Property



Location of Septic Reserve Areas

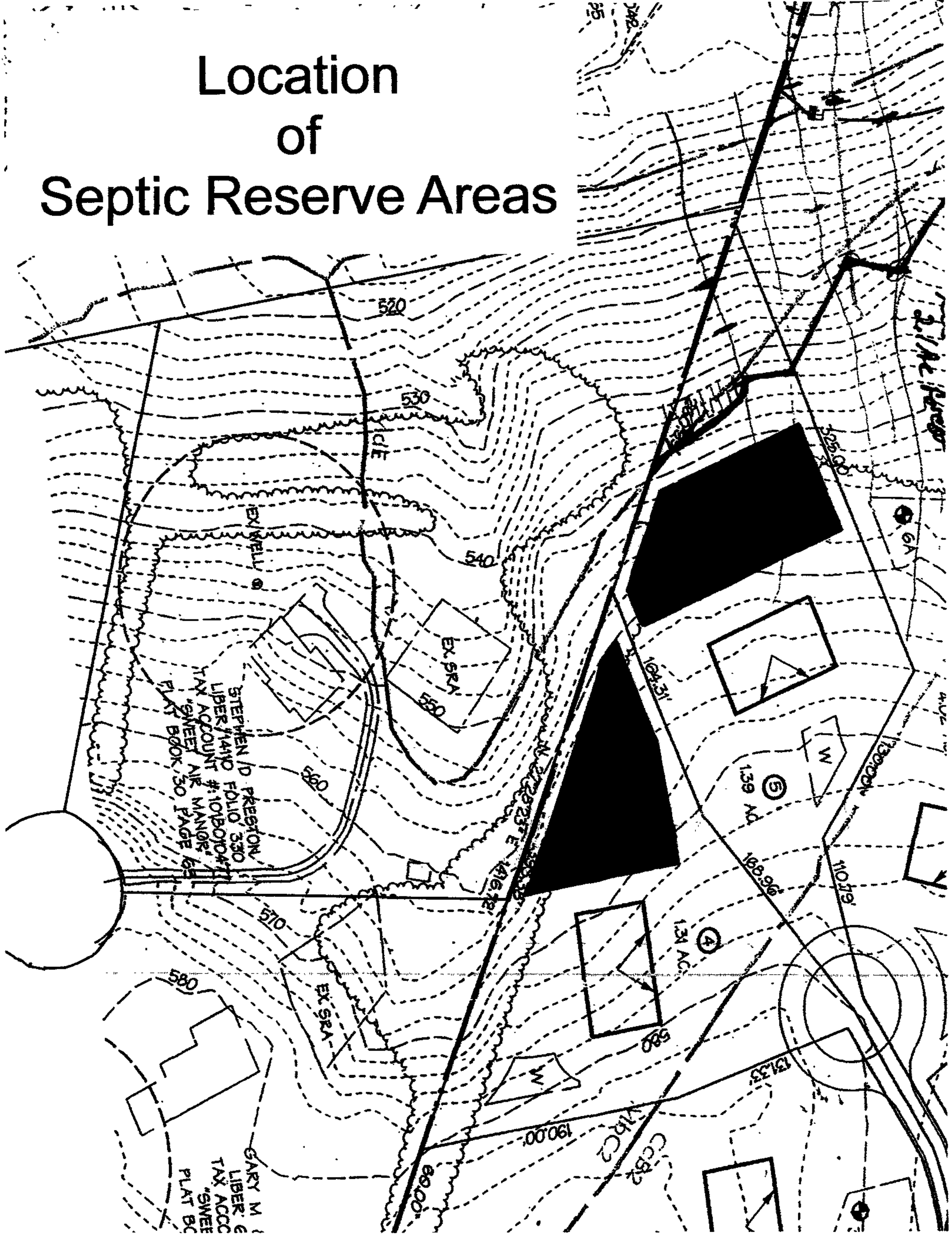


Photo Set 4

Loss of Privacy

2.1 Ac Parcel

6A

325.00'

5A

5B

5C

130.00'N

110.79'

W

⑤
1.39 AC

168.96'

131.33'

④
1.31 AC

164.31'

AC

AB

590

CCB2

N 27°25'23" E 1416.72'

190.00'

60.00'

W

540

530

520

550

560

570

580

EX SRA

EX SRA

CLE

EX WELL ⊕

STEPHEN J D PRESTON
LIBER 14110 FOLIO 330
TAX ACCOUNT # 10(BO)0477
"SWEET AIR MANOR"
PLAT BOOK 30, PAGE 65

GARY M
LIBER 6
TAX ACCO
"SWEE
PLAT BO

SHA
Drives to Excel
State Highway
Administration

MARYLAND DEPARTMENT OF TRANSPORTATION
Robert L. Ehrlich, Jr., *Governor* · Michael S. Steele, *Lt. Governor* · Trent M. Kittleman, *Acting Secretary*

February 13, 2003

Mr. Donald Rascoe
Development Manager
Office of Permits and
Development Management
County Office Building
Room 109
Towson, Maryland 21204
Attn.: Walt Smith

RE: Baltimore County
Concept Plan
Lynch Property
PDM 10-404
MD 145
Mile Post 7.71

Dear Mr. Rascoe:

We have reviewed the referenced concept plan and have no objection to approval. However we will require the owner to obtain an access permit and as a minimum the following roadway improvements will be conditioned to the permit:

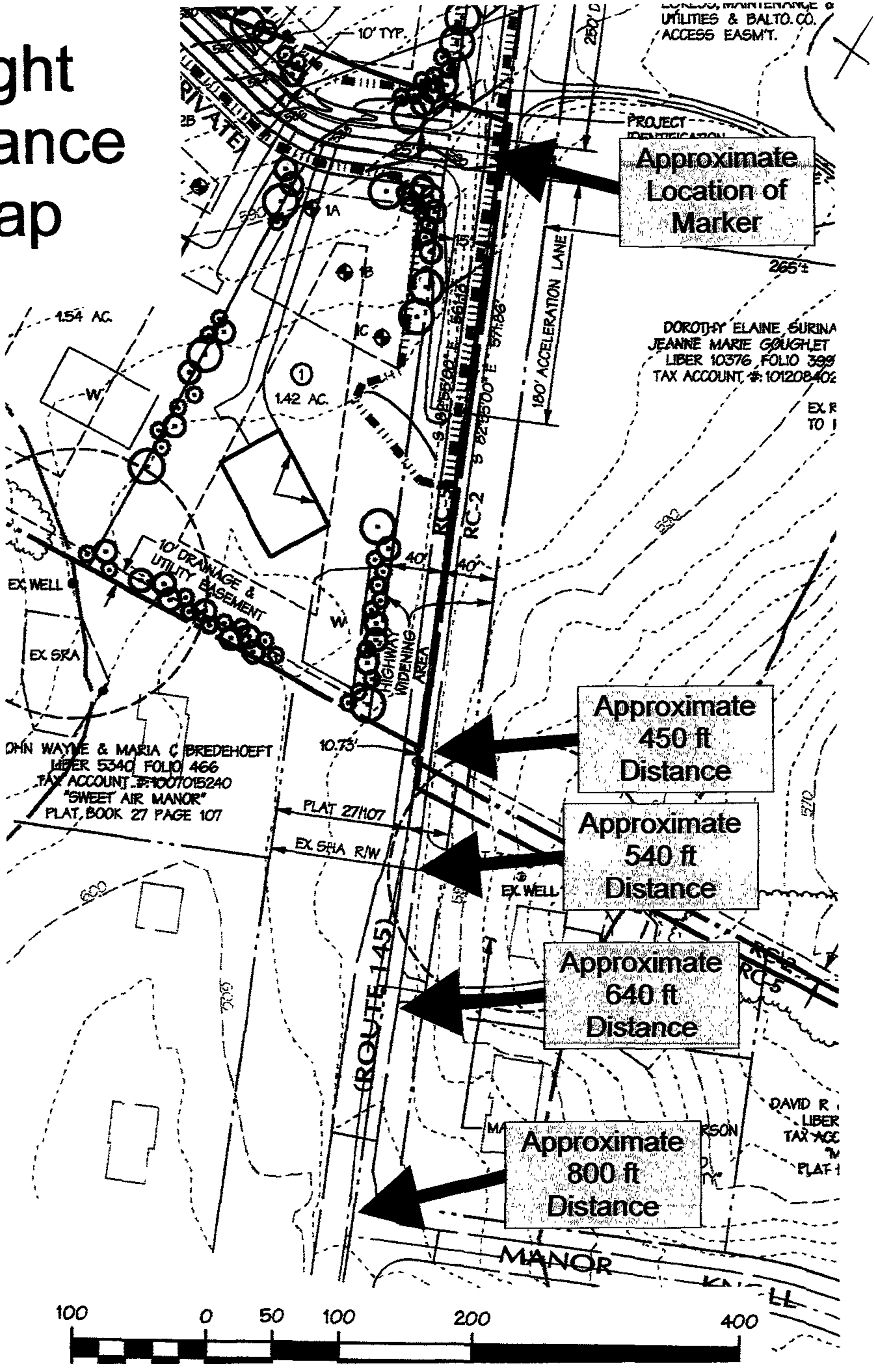
- Relocate the proposed entrance westerly toward the crest of the over vertical curve in MD 145 to improve intersection sight distance.
- Acceleration lane 15' wide and 180' long of full depth paving
- Deceleration lane 15' wide and 250' long of full depth paving
- The proposed entrance shall be 25' wide, with 25' curbed radii and a landing grade of 3% for the first 50'.
- Highway widening dedication to an ultimate 80' R/W.

Should you require any additional information regarding this subject, please contact Larry Gredlein at 410-545-5606 or by E-mail (lgredlein@sha state.md.us)

Very truly yours,

for Kenneth A. McDonald Jr., Chief
Engineering Access Permits Division

Sight Distance Map



Picture Set 5

Sight Distance Estimate

Photo 5-A

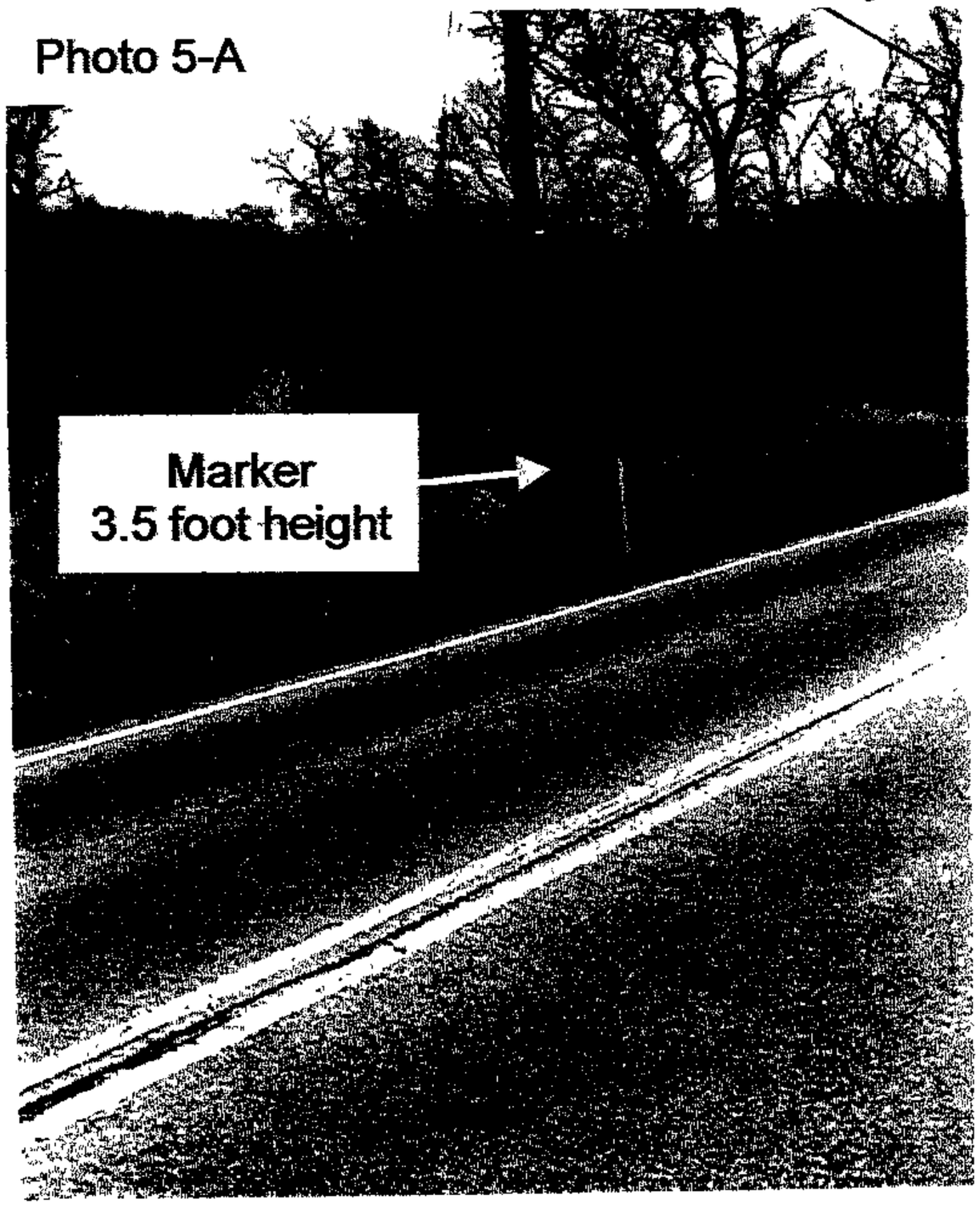
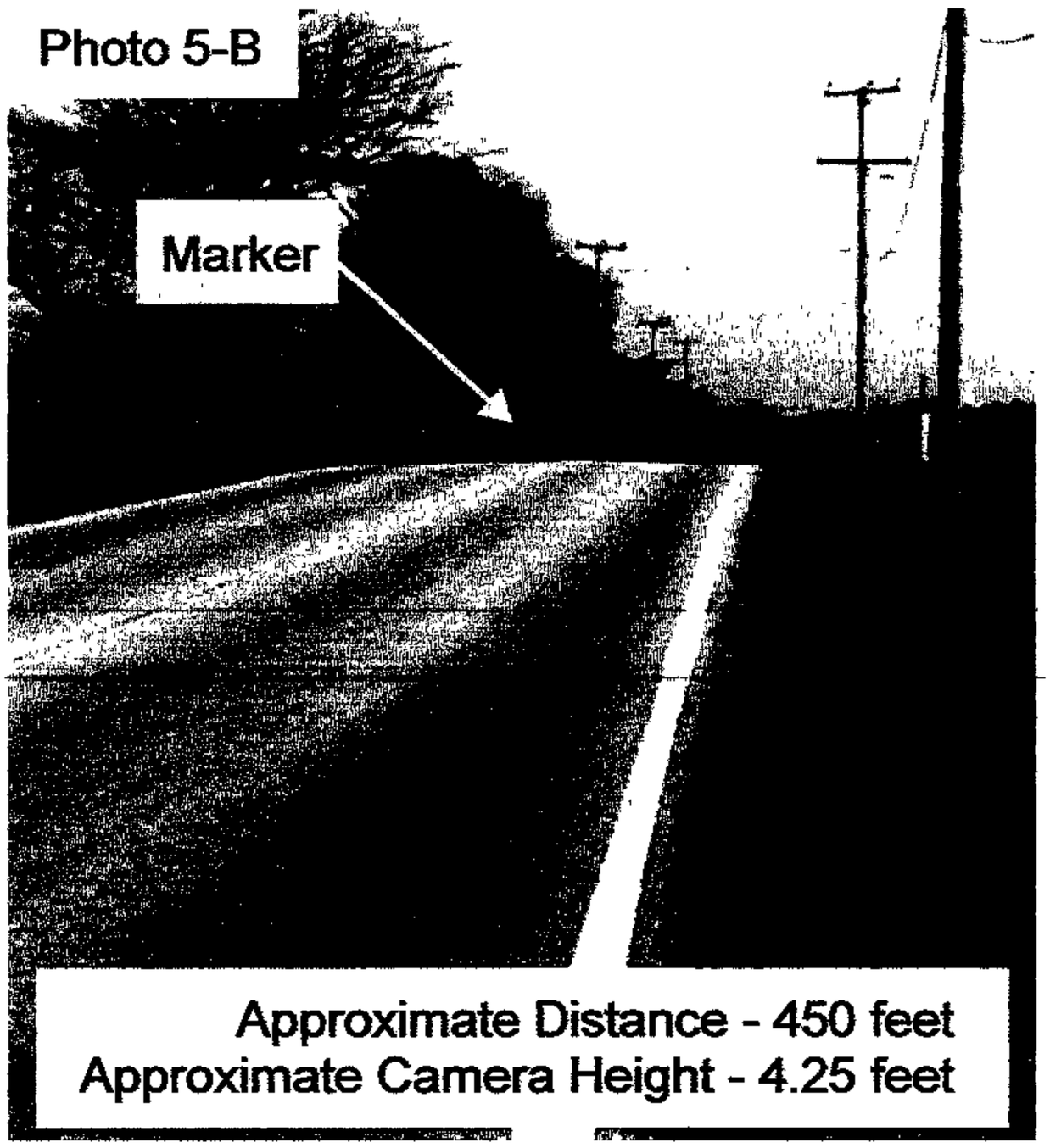
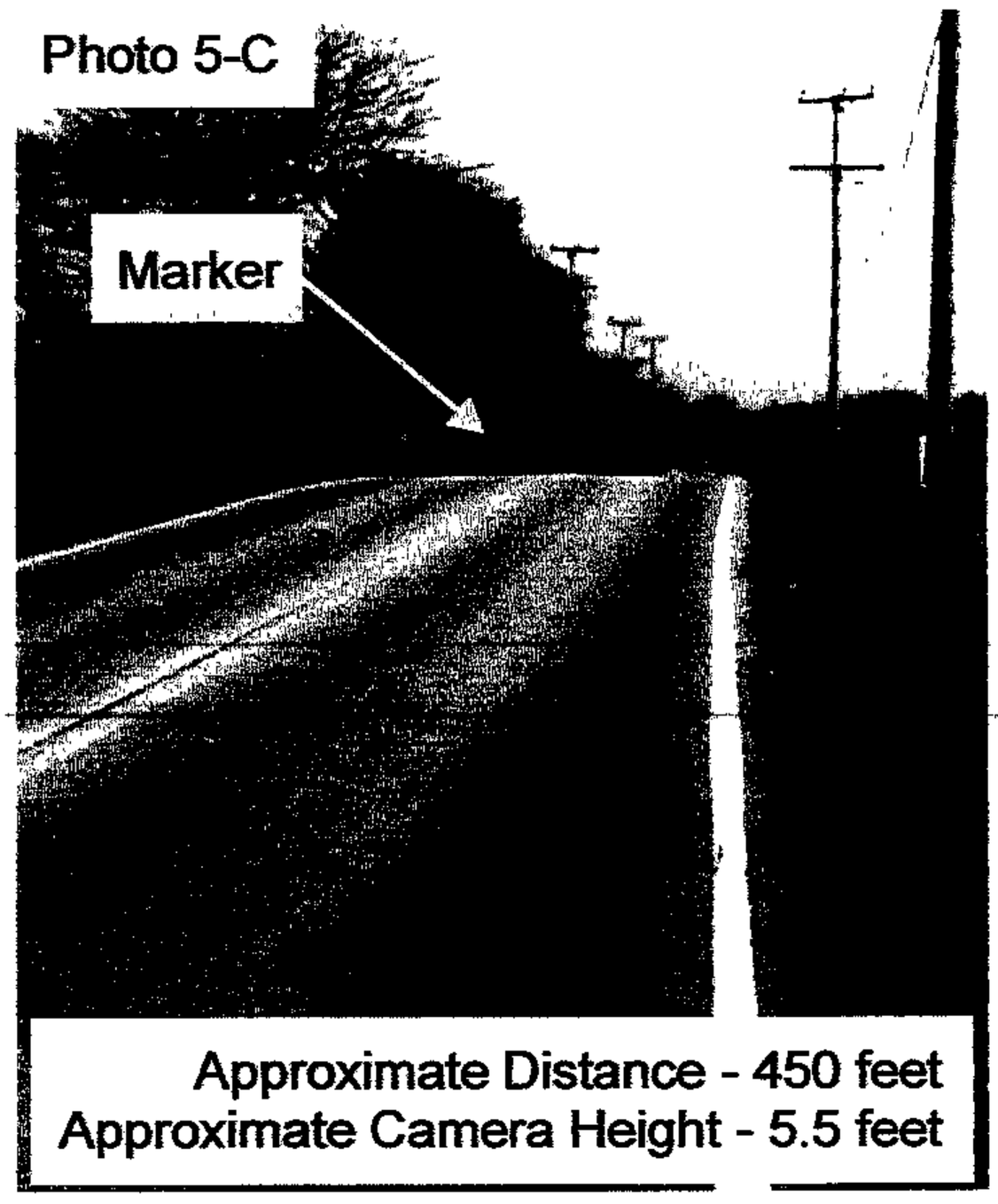


Photo 5-B



Approximate Distance - 450 feet
Approximate Camera Height - 4.25 feet

Photo 5-C



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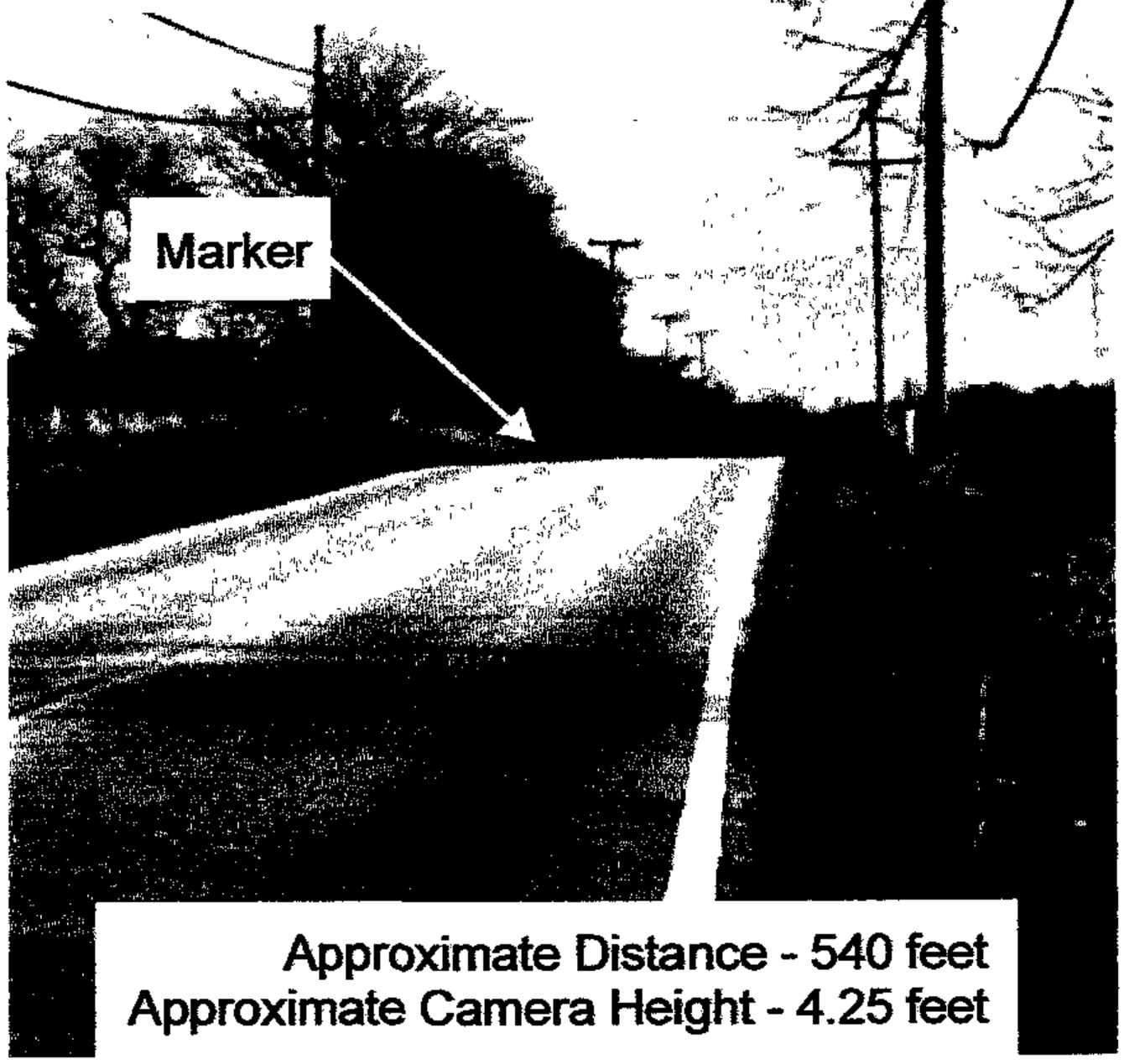
Approximate Camera Height - 5.5 feet

Picture Set 5

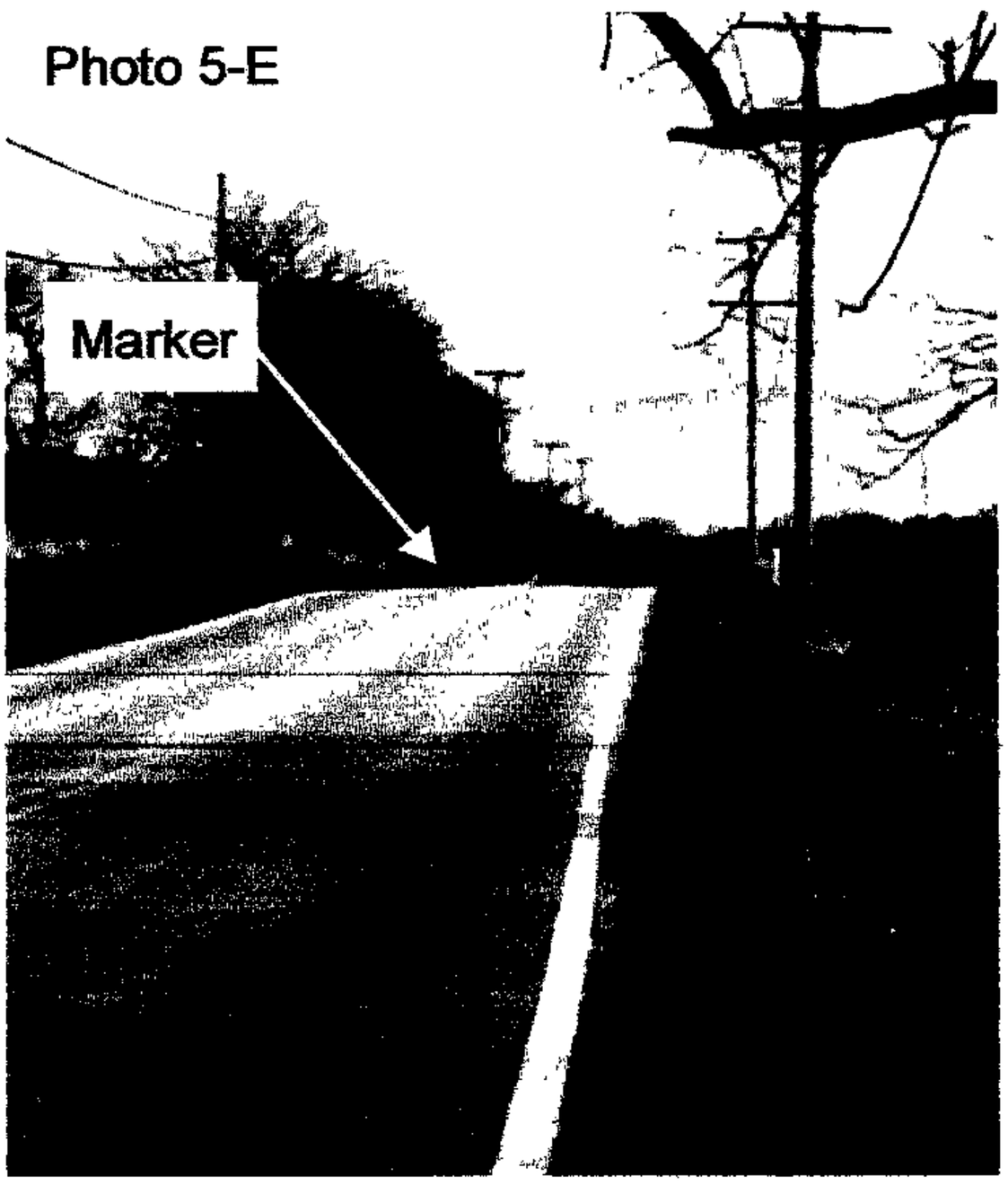
Sight Distance Estimate

Photo 5-D



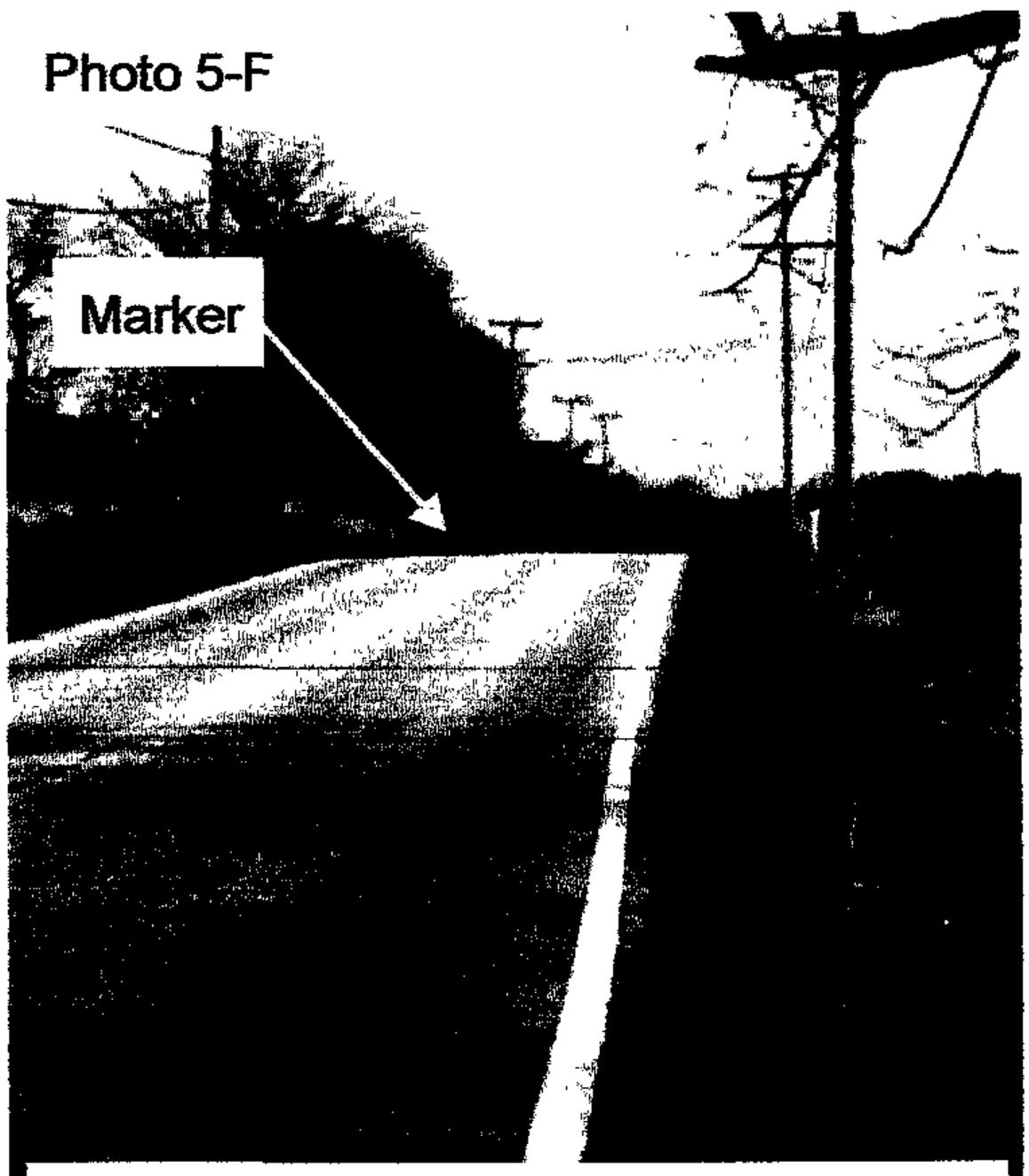
Approximate Distance - 540 feet
Approximate Camera Height - 4.25 feet

Photo 5-E



Approximate Distance - 540 feet
Approximate Camera Height - 5.5 feet

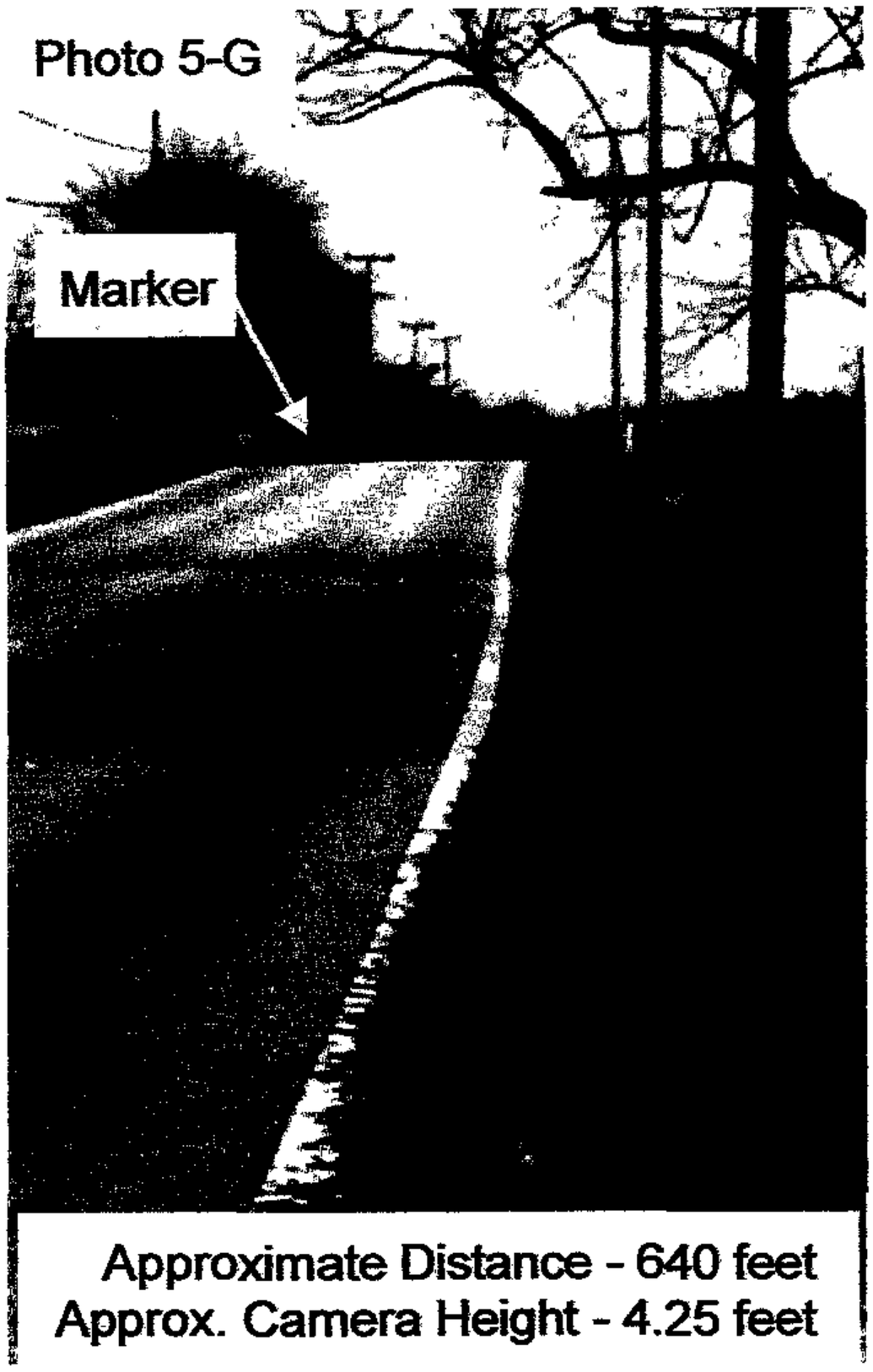
Photo 5-F



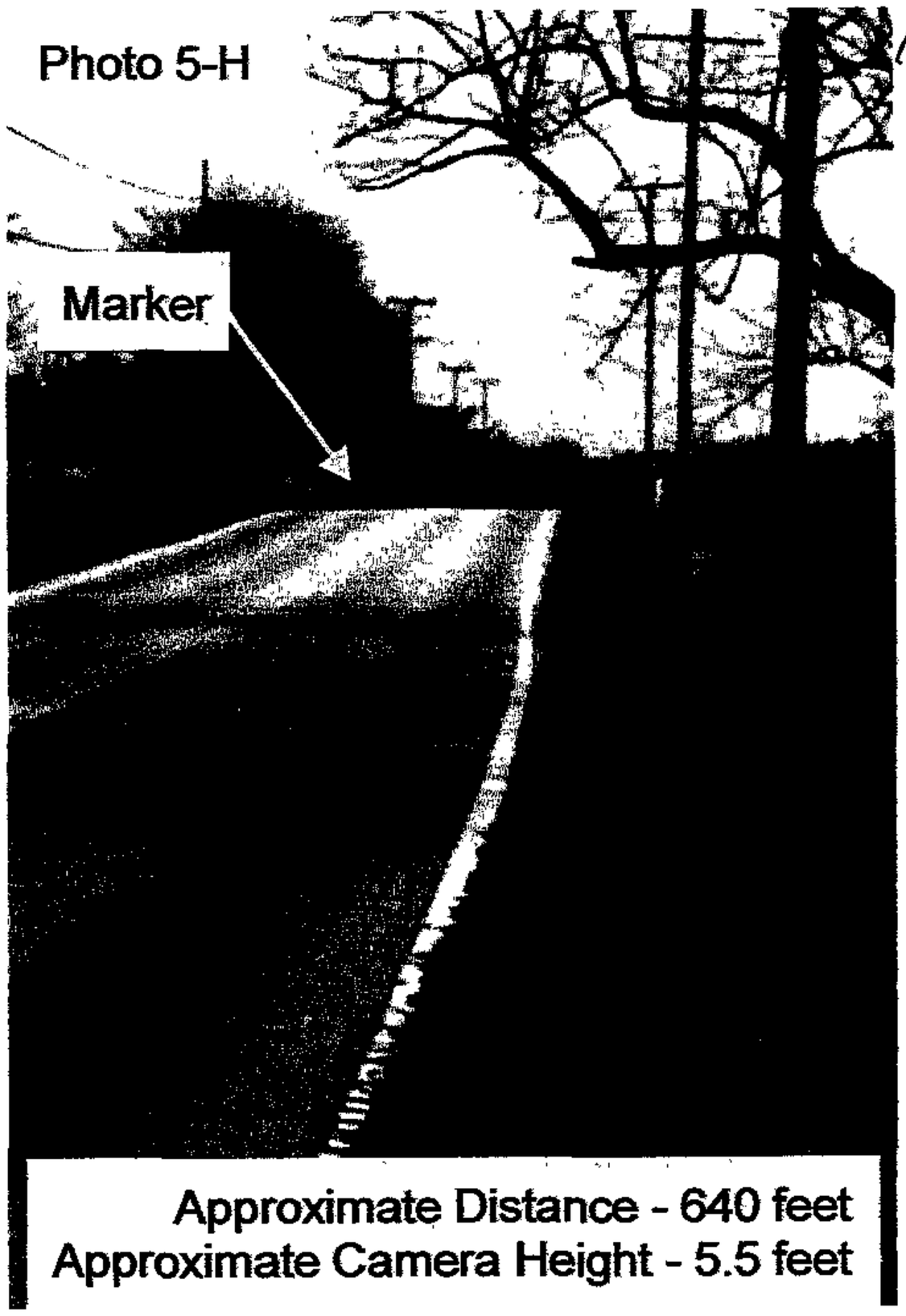
Approximate Distance - 540 feet
Approximate Camera Height - 5.5 feet

Picture Set 5

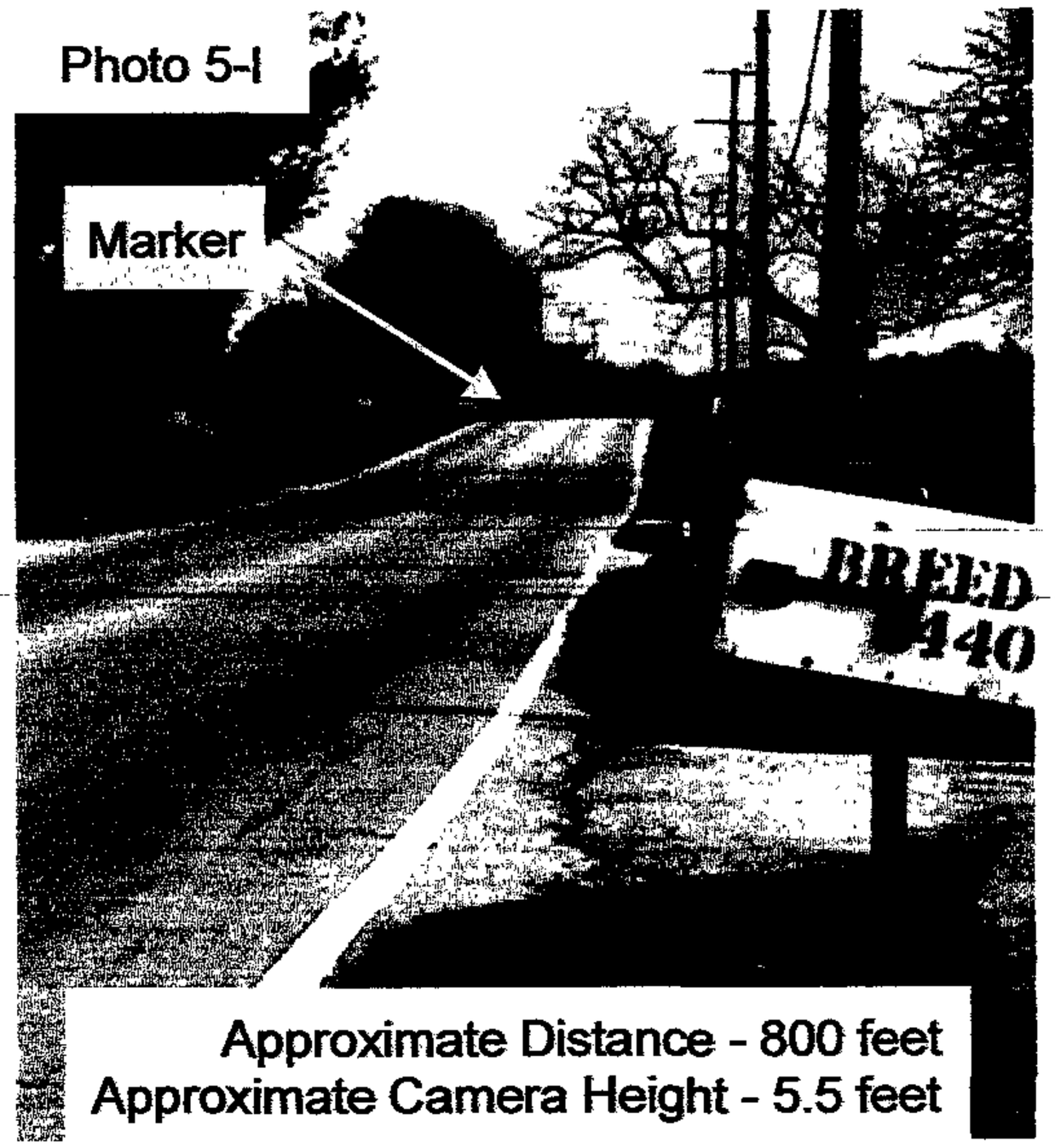
Sight Distance Estimate



Approximate Distance - 640 feet
Approx. Camera Height - 4.25 feet



Approximate Distance - 640 feet
Approximate Camera Height - 5.5 feet



Approximate Distance - 800 feet
Approximate Camera Height - 5.5 feet

CONCEPT PLAN COMMENTS

Project Name: Lynch Property

Date of Meeting: February 24, 2003

__X__ Additional Comments:

1. Why is the 100 year floodplain listed as "not existing" on the Environmental Information chart?

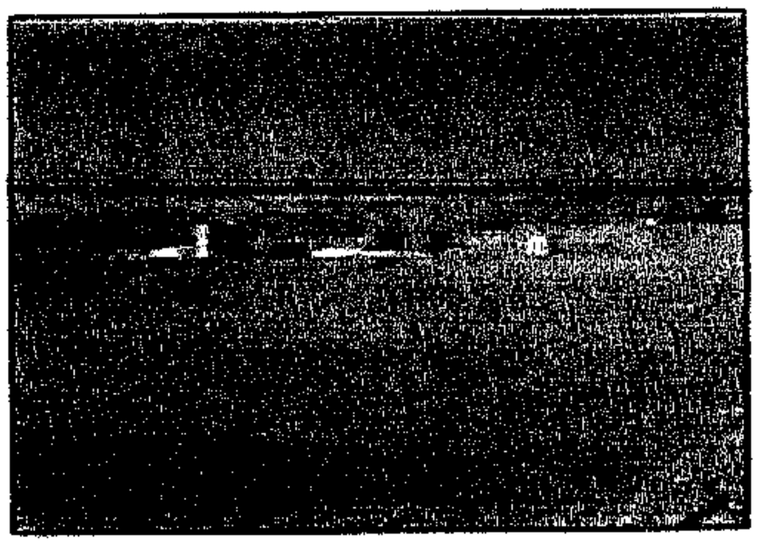
GROUND WATER MANAGEMENT

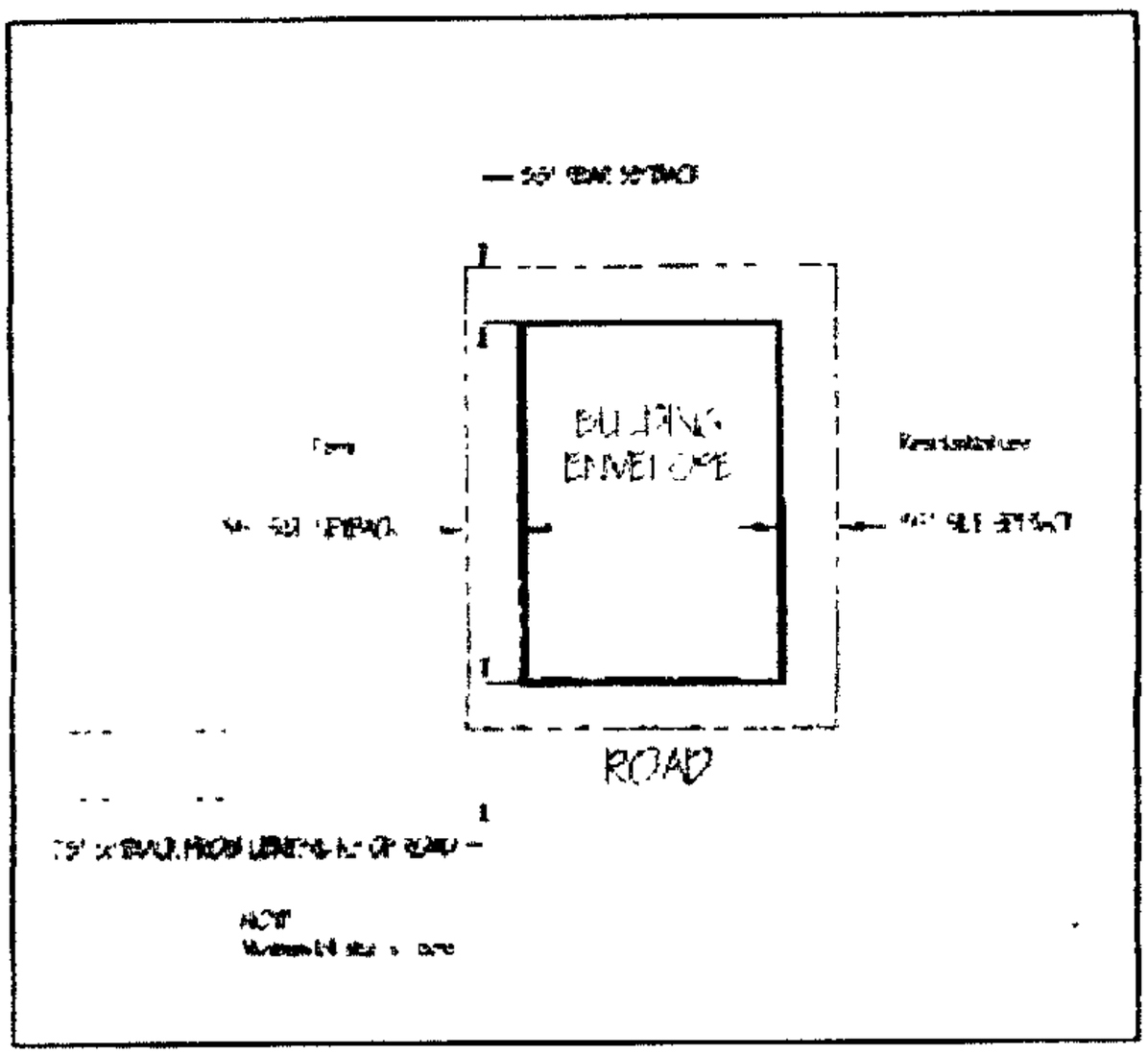
See the attached comments from Clare Brunner dated February 14, 2003.

AGRICULTURE PRESERVATION

1. Move the proposed road and Stormwater Management Facility out of the RC-2 portion of the property.
2. Add the "Standard" Agricultural Nuisances note to the Development Plan.

RC-2
Agriculture

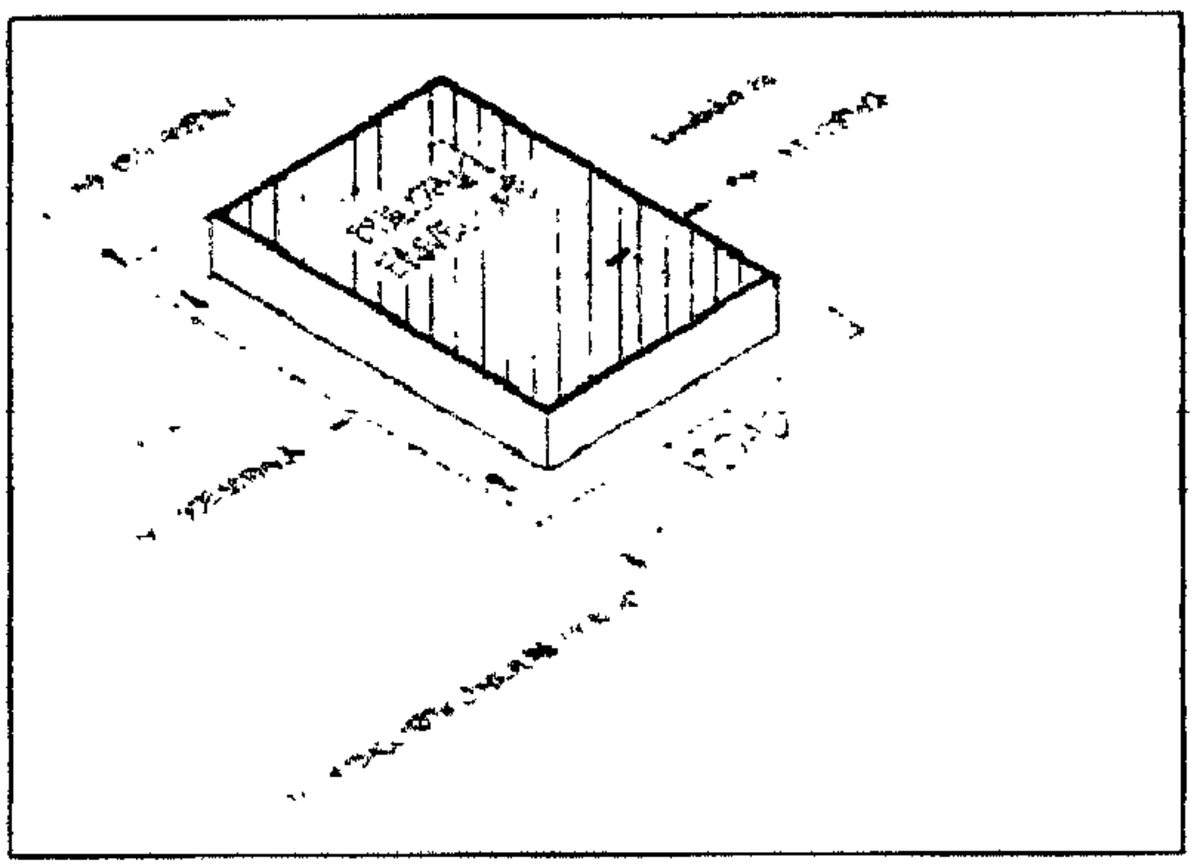




Intent: To foster conditions favorable to a continued agricultural use of the productive agricultural areas of Baltimore County by preventing incompatible forms and degrees of urban uses.

Uses Permitted by Right: Farm, farmette, single-family detached dwelling, public school, farmer's roadside stand, tenant house.

Uses Permitted by Special Exception: Antique shop, animal boarding place, camp, community care center, church, farm market, landscape operation.



Height and Area Requirements

Adjacent Areas With Agricultural Use

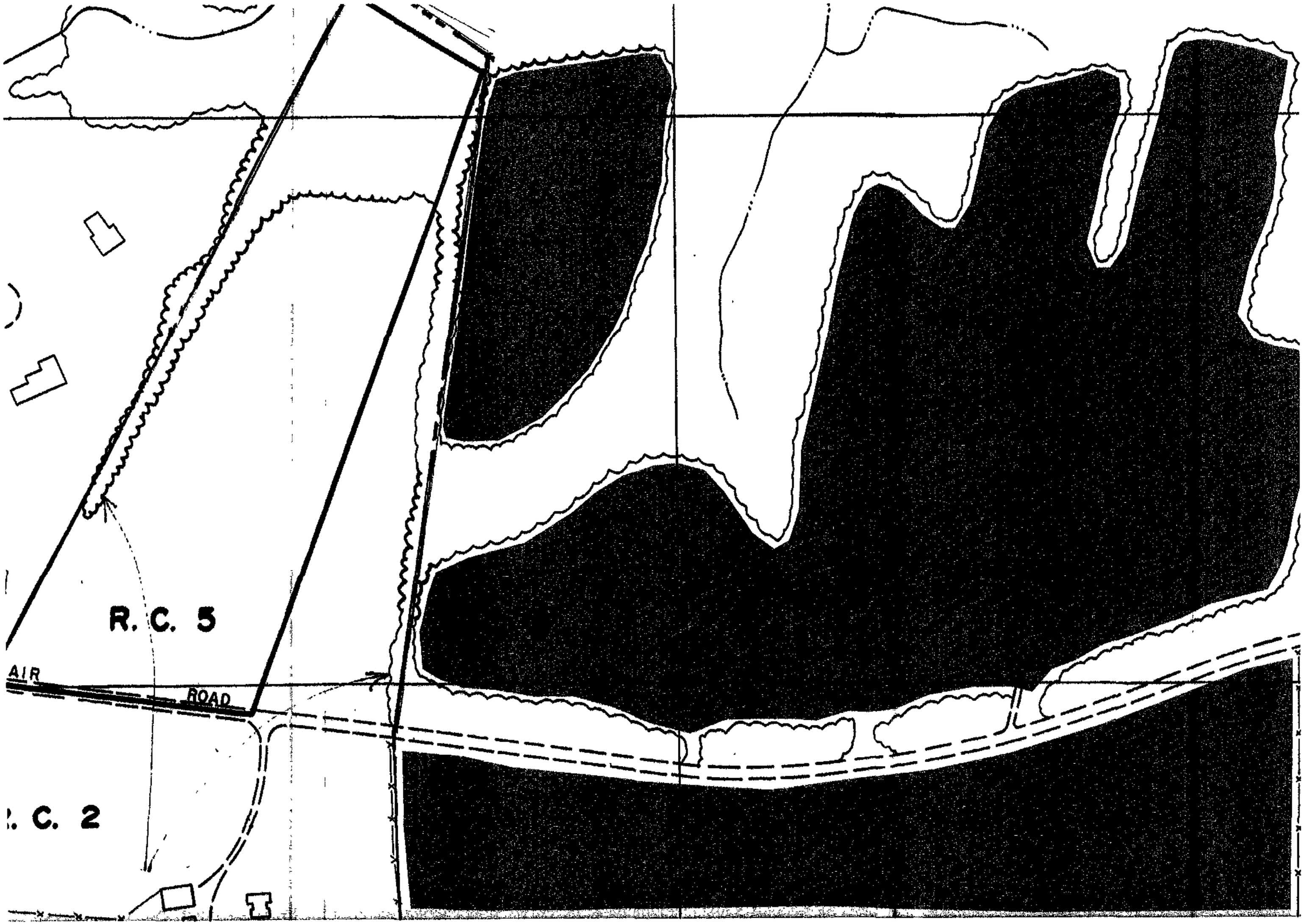


Photo Set 6 Locations

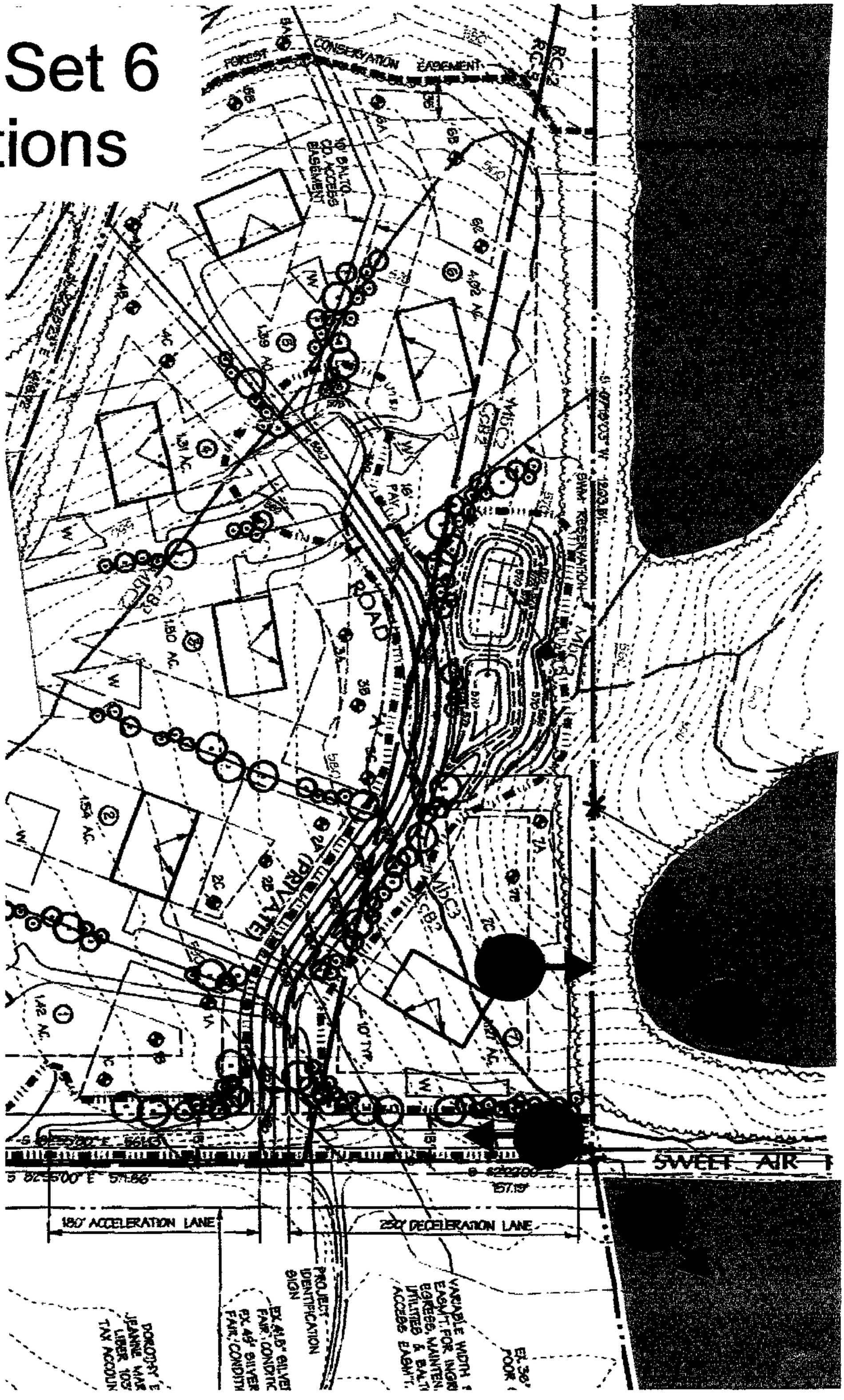


Photo Set 6

Photo 6A

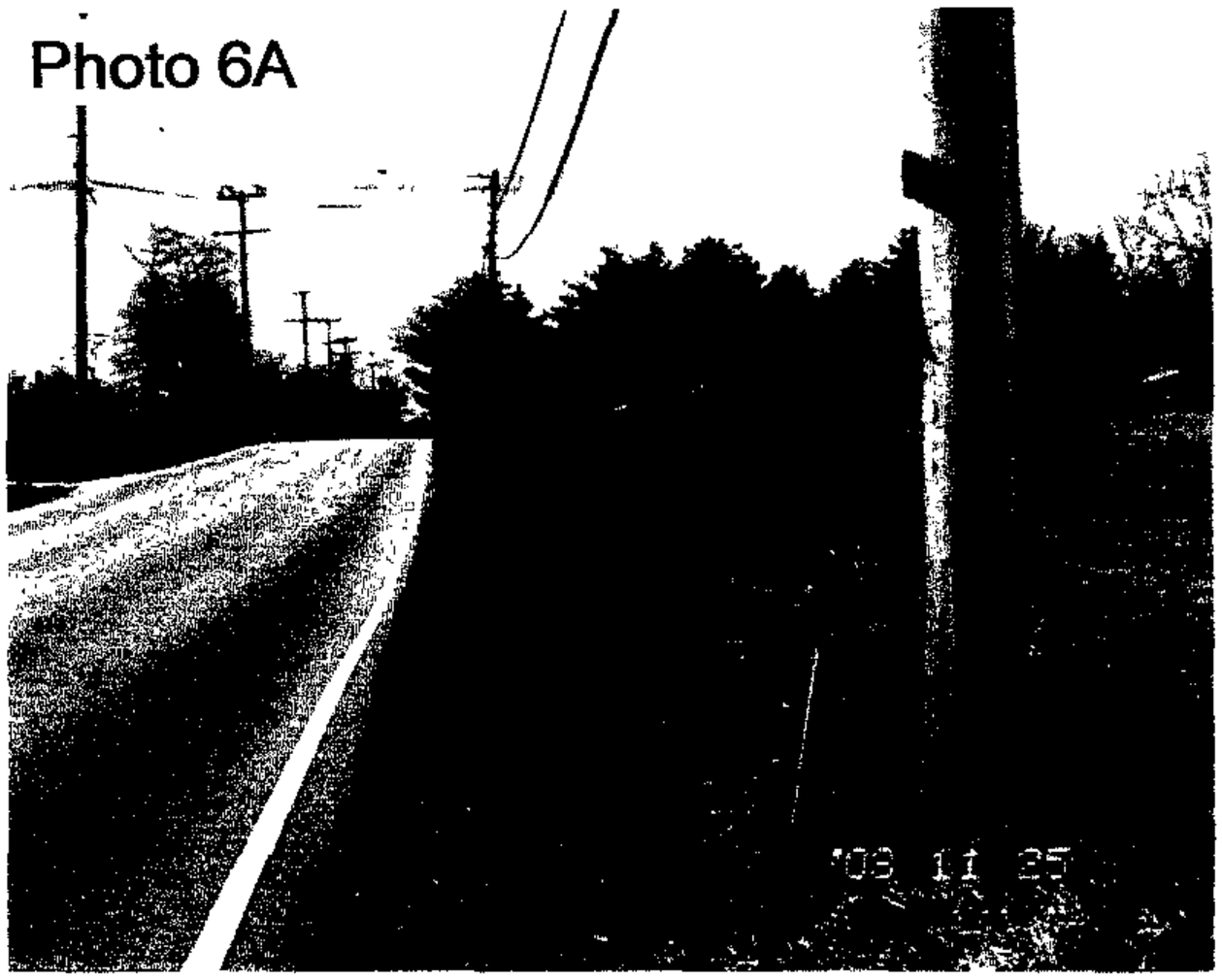


Photo 6B

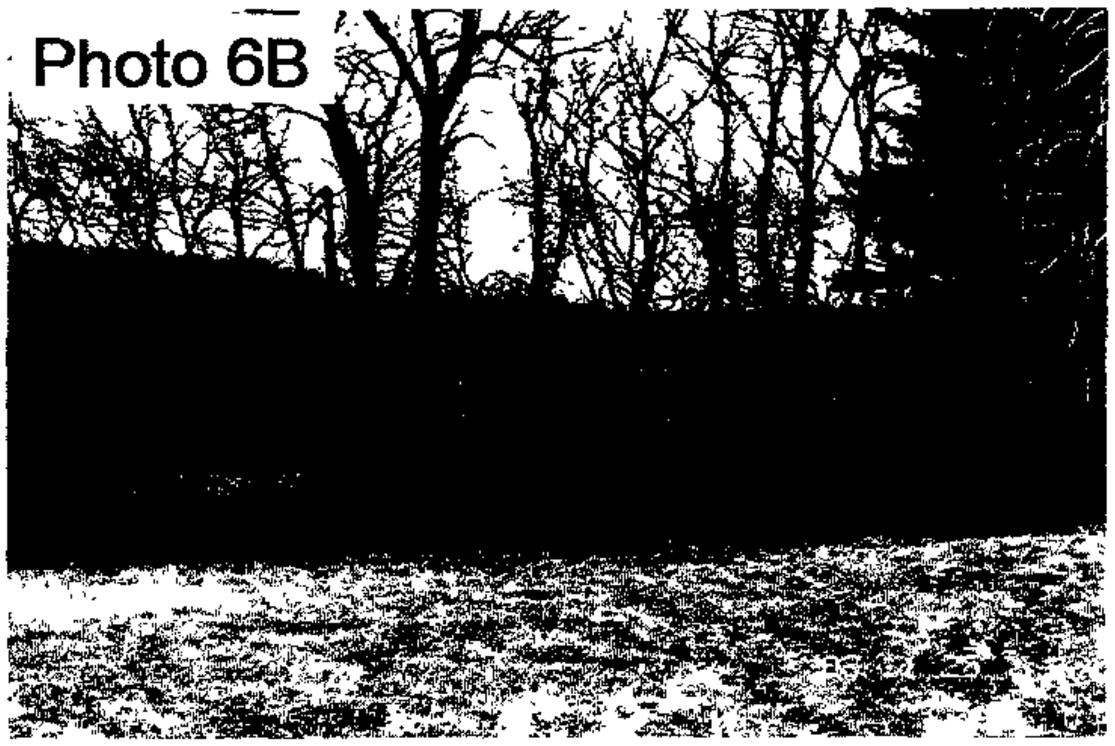


Photo 6C

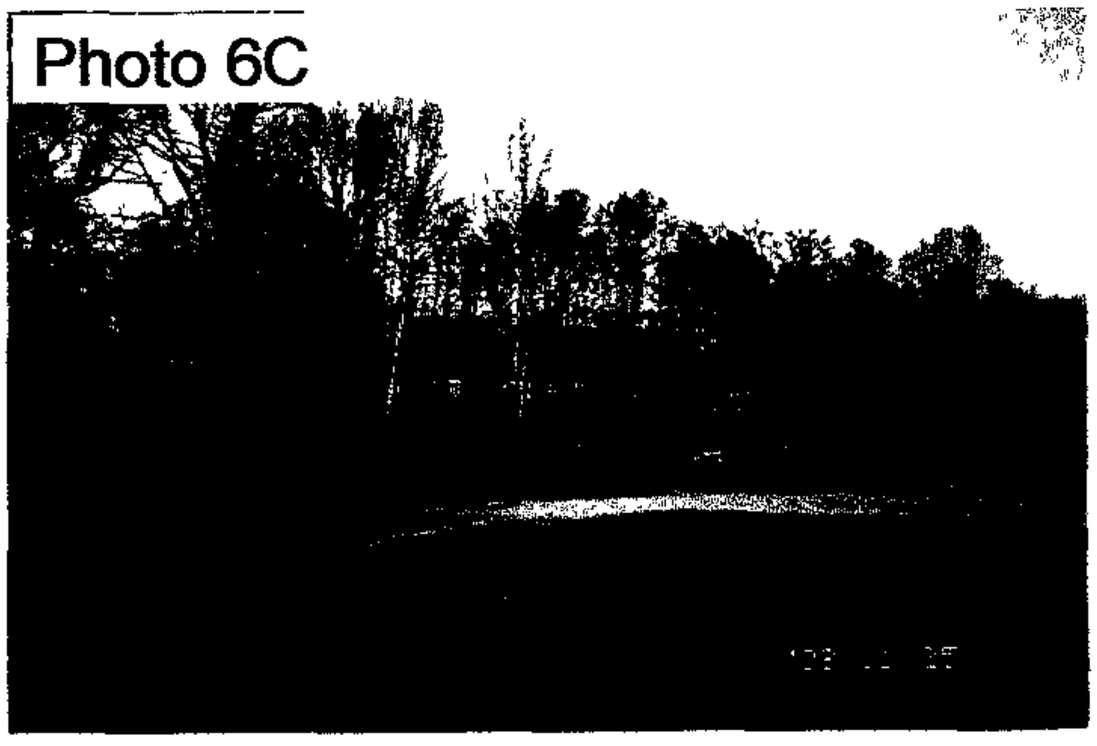
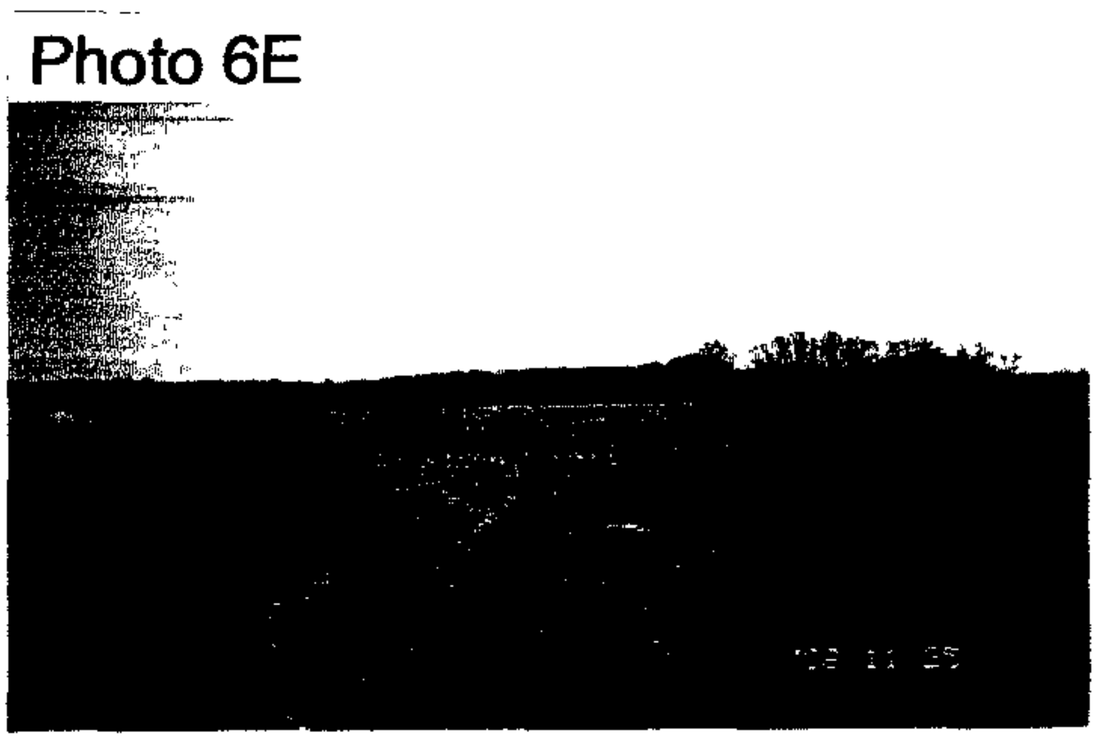


Photo 6D

Photo 6E



Pet Ex #6

Resume

Daniel J. O'Leary, P.E.
Senior Water Resources Engineer
NMP Engineering Consultants, Inc.

Education:
1984, University of Lowell, Lowell, MA
B.S. Civil Engineering

Professional Registration:
1989 Professional Engineer, Maryland No. 17254

Research and Professional Experience:
November 2002 – Present: Senior Water Resources Engineer, NMP Engineering Consultants, Inc., Reisterstown, Maryland. Responsibilities include performing civil engineering / water resources related designs, project reviews on behalf of the Maryland Department of Environment and Baltimore City, expert witness services and project management. Design work is varied and includes support for major highway projects in Maryland, and grading, drainage and environmental permitting for private developments. Project reviews involve acting as staff for MDE or Baltimore City and performing engineering peer review of projects submitted for erosion and sediment control and stormwater management permits to ensure compliance with current environmental laws, regulations, guidelines and codes. Expert witness services to date include performing water resources engineering review of projects, redesign and analysis in support of litigation in Circuit Court for Baltimore County (*Brewster et al v. Woodhaven Building and Development, Inc. et al*) and Circuit Court for Caroline County (*Zielinski, et al v. Prettyman, et al*), as well as Baltimore County zoning hearings (*Burns Property, Becker Property, Bartholme Property, Kaufman-Holdridge Property)* and related matters (*Smythe Property, Lakeside Farms, Arthur Tracey Property*).

June 2001 – October 2002: Principal Engineer, Center for Watershed Protection, Ellicott City, Maryland. Responsibilities included involvement in projects on or requiring stormwater management analysis, design, and retrofitting, project management and supervising of employees, preparing stormwater design manuals and watershed assessments, performing stormwater related research and preparing studies and reports of findings, and preparing for and presenting workshops and seminars on the subject of stormwater management, watershed planning and erosion and sediment control.

1997 - 2002: Continuing Education Instructor, American Society of Civil Engineers, Reston, Virginia. Responsible for presentation, course materials, and minor site logistics for training seminars on urban watershed best management practices. Seminars include application, design, construction and maintenance aspects of various urban BMPs, and have been conducted in over 35 locations throughout the U.S.

April 1996- June 2001. Senior Water Resources Engineer, Parsons Brinckerhoff, Quade and Douglas, Inc., Baltimore, Maryland. Primary responsibilities included project management, design of stormwater management and drainage systems for transit and site development projects including state of the art applications in stormwater management, site grading and drainage design, erosion and sediment control design, preparation of

Daniel J. O'Leary, P.E.
Senior Water Resources Engineer
NMP Engineering Consultants, Inc.

construction plans, specifications and cost estimates, and acquisition of stormwater management, erosion and sediment control, wetland and other regulatory permits in Maryland, Virginia, West Virginia, Ohio, and Georgia, recruiting, supervision, mentoring and developing staff, as well as complex project management and administrative functions. Other responsibilities included membership on the Stormwater Management Regulations Committee, a committee responsible for review and comment on proposed stormwater management regulations changes and the *2000 Maryland Stormwater Design Manual (MDE).*

March 1989 - April 1996. Sediment and Stormwater Plan Review Division Chief Maryland Department of the Environment. Primary responsibilities included performing and supervision of staff performing technical review of approximately 350 state and federal construction projects annually in Maryland for compliance with stormwater management (SWM) and erosion and sediment control (ESC) laws, regulations and guidelines. Other *responsibilities included providing SWM and ESC technical assistance to local* jurisdictions, developers and engineers, performing Section 401 Water Quality Certification reviews, assisting the Chesapeake Bay Critical Areas Commission in regulation implementation, providing input on and implementing changes in regulations and policies, development, publishing, implementation and training users of the *1994 Maryland Standards and Specifications for Soil Erosion and Sediment Control (MDE),* and representing the Department at various functions and meetings.

June 1984 – March 1989. Highway Engineer, Maryland Department of Transportation, State Highway Administration, Baltimore, Maryland. Experience included entry level engineering through project management for site development and highway projects. Work included site grading, drainage, stormwater management and erosion and sediment control design, and preparation of plans, specifications and cost estimates for projects put out to bid by MSHA.

Publications

O'Leary, D.J., C. Lien, and B. Hancock. 1997. *Retrofitting Stormwater Quality Improvement BMPs in an Urbanized Environment, Redhouse Run Case Study, Baltimore County, MD.* ASCE.

O'Leary, D.J. 1996. *Mitigating Thermal Effects of Stormwater Management Ponds using a Groundwater Siphon,* ASCE.

Brennan, K. E., **D. J. O'Leary**, S. P. Buckley. 2001. *An Investigation of the Hydrological Inputs of a Sensitive Wetland Habitat.* Proceedings from the International Conference on Ecology and Transportation. Center for Transportation and the Environment and U.S. Department of Transportation, Federal Highway Administration.

Brennan K. E., **D. J. O'Leary**, S. P. Buckley. 2001. *Surface and Groundwater Modeling of Bog Turtle Habitats.* EWRI, ASCE.

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

Pet Ex #7

TO: Tim Kotroco

FROM: R. Bruce Seeley RBS

DATE: November 12, 2003

SUBJECT: Zoning Item # 04-198
Address 4501 Sweet Air Road (Lynch Property)

Zoning Advisory Committee Meeting of November 3, 2003

__X__ The Department of Environmental Protection and Resource Management offers the following comments on the above-referenced zoning item:

ENVIRONMENTAL IMPACT REVIEW

__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 (Section 14-401 through 14-422 of the Baltimore County Code).

Reviewer: Paul Dennis Date: November 4, 2003

AGRICULTURE PRESERVATION

We support Issues numbered 1, 2, and 5 as stated in the Petition for Special Hearing. The purpose of the RC-2 Zone is to protect agricultural land and foster conditions suitable for agriculture (BCZR 1A0.1.A). Using the RC-2 Zone to further subdivide and create more lots is contrary to the spirit and intent of the regulations and is contrary to the public interest of protecting agriculture.

Reviewer: Wallace S. Lippincott, Jr. Date: December 2, 2003

Pet Ex 8

RESOLUTION

THE LONG GREEN VALLEY ASSOCIATION

RESOLVED: That the position of the Long Green Valley Association as adopted by the Board of Directors on the matter known as:

Cases # X-404 & 04-198-SPH Lynch Property, Sweet Air Road, Baldwin

is that:

It is the strongly held position of the Long Green Valley Association that RC-2 land should not under any circumstances be used to support development in a higher density zone. It is the position of the Board that in this case both the storm water management area and the road are on RC-2 property and are being used to support development on RC-5 property. In addition it is the position of the Long Green Valley Association that the development plan causes environment harm through drainage into the Gunpowder State Park, impacting environmentally sensitive land. A final concern of the Association is that this portion of Sweet Air Road has been designated as a scenic corridor by Baltimore County.

AS WITNESS our hands and seal this 7th day of September, 2004.

ATTEST:

LONG GREEN VALLEY ASSOCIATION:

Carol Trela

SECRETARY
Carol Trela

Charlotte Pine

PRESIDENT
Charlotte Pine

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 of the **LONG GREEN VALLEY ASSOCIATION.**

ATTEST:

Carol Trela

SECRETARY
Carol Trela

Charlotte Pine

PRESIDENT
Charlotte Pine

RESOLUTION

LONG GREEN VALLEY ASSOCIATION

RESOLVED: That at the Annual meeting of the Long Green Valley Association held on May 5, 2004, it was decided by the Association that the responsibility for review and action on all zoning matters for the period of time until the next annual meeting be placed in the Board of Directors consisting of the following members:

Mary Ambrose
Rosanne DiFonzo
Donna Felling
Patricia Garner
Roger Hayden
Denise McCloskey
Steven Preston
Charlotte Pine
Sharon Rohrbaugh
Carol Shaw
John Storck
Carol Trela

AS WITNESS our hands and seal this 7th day of September, 2004.

ATTEST: Carol Trela Charlotte Pine

Carol Trela
SECRETARY

Charlotte Pine
PRESIDENT

Verified 9-07-04

Appellee Developer Exhibits

CBA-04-132 Lynch Property

& 04-198-SPH

~~E~~ A-1 Resume Charles V. Main II

1 page

APEX 1

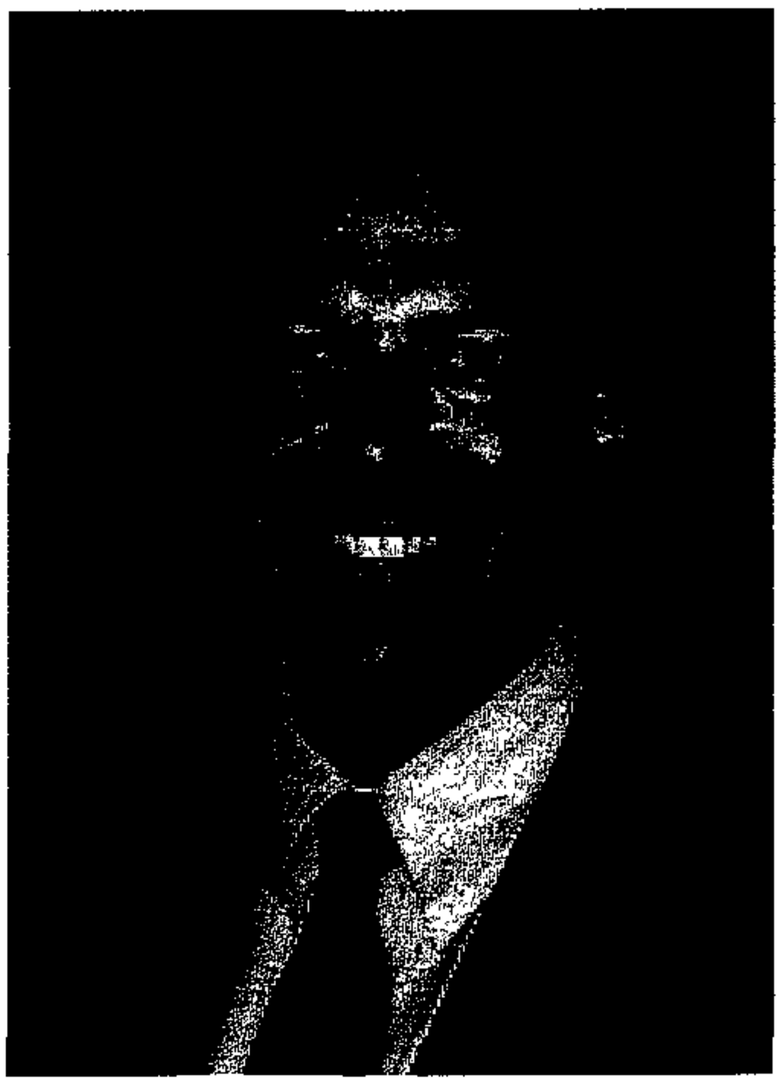
DMW
Daft·McCune·Walker, Inc.

200 East Pennsylvania Avenue
Towson, Maryland 21204
Phone 410 296 3333
Fax 410 296 4705
cmain@dmw com

A Team of Land Planners,
Landscape Architects,
Golf Course Designers,
Engineers, Surveyors &
Environmental Professionals

Charles V. Main, II

Vice President



Charlie Main is responsible for feasibility studies, economic analysis, production of construction drawings, specifications and construction period services.

Thorough analysis and responsive resolution of design concerns are hallmarks of Charlie's work during both engineering and construction phases. His land development experience extends into many local jurisdictions, as well as state and federal agencies. Projects include small commercial renovations, as well as extensive mall expansions and residential subdivisions.

Significant Projects

Towson Town Center
Mall Expansion
Towson, Maryland

Villages of Wisp
Residential Subdivision
McHenry, Maryland

Al-Ray & Super Concrete
Corporation
Rubble Landfill
Lothian, Maryland

Harbor Place
Pavilion Retail Centers
Baltimore, Maryland

Grey Rock
Residential Subdivision
Pikesville, Maryland

Union Memorial Hospital
Multi-Purpose Buildings
Baltimore, Maryland

Professional Background

Daft-McCune-Walker, Inc.
Towson, Maryland
2001 - Present; 1995 - 2000;
1989 - 1992

Frederick Ward Associates
Columbia, Maryland
2000 - 2001

McKee & Associates, Inc.
Hunt Valley, Maryland
1992 - 1995

Greenhorne & O'Mara
Towson, Maryland
1988 - 1989

G.W. Stephens, Jr. &
Associates, Inc.
Towson, Maryland
1984 - 1988

Whitman, Requardt
and Associates
Baltimore, Maryland
1978 - 1984

Registration

Professional Engineer
Maryland No. 20784

Education

B.A. - Mathematics
Washington College

Associations

National Society of
Professional Engineers

American Society of
Civil Engineers

CBA-04-132
Lynch

Pet. Edm Rd

Verified
7-20-04

Postponed to
9-07-04

✓ 1. O'Leary letter

✓ 2. Solomon letter

Pet
X 1

NMP ENGINEERING CONSULTANTS, INC.

July 15, 2004

Mr. Carroll Holzer
Holzer and Lee
508 Fairmont Avenue
Towson, Maryland 21286

Re: Lynch Property Hearing
Case # CBA-04-132
Case # 04-198-SPH

Dear Mr. Holzer:

I regret to inform you that I have a schedule conflict on the date and time of the subpoena you sent for the referenced case(s). I have a previously scheduled court appearance that day and will be unable to attend the hearing(s) on July 20, 2004.

I regret any inconvenience that this may cause. Please inform me if I can be of service at another date and time and I will make every effort to attend.

Sincerely,

Daniel J. O'Leary, P.E.
Senior Engineer

420 CENTRAL AVENUE • REISTERSTOWN, MARYLAND • 21136
PHONE (410) 517-1180 • FAX (410) 517-1181

Timberidge Farms

Pet X
2

Paul J. Solomon

J. Carroll Holzer, Attorney at Law
508 Fairmount Ave.
Towson, Md. 21286

Dear Attorney Holzer:

I will be in Michigan the entire week of July 19th and will, therefore, be unavailable to appear before the Baltimore County Zoning Board as directed by your subpoena. Also, I will be unavailable through August 5, 2004.

Sincerely,

Paul J. Solomon

2473 Steltz Road • New Freedom, PA 17349 • (717) 235-9095

Developer's Exhibits

Exhibit 1 – Redlined Development Plan dated June 25, 2003(1 of 1)
Exhibit 2 – Redlined Development Plan dated June 25, 2003 (1 of 1)
Exhibit 3 – Resume of Michael Ulrich, Sr. dated May 26, 2004 (3 of 3)
Exhibit 4 – Letter from Michael Ulrich to Stephen Smith dated February 25, 2004 (2 of 2)

Michael W. Ulrich Sr.
752 Mago Vista Road
Arnold, MD 21012
410-647-3928
May 26, 2004

Experience:

Dec. 2001 – Present	Traffic Concepts, Inc.	Gambrills, MD 21054
Traffic Engineer	*325 Gambrills Road – Suite E*	*410-923-7101*

- On-staff Traffic Engineer consultant for Senior Engineering (Directors) Staff at the State Highway Administration Office of Traffic & Safety, perform traffic engineering field analyses; review & develop engineering design work for highway signing, pavement markings, traffic signal warrant and operational analysis; provide traffic engineering analysis for state Neighborhood Conservation Projects (NCP), Highway Safety Improvement Program (HSIP), High Collision Location Program (Fund 87), speed and parking analysis, location sight distance analysis and speed studies.

- Provide expert testimony before the County Zoning Officer, and Board of Appeals for Special Exception and Rezoning cases: Town of Belair, Caroline County, Charles County, Town of Perryville.

Jan. 1987 – Nov. 2001 Maryland State Highway Administration Annapolis, MD
Traffic Engineer

- Serve as the Team Leader and manager for all projects affecting state highways in the northern portion of District 5 (Anne Arundel County). Northern Team representative for major highway construction projects providing traffic engineering services, work zone traffic control safety reviews, plan design, traffic signal operations and design, reviews for highway signing, pavement marking and traffic signals, Neighborhood Conservation Projects, and citizens complaints. Review technical Traffic Impact Studies submitted by consultant firms dealing with traffic operations for new developments.

- Support the Assistant District Engineer -Traffic (ADE-T) in the overall operations and review of the technical data, research analysis, and engineering design work for the District 5 Traffic Office. Act in the place of the ADE-Traffic in his absence on engineering and technical matters. Provide training in Traffic Engineering technical and operational areas.

- Provide expert testimony for liability cases for traffic engineering matters in Anne Arundel County, Howard County, and District Court in Washington, D.C.

Experience (cont):

- Represent the District at various interdepartmental, federal, state, county, municipal and local governmental meetings involving traffic engineering, design and technical matters that directly or indirectly affected the District 5 Traffic Engineering Office. Serve as team member on major highway planning and highway design teams.

- Coordinate and implement engineering/technical studies and provide operational solutions being handled directly by the district traffic office.

- Meet with the public to discuss various traffic engineering matters relating to traffic safety. Develop solutions to traffic engineering problems encountered in the field.

- District Special Events Coordinator.

Dec. 1984 – Jan. 1987 Maryland State Highway Administration Hanover, MD
Engineer Technician

- Develop traffic signal timing for complex signal systems along state highways. Project manager for time-delay "before and after" signal studies.

- Develop traffic signing, pavement marking, and construction work zone standards for use by engineers and technicians throughout the state, county, and local jurisdictions. Develop procedures for conducting various special traffic studies.

- Perform Special Traffic Studies as directed by the Deputy Chief Engineer - Traffic Division. Review and comment on highway construction plans and specifications for various highway projects.

May 1969 – Dec. 1984 Maryland State Highway Administration Hanover/Balto., MD
Engineer Technician/Draftsman

- Design and review highway signing and pavement marking plans and specifications. Perform various traffic engineering field studies such as speed studies, origin and destination studies, time-delay studies, signing and marking inventories, condition diagrams, traffic counts, vehicle gap analysis, and accident analysis.

- Check the work of others. Design and draw charts, highway signing and marking plans.

TRAFFIC CONCEPTS, INC.

Traffic Impact Studies • Feasibility • Traffic Signal Design • Expert Testimony

February 25, 2004

Mr. Stephen R. Smith
Gaylord Brooks Realty Co., Inc.
P.O. Box 400
3312 Paper Mill Road
Phoenix, Maryland 21131

REF: Lynch Property - MD 145 (Sweet Air Road)
Speed Study and Sight Distance Analysis

Dear Mr. Smith:

This letter is in response to your request to conduct a speed study, and sight distance analysis along MD 145, for the Lynch Property proposal. We conducted our speed study on February 13, and Sight Distance measurements on February 25, 2004 on clear sunny days under normal road conditions.

A minimum of 100 vehicles for each direction was sampled for the speed study. The posted speed limit along MD 145 in the area of the study is 40 MPH and the speed study was performed within 200 feet of the proposed site access with the following results:

- The 85th percentile speed – (Speed at or below 85 percent of traffic) for eastbound traffic was 51 MPH.

- The 85th percentile speed - (Speed at or below 85 percent of traffic) for westbound traffic was 53 MPH.

Based on the actual 85th percentile speed and rounding off to 55 MPH, the A.A.S.H.T.O. (American Association of State Highway and Transportation Officials) Design Manual (Federal Publication) identifies the Intersection Sight Distance requirement for a left turn passenger car to turn left onto a two-lane highway to be 650 feet. We measured the Intersection Sight Distance for both directions from the proposed driveway access point. Intersection Sight Distance is measured at 3.5 feet above the access point to approaching objects 3.5 feet above the roadway.

Looking to the east, the Intersection Sight Distance measured in excess of 800 feet and therefore meets A.A.S.H.T.O. guidelines. Looking to the west, the Intersection Sight Distance measured 390 feet (restricted due to a slight vertical curve) and does not meet A.A.S.H.T.O. guidelines.

EXHIBIT
Petitioner's No 4

325 Gambrills Rd., Suite E • Gambrills, MD 21054 • (410) 923-7101 • Fax (410) 923-6473 • EMAIL: traconcept@aol.com

However, if the proposed point of access were to be moved 80 feet to the west (towards the vertical curve), the Intersection and Stopping Sight Distances measured in excess of 800 feet in both directions and would therefore meet A.A.S.H.T.O. guidelines.

Sincerely,

Michael W. Ulrich

Michael W. Ulrich, Traffic Engineer
Traffic Concepts, Inc.

County Exhibits

- Exhibit 1 – Planning comments from Anne Roane dated December 2, 2003 (1 of 1)
- Exhibit 2 – Memo from Bruce Seeley to Tim Kotroco dated November 12, 2003 (1 of 1)
- Exhibit 3 – Inter-Office Memorandum from Clare M. Brunner to file dated April 19, 2004 (1 of 1)

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

County Ex No 1

AMENDED DEVELOPMENT PLAN CONFERENCE

TO: Arnold Jablon, Director - Department of Permits & Development Management

FROM: Arnold F. 'Pat' Keller, III, Director - Office of Planning

DATE: December 2, 2003

PROJECT NAME: Lynch Property

PROJECT NUMBER: X-404

PROJECT PLANNER: Anne Roane

GENERAL INFORMATION:

Applicant Name: Gaylord Brooks Realty Company, Inc.
3312 Paper Mill Road
Phoenix, MD 21131

Location: N & S/S Sweet Air Road; E Manor Knoll Court

Councilmanic District: 6th

Growth Management Area: Agricultural Preservation

Zoning: RC 5, RC 2

Acres: 47.0± acres

Surrounding Zoning and Land Use:

North:	RC 2	Residential
South:	RC 5	Residential
East:	RC 2	Residential
West:	RC 2	Residential

Project Proposal:

The applicant proposes 8 single family detached dwelling units to be located as follows: 2 units in RC 2 (36.2± acres) and 6 units in RC 5 (10.8± acres). One of the 8 proposed units is existing. The site is primarily open agricultural field with some existing forest on the west side of the property. There are wetlands and specimen trees located on the property.

PROJECT NAME: Lynch Property **PROJECT NUMBER:** X-402

Other Anticipated Actions and Additional Review Items:

☐ Special Exception	☐ Special Hearing	☐ PUD
☐ Variance	☐ Compatibility	☐ Design Review Panel
☐ Waiver	☐ Scenic Route	☐ Other
☐ RTA Modification	☐ Referral to Planning Board	

MEETINGS:

Concept Plan Conference	07/22/02	Community Input Meeting	09/12/02
Development Plan Conference	04/16/03	Hearing Officer's Hearing	05/08/03
Planning Board			

RECOMMENDATION
The Office of Planning has reviewed the Development Plan for conformance with Concept Plan comments of July 22, 2002 and recommends the Development Plan be **APPROVED**.

SCHOOL IMPACT:
The Office of Planning has reviewed the School Impact Analysis submitted by the applicant on March 21, 2003, and has determined that the proposed development is in compliance with Title 26, Article IX of the Baltimore County Code.

DESIGN:
Limit the proposed building restriction line to within the RC 5 portion of lot 6.

Prepared By: Anne Roane

Section Chief: Lynn Lanham

AR:kma

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

County Ex No 2

TO: Tim Kotroco

FROM: R. Bruce Seeley RBS

DATE: November 12, 2003

SUBJECT: Zoning Item # 04-198
Address 4501 Sweet Air Road (Lynch Property)
Zoning Advisory Committee Meeting of November 3, 2003

__X__ The Department of Environmental Protection and Resource Management offers the following comments on the above-referenced zoning item:

ENVIRONMENTAL IMPACT REVIEW

__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 (Section 14-401 through 14-422 of the Baltimore County Code).

Reviewer: Paul Dennis Date: November 4, 2003

AGRICULTURE PRESERVATION

We support Issues numbered 1, 2, and 5 as stated in the Petition for Special Hearing. The purpose of the RC-2 Zone is to protect agricultural land and foster conditions suitable for agriculture (BCZR 1A0.1.A). Using the RC-2 Zone to further subdivide and create more lots is contrary to the spirit and intent of the regulations and is contrary to the public interest of protecting agriculture.

Reviewer: Wallace S. Lippincott, Jr. Date: December 2, 2003

BALTIMORE COUNTY, MARYLAND

Inter-Office Memorandum

County No 2

DATE: April 19, 2004

TO: File

FROM: Clare M. Brunner, R.S., Ground Water Management
Department of Environmental Protection & Resource Management

SUBJECT: Lynch Property, Sweet Air Road D-10

I met with Steve Smith and Charlie Main this afternoon to discuss a red lined plan from the HOH meeting for the above referenced property. The main revision is the entrance location to this subdivision from Sweet Air Road. This revision will impact the SRA on Lot 1. As a result an additional percolation test will be required. It is scheduled for May 3rd. A revision to the well area may be required. A revised plan must be submitted after the test is completed, and a review of the SRA and well area on Lot 1 is required.

Lynch HOH

5/4/04 TEST ID Completed —
CO-5 LRS 5-16.
new SRA approved.

Protestant's Exhibits

- ✓Exhibit 1 – Concept Plan Comments from Zoning dated July 22, 2002 (2 of 2)
- ✓Exhibit 2 – Memo from HLA to Mary Lee Lynch File dated June 30, 2003(1 of 1)
- ✓Exhibit 3 – Development Plan Comments dated August 13, 2003 (1 of 1)
- ✓Exhibit 4 – Pressure on Water Supply of Adjoining Property (1 of 1)
- ✓Exhibit 5 – Resume of Stephen D. Preston (9 of 9)
- ✓Exhibit 6 – Location of Lynch Property and Surrounding Area (20 of 20)
- ✓Exhibit 7 – From the Mountains to the Sea: The State of Maryland's Freshwater Streams (5 of 5)
- ✓Exhibit 8 - Photos (9)

PDM

BALTIMORE COUNTY, MARYLAND

Prot No 1

SUBJECT: CONCEPT PLAN COMMENTS

CPC DATE: 07/22/02
11:00 a.m., Room 123

FROM: PDM - ZONING REVIEW

PROJECT NAME: **Lynch Property – Sweet Air Road** PLAN DATE: 01/29/043

LOCATION: n & s/s Sweet Air Rd. e Manor Knoll Ct.. DISTRICT: 10c3

PROPOSAL: 8 Single Family Dwellings ZONING: R.C.2 & R.C.5

Based on the plan submitted, this office offers the following comments regarding the concept of creating 8 lots on 47 gross acres of R.C. zoned land. The plan has been reviewed by the staff at this level of detail for general compliance with the Baltimore County Zoning Regulations (BCZR). The following comments are generalized for the concept plan and they **do not** identify all details and inherent technical zoning requirements necessary in order to determine final compliance with these regulations. To avoid any possible delays in the development review and zoning approval process, when these details and technical information are identified or changed, this office should be contacted and it should be the responsibility of the owner, developer or developer's engineer to rectify any zoning conflicts well in advance of any expected final approvals. The intent of the developer must be clear on the plan, including any previous and proposed zoning hearings. Only if necessary, will the following comments be up-dated and/or supplemented during review of the Development Plan.

1. A Special Hearing (SPH) will be required to establish that portion of Lot 7 lying in the R.C.2 zone as a Non-Density parcel.

2. Provide linear dimensions for all existing and new lines of division.

3. Label building orientations, heights in feet or stories for all existing and proposed principal and accessory structures. Note on the plan "Maximum height for non-agricultural principal structures is 35 feet".

4. **History:** Provide a zoning history by case number on the plan including the date of the last order, what was requested, granted or denied and listing and indicating compliance with any restrictions or note no zoning history is on file for this property.

5. Add BCMD values to the three provided grid ticks. Add ownership information to the plan.

6. **Existing Dwelling and Buildings:** Note on the plan print and specifically confirm all buildings to be razed, **when, and who** will be responsible in the notes. Note on the plan print and specifically confirm all **existing buildings and uses to remain**, in the notes. Include on the plan and clearly note that the developer's engineer confirms the following existing conditions: uses, including the number of dwelling units, **setbacks**, dimensions, **height,** and front orientation of all buildings to **remain**. Any structures to remain that do not meet the requirements of the BCZR will require variances.

7. Show the width of the proposed road. Label as public or private. Provide widths for the individual proposed panhandles. Be aware that in those places where two lots are involved the pan width must be 12 feet.

8. **Signs:** Provide an engineering scale elevation on the plan of all existing and proposed freestanding signs. Clearly indicate the type, height, dimensions, square footage, single or double-face and illumination. All signs must be keyed to their existing or proposed location on the plan print and enough detail must be shown to determine compliance with Section 450 and other applicable sections of the BCZR and all zoning sign policies or a zoning variance is required. Or note no signs are proposed.

9. Revise the Site Data chart to include the existing dwelling. Add the density certification note on the plan under the density calculation: *"This property as shown on the plan has been held intact since November 25, 1979. The developer's engineer has confirmed that no part of the gross area of this property as shown on the plan has ever been utilized, recorded or represented as density or area to support any off-site dwellings"*. If any adjacently owned property has been subdivided after this date, show this area as part of the overall tract boundary and adjust density calculations accordingly.

10. Add typical lot layout reflecting the requirements of each zone to the plan.

11. Identify the property on the south side of Sweet Air Road as "Lot 8", provide lot area.

12. This development is subject to the requirements of Section 260 of the BCZR. You should contact the Office of Planning for direction on these requirements.

13. Note on the plan the maximum 15% coverage for the RC-5 zoned lots.

LLOYD T. MOXLEY
Planner II
Zoning Review

LTM

MEMORANDUM

Post No 2

TO: **MARY LEE LYNCH FILE (14186-1)**

FROM: HLA

DATE: June 30, 2003

RE: **Meeting with Timothy Kotroco**

On June 25, 2003 I met with Timothy Kotroco, Director of the Department of Permits and Development Management. The purpose of that meeting was to obtain Mr. Kotroco's position on whether or not a separate Special Hearing request had to be filed for the creation of non-density parcels as part of residential lots shown on a development plan to be submitted for approval during a Hearing Officer's Hearing.

Mr. Kotroco advised that it was now the position of PADM that the filing of a separate Special Hearing Petition was not necessary The Hearing Officer had full authority to determine that such land areas were non-density portions of lots. Mr. Kotroco also advised that if such areas were discovered after a Development plan had received Hearing Officer approval, then and in that event a separate Special Hearing would have to be filed.

cc: Mr. Stephen Smith
Gaylord Brooks Companies
P.O. Box 400
3312 Paper Mill Road
Phoenix, Maryland 21131

G:\Clients\Lynch, Ms. Mary Lee\14186) memo to file.wpd

PDM

BALTIMORE COUNTY, MARYLAND

SUBJECT: DEVELOPMENT PLAN COMMENTS

DPC DATE: 08/13/03
9:00 a.m., Room 123

FROM: PDM - ZONING REVIEW

PROJECT NAME: **Lynch Property – Sweet Air Road**

PLAN DATE: 06/26/03

LOCATION: n & s/s Sweet Air Rd. e Manor Knoll Ct..

DISTRICT: 10c3

PROPOSAL: 8 Single Family Dwellings

ZONING: R.C.2 & R.C.5

Final zoning approval is contingent first, upon all plan comments being addressed on the development plan; second, upon the final resolution of all comments; and finally, the inclusion of the FDP checklist information being included on the zoning final development plan

1. **A Special Hearing** (SPH) will be required to establish that portion of Lot 6 lying in the R.C.2 zone as a Non-Density parcel. Include on the plan the requested zoning relief. Remove that portion of the building envelope situated in the RC-2. Illustrated how an optional open projection (deck) of a minimum 10' x 20' can be added to the rear of the proposed dwelling.

2. **Provide** linear dimensions for all existing and new lines of division.

3. **Provide** widths for the individual proposed panhandles. Be aware that in those places where two lots are involved the pan width must be 12 feet.

4. **History:** Provide a zoning history by case number on the plan including the date of the last order, what was requested, granted or denied and listing and indicating compliance with any restrictions or note no zoning history is on file for this property.

5. **Revise** note 11 to identify just what the uses on Lot 8 are. As this is a subdivision of agricultural land with more than one principal structure upon it, compliance with ZCPM 400.1.C and 404.2 must be established.

6. **Existing Dwelling and Buildings:** Note on the plan print and specifically confirm all buildings to be razed, **when, and who will be responsible** in the notes.

7. **Revise** the site data chart to show 2 units proposed in the RC-2 zone and a total of 8 units.

Lot No 3

LLOYD T. MOXLEY
Planner II
Zoning Review

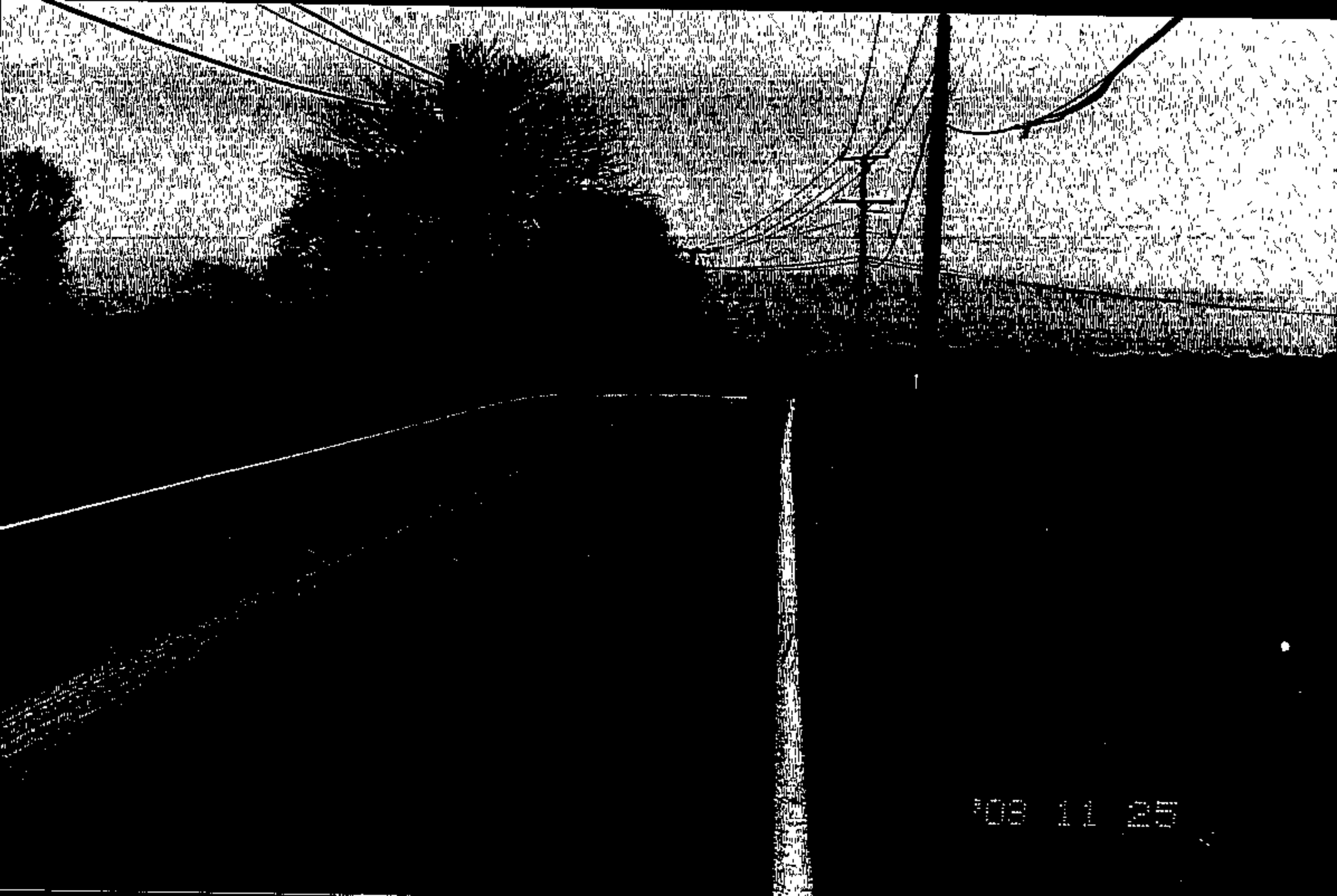
Pressure on Water Supply of Adjoining Property

Prot No 4

'03 11 25

5-B

450' DISTANCE
4.25' CAMERA HEIGHT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5-C

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5-D

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5-E

540' DISTANCE

5.5' CAMERA HEIGHT

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5-F

540' DISTANCE

6.5' CAMERA HEIGHT

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5-6

640' DISTANCE

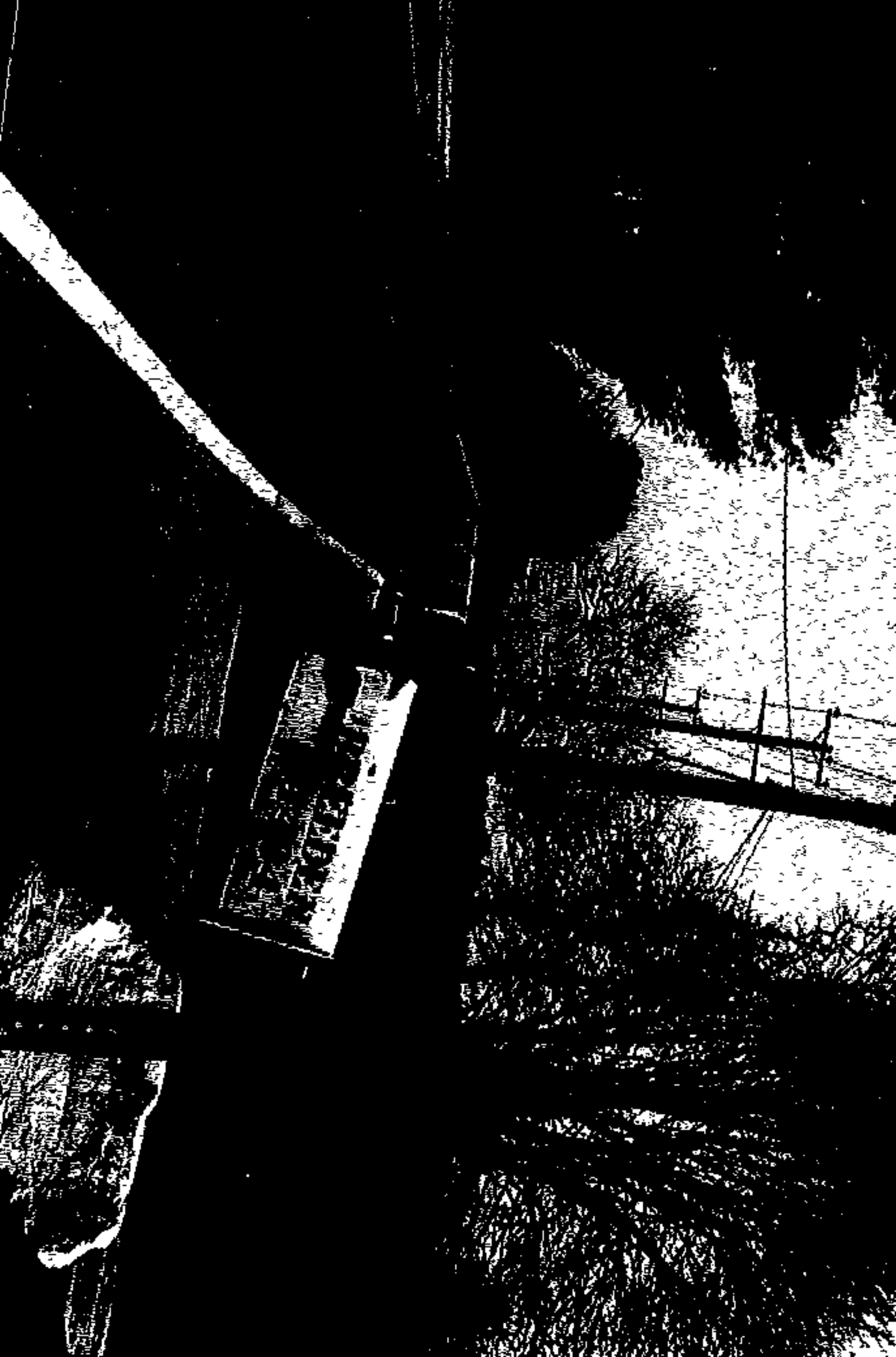
4.25' CAMERA HEIGHT

'08 11 25

5-H

640' DISTANCE

5.5' CAMERA HEIGHT



5-I

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5.5' CAMERA HEIGHT

collectively

Ex No 8

United States
Environmental Protection
Agency

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Development
Washington, DC 20460

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From the Mountains to the Sea

The State of Maryland's Freshwater Streams

STATE OF MARYLAND
DEPARTMENT OF NATURAL RESOURCES

From the Mountains to the Sea:

The State of Maryland's Freshwater Streams

Authors

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1650 Arch Street
Philadelphia, PA 19103

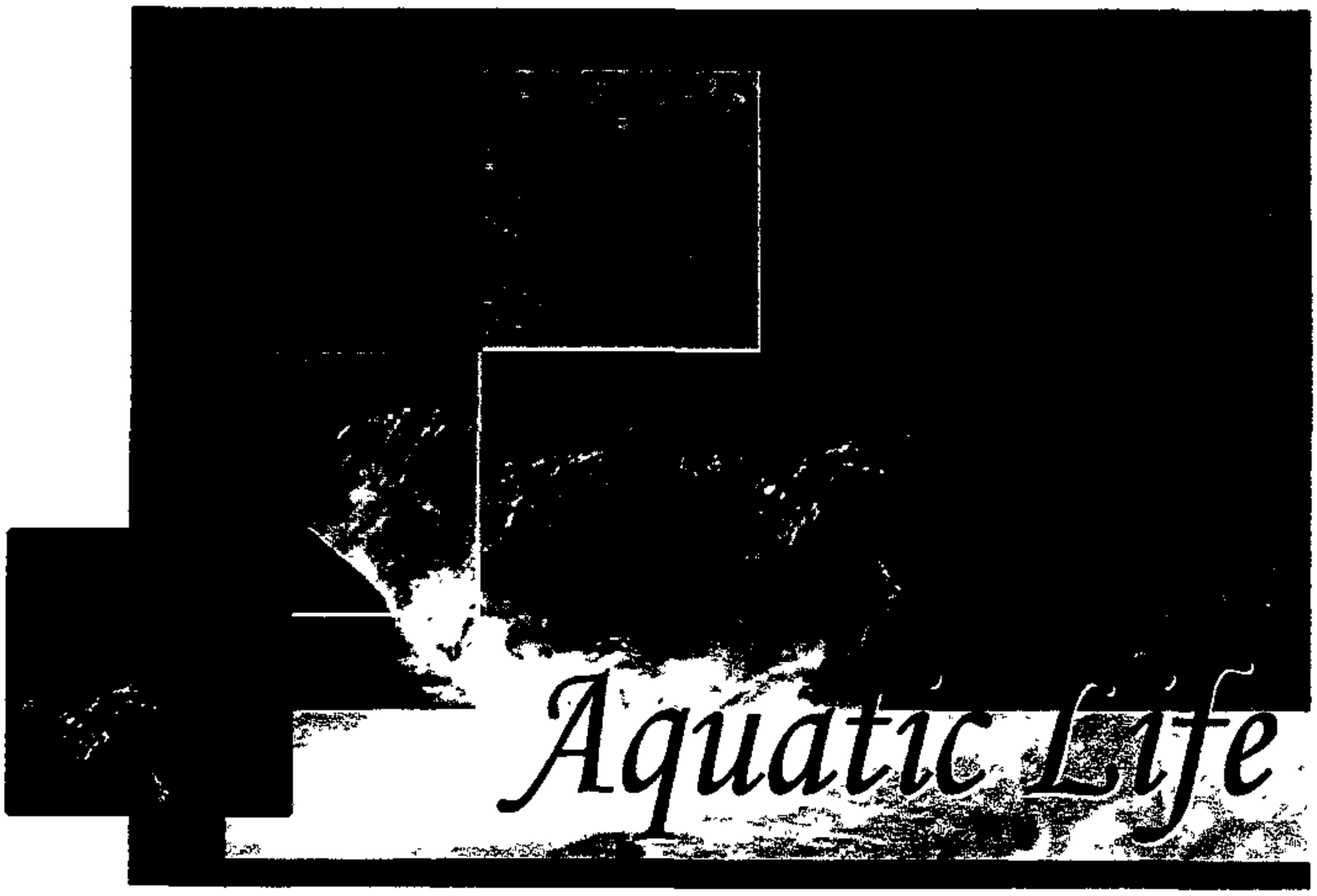
The purpose of this report is to begin to address the current health of Maryland's freshwater streams and to determine the impacts of human activities on these waters. The data base compiled for this report will also be used in the preparation of Maryland's next biennial water quality report to Congress. With the availability of this new statewide information, a logical next step will be to evaluate it's applicability to regulatory activities. A multi-agency effort is now underway in Maryland to determine how these data on the State's streams can be used to develop biocriteria for water quality regulatory programs (see "The Future of Maryland's Streams" section).

Below are the major findings from three years of stream sampling (1995-1997) by the Maryland Biological Stream Survey (MBSS...or the Survey). Data from about 1,000 randomly-selected sites were used to assess Maryland's non-tidal freshwater streams from the Appalachian Mountains of Garrett County to the Lower Eastern Shore. Aquatic animals (fish, benthic macroinvertebrates, reptiles, and amphibians), physical habitat, and water chemistry were assessed at each site, as well as land use in the upstream watershed. Indices of Biotic Integrity for fish and benthic macroinvertebrates were used to tell us the overall ecological health of the sampled streams. For the first time, we now have a comprehensive and scientifically-defensible tool for telling us how many stream miles, either within certain river basins or statewide, are healthy or not. This tool also gives us insight into some of the causes of stream degradation. For a detailed description of the design and methods used by the Survey, see the Technical Appendix at the end of this report.

Land Use Impacts

Current patterns of urbanization have caused significant impacts to Maryland's streams. If urban sprawl continues to consume our forests and farmlands in the same manner as in the past, more Maryland streams will likely degrade in the years to come. For example, the health of many streams is largely influenced by the amount of impervious land cover upstream. Three indicators of stream health help us illustrate the harmful effects of urbanization on stream biota. When watershed imperviousness exceeds 25%, only hardy, pollution-tolerant reptiles and amphibians can thrive, while more pollution-sensitive species are eliminated. Above 15% watershed imperviousness, stream health is never rated good, based on a combined fish and benthic macroinvertebrate Index of Biotic Integrity. Even low levels of imperviousness affect streams. When upstream impervious land cover is above 2%, pollution-sensitive brook trout are never found. Streams most affected by urbanization are in the Baltimore-Washington Metropolitan portions of the Patapsco and Potomac Washington Metro river basins.

Urbanization continues to threaten Maryland streams. If the current rate o urban sprawl continues, mo Maryland streams will likely degrade



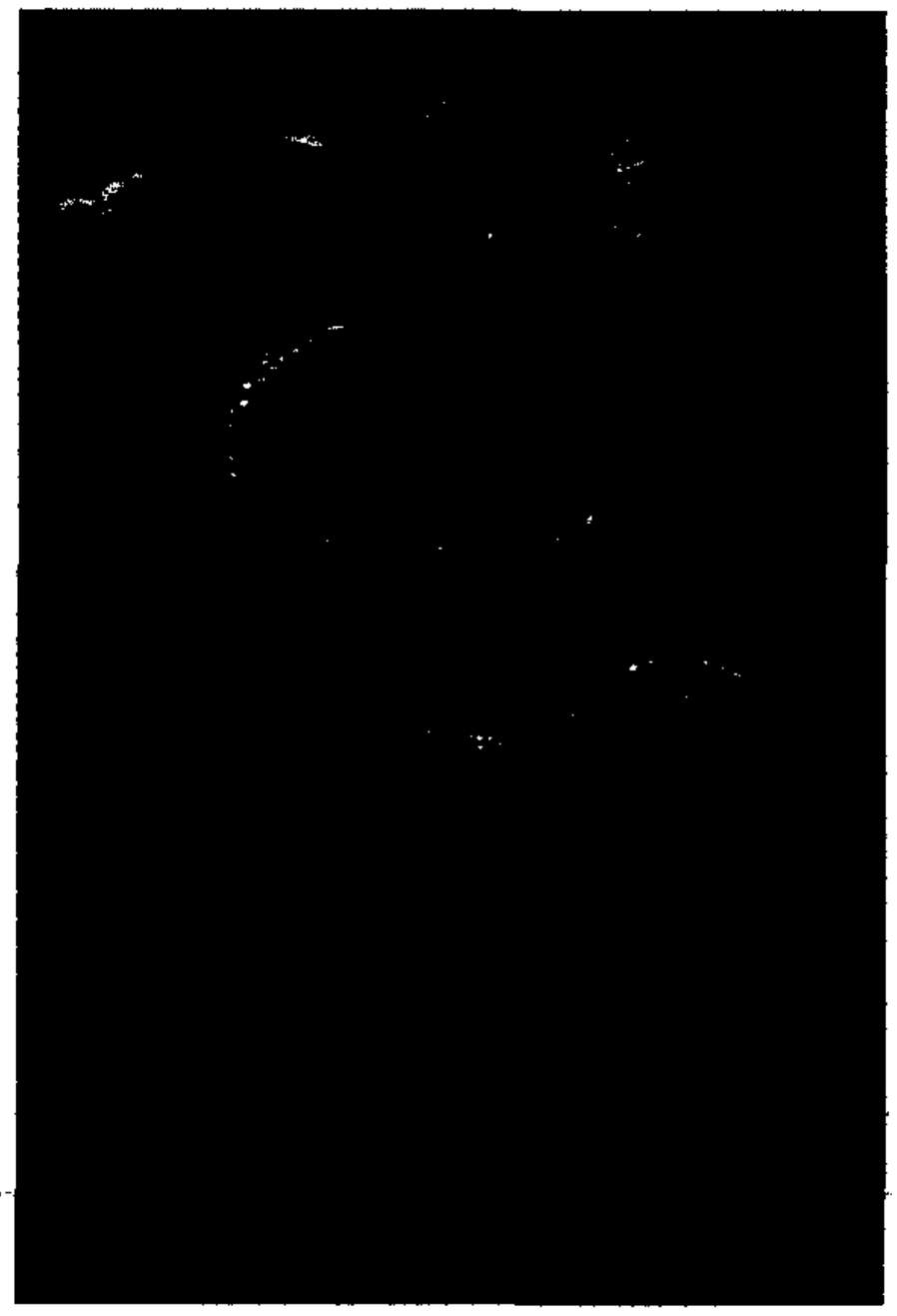
Aquatic Life

Reptiles and Amphibians

Amphibians and reptiles (collectively called ***herpetofauna***, or herps) are excellent indicators of stream and watershed health. Because many of these animals live part of their lives in water and part on land, their survival depends not only on water quality but also on the physical make-up of both environments.

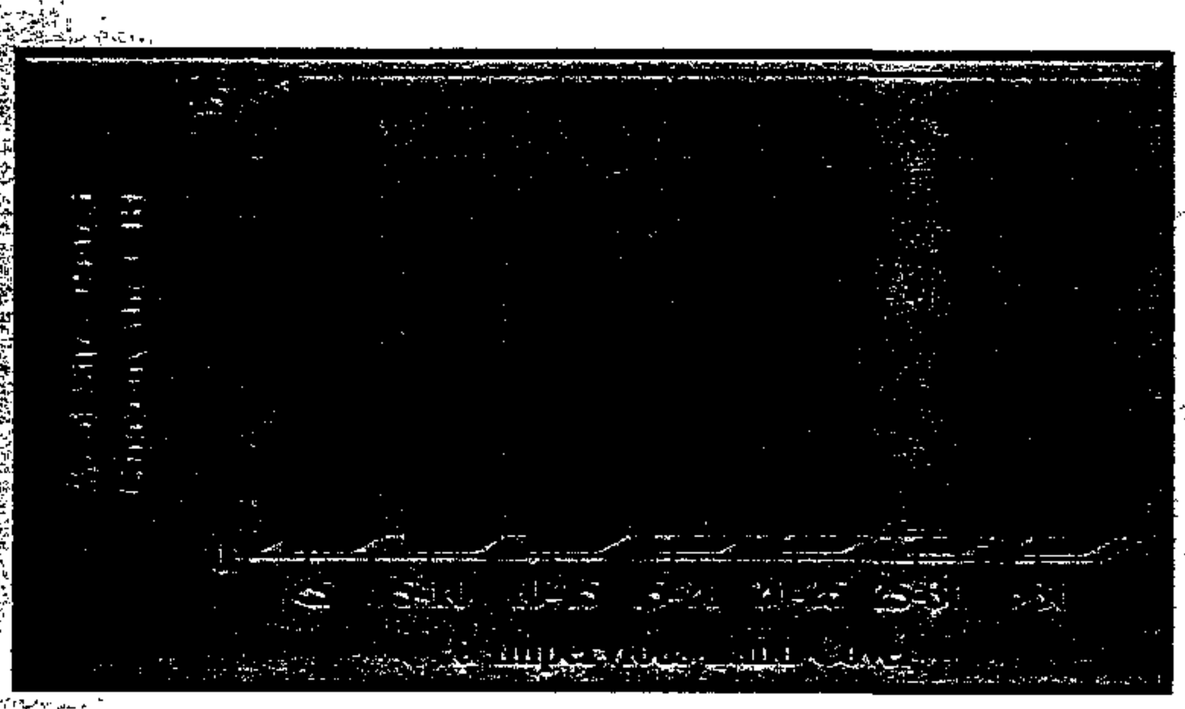
Forty-five species of herps were found statewide during the Survey, and 9 out of 10 stream miles harbor at least one species. Of these 45 species, 29 are either aquatic or intimately dependent upon riparian environments. In general, fewer herp species live in or near Coastal Plain streams than elsewhere in the state. The number of species per basin ranges from 28 in the Patuxent River basin to 10 in the Nanticoke/Wicomico and Bush basins (Figure 18).

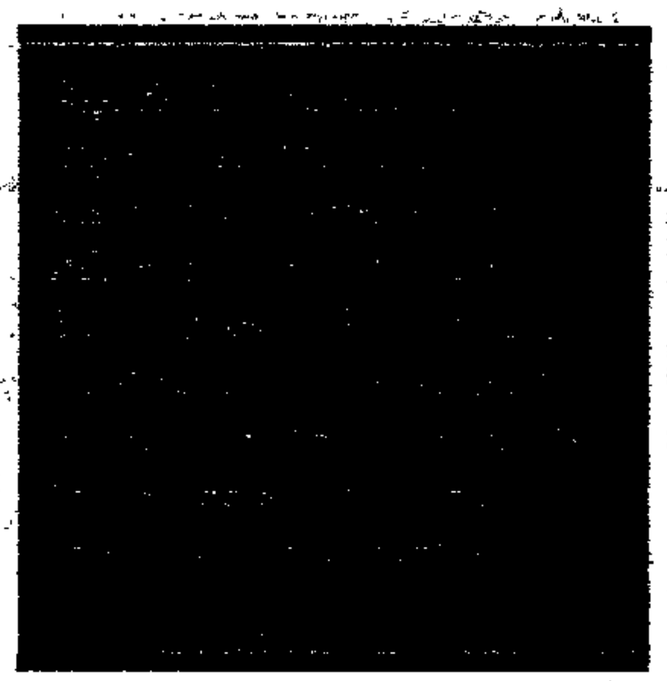
Although several herp species are sensitive to acid rain and other water quality impacts, results from the Survey suggest that, in Maryland, urbanization has a larger impact on herp species diversity, with fewer species occurring in more urbanized areas. Only seven of the 29 aquatic or riparian species were found at sites where watershed imperviousness exceeded 25%, while 22 species occurred at less urbanized sites (Figure 19). Four species of salamanders occurred exclusively at sites within the least urbanized watersheds (<3% impervious land cover).



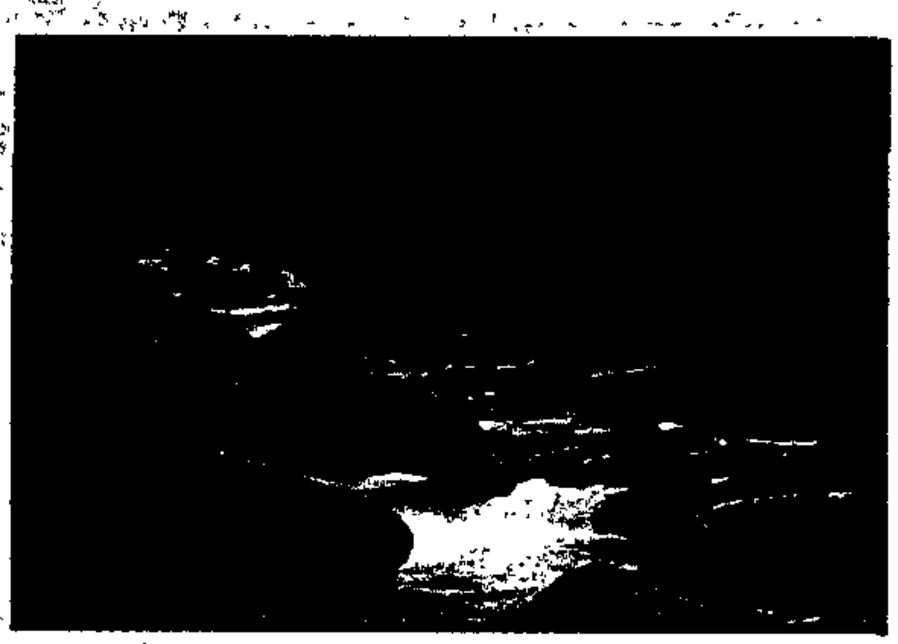
Black Rat Snake
Photo by Paul Kazyak

The amount of urban land in a watershed influences whic reptiles and amphibians can live in its streams. A number of species can not tolerate the sometimes harsh conditions found in urban streams.





migratory fish, human activities continue to impact Maryland streams, Chesapeake Bay, and, although often ignored, even the Gulf of Mexico. Fish communities are unhealthy in more than a quarter of our stream miles, while more than half of all stream miles have benthic macroinvertebrate communities in poor condition.



Youghiogheny River Gorge
Photo courtesy of MD DNR

Beyond the community level, 7 of the 100 or so freshwater fish species in Maryland are afforded special protection because they are in danger of extinction and an additional 15 species appear to be at similar levels of risk. When individual river basins are considered, the number of populations that may be threatened or endangered grows even larger. American eel and brook trout, once abundant in Maryland streams, are now restricted in number and distribution. Clearly, there is much work ahead if we are to save our remaining resources and attempt to restore some of what we have lost.

More than one-third of our stream miles have little or no vegetated riparian buffers. While there is increasing interest in protecting and reestablishing riparian buffers, forested areas along streams continue to be lost, even on public lands. Although achieving Maryland's goal of 600 additional miles of forested stream buffers by the year 2010 (Maryland's *Stream Releaf Program*) will be a landmark achievement, much more needs to be done. We also need to recognize the vital importance of allowing trees that die naturally to fall into streams, where they create more habitat in those streams and rivers that already have forested riparian buffers.

Conversion of farmland and forest into urban areas continues at a rapid pace in Maryland. At the current rate of population growth and development, an area the size of Baltimore County (612 square miles or about 5% of Maryland's total area) will be urbanized in the next 25 years. The old adage that "an ounce of prevention is worth a pound of cure" is especially appropriate when considering the effects of urbanization—we now know that living resources in streams are impacted even at low levels of urbanization and that these impacts become pronounced when the amount of impervious land cover exceeds 15% of a watershed. Another problem is population growth. With the projected rate of population increase in Maryland, many streams in the state will become more degraded by the cumulative impacts of too many people.

The future health of many Maryland streams will be dependent on our commitment to redirect population growth and development into existing urban areas rather than continue to "sprawl" into forested and agricultural areas. Streams that are currently healthy should be protected—the most cost-effective

Water is the most critical resource issue of our lifetime and our children's lifetime. The health of our waters is the principal measure of how we live on the land.
— Luna Leopold

IN THE MATTER OF:	*	BEFORE THE
LYNCH PROPERTY	*	BOARD OF APPEALS
	*	OF
	*	BALTIMORE COUNTY
	*	CASE NO. CBA-04-132
	*	CASE NO. 04-198-SPH
	*	September 7, 2004

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County, at the Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204, at 9:50 a.m., September 7, 2004.

* * * * *

ORIGINAL

Reported by:

C.E. Peatt

BOARD MEMBERS:

LAWRENCE M. STAHL, Chairman
DONALD I. MOHLER, III
MARGARET BRASSIL

APPEARANCES:

HOWARD L. ALDERMAN, JR., Esquire
On behalf of Developer
J. CARROLL HOLZER, Esquire
On behalf of Appellants/Protestants

CAROLE S DEMILIO, Esquire
Deputy People's Counsel
On behalf of Baltimore County

PROCEEDINGS

* * * * *

THE CHAIRMAN: First of all, I want to apologize to everybody. No excuses. I certainly don't ask for other people's excuses.

I thought it was 10 o'clock, turned out it was 9 o'clock. Luckily, they got me at my office before I got here so we'll try to move along.

I owe each of you individually and collectively my apology, and my apologies to any civilians and folks here this morning. Okay.

We're here in the matter of the Lynch property, a development appeal in Case No. CBA-04-132, regarding the developer Gaylord Brooks Realty Company, north and south Sweet Air Road, 355 feet southeast of Manor Knoll Court, in the 10th Election District, and 3rd Councilmanic District.

We are also here in connection with a special hearing, Case No. 04-198-SPH, which was a petition filed by the Long Green Valley Association and others.

This matter arises from a June 3, 2004 decision

of the Hearing Officer in which a plan was approved. Counsel, for the record, if you would?

MR. ALDERMAN: Good morning, Mr. Stahl, members of the Board. Howard L. Alderman, Jr., on behalf of the owners and developer, who are respondents/appellees in this case.

MR. HOLZER: Good morning. J. Carroll Holzer, 508 Fairmount Avenue, on behalf of Long Green Valley Association, Charlotte Pine, individually, Steve Preston, and Gary Elser, individuals. We were protestants below and petitioners below; petitioners for the special hearing.

MR. DEMILIO: Carole Demilio, Deputy People's Counsel, for Baltimore County.

MR. HOLZER: Mr. Chairman, Mr. Alderman and I had some time before the hearing started this morning to discuss the matter of the procedure.

Since this is an appeal from a development plan approval, and also a special hearing, the special hearing petition is heard de novo.

I have a number of witnesses, Mr. Alderman has a

witness or two, and I would prefer if I could take the special hearing portion of it so I can be able to release the witnesses, hopefully this morning after their testimony, and then neither Mr. Alderman or I could recall whether we argued the development plan. If we did, we don't have to do it, but if we didn't, then I would briefly argue the development plan. My notes do not reflect that we did.

THE CHAIRMAN: We don't show any.

MR. HOLZER: So the order of proceeding would be the petition for special hearing and then the development plan which has to be argued by counsel, and there's no new evidence presented on that. We'll do that afterwards.

THE CHAIRMAN: One would hope that would take less time.

MR. HOLZER: It would be very brief, I'm sure. With that, I believe that I'm ready to call my first witness.

THE CHAIRMAN. Okay.

MR. ALDERMAN: That's fine, Carroll. We agree.

THE CHAIRMAN: Off the record.

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(Discussion held off the record.

MR. HOLZER: Mr. Preston.

STEPHEN PRESTON,

having been called as a witness, was duly sworn and testified as follows,

DIRECT EXAMINATION

BY MR. HOLZER:

Q. Mr. Preston, could you give us your full name and present address, please.

A. My name Stephen Preston. I live at 4408 Old Farm Road, Baldwin, Maryland.

Q. In relationship to the subject site, which we have two exhibits here, one was the Developer's Exhibit No. 2 below, which is the red lined development plan on the right, and the left exhibit is an aerial photograph that was taken, made available of the subject site by People's Counsel, could you come --

MR. HOLZER: And I will mark this as -- what do you want to do, Board of Appeals Petitioner's Exhibit 1?

THE CHAIRMAN: CBA No. 1.

MR. ALDERMAN: No objection.

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MR. HOLZER: We're petitioners in this case and Mr. Alderman is the developer below so, hopefully, there won't be any confusion. It's CBA No. 1.

THE CHAIRMAN: Accepted.

MR. HOLZER: I would also mark the red lined plan as Petitioner's CBA No. 2.

Q. Mr. Preston, could you briefly come up here and show the Board where your house is and where the house of Mr. Elser is, who is another participant that's not here this morning because of a family emergency, apparently, and explain a little bit about the community and the surrounding areas. And you can use Petitioner's No. 1, if you'd like.

A. This parcel here is the subject of the development plan on the north side of Sweet Air Road, which is this right here. My property is off the cul de sac on Old Farm Road back in this area.

Q. Can you see your house on Petitioner's Exhibit No. 1, the aerial photo?

A. Yes. The house is towards the front of the lot, and you can see it on the photo.

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Q. Look on Petitioner's Exhibit No. 2, which is the approved red lined development plan. Is your house identified on that property?

A. It is as well as right here. The cul-de-sac is here. My property and the house is right here.

Q. Where's Mr. Elser?

A. Mr. Elser is just south of my lot. His lot extends up along Old Farm Road, and is on the west side of the property, and you can see his house as well.

Q. Could show his house on Petitioner's No. 2?

A. Yes. It's marked right here.

Q. Is your property served by a well and septic?

A. Yes, it is.

Q. Could you locate those for us, please?

A. The well on my property is on the northwest side of the house, over in here.

And the septic is on the northeast side, which it's right in here.

Q. Closer to the subject site?

A. Yes.

Q. The development site?

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A. That's correct.

Q. What about Mr. Elser's property, does he have more than one well?

A. Yes. He actually has four wells on his property. He has easements from three properties on the south side of his which go into his lot to get water.

So four wells in a row right along here, which presumably is why this lot didn't get developed.

MR. ALDERMAN: Objection.

Q. Well, you don't know why it didn't get developed?

A. Right.

Q. Let's just stick to the facts. Look at Petitioner's No. 2. Are those wells located on that exhibit?

A. Yes. You can see the circles around each well.

Q. Just generally, tell the Board in which direction does, in relationship to your property, in which direction does the surface, or the hills running, or the valleys, or whatever?

A. Right. The Lynch property itself is a low ridge, basically, so that it runs off on every side onto adjacent

Page 10

property.
It runs off to the east into Gunpowder State Park, and it runs off to the west through the adjoining properties here.
And then there's a stream that runs back down this way, and actually cuts through the corner of the Lynch property. This is an intermittent stream down here, I believe.
Q. In the Gunpowder area?
A. Gunpowder. And this stream is directly down through a swale into that intermittent stream, and this is a free flowing stream up along here.
Q. Is your property lower or higher than the Lynch property?
A. Most of it is lower.
Q. Is the Gunpowder State Park property higher or lower than the Lynch property?
A. It's lower also, at least the adjoining parcels.
Q. Let me ask you this. Could you generally describe what the community is like surrounding the Lynch property?

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A. Well, it's mostly rural. On this side is all Gunpowder State Park. This area through here is county property, which I assume is not developable because there's a stream that runs through here, and it was conserved because of that.
All of this is agricultural all through here, and pretty much extending down into Long Green Valley.
Q. When you say "here," you're pointing to the east of the Lynch property and north side of Sweet Air Road, is that right?
A. That is correct. Then to the west side is our development.
Q What's the name of your development?
A. I forget, to be honest. It's not one we refer to often.
Q. I didn't want to ask you tough questions. All right. Now let me just go through, before the Board of Appeals, there were certain exhibits submitted -- I'm sorry -- before the Zoning Commissioner and the Hearing Officer, there were certain exhibits submitted, one of which was your resume as Protestants' No. 5. Can you

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identify this?
A. Yes. That's my CV.
Q. Could you tell us just a little bit about your background? You can sit down at this point.
A. Yes. I worked for the Chesapeake Bay Programs which is a consortium of agencies that works to do Chesapeake Bay restoration work sponsored by EPA. The State of Maryland, Pennsylvania, Virginia, are all signatories to it. Essentially, we work to do Chesapeake Bay restoration work.
Q. What educational background do you have that prepares you for that responsibility?
A. I have a Ph.D. in civil engineering, mostly environmental engineering, and a Master's degree and Bachelor's in biology.
Q. Now, I explained to you that the hearing this morning is on the petition for special hearing, not on the approval of the development plan, so we are going to keep your comments related to the petition for special hearing questions.
But I wanted to also --

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MR. HOLZER: And I'm not going to offer Mr. Preston as an expert. I just wanted the Board to have some understanding of his background on environmental issues. I would offer this as Petitioner's No. 3, his resume.
MR. ALDERMAN: No objection. It's already in the record.
Q. Now, also sort of preparatory to going into the petition for special hearing, you prepared for the Zoning Commissioner a series of exhibits and maps marked as Protestants' No. 6.
Subsequent to the time that you prepared these, the Hearing Officer on the development plan did remand the development plan for a traffic study for sight distance, is that correct?
A. That is correct.
Q. And as a result of is that, in a supplemental decision and a new red lined plan -- which is marked as Petitioner's Board No. 2 -- the entranceway to the subject site was modified so as to permit better sight distance. Is that your understanding of what happened below?

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A. Yes, it is.
Q. So recognizing that this exhibit was prepared before the road alignment was moved, can you identify this document for the Board?
A. This is the packet of exhibits that I put together to illustrate certain issues that I wanted to raise in the special hearing and the Hearing Officer's hearing.
Q. Just go through them briefly as to what those documents relate to. And then, if you need to use them in the future, you're certainly welcome to do so. Take page one.
A. Page one is one that shows the surrounding area of the property in question. It shows it in context to the Gunpowder State Park. And Sweet Air Manor is the name of my development. Essentially, it shows where it fits in.
Q. Page two.
A. Page two shows the contours, the drainage contours off the property, and it shows the fact that it's a low ridge with drainage off of the east, north and west

Page 15

sides.
Q. Page three of that document.
A. Page three shows a little more deliberately the drainage patterns, where some of the primary directions of flow are, as well as the surface runoff direction.
Q. Page four.
A. Page four is a photo set which shows drainage down through my property. This was taken during the wintertime so you can see, as the snow melts, how the water is flowing.
Q. Are these pictures that are photo sets one, are those pictures of your property?
A. These are pictures of my property immediately adjacent to the Lynch property so you can see how water is flowing off the Lynch property down through my property.
Q. Page six, photo set number two?
A Photo set two shows where the water ponds on my property immediately adjacent to the Lynch property, two locations in particular.
Q. Photo set number three.
A. Photo set number three shows erosion that's been

Page 16

occurring on my property immediately below where that runoff occurs.
And then the map after that shows the primary directions of flow and exactly where the erosion is occurring.
Q. Is that captioned Runoff and Erosion on Adjoining Property?
A. Correct.
Q. Next page.
A. The next page shows the location of two of the septic reserve areas on the Lynch property. Both of those sit at the top of the hill that drain directly onto my property.
Q. That's captioned Location of Septic Reserve Areas?
A. That's correct.
Q. Next page.
A. The next is a photo set which shows the area of the septic reserves.
Q. It's called Photo Set Number Four, is that correct?

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A. That is correct. And the extent of the hills where it occurs.
Q. Next page.
A. The next page is a map that I put together to show the height difference between my property and the Lynch property, and the loss of privacy that would occur with these houses.
Q. Next page.
A. The next page is --
Q. All right. Now, the next page is the State Highway Administration material which has subsequently been changed, so the next number of pages and photographs deal with the sight distance of the highway which are no longer relative to Petitioner's Exhibit No. 2, is that correct?
A. That's correct.
MR. HOLZER: I would offer this document as Petitioner's CBA No. 4.
MR. ALDERMAN: No objection to the pages described by Mr. Preston, recognizing the balance are no longer applicable.

MR. HOLZER: Yes. The balance of the pages after his description would relate to a prior development plan in which the road alignment, entranceway, has been moved, so they would no longer be relevant.

Q One other procedural point. Mr. Preston, subsequent to the Hearing Officer's hearing and the Zoning Commissioner's hearing on this matter, did I ask you to get the transcript or the tapes from that proceeding on the development plan?

A. Yes, you did.

Q. I show you three tapes. Could you identify those, please, for us?

A. Yes. These are the tapes I paid from the county relative to the Hearing Officer's hearing, special hearing.

Q. That purports to be the approval of this development plan for the Lynch property?

A. That's correct.

Q. And this is what they gave you?

A. Yes.

MR. ALDERMAN: Are they both hearings?

MR. HOLZER: I think -- yes. It's marked both.

MR. ALDERMAN: For the record, they are both hearings, both the development plan and the zoning hearing?

MR. HOLZER: That's correct, and obviously the zoning hearing portion of a petition for special hearing portion of it, since this is de novo, are whatever they are worth.

But for purposes of the Hearing Officer's hearing portion of the case, this is the only record of what took place below.

MR. ALDERMAN: That's both development plan hearings?

THE WITNESS: Yes, I believe it is.

MR. HOLZER: Yes. Here it is.

MR. ALDERMAN: Remember, we came back.

MR. HOLZER: October 17, 2003, December 2, 2003.

MR. ALDERMAN: No objection.

MR. HOLZER: So these three tapes include the supplemental hearing or the second hearing in which the road alignment was adjusted to the current location, so

it's the whole case.

MR. ALDERMAN: Fine.

MR. HOLZER: I would offer that as the next petitioner's exhibit, No. 5, which consists of those three tapes.

Q. Now, Mr. Preston, this was a long way to get to this, the questions presented for the petition for special hearing, but let me ask you to now address your comments as a neighbor and as a representative of the community, of at least Mr. Elser, who couldn't be here this morning.

You raised the first question, is a road that supports R.C. 5 residential development permitted within an R.C. 2 zone?

I don't want you to testify as an expert. I just simply want you to explain as a citizen what about the proposed development plan that's been approved raised an issue in you mind that caused you to ask this question?

A. Basically what I saw from the development plan was that they were trying to maximize the density on this piece of property.

And in order to do that, I saw a lot of the

infrastructure going into the R.C. 2 portion, which is, in my mind, primarily agricultural use.

And that's what struck me as odd, that the support structures, the road and stormwater management pond would be placed in an ag area in order to support a development.

Q. Do you know the two zones that exist on the property are?

A. R.C. 5 and R.C. 2.

Q. Could you point out where the R.C. 5 property is on Petitioner's Exhibit 2, and where the R.C. 2 property is?

A. R.C. 5 is the larger parcel on this side immediately adjacent to my property and Mr. Elser's. And then the R.C. 2 portion is this triangular shaped piece that adjoins Gunpowder State Park.

Q. While you up there, there is also more to this property. Basically what you have described is on the north side of Sweet Air Road?

A. That is correct.

Q. Is there any portion of the property that's on

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the south side of Sweet Air Road?
A. The rest of the Lynch property is on the south side, designated by this parcel here, and that was a working farm. I believe it's planned to be continued a working farm, and it includes a residence as well.
Q. That area south of Sweet Air Road is also depicted on Petitioner's Exhibit No. 2, is it not?
A. That is correct, this area over here.
Q. So the area that you're primarily raising these questions are the sections above Sweet Air Road?
A. That is correct.
Q. So after you viewed the road in the R.C. 2 portion of the property, what other concerns did you have, and why do you have concern about the road?
A. It's mostly the fact that there's so many houses being placed in such a small area. There were concerns about runoff coming down through my property.
There were concerns about pressure on the wells. From my perspective, professionally, concerns about impacts on the state park, which is immediately adjacent.
This is something we deal with every day. This

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is placing fairly high density housing right in the very headwaters of the state park. And, to me that, was counter-intuitive, and that's one of the reasons that I questioned it.
Again, the placing of the infrastructure in the R.C. 2 portion of the property was only necessary because of the number of houses they are trying to put in the R.C. 5 area, so that's why I raised a concern.
Q. The second question you raised, is the stormwater water management facility that solely supports R.C. 5 development permitted within R.C. 2 zones, is that sort of tied in with what you just expressed about the road? Do you have any comments about the stormwater management facility?
A. Well, the stormwater management facility is primarily almost entirely in support of the houses in the R.C. 5 section.
And so it's placed in the R.C. 2 area, but it is supporting the R.C. 5 portion.
So, again, it's infrastructure that's placed in R.C. 2 to support R.C. 5.

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Q. Now, the third question that was raised, can the R.C. 2 zones on the north side of Sweet Air Road support both lots six and seven?
A. Can you repeat the question?
Q. My question was, can the R.C. 2 zone on the north side of Sweet Air Road support both lots six and seven?
A. Yes. My understanding of the R.C. 2 rules --
MR. ALDERMAN: Objection.
THE CHAIRMAN: What's your objection?
MR. ALDERMAN: Mr. Preston, I've been letting him go on the environmental side of things. He's not offered as anyone that even has a familiarity with the zoning regulations of this county.
And I believe for him to offer an opinion, which is really a legal conclusion which the Board will be called upon to render, is inappropriate for this witness,
MR. HOLZER: I'll just rephrase the question.
Q. Mr. Preston, instead of trying to tell us what the zoning regulations mean, or say, what was your concern in regard to both lots six and seven in the R.C. 2 zone, as a lay person?

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A. Well, I had thought that there were only two homes per hundred acres allowed on R.C. 2 land. And what I see here are at least three parcels on the R.C. 2 section of this property.
Q. That's why you raised that issue?
A. That's right.
Q. Question number four, can the density of an R.C. 2 parcel on the north side of Sweet Air Road support lot number seven and lot number six along with the stormwater management facility, and also lot number eight on the south side of Sweet Air Road?
MR. ALDERMAN: Objection, for the same reasons I previously offered. It's asking Mr. Preston to render a legal conclusion which is currently pending before this Board based on the application of the zoning regulations, for which he's not been qualified.
MR. HOLZER: I think he's entitled to say --
THE CHAIRMAN: I think if he answers the question the way he answered the previous one, simply to give a lay description of his concerns without relating them to the specific section.

MR. HOLZER: That's what I was trying to ask him. If I asked it inartfully, I will rephrase it.

THE CHAIRMAN: Why don't you deal with it the same way as the other.

MR. MOHLER: Would you rephrase it?

Q. As a lay person, as a citizen neighbor, when you looked at the development plan and you saw lots six and seven, and also lot eight, and also the stormwater management facility, what was your concern?

A. My concern was I had thought that R.C. 2 could only be subdivided into two parcels.

And what I see here is a subdivision into at least four parcels, if you include stormwater management facility as a separate one.

Q. Could you show us what you mean by that, because the Board has never seen this before, even though we have sort of lived through it for awhile.

A. Well, the original home is on the R.C. 2 portion of right here, so that is one parcel, which I assume will be subdivided off.

Lot seven is in this portion of the R.C. 2 area.

The stormwater management facility, I assume, then will be a separate parcel.

And then lot six is back at the northern end of the R.C. 2 portion. So that's at least four.

Q. So as a lay person, that's what peaked your curiosity as to whether that was permitted by the regulations?

A. That's correct.

Q. Now, the last question was whether the creation of non-density parcels as part of residential lots shown on the development plan require a separate special hearing request, and specifically a portion of lot seven in the R.C. 2 zone?

Do you remember what peaked your interest in that issue?

A. I had thought that it required a special hearing to raise those issues, and that was why we included that question.

Q. Are you a member of the Long Green Valley Association?

A. Yes, I am.

Q. And Ms. Shaw and Ms. Pine are here representing them, but as a member -- well, forget that. I will do it through them.

MR. HOLZER: I have no further questions.

THE CHAIRMAN: Ms. Demilio?

MS. DEMILIO: I just have a couple questions.

FURTHER DIRECT EXAMINATION

BY MS. DEMILIO:

Q. Mr. Preston, you talked about your understanding of the zoning on the north side and actually the south side also of Sweet Air Road involved in this site?

A. Yes.

Q. I want to show you a zoning map which is the October 10, 2002 zoning map, which is probably the latest one --

MR. ALDERMAN: Keep in mind this is not the official zoning map of Baltimore County today.

MS. DEMILIO: But we can't put our hands on it.

MR. ALDERMAN: The law says we are supposed to be able to do.

MS. DEMILIO: As Mr. Alderman knows, we probably

can't put our hands on it.

Q. At any rate, are you aware of any zoning changes on this site as a result of the 2004 comprehensive zoning?

A. I'm not.

Q. I just wanted you to look at this zoning map and ask you if it agrees with what your testimony was as to how the property is split zoned. Are you familiar with that?

A. Yes.

MS. DEMILIO: I will offer this as People's Counsel No. 1.

Q. Now, in your opinion, does this map outline the split zone of the property on the north side of Sweet Air Road?

A. Yes, it does.

Q. Mr. Preston, did you participate in a reclassification zoning case that involved this very site?

A. I did.

Q. Is it your understanding that was about two years ago, 2002?

A. I believe that's right.

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Q. What area of the site was requested to be rezoned?
A. The R.C. 2 portion was requested to be rezoned to R.C. 5.
Q. Is that the R.C. 2 on the north side of Sweet Air Road?
A. Yes, on the northern side -- there's two pieces. There's a small section on the north side of the property and then there's a triangular shape on the east side of the property.
Q. What was the result of that zoning request, rezoning request?
A. It was an out of cycle reclassification request, and I believe that the Board decided that it should not be changed.
And then if a change was desired, it should be through the normal rezoning, comprehensive review process.
Q. As a result of that case, the site remained, on the north section, split zoned R.C. 2 and R.C. 5?
A. Yes.
MS. DEMILIO: I have no further questions.

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CROSS EXAMINATION
BY MR. ALDERMAN:
Q. Mr. Preston, good morning. Howard Alderman, on behalf of the owner/developer.
With respect to Sweet Air Manor, the community in which you live, you're familiar with that development, correct?
A. Yes.
Q. Is there any land area that was part of that development that was dedicated to Baltimore County or other governmental entity for drainage purposes?
A. I believe there is. The area just north of my property is county property and I believe it's dedicated to the county for stormwater drainage.
Q. That's where the stream is?
A. For stream protection, yes.
Q. How large is your community?
A. How many homes?
Q. Yes.
A. I'm not sure. I haven't counted them.
Q. Five? Ten?

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A. I'd say --
Q. Without being exact.
A. I'd say twenty, thirty, something like that.
Q. How is your community zoned?
A. R.C. 5.
Q. And neither you nor your community sought to have the subject property rezoned during the 2004 comprehensive zoning map process, did you?
A. That's correct.
Q. I believe in response to a question from Mr. Holzer, you indicated that the road which is on the interior of the proposed development is located in both the R.C. 2 and R.C. 5 zones as you perceive it, correct?
A. That's correct.
Q. And the majority of that road is located in which of the two zones?
A. I believe it's in the R.C. 2.
Q. You're an engineer, correct? Let's take a look, Mr. Preston. You testified previously with respect to Developer's 2 below, I believe it's Petitioner's 2 in this case, that the R.C. 2 zone line on the east side is shown,

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in the R.C. area, is that triangular piece?
A. That's correct.
Q. Now, the interior road starts at Sweet Air and comes up and touches the R.C. 2 line, correct?
A. Correct.
Q. And you're familiar with scales, aren't you, of engineering drawings?
A. Yes.
Q. This indicate a scale of one inch equals a hundred feet. Can you approximate how much roadway in terms of length that might be there?
A. I'd have to measure it. It's hard to tell from here.
Q. Here, step up. I'm not asking for an exact measurement.
A. After a closer look, I would concede that most of it is in R.C. 5.
Q. So the majority of the road is in R.C. 5?
A. Yes.
Q. Now, do you know what areas of the site drain into the stormwater management facility as shown?

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A. I believe the flow of direction is going to be -- well, let me make sure.

I believe, as you can see the contours here, the flow of direction is going to be this way to the stormwater management site.

MR. HOLZER: You have to describe it. "This way" doesn't translate very good.

A. I'm sorry. It's going to flow in the northeasterly direction from the southeasterly corner or southwesterly corner.

Q. I'm sorry. That's down around lots one and two?

A. That is correct. Lots 1, 2 and 3 go directly to the stormwater management area, I believe.

A portion of it also goes to the west side of the property.

Q. What about the road? Does the road drainage go into the stormwater management facility?

A. I believe if there's curb and gutter, probably all of that will go into the stormwater management facility.

Q. Do you know whether it's open section or a curb

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and gutter road?

A. I don't know.

Q. Now, I'm confused. You used two phrases in your testimony, lots and parcels.

Is there a difference in your mind between those two definitions?

A. Lots, to me, would imply a house. But I think when I talked about parcels, I talked about four parcels in the R.C. 2 portion, at least one of those would not have a house.

Q. Now, I believe you said lot six was in the R.C. 2, is that correct?

A. A portion of lot six is in the R.C. 2.

Q. Where's the home in lot six? Is it in the R.C. 5 or R.C. 2?

A. It's in the R.C. 5.

Q. So how many homes or lots are there proposed in the R.C. 2?

A. There are two houses -- there is one building envelope in the R.C. 2 and there's one established house in the R.C. 2.

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Q. So a total of two houses in the R.C. 2, is that correct?

A. That's correct.

Q. That would be the existing working farm that you describe on the south side of Manor Road?

A. That's correct.

Q. Sweet Air Road. Excuse me. And lot seven with a house on the north side of Sweet Air Road?

A. That's correct.

Q. As a lay person, and based upon your testimony, what types of issues require a special hearings before the Zoning Commissioner?

A. That would be a legal issue. I'm not sure I can answer that in a lot of detail. I understood this was one that did require a special hearing.

Q. You indicated one of your concerns was that you thought that some issue you saw on this plan required a special hearing?

A. Right.

Q. So that would imply that you know the types of issues that requires a special hearing.

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I'm just curious as to what types of issues require a special hearing?

A. That was based on conversation with legal counsel, with Mr. Holzer, so I rely on legal counsel for that.

Q. So that was a concern suggested to you by legal counsel?

A. It was a concern that I raised, and legal counsel offered me advice as to how to approach it.

Q. So was your concern that a special hearing was required?

A. The concern was about the way the R.C. 2 land was being used. And the special hearing was the way to address it.

Q. Why is a special hearing requested, Mr. Preston, or why is it required?

A. I think that's a legal issue.

Q. Now, you opposed the change in zoning on the subject property to all R.C. 5, correct?

A. That is correct.

Q. How many lots were permitted in Sweet Air Manor

when Sweet Air Manor was developed, do you know?
A. I have no idea. That was back in the sixties, I believe, when that development was built.
Q. Do you know if it was built at density or under density?
A. I couldn't say.
Q. Based upon your observations, are you suggesting that -- you said you're concerned about the density of homes, is that correct?
A. Correct.
Q. Based on your observations and your concerns, are you suggesting to this Board that the number of homes proposed in the R.C. 5 exceed that which is allowed?
A. No, I don't believe it exceeds it.
MR. ALDERMAN: Mr. Preston, thank you.
MR. HOLZER: I have no further questions.
MS. DEMILIO: No questions.
THE CHAIRMAN: Thank you, sir.
MR. HOLZER: Mr. O'Leary.

D A N I E L J. O'LEARY,

having been called as a witness, was duly sworn and

testified as follows.

DIRECT EXAMINATION

BY MR. HOLZER:

Q. Mr. O'Leary, could you give us your full name and present place of employment and address, please.
A. My name is Daniel O'Leary. My present place of employment is NPM Engineering Consultants, 420 Central Avenue, in Reisterstown.
Q. Okay, sir. I show you a document which I provided to Mr. Alderman. Can you identify that, sir?
A. Yes. It's my resume.
Q. Could you just give us a brief description of your educational background, your professional registrations, and some of your professional experience?
A. I graduated from the University of Lowell back in Lowell, Massachusetts, back in 1984, at which time I took an entry level position with the State Highway Administration in Maryland, in the highway hydraulics division.
The highway hydraulics division basically provides support for highway projects from water resources

from an engineering prospective. That would be drainage, culverts, and environmental permits.
At that time in 1984, the State of Maryland had just enacted the stormwater management regulations, law and regulations, so as the new guy with the State Highway, I was sort of put in charge of addressing the new regulations in Maryland, actually out of the Department of Natural Resources at that time.
I worked in State Highway for about five years, then changed to the Maryland Department of Environment who, two years prior, had been established by Governor Schaffer, and assigned a lot of the regulatory responsibilities that the Department of Natural Resources previously had, including stormwater management, erosion and sediment control regulations.
I became the planner review Chief for the Maryland Department of Environment sediment and stormwater administration, and did so -- held that position for about seven years.
After that seven years, I guess it was in -- let me get the years straight -- in 1996, I left the state

service and became a consultant engineer for Parsons, Brinckerhoff, Quade and Douglas, out of Baltimore, Maryland.
It's one office in a very large international engineering firm, and I was charged with essentially doing the same thing, getting stormwater management, erosion and sediment control permits for a variety of projects on behalf of our client at that time who were state highway and other typically transportation-related clients.
In June 2001, I left Parsons, Brinckerhoff, to take a position as the principal engineer at the Center for Watershed Protection in Ellicott City, Maryland.
I was responsible for research and application and stormwater management, erosion and sediment control for this nationally-recognized nonprofit.
I also traveled fairly often to give seminars and speaking, participate in speaking engagements on the subject.
October 2002, I left the Center for Watershed protection and became employed with NMP Engineering Consultants, at which time I went back to being

essentially a consultant engineer for highway transportation and other types of projects as well as development projects in Baltimore, Howard and, thus far, Montgomery counties.

I am a professional engineer registered in the State of Maryland since 1989, and I think that's about it.

Q. Mr. O'Leary, have you participated in testifying and being qualified as an expert civil engineer in any administrative proceedings in Baltimore County?

A. Yes.

Q. That has been before the Hearing Officer and the Zoning Commissioner?

A. That is correct.

Q. Have you had occasion to testify before this Board up until now?

A. I have not.

Q. Have you qualified in any circuit courts in the State of Maryland as an expert civil engineer?

A. Two.

Q. Which?

A. Baltimore County and Caroline County.

Q. In your resume, you've indicated a number of projects in Baltimore County that you have been involved going through the development regulations where you have been offered as an expert witness and have been accepted, is that correct?

A That is correct.

MR. HOLZER: I would offer the resume of Mr. O'Leary as the next petitioner's exhibit, No. 6, and I would offer him for voir dire as an expert in civil engineering, related to stormwater management.

VOIR DIRE

BY MR. ALDERMAN:

Q. Mr. O'Leary, good morning. Howard Alderman, on behalf of the owner/developer.

How many stormwater management design plans for residential developments have you prepared and worked through the approval process in Baltimore County?

A. I have largely been involved as a consultant to an engineering firm in Baltimore County with my specialty being stormwater management.

That firm typically does the -- walks the plans

through the Baltimore County processes as well as actually doing the subdivision work and getting the sediment control approval, so I have been limited on approximately fifteen projects. My involvement has been limited to stormwater management design.

Q. What's the name of the firm that you're a subcontractor?

A. Colbert, Rosen, Feltz, Incorporated.

Q. So you have not personally prepared and worked through all aspects of the process, any stormwater management plans, correct? You have done it, sort of ghosted it?

A. Well, no. I prepared the plans and I have responded to county comments and I have met with county plans review officials to address the stormwater management's specific comments, so I have been involved more than simply providing a design and handing it to the, I guess, the prime contractor on the project.

Q. Is that in the phase one or phase two design stage of the development regulations?

A. It's been throughout the development process. In

fact, a couple of projects that we started working on with Colbert, Matz have gone to construction, and I have been involved straight through.

MR. ALDERMAN: Thank you. No objection.

CONTINUED DIRECT EXAMINATION

BY MR. HOLZER:

Q. Mr. O'Leary, could you tell us exactly what documents and exhibits and materials you reviewed for purposes of your appearing here this morning to testify before the Board?

A. Yes. I reviewed the stormwater management hydrology computations for Lynch properties, Sweet Air Road, Baltimore County, Maryland, dated July 2003.

Q. Okay.

A. And the development plan and schematic landscape plan for Lynch property dated June 26, '03, with red line revisions, and I don't know if the red lines actually have a date on them.

Q. Could you come up and take a look at Petitioner's No. 2 before the Board, which is dated June 26, '03, and it's marked as the red line for Hearing Officer's hearing.

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Could you take a look at that and see if that's familiar or similar to the one that you reviewed? Just to make sure that you're looking at the same document.

A. Yes, that appears to be the same one that I reviewed. I had one other thing that I looked at, the development plan conference comments from Baltimore County.

Q. Okay.

A. Dated August 13, 2003.

Q. From what department?

A. I believe it's from DEPRM, but it just says stormwater management comments.

Q. Okay. And those were provided to you from the file, apparently from the file of the Lynch development plan?

A. Yes.

Q. Did you also have occasion to view the site?

A. Yes.

Q. Can you tell us approximately when that was, and how many times?

A. I don't have my calendar book with me, but it was

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maybe about a month ago, maybe August.

Q. Do you recall how long you took and where you viewed the site from?

A. I viewed the site from Mr. Preston's property as well as from Sweet Air Road.

Q. Do you recall the question that was posed to you in regard to our asking for an opinion? Do you recall that question that was posed to you?

A. Not specifically.

Q. Then I will pose it again. In looking at the development plan, lot number seven -- which is the lot that's contained on the R.C. 2 portion of the property -- are you familiar with that, with the land and where lot number seven is?

A. Yes, sir.

Q. My question is, does any portion of lot number seven, as best you can tell from reading this development plan prepared by Daft, McCune, Walker, does any portion of that property, lot number seven, drain into the stormwater management facility?

A. Into the facility itself, it does not appear to,

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no.

Q. Could you explain where you believe it drains?

A. "It" being lot seven?

Q. Yes.

A. It appears lot seven drains across the stormwater management reservation to the east, and off the property.

Q. Could you sort of use your finger, if you could come up here, and show the Board where you think it drains?

A. Water flows downhill, and to flow downhill, it would flow perpendicular to the contours shown on the development plan, which would indicate water from the lot seven would flow generally in this direction to where it's designated on the plan SWM design point number one, without passing through the stormwater management pond itself.

Q. Does the stormwater management pond appear to support any portion of the R.C. 2 zoned property which is this triangular area north of Sweet Air Road?

A. It's actually east -- oh -- north of Sweet Air Road?

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Q. Yes.

A. East of R.C. 5.

Q. East of the R.C. 5.

A. Well, the stormwater management pond would treat the rainfall that lands on it, it appears it would discharge from the roadway that passes into the R.C. 2, and maybe a portion of the driveway for lot seven right at the roadway where it crosses over a swale or a shallow drainageway that directs flow down to the stormwater management device.

Q. So other than the rain just falling right on the stormwater management pond itself, then the only other water that it would be serving would be produced basically from the road and the driveway which is in the R.C. 5 portion of the property? Well, let me say this. In the R.C. 5 portion of the property first?

A. I'm not sure I understand.

Q. That's a bad question. Let me rephrase it. The only portion of the R.C. 2 property that is draining into the stormwater management pond is coming from the road which starts in the R.C. 5, then into the R.C. 2, and then

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goes back to the D.R. 5, is that fair?
A. Yes, the road, and maybe a very small portion of the driveway as shown that accesses lot seven.
Q. So that small portion of the driveway that accesses lot seven, is that in the R.C. 2 zoned portion of the property, or R.C. 5?
A. Well, it's mostly within the R.C. 5, but there may be a little, a very small area in the R.C. 2.
Q. Now, does the stormwater management pond need to be in the R.C. 2 zone to support this development?
A. No, I don't think so.
Q. Suppose the stormwater management facility was in the R.C. 5 zone, what effect would that have on the calculations or on the stormwater management plan itself?
A. Well, the drainage area to the stormwater management device would be decreased slightly because of it being shifted upgradient.
But aside from that, the calculations and analysis would largely remain the same.
Q. Mr. O'Leary, in terms of looking at these plans, do you agree with the testimony of Mr. Preston -- I

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believe you were here and you heard his testimony -- that the predominant portion of the road is within the R.C. 5 zone?
A. I heard talk of it, yes.
Q. From your review, do you have any reason to believe that that is not a fair statement?
A. The majority of the road does appear to be in the R.C. 5.
MR. HOLZER: Thank you. I have no further questions.
THE CHAIRMAN: Ms. Demilio?
FURTHER DIRECT EXAMINATION
BY MS. DEMILIO:
Q. Mr. O'Leary, if I understand your testimony, are you saying that the stormwater pond in the R.C. 2 really doesn't support much in the R.C. 2? Is that the bottom line of your testimony?
A. Yes. The analysis provided to the point of analysis or point of design at the property line, so obviously any of the upgradient area drains to that point within that sub-watershed, including the R.C. 2.

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But it's predominantly from the R.C. 5 area and the impervious that's generated on the R.C. 5 area that that stormwater management pond serves.
Q. Are you also saying that if it were designed differently, you could easily, or feasibly, you could locate the stormwater management pond for the R.C. 5 in the R.C. 5?
A. Yes. I don't know if you could still handle the same number of lots. There may have to be other adjustments made.
Q. But there is, from an environmental or engineering standpoint, there is nothing wrong with putting a stormwater management pond in the R.C. 5?
A. The challenge would be the higher in elevation that you move the pond, the less area that you can capture with it.
So the further you move it upgradient, there may be some areas along the R.C. 5/R.C.2 border that may no longer drain to it because they won't physically drain there.
Q. And that's not fatal to the development?

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A. No.
MS. DEMILIO: Thank you. I have no further questions.
THE CHAIRMAN: Mr. Alderman.
CROSS EXAMINATION
BY MR. ALDERMAN:
Q. Mr. O'leary, Howard Alderman again. You heard Mr. Preston indicate this heavy dashed black line running in a, I guess, southwest/northeast direction, is a zone line, correct?
A. That's what I understand.
Q. What impact does that zone line have on the flow of stormwater?
A. None, sir.
Q. The stormwater management plans that you have designed in your career, have the properties ever been split by two or more zones?
A. I don't know, off the top of my head. I don't recall.
I mean, sometimes watersheds certainly expand into different zones, but I can't recall if the properties

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that I worked on had different zoning categories.
Q. The Lynch property is all in the same watershed, correct?
A. Not necessarily. There are two design points, two separate sub-watersheds.
Q. Sub-sheds, as we know them?
A. Yes.
Q. Now,with respect to the zoning line, what difference does it make from a stormwater management design standpoint whether the facility is in the area to the east, which is zoned R.C. 2, or to the west, zoned R.C. 5, from a stormwater management design standpoint?
A. As I just explained, the only difference that it makes is you're a little bit higher in elevation in the R.C. 5 zones, so you wouldn't be able to get as much drainage area to the pond. But aside from that, no difference.
Q. So would there be more uncontrolled flow or unmanaged flow if it were moved to the R.C. 5?
A. Yes.
Q. And the purpose of the stormwater management is

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to manage stormwater, correct?
A. By definition.
Q. I just wanted to make sure I understood correctly. How would you describe a stormwater management facility? What is it?
A. Well, the answer that we probably have time for today is it's a device, sort of -- I would call them typically low-tech devices that work by gravity flow, so you don't have pumps and other things involved in their design.
But they're gravity flow devices that are designed to reduce pollutants in stormwater from developed areas and, in some cases, provide attenuation to minimize the impact of increased flows on downstream properties.
Q. When did you review the red lined development plan?
A. It's been wherein the last month.
Q. And then Mr. Holzer showed you this one this morning, correct, prior to the hearing?
A. Yes, just briefly.
Q. Coming back to the stormwater management facility

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itself, for purposes of the Board, and certainly for the record, in case some judge gets to hear this, is a facility -- does it have walls and structures, or is it a land form done by dredging or by excavation or cutting or fill? How is it made?
A. It's primarily a land form done by grading, using heavy equipment. And then this one in particular is designed to be a sand filter. It does not provide any quantity control of stormwater.
It only provides water quality for impervious surfaces that drain that are up watershed from it.
But in this case, one cell provides pre-treatment, which is the one to the south. That is simply a holding area that allows the heavier sediment particles to fall out of the stormwater in a low velocity setting.
Then there is discharge from there into the sand filter bed, which is the cell to the north. You can see the cross-hatching in there. There are other drain pipes that drain to an outlet to the east.
Q. Now, that first cell I think you talked about, is

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what some refer to as a fore bay?
A. Yes, pre-treatment fore bay.
Q. Now, tell me about infiltration from this type of facility. Is it designed for infiltration of stormwater into the ground?
A. No, sir.
Q. Is there any infiltration that will occur?
A. There may be some, but a fore bay's job is to collect particulate, sediment. And even if there is some infiltration early on in the life of the structure, it's likely to diminish drastically and quickly.
Q. What about the northern cell?
A It's designed as a sand filter. There may be some volume provided beneath the structure itself to hold water and allow for infiltration, but typically it's designed as a pass-through device where the stormwater management filters through the sand bed and is discharged out the pipe.
Q. Have you ever designed a stormwater management facility like that?
A. Yes, sir.

Q. Are those designs recognized by the current Code of Maryland Regulations adopted by the Maryland Department of Environment?
A. Yes.
Q. How many times have you visited the subject property?
A. Once.
Q. Now, as I understand your testimony, your observation of the property was on the west side from the Preston property and on the south side from Sweet Air Road, but not from the east side, is that correct?
A. I walked in a little bit into the east side, but I did not go as far as where I think the pond is to be located.
Q. So you didn't really get back that far where the facility is proposed?
A. No.
Q. You reviewed the hydrology?
A. Just what was provided in the stormwater management hydrology computation.
Q. Do you know what type of information is required

by Baltimore County at the Hearing Officer's level for approval of development plans from a stormwater management prospective?
A. Yes, sir.
Q. Have you reviewed that same type information for the Lynch property?
A. That's what I have, yes.
MR. ALDERMAN: If I may have just one moment?
THE CHAIRMAN: Sure.
Q. Are you familiar with the concept of peak management, stormwater management credit and stormwater management design?
A. Certainly am.
Q. Based on your review of the information provided to the Department of Environmental Protection and Resource Management relative to the Lynch property, were both of those concepts utilized?
A. Well, for quality, yes. They address water quality and provided documentation of credits for a number of lots.
As far as peak management goes, they requested a

waiver, so they are not providing peak management.
Q. And that was granted?
A. That's what I understand, although that's not what it says in these August 13 comments from development plan conference comments, so there may have been something that transpired.
Q. After that?
A. Yes.
Q. With respect to the stormwater management facility, that was not designed solely for lot seven, correct?
A. That's correct.
Q. And in your experience, when you have a property for which you're designing a stormwater management facility, do you design or calculate the hydrology and design of the facility based on zoning lines or based on the impervious surfaces that will result from the proposed development?
A. On the impervious surfaces.
Q. And is that what the Code of Maryland Regulations require?

A. It does.
MR. ALDERMAN: Thank you, Mr. O'Leary. Nothing further.
MR. HOLZER: I have a few.
THE CHAIRMAN: Before we do, I think there's a question from both Board members.
MR. HOLZER: Could I just have a few questions?
THE CHAIRMAN: Rather than come back to you and come back to you --
MR. HOLZER: All right.
MR. MOHLER: I just want to clarify one issue. The discussion of the stormwater management pond being constructed in the R.C. 2 or R.C. 5 zone, I understood you to say it could be constructed in either one?
THE WITNESS: Physically.
MR. MOHLER: Did I also understand you to say that if it were constructed in the R.C. 5 instead of the R.C. 2, that it would actually be less effective in terms of its ability to capture runoff?
THE WITNESS: I didn't say less effective. What I answered to was whether there would be more, quote,

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unquote, uncontrolled runoff, and that's true, that there would be runoff below the pond that obviously would not drain to it, although it would be undeveloped land below the pond, so the actual effect of the uncontrolled runoff would be negligible.

MR. MOHLER: But there would be more uncontrolled runoff if it were constructed in the R.C. 5 versus R.C. 2 location?

THE WITNESS: Yes.

MR. MOHLER: Thank you. I wanted to clarify that.

MS. BRAZZI: Mr. O'Leary, where the stormwater management facility is now, does the property that is on R.C. 5 drain into it the way it's currently configured? In other words, is it effective for the R.C. 5 property?

THE WITNESS: It's effective for the roadway, and there's a high point. You can make out this heavy dash line. That's a soil line. I'm sorry.

I'm thinking there was a drainage boundary line. Well, there's a ridge that runs kind of through the property in this direction, so there are a few lots on

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R.C. 5 that would drain to the west just by the lay of the land.

However, I believe the roadway -- at least three of the lots would drain to the stormwater management pond, so not all of it, but some of it. And the roadway, of course, is the most important aspect because that generates the most runoff.

MS. BRAZZI: Thank you.

REDIRECT EXAMINATION

BY MR. HOLZER:

Q. Mr. O'Leary, just a couple questions. Can you see the area of the stormwater management facility if you're standing on Sweet Air Road?

A. Yes.

Q. But you walked on the Gunpowder State Park property in a northerly direction back towards where the stormwater management pond is, or would be?

A. Back in that direction where there's a cleared field there.

Q. Insofar as the stormwater management facility itself, you testified it requires some heavy equipment and

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grading to take place in order to construct it?

A. That is correct.

Q. Does it also include pipes and riprapping and fencing that would ultimately be responsible for creating that facility?

A. Yes. It requires underdrain pipes, typically a concrete riser, which is a square concrete structure that sticks up out of the ground and typically has an overflow hole in it, although I don't have that level of detail in the plan I looked at.

And, yes, there would be a riprap outlet and, technically, in the stormwater management design manual, the 2000 Maryland stormwater design manual, which is incorporated by reference into the Maryland regulations, is considered a structural stormwater management device, although it's done largely with grading and land form type equipment.

Q. Now, let me ask you this question, following up on what Mr. Alderman had asked you. If the R.C. zone only had the one house for lot number seven, would it require a stormwater management facility?

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A. If the --

Q. If lot number seven, if you had none of this development in the R.C. 5, and you simply had one house where it's currently proposed on lot number seven, would you need a stormwater management facility?

A. I don't think so. You would still need to address stormwater management.

Q. But you would not need a facility such as the size and magnitude that's proposed on this petitioner's exhibit?

A. I said it'd be very unusual to have a stormwater management device for a single lot. So, yes. You have to address it, so not knowing exactly what the impact is from just that lot would be, it's hard for me to say.

But it's unlikely a pond, for instance, would be required for a single lot development.

Q. Is it possible that you could get a waiver of stormwater management if you just had a single house in the R.C. 2 zone portion of this property?

A. It's possible.

Q. In follow up then, it's the density of the

housing on the R.C. 5 along with the road system that requires the facility that's proposed on Petitioner's Exhibit No. 2?

A. Yes.

MR. HOLZER: I have no further questions.

MS. DEMILIO: No questions.

MR. ALDERMAN: Just one sort of broad question.

RECROSS EXAMINATION

BY MR. ALDERMAN:

Q. Following up on Mr. Holzer's line of questioning, would it be fair to say that the stormwater management facility is incidental or required by the development of the Lynch property on the north side of Sweet Air Road?

A. It depends on how densely you develop it.

Q. Well, if you're going to improve the land on the north side of Sweet Air Road as shown with the number of houses on the north side of Sweet Air Road, stormwater management is required, correct?

A. The quality management provided somehow stormwater management would have to be addressed. They asked for and received a waiver from quantity control, but

they're providing quality.

I would say, yes, at this density with a road and so forth, that stormwater management quality control would have to be provided.

Q. Then I'm confused. Let me make sure I'm clear on the record. Is it the stormwater management facility that's incidental to the development, or is the development incidental to the stormwater management facility?

MR. HOLZER: Objection.

MS. DEMILIO: Objection. What kind of question is that?

MR. HOLZER: I mean, that's not an appropriate question.

MS. DEMILIO: That doesn't make any sense.

Q. Do you understand the question?

MR. HOLZER: Who is he to decide what's incidental? He's qualified as a civil engineer.

THE CHAIRMAN: Well, you have an expert. If there's something wrong with the question, if he feels the question has difficulty and he can't address it as an

expert, especially since you can do hypotheticals, the expert certainly is in a position to say, I can't answer that question or, I don't know the answer, or I don't know where you're going with that, or What are you talking about? He's an expert.

MR. HOLZER: That's true. That's always true. My objection is that the question itself is improper.

THE CHAIRMAN: I'm going to allow the question and let the expert deal with it.

A. Could you ask me the question again?

Q. Sure. Absolutely. I will try. Is the stormwater management facility incidental to the proposed development on the north side of Sweet Air Road, or is the housing aspect incidental to the stormwater management facility?

A. I would say the stormwater management facility is incidental to the housing development.

Q. You wouldn't need it without the houses, would you?

A. That's correct.

MR. ALDERMAN: Thank you.

THE CHAIRMAN: Folks, I have a request for a two-minute break.

(A recess was taken.)

THE CHAIRMAN: Mr. Holzer?

MR. HOLZER: Yes, sir. Two housekeeping points. Mr. O'Leary's testimony, I had him identify it, but I didn't present it as the next petitioner's exhibit, if I may?

THE CHAIRMAN: That's No. 6.

MR. HOLZER: Also, I just wanted to make sure that this document is in the record. It was in regard to the zoning item, No. 04-198, the Lynch property, the Zoning Advisory comment should be in your file, but I wanted to make sure that this one was, which was Mr. Lippincott's agricultural preservation comments in which they support, his office supports Issue No. 1, 2, and 5, so it should have been in your file already, but I'd just like to have that especially marked as No. 7.

One other request. The next witness will be Mr. Paul Solomon, and he will be awhile, I think, but it's 11:30, and I'd like to make sure if he does testify, that

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we are able to get through his direct and cross examination before we break for lunch.

I believe we should be able to get finished by 12:30, but if that's okay with the Board?

THE CHAIRMAN: Done.

MR. HOLZER: After that, I just have one of the representatives from Long Green, and that will be our case.

So even with the delayed start, I am hoping to accomplish my promise of getting finished in the morning.

THE CHAIRMAN: Off the record.

(Discussion held off the record.)

MR. ALDERMAN: And I'm planning to call Charles Main, a professional engineer.

THE CHAIRMAN: Long witness? Short witness?

MR. ALDERMAN: He won't be that long. I was just going to say about six feet, but I wasn't going to go there.

THE CHAIRMAN: Off the record.

(Discussion held off the record.

THE CHAIRMAN: Mr. Holzer.

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MR. HOLZER: Mr. Solomon, please.

P A U L S O L O M O N,

having been called as a witness, was duly sworn, and testified as follows:

DIRECT EXAMINATION

BY MR. HOLZER:

Q. Mr. Solomon, would you give us your full name and address, please?

A. My name is Paul J. Solomon. I reside at 2473 Steltz -- S-t-e-l-t-z -- Road, located in New Freedom, in Pennsylvania, zip code 17349.

Q. Mr. Solomon, there are some members of the Board that may not remember you from the old days, so I would ask if you would go through your background, first your educational background, and then your employment with Baltimore County, and then we'll go from there.

A. Yes, sir. I graduated from Georgetown University with a major in history, a minor in philosophy.

I obtained a second degree from Penn State University with a major in agricultural and biological sciences. And, lastly, I obtained a Masters in planning

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from Penn State.

I then was employed by York County as a planner for several years where I prepared comprehensive plans and did related work.

I prepared plans for the township of boroughs that exist in the county. There were seventy-two of them.

Then I was employed in 1970 by this county. I worked in the Office of Planning and Zoning until about 1986.

In 1986, the unit that I headed in the planning office, which was the environmental planning section, then moved down to the new agency, the Department of Environmental Protection and Resource Management.

While I was with the planning office, the relevant experience I had, relevant that is to this case, was I was the planner in charge of the R.C. zones, that is, the development of the R.C. zones.

In 1970, there were only development zones in Baltimore County. There were no environmental or resource zones.

I also was the north area planner for a period of

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years, and in that responsibility, I reviewed development plans, I got involved in zoning issues, so on, so on.

Finally, when I was with the Department of Environmental Protection and Resource Management, I was the administrator for the Maryland Agricultural Land Preservation Program as it pertained to the county.

So, basically in a nutshell, that's my educational and experience background. I have been a planner for thirty-six years.

Q. With attention, I guess, to this particular case, and the R.C. 2 zone, could you just give us some background about your participation in the development of the R.C. zones?

A. Yes. In 1970, the County Council enacted Bill 100. That put in play or put in place all new zones basically for the county.

The D.R. zones were just established at that time by the enactment of Bill 100.

And in addition, they enacted two zones in the rural area. One zone was the larger of the zones which was referred to or called rural deferred planning.

The other zone was rural suburban planning. The Rural Deferred Planning, when it was recommended to the Council, we required a ten-acre minimum lot size.

The rural suburban zone required a three-acre minimum lot size.

But on the very night the County Council enacted Bill 100, they surprised everybody by reducing the ten acre to one acre minimum lot size and the three acres to a one-acre minimum lot size.

So, therefore, we had, instead of a holding zone, we pretty much had a residential development zone, and we are talking about over half of the county.

So in the early seventies, this was enacted. And then as development started to occur, more and more development, we started to lose farmland.

We had the sprawl occurring. We had subdivisions here, subdivisions there, and the cost of serving those scattered subdivisions was enormous to the county. The roads weren't adequate to serve some of them.

And in addition, we found out that three reservoirs which served the metropolitan area that are

located within the county, we got reports that there was sediment which was getting into the reservoirs, reducing the capacity. The reservoirs weren't being enriched by the runoff of the various development. So I went to our director and I said rural deferred planning implies we are going to do more here, and it looks like we better do it sooner than later.

So with his blessing, I was able to get some staff help, and we did a plan for the entire north county of Baltimore, that is, from the urban rural demarcation line northwest and east.

After the plan was done, we then proceeded to develop new zones so the plan would mean something, so we develop the R.C. zones.

Q. Could I stop you there, Mr. Solomon, and just say that we'll get into those zones, and specifically the R.C. 2 zones and R.C. 5 zones.

MR. HOLZER: But at this point, I would want to offer Mr. Paul Solomon as an expert land planner including zoning issues.

Q. And I would ask you, Mr. Solomon, have you so

qualified before this Board on any prior occasion?

A. Yes, I have.

Q. Do you recall how many times?

A. Well, I can tell you it's been about thirty years off and on appearing in front of the Board, but only on an average of maybe once a year. So I haven't been here -- I've worn out my welcome.

Q. When did you leave the county?

A. I left in 1992.

Q. Since 1992, you sort of acted as a consultant every once in a while on cases that required your testimony before the Board?

A. On an average, I would say once a year. I don't hang a shingle out, but when someone calls and I think I can be of help in that manner, then I have some emotional support because I think the R.C. zones ought to be left in tact, then I get involved.

Q. For instance, I believe one of the cases that you testified in as an expert was called the Marzullo case, the snake case?

A. Yes.

Q. That this Board had. I won't recall if Mr. Stahl had --

THE CHAIRMAN: No, I wasn't. Mr. Alderman, do you have any voir dire?

MR. ALDERMAN: No, sir.

THE CHAIRMAN: I would say Mr. Solomon is well-known to me, and has appeared in front of the Board on any number of occasions.

MR. ALDERMAN: Since I used to work for Mr. Solomon, I have to be especially careful.

THE CHAIRMAN: You're going to move him as an expert, and the Board will accept him.

MR. HOLZER: I did that because there are two members of the Board, that I don't know whether they go back long enough to know Mr. Solomon. I don't believe they do so.

CONTINUED DIRECT EXAMINATION

BY MR. HOLZER:

Q. Now, Mr. Solomon, you started to talk about your involvement with the creation of the R.C. zones.

Let me just ask you, before we get into some of

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that, how did you become familiar with this particular case, and when did you become familiar with it?

A. Well, you and the people you serve phoned me and asked me if I would look over the case. And I did. And then I informed you that based on what I know and my past experience, I thought I could be of some help.

Q. Do you recall what documents you took a look at to prepare yourself for this morning?

A. Well, I took a look at the plat, the red lined development plan. I received photographs. Of course, to refresh my memory, I reviewed the R.C. 2 zones again.

I looked at the policy manual that is called the zoning office's policy manual. I reviewed that. I looked, of course, at the Hearing Officer's opinion and order. I reviewed that.

I looked at the soils. I looked at the photographs. Those are the basic documents I reviewed.

Q. Having prepared yourself that way, and I would ask you, if you could, knowing that this question involved the R.C. 2 and R.C. 5 zones, and particularly whether or not a road and stormwater management facility that serve

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this particular development can be placed in the R.C. 2 zone, could you sort of just give us a background about the R.C. 2 zone?

And if you need to go into the R.C. 5 to distinguish it, and give us some understanding of what the zone is designed to do, in your opinion?

A. The basic framework of the R.C. zones is to encourage rural development within the R.C. 5 and the R.C. 5 in most regards exist around existing villages, although there are some exceptions to that.

So instead of having the development sprawl out over the farmland, you want to encourage it to occur within the R.C. 5, although limited development is allowed in R.C. 2, basically one house for every fifty acres.

So you're trying to preserve the farmland. Baltimore County is blessed with some very fertile farmland, and lots of it. So the purpose of the R.C. 2 -- I might as well go ahead and --

Q. If you need to refer to some sections?

A. I might as well bring that it now.

Q. Please do.

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A. I'm just going to read it. It's Item 1A01.1.b. The R.C. 2 zoning classification is established pursuant to the legislative findings above, and they just kind of enumerate what I have been saying about what's happening up there as far as the loss of farmland, scattered development, so forth. Those were the findings. I can kind of summarize them.

In order to foster conditions favorable to a continued agricultural use of the productive agricultural areas of Baltimore County by preventing incompatible forms and degrees of urban use.

So that's the purpose of R.C. 2. And then the R.C. 4 is a watershed zone which is designed to limit development and encourage other practices which protect the resources which serve the metropolitan area.

So that's the basic philosophy and mind set behind the establishment of the R.C. zones.

Q. Now, our client raised the question and posed the question through this petition for special hearing about the uses within an R.C. 2 zone, and they questioned specifically whether the road proposed in Petitioner's

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Exhibit No. 2 and the stormwater management facility proposed in that exhibit are appropriate for the R.C. 2 zones.

Did you have an opportunity to sort of analyze those two questions? I'll combine the stormwater management facility and the road into one question, but please feel free to separate and discuss each of them.

A. Well, the R.C. zone did not exist, was not established to provide an area for R.C. 5 development, be it the houses themselves or the support facilities for those houses. That, I think, is very clear.

It's just as clear, not just from the purposes as I stated, but you obviously are not going to preserve farmland if you allow lots which are really basically established in the R.C. 5, but would then spill over into the R.C. 2.

We are not preserving agricultural land when you allow an access road to, in part, or entirely, be placed in R.C. 2 instead of R.C. 5.

The same way with stormwater management. It could be true of parking and a lot of other uses which are

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needed in conjunction with the R.C. 5 or any other development.

So if you look at the uses allowed in R.C. 2, you're allowed to establish a building lot in a very limited fashion, one for every fifty acres, basically.

There are some nuances to that, but that's basically what it is. You're allowed to have farms, open space, public schools, streets and ways, telephone, telegraph, electrical power, so you have a limited number of uses.

But when it talks about streets and ways, when it says they're allowed as a matter of right, it's only for those uses like a rural agricultural development using the lots which are allocated to that parcel, or some special exception use, like a farmer's roadside stand, or whatever other use allowed by special exception.

That infrastructure can be placed in R.C. 2 only if it applies to what's allowed in the R.C. 2.

Q. The Zoning Commissioner addressed that point in his decision.

Do you agree or disagree with his analysis of the

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streets and roadways as the way he analyzed it in his opinion?

A. I don't agree, because I don't think it's consistent with the policy which is established in his office which I alluded to earlier as far as what I reviewed.

But let me refer to another section of the R.C. 2 zoning ordinance. This is section 1A00.5. It says, I quote, Application to tract divided by a zone boundary, which is this case, a tract of land which is divided into R.C. 5 and RC. 2. There aren't many of them, but there are a number.

Whenever a single tract is divided by a zone boundary so that portions of such a tract lie within R.C. zones of different classifications, the total number of dwellings or density units allowed shall apply to each tract individually.

That's basically what that paragraph says. Now, the key word here is "apply." Whatever units are permitted as established by the zoning ordinance, whatever allocation is allowed, those have to be applied to that

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particular zoning classification. In this case, the R.C. 5 and not within the R.C. 2.

And then to further enforce that, the Zoning Commissioner's policy manual -- I referred to the section here, Section 1A00.5.a.

It references tracts divided by zone boundaries. It states, quote, If R.C. zoned land under the same ownership is separated by a different R.C. zone, then the density should be allocated and utilized by each zoned parcel.

So we have the word "applied" and "utilized" in both these documents, and they reinforce each other.

And I think it's very clear that whatever density is generated from that parcel of land, whatever R.C. zone it is in, it must be applied and utilized within that zone.

And that would mean all the infrastructure and other needs required by the county, so forth, such as, again, stormwater management, roads, parks, whatever else is required.

Q. Does the placing of this road through the R.C. 2

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portion of the property and the stormwater management pond, in your opinion, violate the zoning regulations that you just referred to?

A. Yes. I would say it is actually a de facto rezoning of R.C. 2 to R.C. 5. You're taking R.C. 2 land which has a very specific purpose, and you're really making it R.C. 5 land, is what you're doing.

Q. Let me ask you, in that vein, Ms. Demilio asked Mr. Preston, I believe, whether or not he participated in a reclassification effort to rezone this R.C. 2 property to R.C. 5, which this Board denied.

How does that aspect relate to what you just answered?

A. Well, if they were able to get the rezoning approved, then you would have just what you have here basically, I would assume.

So they have accomplished through this process what they were trying to seek through that process. Where they failed to rezone it, in effect, they are rezoning it by a different mode. That's really what it really boils down to.

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Q. If the R.C. 2 zone was permitted to be utilized in the way and the fashion that they're utilizing it in this case, what would the effect, the overall effect be on the R.C. 2 zone, in your opinion?

A. If I can go up here to the map?

Q. Sure.

A. The areas -- I'm referring now to the Baltimore County zoning map -- and the areas of R.C. zoning are shown in this pale green.

And as you can see, it interfaces enormously with the R.C. 2. Not only that, but some of the more or the urban zones, the D.R. zones, even the industrial and so forth, they are faced with the R.C. 2 zone.

So if you accept the concept that you can take development, land that's zoned for development, be it D.R. 1, R.C. 5, whatever, and you can maximize your use by putting your homes or factory, or whatever in those appropriate zones, and then all of the related access infrastructures, everything else would go within the R.C. 2, which would cost you a lot less to buy R.C. 2 land, obviously, than to buy industrial or commercial or even

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R.C. 5, so you maximize the use of the R.C. 5 in this case by putting all the infrastructure on adjacent R.C. 2, so that's going to open up the door.

And I realize that alone is not the basis for making a decision here. The decision made is to be based on the merits of the case, but the implication is, that's what's going to happen.

And it's interesting in the twenty-six years since the R.C. zones have been in effect, whatever it might be, this has never occurred before.

I'm not aware -- and you will be able to cross examine me -- but I'm not aware of any major cases where this has occurred before, where R.C. 2 land is utilized to complement and supplement development.

Q. Now, are you aware of any cases where the use of the R.C. 2 zone or conservation zone such as this was not permitted to be utilized for purposes of, let's say, a commercial zone or another R.C. zone?

A. I should mention in preparing for this case, I did inquire as to other cases which may have a parallel to this case and there was a case a number of years ago

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called the Leimbach case that occurred. The name of the case is Leimbach versus City of Baltimore.

Here was a man that was the petitioner, I should say, who had a trucking terminal in the city of Baltimore, as I understand it, and his access bridge was washed out or otherwise lost to him, destroyed.

So he bought a residential lot in a residentially zoned tract of land next door, and attempted to use that lot to gain access to his business. And the courts ruled that you cannot --

MR. ALDERMAN: Objection. Mr. Solomon is qualified as an planner with expertise in zoning. Has he now ventured into jurisprudence as well.

MR. HOLZER: I believe he can certainly tell --

THE CHAIRMAN: He can quote from a case that he thinks is parallel to this one. It may not be, but that is what cross examination is for.

A. The courts ruled a residentially zoned lot in a residentially zoned area could not be used to provide access to a lot or tract of land which was zoned commercial. That was that one case.

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The other case was a more recent case, although ten or fifteen years ago, called the Jones case. It involved a High's dairy, I believe.

I was involved with that case. It's been awhile. But a gentleman owned a little over an acre, and he was reconverting it from one commercial use to some other commercial uses.

He apparently did not have enough space on the one acre for the top field, as I recall, so he requested or petitioned to have the top field placed on the adjacent R.C. 2 zoned land.

And it was ruled and determined that he could not use R.C. 2 land for that purpose, it was not consistent with the intents and purposes and the requirements of the R.C. 2 land.

Q The Jones case was a case that this Board decided, and decided in the fashion that you just testified to?

A. Yes, they did, and I think it was appealed, and their decision was upheld on appeal.

Q. So based upon experience, even though you retired

in 1992 from the county, based upon your experience and your knowledge of the zones, other than the Jones case in Baltimore County, this is a case that carries with it a somewhat unique question to be presented to the Board?

A. Yes, yes, it does. I think, like I said before, the implications are significant.

I do think that there's a strong basis within the ordinance to make it very clear that you cannot use R.C. 2 zoned land for R.C. 5 development, or for any other development.

I'm going to add in this case it's not only a road that intrudes within the R.C. 2. As we know, it's a stormwater management facility. And in addition, four or five of these lots also intrude and encompass land areas in the R.C. 2, particularly lot six.

So it's not just the infrastructure that's been provided for R.C. 2, but actual areas on some of these lots are also included in the R.C. 2, although the homes themselves are located within the R.C. 5.

Q. You were here and you heard Mr. O'Leary's engineering testimony about lot number seven which does

not, in his opinion, does not go into the stormwater management facility, but that the R.C. 2 portion of the road and maybe a tiny bit of the driveway of lot number seven might drain into the R.C. or might drain into the stormwater management facility.

Does that have any effect on your opinion that you just rendered in regard to the impropriety of the use of the stormwater management facility and the road being in the R.C. zone?

A. No.

Q. Can you just explain why? I think I know the answer.

A. Well, if we are -- the zoning line is the boundary. As the zoning ordinance in the case and as the manual which supplements the zoning ordinance in the case, whatever lots are allocated within a particular zone have to be utilized and applied in that zone, and that would include all the related improvements which are required.

So it's not a matter of degree. Once you start playing that game, where do you draw the line? You can argue this is only a small piece of R.C. 2. You can argue

it really can't be used for farming in the sense you can argue that a larger piece could be.

Once you start down that road, where do you draw the line? The line is drawn at the zoning line. That's where it's drawn.

That's what the regulations say, and that's where it's got to be drawn.

Q. Is there a requirement in the R.C. 2 zone that what goes in there fosters or furthers the purpose of agriculture?

A. The R.C. 2 makes it very clear that the purpose of the R.C. 2 zone is to protect and foster agricultural land.

You don't protect agricultural land by putting a stormwater management facility on there. They are allowed, however, if the lots are generated from the R.C. 2 land.

If you have a hundred-acre farm, you can put, let's say, or 500 acres, whatever number, you can put those lots on that property and stormwater management can go on that property, on that zoned land, only to

supplement and meet the requirements of that development on that land. I'm beating a dead horse. I know that.

Q. No. I asked you that question because I wanted to make sure I got that point out and, obviously, you think I have.

By your testimony, you've sort of addressed the first two questions. Let me just ask this. As exhibit No. 7, I had submitted as Petitioner's No. 7, Mr. Lippincott's comments. Could you take a look at that, sir?

A. I have seen this, yes.

Q. How do those comments of DEPRM correspond to your testimony?

A. They support the testimony I have given here today. They support it insofar as they go with that letter. I have expanded from what they have stated in that letter.

Q. I understand you have articulated more reasoning. There are some other questions, questions number three and four. I don't know whether you have the special hearing request in front of you or not.

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The first two questions dealt with the road and the stormwater management facility. The third and fourth questions that were raised by Mr. Preston through me talks about the R.C. 2 zoned land, Can it support lots six and seven, and can you have lots six and seven and lot eight and also the stormwater management facility in a separate parcel?

Are you familiar with those questions that he's posed?

A. I am.

Q. And you heard Mr. Preston's testimony this morning as to why he raised them.

Do you have any comments that you care to share with us in regard to, collectively, those questions posed in that area?

A. Well, Mr. Preston made the point that this is basically developing four lots in the R.C. 2, although these aren't lots necessarily in every case for the construction of a home or whatever.

Only number eight and number seven are really R.C. 2 lots. But the other, the stormwater management

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facility and part of lot six are also, in effect, subdividing this property into basically four sections. Put it this way.

That is a legitimate question. But even more basic than that is the issue of putting R.C. 5 development in an R.C. 2 zone.

That question does have merit, though. And it's almost -- I can't answer beyond what I just said with regard to that.

MR. HOLZER: Thank you, Mr. Solomon. I have no further questions.

THE CHAIRMAN: Ms. Demilio?

MS. DEMILIO: No questions.

THE CHAIRMAN: Cross.

CROSS EXAMINATION

BY MR. ALDERMAN:

Q. Mr. Solomon, good afternoon. Howard Alderman, on behalf of the owner/developer. Good to see you again, sir.

A. Thank you.

Q. Streets and roads, only those which promote

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agriculture, correct?

A. No, that's not correct.

Q. Streets and roads, only those which promote agriculture, correct?

A. No, that's not correct.

Q. Streets and roads are generally allowed in the R.C. 2 zone, is that correct?

A. Well, they are allowed in conjunction with R.C. 2 development, and they also would be allowed if the state or county decided to put a major road through R.C. 2.

Q. What about a minor road?

A. If it's associated with a private development that's not R.C. 2 related, my testimony is it's not allowed.

Q. Where does it say that in the zoning regulations?

A. Where does it say --

Q. Where's does it say streets and roads that can be built are only governmental or only to support the houses that are allowed in the R.C. 2 zone?

A. That's implicit.

Q. So you can't point to any specific reference, is

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that correct?

A. No. But I think it is commonly understood that it's something that's historically established and understood.

Now, if you take it out of context in the very narrow way -- which is apparently what the Zoning Commissioner did -- then you get into this issue.

Q. How do cable T.V. facilities support agricultural development and agricultural resources?

A. If you look at the zoning ordinance, it allows all types of common -- it allows transmission lines, pipelines and roads, so forth.

Because the R.C. 2 is so vast, if you say we would not allow any of the publicly-related uses within the R.C. 2 zone, they couldn't be established because, inevitably, you have to go through in almost every case R.C. 2 land, so they were allowed because of the public need.

Q. What about private T.V. cable facilities, Mr. Solomon, how do they promote agriculture?

MS. DEMILIO: Objection. What are private T.V.

cable facilities, what is that?

Q. Mr. Solomon, do you have the zoning regulations with you?

THE CHAIRMAN: First of all, I am going to sustain the objection. Rephrase, lay some foundation.

MR. ALDERMAN: I'll withdraw the question.

Q. You are familiar with the zoning regulations, R.C. 2, correct?

A. I think I am, yes.

Q. And public schools are permitted as of right in the R.C. 2 zone?

A. That's correct.

Q. And how do public schools promote agricultural?

A. There are certain uses which are so important to the common good that they are allowed virtually in all zones.

Roads are one of them. If the county wants to put a road in or, again, I mentioned this whole class of pipelines, transmission lines, et cetera, the public need overwhelms the small loss of agricultural land which might occur.

And the same is true, talking about uses in the R.C. zones, homes are allowed. A limited number of dwellings are allowed.

They don't help the agricultural use of land, but that was an accommodation, a political accommodation, basically, so the zone would even get enacted.

If you had said no dwellings, there might have been such a furor that the zoning wouldn't have been enacted even in the first place.

So there are accommodations made for the common good, and the last reference was for a political reason and, basically, R.C. 2 is, in fact, very little affected by the classes we just talked about.

Q. Explain, if you will, for the Board, and certainly for the record, either the accommodation or the political reason for commercial film production facilities being allowed in R.C. 2 zones as a matter of right, and how they promote agriculture?

A. No zoning regulations are perfect. I don't know whether -- I'm assuming that you're correct, you're saying that that is allowed.

Q. Am I incorrect, Mr. Solomon?

MS. DEMILIO: Objection.

MR. HOLZER: Objection.

MR. ALDERMAN: I want him to answer this question.

MR. HOLZER: Then why don't you show him the provisions?

Q. These are the R.C. 2 zones, general provisions?

A. I understand.

Q. Use regulations. I'm sorry. Use regulations. Uses permitted as of right, and then uses permitted by special exception. Commercial film production is permitted is as of right, correct?

A. No, that's not correct. That's a use allowed --

Q. Accessory uses under nine?

A. Okay. Yes.

Q. It is permitted as of right, correct?

A. It is.

Q. Now, given that, would you answer my question?

A. How does it help agricultural?

Q. Well, you indicated it was either by way of

accommodation, a political compromise, or to promote agriculture, and I am curious as to how those facilities meet any of those roles?

A. There are some apparently minor exceptions to that, but you don't see R.C. 2 land being threatened by that particular use.

As I said before, Howard, you worked as a planner for a short period of time at least, and you know it's not a perfect world.

Okay? It's an imperfect world. And if you and I had our way, we might be able to improve these regulations.

THE CHAIRMAN: You asked the question. You got the answer as it is.

MR. ALDERMAN: I didn't say a word. It's like being lectured to by your professor. You know, you stand there and take it.

Q. Now, since your retirement from Baltimore County in 1992, Mr. Solomon, how many development plan review hearings at the Hearing Officer's level have you participated in?

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A. None.
Q. Are you aware the development review process changed in --
A. Yes, I'm aware of that.
Q. You referred to the, I believe it was the Orville Jones case, the High's store over in Long Green Valley?
A. That's correct.
Q. Was the septic reserve area or tile field to which you made reference, was that located on the same lot, proposed to be located on the same lot, or was it proposed to be located on somebody else's property by way of easement, if you know?
A. I can just testify to the fact it was to be placed on R.C. 2 zoned land. That's the important fact.
Q. To support a commercial use?
A. That's correct.
Q. And the same was true in the Leimbach versus City of Baltimore case, that was a roadway running through a residential community to support a proposed commercial use?
A. A residential community zoned residential, yes.

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Q. And are you familiar with Paper Mill Road as it exists between Ashland and Jacksonville?
A. I am familiar with it, but I don't attest to everything.
Q. But you're familiar with the road. You used to be the north county planner.
Do you know where the Nature Food Store is on the bend of Paper Mill Road?
A. I don't recall.
Q. Okay. You talked about split zoned lots and made a reference to the Zoning Commissioner's policy manual, correct?
A. I did.
Q. That is for calculation of density, is that correct?
A. I think it seems to go further than that. It talks about not just the number of units, but talks about where they can be utilized or applied as well.
Q. Well, Mr. Solomon, are you suggesting that the proposed home in the R.C. 2 zone, the density for that home is generated by an R.C. 5 zoning classification?

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A. Repeat that question.
Q. Are you suggesting the density that would allow the home on lot seven is the density that would allow that home generated by an R.C. 5 zone or any portion of an R.C. 5 zone?
A. The lot that you refer to, number seven, is generated by the allocation of development rights within the R.C. 2.
Q. Only within the R.C. 2, correct?
A. Yes.
Q. There's a minimum lot size, correct?
A. Yes.
Q. What is the minimum lot size?
A. I believe it's one acre.
Q. Now, let's shift to the R.C. 5. Today, what is the minimum lot size in the R.C. 5?
A. It changed. It was an acre. Frankly, I don't know what it is today.
Q. Do you know if the acre lot size still applies to this development plan as approved?
A. I think all those lots are at least an acre in

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size.
Q. Based on the R.C -- there's no R.C. 5 zoning on the south side of Sweet Air Road, is there?
A No R.C. 2 as far as this tract.
Q. And you reviewed the red lined plan?
A. Yes.
Q. How many residential lots are permitted by right in the R.C. 5 zone on the north side of Sweet Air Road? Feel free to refer to the plan, if you need to.
A. Again, I didn't review the updates of the R.C. 5. It wasn't critical that I do so.
My point here is that the R.C. r development, whatever number of lots are allowed, cannot flow over onto the R.C. 2 in any shape or form, so the number of lots is not critical.
Q. I'm not trying to be a trick question because the R.C. 5 zoning was changed.
Applying the R.C. 5 regulations that existed prior to the change as shown on the red lined development plan as proposed, how many residential lots are permitted in the R.C. 5 zone on the north side of the Sweet Air

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Road?
A. I don't know.
Q. How many are proposed?
A. There are six lots proposed.
Q. In the R.C. 5?
A. In the R.C. 5.
Q. Those six lots derive their density --that's how you create lots, you have to have density to create a lot?
A. I understand that.
Q. Those six lots derive their densities from what zone?
A. From the R.C. 5 and only the R.C. 5.
Q. So you're not suggesting that there's any transfer of density between zones on this proposal?
A. No. I'm just saying the density has to be applied and utilized in the area that's zoned for that type of development, in this case, R.C. 5.
Q. With respect to the R.C. 5 lots proposed on the north side of Sweet Air Road, are each of them at least one acre?
Do each of them contain at least one acre of R.C.

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5 zoned land?
MR. HOLZER: Objection.
MS. DEMILO: Objection. This has been asked and answered.
MR. ALDERMAN: No. It was asked about density. I asked if there was sharing of density. Now, I'm asking minimum acreage based on zoning.
MR. HOLZER: He answered that.
THE CHAIRMAN: He already said there was.
MR. ALDERMAN: He said there was sufficient land area. If the Board understands that Mr. Solomon's answer was each of the proposed lots in the R.C. 5 has a minimum of one acre of R.C. 5 zoned land, then I will withdraw the question.
Q. Now, Mr. Solomon, are you familiar with the area on the south side of Sweet Air Road of the subject property?
A. Yes.
Q. Do you know how that area is used?
A. As a farm.
Q. And any other use down there?

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A. On the subject tract land?
Q. Yes, sir.
A. It appears to me just to be a farm on the south side and the development of land on the north side.
Q. So only farming is occurring on the south side of the subject property?
A. In regard to the subject property?
Q. Yes.
A. As far as I can discern, yes. And that was consistent with the testimony that's already established on the record, but go ahead.
Q. So are you suggesting that the Developer's Exhibit 2, which is Petitioner's 2 at this level, is in error?
A. No.
Q. This shows an existing dwelling on the south side.
A. I didn't say there wasn't a dealing there.
Q. I asked you what uses were there, and you said it was only farming.
MS. DEMILO: Objection. Mr. Alderman is being

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argumentative. Why doesn't he ask the question directly.
THE CHAIRMAN: Okay, Folks, relax. Relax. None of this is necessary to get that bent out of shape. Ask the question specifically and get an answer.
Q. Are there any uses other than farming on the subject property on the south side of Sweet Air Road?
A. I'll answer your question this way. A farmstead is part of a farm. It's part of a farming operation.
A farmstead would mean a dwelling, maybe a barn, outbuildings, all necessary for a farm operator to operate that farm.
So when I say it's a farm, it's implicit again that it includes the necessary structures to accommodate that use. So your question was answered correctly, although not to your satisfaction.
Q. Is that dwelling required to farm that land?
A. In a practical sense, it is, particularly if you have livestock.
Q. What would happen to the farming operation, Mr. Solomon, if another dwelling were put down there?
Would it have a positive impact on the

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agricultural operation, or a less than positive impact?

MR. HOLZER: Objection. Not relevant

THE CHAIRMAN: I'm going to sustain it because I'm not quite sure what the question means, a barn, a shed?

MR. ALDERMAN: Is there an additional dwelling is what I asked.

MR. HOLZER: And I objected because there is no additional dwelling that's being proposed for that.

MR. ALDERMAN: It's a hypothetical. He's an expert witness.

THE CHAIRMAN: It's cross examination.

Q. Would an additional dwelling on the south side, would it have a positive impact on agricultural uses or less than a positive impact, or no impact on the agricultural use?

A. It could have a significant impact. It could have a marginal impact, or no impact.

It depends on where it's located. If it's on a stone ledge, it's very small and right next to a home, it's going to be virtually no impact.

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If it's put on prime farmland out in the middle of a field, it can have a major impact.

Q. Have you been to the subject property?

A. No, I have not. I have looked at the maps. I have looked at pictures.

I didn't think it was necessary based on the testimony I have been giving today.

Q. Do you have an opinion as to whether or not an additional dwelling is permitted within the R.C. 2 zone portion of the subject property?

A. Yes.

Q. Do you have an opinion as to whether that additional dwelling is better located on the north side of Sweet Air Road or the south side of Sweet Air Road in terms of promoting agricultural uses of the subject property?

A. My answer to your question would be that I think it would be better served if it was on the north side where you have established it as lot seven.

That would be the larger parcel of the R.C. 2 on the south side in tact. But I would suggest you use the

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entire parcel of the R.C. 2 for that lot, rather than have the R.C. 5 flow over into the R.C. 2 portion.

MR. ALDERMAN: Nothing further. Thank you, Mr. Solomon.

THE CHAIRMAN: Redirect?

MR. HOLZER: None.

MS. DEMILIO: I have a couple.

REDIRECT EXAMINATION

BY MS. DEMILIO:

Q. Mr. Solomon, I was intrigued by Mr. Alderman raising the issue of commercial film production, because it did not appear to me he understood commercial film production, and low and behold, Section 101 of the zoning regulations actually provides a definition.

I'm going to give you a chance to look at it before I ask you a question. Read it to yourself.

A. Fine.

Q. Now, I also want to show you Section 435 of the zoning regulations which requires referral when you talk about a commercial film production.

Do you see Section 435 of the zoning regulations?

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I ask you to take a second to look at that.

A. Yes.

Q. Now, under the definition and under Section 435, does commercial film production look like a permanent use on an agricultural land?

A. No, it's not. It's basically the shooting of film or videotape on location and in a natural setting.

So it's hardly a use at all. It's just a passing use. It does not take away agricultural use of the land in any way, shape or form.

Q. It refers to a natural setting, so you would assume it means the natural agricultural setting that's been filmed?

A. It means that they aren't going to put up any structures or buildings even for a temporary situation. It would not encumber the agricultural use of the land.

Q. So then, in your opinion, it wouldn't interfere with the agricultural use of the property, and certainly not on a permanent basis?

A. Just for hours, and not even days, necessarily.

Q. Thank you. No further questions.

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MS. DEMILIO: I'm sorry, is this your map, or the county map?
THE WITNESS: I stole that from the people next door.
MS. DEMILIO: You mean it's on temporary loan?
THE WITNESS: They told me I could borrow it as long as I get it back by 4:30.
MS. DEMILIO: It's for illustrative purposes?
THE WITNESS: Right. $85 if you want to buy it. I didn't care to purchase it.
MS. DEMILIO: Maybe Mr. Alderman wants to buy it.
MR. HOLZER: For the record, the witness had testified to the Baltimore County zoning map prepared by the GIS service unit and --
MR. ALDERMAN: It's an inch to a mile. That's not the official zoning map.
THE WITNESS: It's a generalized zoning map.
MR. ALDERMAN: Based on the '97 zoning.
MR. HOLZER: This was for illustrative purposes, so if everyone agrees that we don't have to put it in, we won't, but we described it for the record, and I believe

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that's all the questions that I have.
THE CHAIRMAN: Thank you, Mr. Solomon. It was a pleasure seeing you.
MR. HOLZER: I have one more witness, but she'll be very brief. I call Charlotte Pine.

CHARLOTTE PINE,

having been called as a witness, was duly sworn, and testified as follows:

DIRECT EXAMINATION

BY MR. HOLZER:

Q. Ms. Pine, would you give us your full name and present address, please, and your position with the Long Green Valley Association?
A. My name is Charlotte W. Pine. I live at 13310 Fork Road, and I am president of the Long Green Valley Association.
Q. The Long Green Valley Association is one of the protestants and also one of the petitioners in this Lynch property case?
A. Yes. We have been for -- it's been approximately two years.

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Q. Do you have the Rule 8 documents that are required?
A. Yes.
MR. HOLZER: Ms. Pine has given me a resolution, affidavit, a resolution from the secretary -- I guess they were all together -- that consists of three pieces of paper.
A. Ms. Pine, is that right?
A. Yes, that's correct.
Q. You are authorized to speak on behalf of the association in rather to the Lynch property case?
A. Yes, I am.
Q. You're also here as an individual to testify yourself?
A. Yes.
Q. So you're wearing two hats this morning?
A. Yes.
MR. HOLZER: I would offer this as the next petitioner's exhibit.
THE CHAIRMAN: Accepted.
Q. Ms. Pine, you are familiar with the Lynch

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property?
A. Yes, I am very familiar with it.
Q. Do you recall whether you participated in the reclassification case that was before this Board a few years ago?
A. Yes, we did. We participated in the request for reclassification of the R.C. 2 land which is adjacent to the park.
We objected to it, and the park was interested in purchasing, but the Lynch family was not interested.
It is a very beautiful, beautiful area. It is a scenic area. It is adjacent to other farmland.
Q. Now, you're familiar with this development plan that has been proposed that's been the subject of the hearing this morning?
A. Yes.
Q. You're also familiar with the petition for special hearing raising the questions in regard to the appropriateness of using R.C. 2 land to support the road and the stormwater management?
A. Yes, I am familiar with it.

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Q. What's your association's position in regard to that?
A. Our association is very much opposed to it. We have been opposed to any change or any usage of R.C. 5 land for R.C. 2 (sic) purposes, and wherever it has occurred in our valley, we have objected.
Q. Ms. Pine, you reversed the R.C. 2 and R.C. 5.
A. Did I?
THE CHAIRMAN: You just became a witness for Mr. Alderman.
THE WITNESS: Excuse me.
Q. Do you want to try it again?
A. We certainly object to the usage of R.C. 2 land for the R.C. 5 purposes.
THE CHAIRMAN: There you go.
Q. I thought that's what you meant.
A. That's what I was trying to stay.
Q. Your association was also involved, as I recall, in the Jones case that Mr. Solomon just testified to?
A. That's correct. The Long Green Valley Association initiated the Jones case.

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Q. And again, that was based upon your concern about the R.C. 2 zone?
A. Yes. We did not think R.C. 2 land should be used for anything other than farming.
We have been very, very successful in the Long Green Valley in preserving farmland, and we're trying to continue that vein.
Q. Is there anything else that you care to say in regard to that issue related to the association or to yourself as an individual?
A. I think it's all been said. Everyone knows that we are trying to preserve the farmland.
And there's been some mention here that this is a very insignificant piece.
But to the farmer, it's not. They need the small parcels. And I have lived there a long time, and that place has been farmed on both sides of the road for many, many years by the Lynch family.
Q. Do you happen to know whether the Gunpowder Park is also farmed, which is right adjacent to it?
A. Yes, it is farmed. Some of it is woodland, but it's also farmed.

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Q. So even though the Gunpowder Park is a park, agricultural operations still take place north of Sweet Air Road and adjacent to this property?
A. Yes. It is leased. It was formerly the Jack Marshall farm, but it is leased. I don't know who leases it, but it is leased.
Q. Do you have any other concerns on behalf of the association?
A. No. That's it.
Q. Ms. Pine, do you know whether Sweet Air Road is a scenic road?
A. Yes, it is a scenic road.
Q. What impact does that have, or this proposed development have on the scenic roads?
MR. ALDERMAN: Objection.
THE CHAIRMAN: She can answer from her own personal lay point of view.
MR. ALDERMAN: As long as it's a lay point of view.
A. Well, the more houses that you see there in an

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area that at this point is pretty much pristine farmland, I think is objectionable.
Additionally, the stormwater management plan, that sounded like it would not be an attractive thing for a vista.
One issue came up as to why there was no request for a downshifting in this area of the zoning cycle.
Well, we knew that this was inappropriate or would not be something we could do.
We had discussed it because nothing is already in the pipeline that the councilmen are going to touch, and that's been affirmed this time, the zoning cycle. I don't think Mr. McIntyre downshifted anything that was already in the pipeline.
MR. HOLER: I have no further questions.
FURTHER DIRECT EXAMINATION
BY MS. DEMILIO:
Q. Ms. Pine, for the record, you also appeared here individually. Can we assume the concerns you expressed on behalf of the association are also your own personal concerns in regard to this development?

A. Yes.
MS. DEMILIO: Thank you.
THE CHAIRMAN: Cross?
MR. ALDERMAN: Yes
CROSS EXAMINATION
BY MR. ALDERMAN:
Q. Good afternoon, Ms. Pine. Howard Alderman, on behalf of the developer.
Are you familiar with Issue 3-111 on the Baltimore County 2004 comprehensive zoning map process?
A. No, not really.
Q. Now, you indicated the Long Green Valley Association offered to purchase this property?
A. No. Gunpowder Park.
Q. I'm sorry. I misheard. I apologize.
A. Maybe I misspoke.
Q. No. I like the other answer you gave. That's not a problem.
So your association is not opposed to the existing R.C. 5 zoning on this property, correct?
A. We oppose it, but we know it's fruitless, that

there is no way we can do anything about it.
THE CHAIRMAN: That's your answer.
Q. You are aware that the adjoining property to the west is zoned R.C. 5 as well, correct?
A. Yes, we are aware of that. That's existing. That's been in the pipeline.
MR. ALDERMAN: Thank you, Ms. Pine. Nothing further.
MR. HOLER: That's our case.
MR. ALDERMAN: Let me say, for the record, I snapped at Mr. Holzer a little bit earlier. I was caught up if a moment. Carroll, I do apologize.
MR. HOLZER: I didn't know I was snapped at. That wasn't much of a snap.
THE CHAIRMAN: Lawyers snap at him so often, it just rolls off him.
MR. ALDERMAN: I know, but this is my more gentile approach I'm going to achieve here.
THE CHAIRMAN: Off the record.
(Discussion held off the record.
THE CHAIRMAN: All right. It's 12:30. We'll

break for lunch and you can start from scratch. Forty-five minutes.
(A luncheon recess was taken.)
AFTERNOON SESSION.
* * * * *
THE CHAIRMAN: Back on the record. Mr. Alderman?
MR. ALDERMAN: Yes, sir.
THE CHAIRMAN: It's your case.
MR. ALDERMAN: It is, indeed. I call Charles V. -- as in Victor -- Main, the 2nd.
C H A R L E S V. M A I N, II,
having been called as a witness, was duly sworn, and testified as follows.
DIRECT EXAMINATION
BY MR. ALDERMAN:
Q. Mr. Main, state your name and address for the record, please?
A. Charles Main, the 2nd, Daft, McCune, Walker, 200 East Pennsylvania Avenue, Towson, Maryland 21286.
Q. Would you describe for the members of the Board

and those present, however briefly, your educational and professional experience, please.
A. I have a Bachelor of Arts from Washington College in 1977, and I have had experience in the land development, civil engineering field since right behind that, 1978, and I'm a P.E. registered in the State of Maryland 1994 until today.
Q. Are you a member of any local or national associations or societies?
A. Yes. American Society of Civil Engineers, and the National Society of Professional Engineers.
Q. How long have you been working with development projects and zoning projects in Baltimore County?
A. Over twenty years.
MR. ALDERMAN: I provided a copy to Mr. Holzer, and I will also provide a copy, if you'd like after the hearing, to Ms. Demilio.
Q. I show you a copy of a single page with a picture of a mustached Charles Main on it and ask you is that a brief summary of not only your professional experience but also education?

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A. Yes, it is.
MR. ALDERMAN: I would offer Mr. Main's one-page resume as Appellee's No. 1.
THE CHAIRMAN: Accepted.
Q Mr. Main, have you ever appeared and testified in variance and/or special hearing cases before the Baltimore County Hearing Officer and/or Zoning Commissioner?
A. Yes, I have.
Q. Have you ever appeared and testified in the zoning hearings or zoning special hearing cases before this County Board of Appeals?
A. Yes.
Q. You indicated that you hold a professional license in Maryland?
A. Yes.
Q. Are you familiar with development zoning and design processes in Baltimore County?
A. Yes.
Q. Does your experience in Baltimore County require you to be familiar with the development regulations of Baltimore County?

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A. Yes.
Q. Does your land development experience and zoning experience of Baltimore County require you to be familiar with the Baltimore County zoning regulations and the rules and policies attempted pursuant thereto?
A. Yes.
Q. Are you familiar with the subject property?
A. Yes.
Q. Did you appear and testify before the Hearing Officer and Zoning Commissioner as an expert witness, professional engineer, with emphasis in zoning and planning matters?
A. Yes.
Q. Have you been involved with the subject property since the submittal of the concept plan?
A. Yes.
Q. Have you familiarized yourself with the development plans, with the zoning regulations and with the development regulations in preparation for your appearance and testimony here today.
A. Yes.

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MR. ALDERMAN: I would offer Mr. Main as a registered engineer with emphasis in planning and zoning matters in Baltimore County.
MR. HOLZER: I have no questions.
MS. DEMILO: No questions.
THE CHAIRMAN: So noted.
Q. Mr. Main, how is the subject property zoned?
A. R.C. 5 and R.C. 2 split zoned.
Q. Have you visited the subject property and, if so, how many times?
A. Several times, maybe two or three, but it's been probably a year ago when we were going through the development case.
Q. Based on your research and preparation -- have you been involved in the research and preparation of the plans throughout this development process?
A. Yes.
Q. Based upon your research, have you found any indication that the current owner's requested that the property be split zoned as it is today?
A. No.

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Q. Were you involved in a proceeding held of the Board of Appeals where the owner sought to change all the R.C. 2 zoning to R.C. 5?
A. I was not, but my company was.
Q. Are you familiar with the outcome of that proceeding?
A. Yes.
Q. What was the outcome?
A. It was not granted, and it remained split zoned R.C. 2 and R.C. 5.
Q. You indicated that you're familiar or required to be familiar where the zoning regulations of Baltimore County.
In your professional opinion, is a roadway such as depicted on Petitioner's 2, which was Developer's 2 below, which is the approved development plan, is the roadway which is located both in the R.C. 2 and R.C.5 zone a permitted use?
A. Yes.
Q. What do you base that opinion on, sir?
A. Baltimore County zoning regulations allowing

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streets and ways for R.C. 2.
Q. Now, have you had any input into the design, the location and configuration of the proposed stormwater management facility as shown on Petitioner's 2, which was Developer's 2 below?
A. Yes, I have.
Q. Based on your familiarity with the Baltimore County zoning regulations, is a stormwater management facility that will support homes in both the R.C. 5 zoning and R.C. 2 zoning a principal use permitted in the R.C. 2 zone?
A. No.
Q. Why not?
A. It's not a principal use. It's not listed as uses in the R.C. 2 zoning regulations.
Q. Well, being familiar with the zoning regulations, in what zones are stormwater management facilities listed as uses?
A. None, to my knowledge.
Q. How would you describe this stormwater management facility in relation to the proposed development?

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A. It's a relatively small excavated water quality facility. It has no concrete riser structure for peak management. It's basically for water quality only.
Q. Is it similar to any other facilities or amenities that are being proposed in conjunction with the proposed development?
A. No.
Q. Is it similar to the roads and the landscaping?
A. Well, it's similar in that it provides features for a number of lots in the proposed development such as landscaping and roads.
Q. No, you were here this morning when Mr. O'Leary testified, correct?
A. Yes.
Q. Did you hear his testimony that based on his review of the development plan, and on his review of the hydrology as submitted, that the stormwater management facility picks up the road drainage, that portion of the road in the R.C. 2 zone, as well as a portion of the private driveway for the house proposed in lot seven?
A. Yes.

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Q. Do you have any disagreement with that testimony?
A. No.
Q. Does the stormwater management facility as located and designed also treat stormwater from other portions of the site?
A. Yes.
Q. In designing a development site, in your practice, is a stormwater management facility located in any particular zoning or what factors go into the location or proposed location of a stormwater management facility?
A. We are required to examine the drainage by design points, which are determined by the topography.
So wherever your lowest points are, that's what you're required to review for stormwater management compliance.
Q. Did you follow that process for this development plan?
A. Yes, sir.
Q. Are you aware of any constraints from a zoning perspective in terms of where that stormwater management facility can be located on the subject property?

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A. No.
Q. In designing residential development projects, is landscaping also required?
A. Yes.
Q. Are you familiar of any zone in the Baltimore County zoning regulations that treats landscaping as a permitted principal use?
A. I'm not.
Q. Is the landscaping proposed for the subject property, for the development of subject property, integrated with the entire development, irrespective of the zone?
A. Yes.
Q. Does the landscaping provide that same type of integrated approach as the stormwater management facility?
A. Yes.
Q. Based upon your familiarity with the zoning regulations, is the R.C. 2 zoning density on the north side of Sweet Air Road being utilized to support more than one lot?
A. No.

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Q. Now, you indicated that the property on the north side is split zoned. Both R.C. 5 and R.C. 2, correct?
A. Yes.
Q. Referring you to Petitioner's 2, Developer's 2 below, it appears that there's one house proposed in the R.C. 2 zone, correct?
A. On the north side of Sweet Air, yes.
Q. Are there any homes at present on the north side of Sweet Air Road?
A. No.
Q. And each one of these rectangular boxes with the arrows constitute one proposed house?
A. Yes.
Q. And each house is located on its own lot?
A. Yes.
Q. What is the minimum lot size of each of the lots?
A. One acre.
Q. Now, you said there was one in the R.C. 2. How many lots are being proposed to be created in the R.C. 5 zone portion of the property?
A. Six.

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Q. Do you know how many are permitted by a strict application of the density and the acreage?
A. Seven.
Q. Is there any land area zoned R.C. 2 being used to support the minimum one-acre size for any of the houses in the R.C. 5 zone?
A. No.
Q. Are there any other portions or parcels of the R.C. 2 zone that are being proposed for creation on the north side?
A. There's a portion of lot six which is a non-density portion zoned R.C. 2 and the stormwater management reservation, which is also zoned R.C. 2.
Q. Now, you say non-density. Would that be a non-density parcel?
A. Yes.
Q. How many homes can be built on that?
A. None.
Q. Why?
A. Because the density has been absorbed by the creation of lot seven, and there's no density available.

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Q. Have you been involved in other projects in Baltimore County where non-density parcels have been created?
A. Yes.
Q. Based on your familiarity with the zoning regulations and the development plan as proposed, has the owner attempted to double count the available density on the north side of Sweet Air Road?
A. No.
Q. Based on your familiarity with the zoning regulations and the development process as practiced in Baltimore County, in your professional opinion, are non-density areas or non-density parcels shown on a development plan required to be considered only by way of zoning special hearing?
A. No.
Q. Why not?
A. Because they can be brought up as outstanding issues. In this case, it was brought up by the zoning staff, and the Hearing Officer has the ability to review it as an outstanding issue.

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Q. Was it brought up by the zoning office as an outstanding issue at the time of the development plan conference?
A. It was a point of clarification that non-density parcel was created, and they wanted a specific note to that in the order and on the plan.
Q. Have you reviewed the Zoning Commissioner's order?
A. Yes.
Q. Did the zoning order cover the issue of non-density parcels and the comments received at the development plan conference?
A. Yes.
Q. Of course, it was also raised in this case by the protestants, wasn't it?
A. Yes.
Q. Based upon your review of the Hearing Officer's orders, both orders in this case, is the owner/developer required to submit a landscape plan?
MR. HOLZER: Objection. This is the zoning hearing only. It's not the development plan.

And I was very careful not to get into discussion or testimony about the development plan, because that's only for purposes of our argument, unless this Board wants to allow new evidence.

MR. ALDERMAN: I'll withdraw the question.

THE CHAIRMAN: The answer is you haven't? I don't want to --

MR. ALDERMAN: And I don't want to. I'm didn't mean to stray. If that's how you're interpreting that question, I didn't mean to stray.

Q. Do you agree with Mr. O'Leary's testimony, or based on his observation, that there will be no walls and that the proposed stormwater management facility will not be a structure?

MR. HOLZER: Objection. That's not what he testified to. He testified that it was, in fact, a structure.

THE CHAIRMAN: Rephrase the question. Have him characterize what it is.

Q. Let me back up. Let me ask you a question I asked Mr. O'Leary.

In your profession opinion, is the stormwater management facility incidental to the development, or is the development incidental to the stormwater management facility.

A. The facility is incidental to the development.

Q. Will the stormwater management facility be classified as a building under the zoning regulations?

A. No.

Q. Will it have any walls?

A. No.

Q. Describe the proposed roadway and whether or not it's an open section or curb and gutter.

A. It's an open section roadway, no curbs, roadside ditch or swale that discharges stormwater, which is the primary focus of the stormwater facility.

Q. You agree there's both a fore -- f-o-r-e -- fore bay and a subsequent treatment bay, correct?

A. Yes.

Q. That's the sand filter as described by Mr. O'Leary?

A. Yes.

Q. Based on your knowledge as a professional engineer of the Code of Maryland regulations and the requirements of this county, can that stormwater management be designed in final form and constructed in accordance with all applicable laws, rules and regulations?

A. Yes.

Q. Based upon your knowledge of the Baltimore County zoning regulations, are you aware of any prohibition of an integrated and incidental element of proposed development be located in one zone, addressing perhaps stormwater that may be partially generated in another zone of the same property?

A. No.

Q. Did you hear Mr. O'Leary say the stormwater management facility could be relocated up in the R.C. 5 area?

A. Yes.

Q. Do you agree with that position?

A. If there's change to the program, yes, it's possible.

Q. Do you also agree with his position that would result in an additional uncontrolled runoff?

A. Yes.

Q. In terms of the design of the stormwater management facility, is what's shown on Developer's Exhibit 2, or Petitioner's 2, is that the final design?

A. No.

Q. What goes into the final design of a stormwater management facility?

A. A field-run topographic survey and construction drawings and details, reviewed and approved by Baltimore County Department of Environmental Protection and Resource Management.

Q. Is that type of final design generally done after the Hearing Officer's hearing?

A. Yes.

MR. ALDERMAN Nothing further of Mr. Main at this time. Your witness.

THE CHAIRMAN: Mr. Holzer.

MR. HOLZER: No questions.

THE CHAIRMAN: Ms. Demilio?

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MS. DEMILIO: No.
MR. ALDERMAN: That's the developer's case on the zoning issue.
THE CHAIRMAN: Okay. Do you have any rebuttal?
MR. HOLZER: No.
THE CHAIRMAN: With everyone's agreement, the special hearing case is now completed.
MR. ALDERMAN: Yes.
MR. HOLZER: That's correct.
MS. DEMILIO: Yes.
THE CHAIRMAN: Now we have the development plan, to the extent that any of your gentlemen feel it's necessary after the special hearing.
MR. HOLZER: Well, it's interesting that you phrased your admonition to me in that fashion.
MR. ALDERMAN: But did he listen?
THE CHAIRMAN: Funny how it comes out that way.
MR. HOLZER: And I did listen and, obviously, the Board is very aware if the underlying zoning questions that were presented, i.,e., whether or not the stormwater management and the road cannot be in the R.C. 2 zone, then

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this plan goes down.
And so it's a predicate for the approval of this plan, which is why I thought it made sense to go forward with the special hearing first.
However, having said that, I will be just very brief on behalf of my two clients, while actually all of them, but the two individuals that live next door, the Hearing Officer, on the Hearing Officer's decision to approve this plan, if you review the tapes, if you get that far as a result of the special hearing analysis, you will hear there's a lot of testimony.
Mr. Elser is concerned about the water situation and the availability of water. Yes, his existing well is right here next to the property line and, yes, it's technically the proper distance from the wells of the other houses proposed on the development, but the reason that it was brought up, that there are four properties served by his lot for the other adjacent properties --
MR. ALDERMAN: I'm going to object, Mr. Holzer. I don't mean to cut you off at this point, but this is not an issue raised on appeal of the development plan.

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The issues raised on appeal of the development plan are set out as enumerated items one and two, and they rely on underlying zoning issues, a road in the R.C. 5 and R.C. 2 zone, the stormwater management facility in the R.C. 5 and R.C. 2 zone, the R.C. 2 zone supporting two lots, being lots six and seven, and the density of the R.C. 2 zone on the north side of Sweet Air Road supporting lots six and seven with a stormwater management facility, and also lot eight, and whether the creation of non-density parcels would require a special hearing, but especially with respect to lot seven, and that's all that's here on this development plan. Those are the only issues.
MR. HOLZER: The answer to that is what we talked about last time. If you recall, this issue was brought up at the last hearing, according to my notes, and my response was that such other and further relief as may be presented at the time of the hearing before the Board.
Integral to the issues, the underlying zoning issues, are these two issues in regard to the community related to the wells and the stormwater issue as well as

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the landscaping issue that was supposed to have been resolved.
THE CHAIRMAN: Remember, gentlemen, that we are in a different evidentiary situation, in a different appellate standard situation in the development plan as opposed to the zoning case.
As long as you don't beat the horse to death, Mr. Holzer, if you're just going to mention that, I will let you go.
We are still going to determine whether or not, all things being equal, and the Commissioner having heard what he heard, whether it was appropriate for him to rule as he ruled.
MR. ALDERMAN: Let me say with respect to the statutory appeal to this Board, it says the petitioner or the appellant shall set forth with particularity the issues complained about in the Hearing Officer's order.
It doesn't say and also a catch all. To the extent that there are issues other than those which I have just read from the petition on appeal, they should have been raised in the zoning case.

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They are not proper to be raised at the time of the development plan. They were not set forth.

Those that were set forth with particularity, if Mr. Holzer wants to talk about those all afternoon, I will sit done and be quiet.

But for such other relief as may be -- he just says for such other relief as may be presented. I don't think he's presenting any relief here today.

He's requesting relief here today with respect to issues that are not raised in a petition on appeal in contravention of the statutory standards for appeal noted to this Board.

MR. HOLZER: I've argued before. I will be very brief.

THE CHAIRMAN: Finish your thought.

MR. HOLZER: All right. The issues that concern Mr. Preston and Mr. Elser, in addition to the underlying special hearing issues, related to the question of whether or not Mr. Elser's well would be affected.

The Hearing Officer indicates, when you read the decision, used the fact that there were four wells on Mr.

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Elser's property to simply say, Well, see there's no problem with water.

Well, that was just a 180 degree opposite conclusion to draw from Mr. Elser's testimony that there's a problem of available water in the neighborhood, and all four of the neighbors had to drill their well on my property which, therefore, goes to establish the fact that there was a well concern on behalf of Mr. Elser and Mr. Preston.

So the conclusion that the Hearing Officer drew was diametrically opposed to the testimony and the illustration of the exhibits that have already been shown to you that there was a well concern and a well problem. So that's number one.

Number two, the issue related to Mr. Preston's concern that he started to articulate, but I wouldn't let him get in too far, because it was really testimony about the development plan, was the fact of his concern about the stormwater coming down onto his property and, more importantly, the septic reserve areas that you will see in the exhibits that I put in from below.

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There is an area of blue marking two septic reserve areas. They are right adjacent to his well. Again, they are beyond the hundred foot requirement, technical requirement, but he is extremely concerned about his well and the impact of those septic reserve areas.

If you read the Hearing Officer's decision, quite frankly, you saw the resume and heard the testimony of Mr. Preston -- and you can review his resume and see what kind of professional person he is, even though I didn't offer him as an expert -- and the opinion of the Hearing Officer was very demeaning in regard to that aspect of the concern that was raised by Mr. Preston.

In effect, it told him that he didn't know what he was talking about when, in reality, he probably knows more about what he was talking about from an environmental standpoint than maybe the Hearing Officer understood.

So this case, insofar as the development plan, received short shrift in that respect.

I must admit that the Hearing Officer did pay attention to the testimony of Mr. Preston, who went out there by himself, without being an engineer, without being

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an expert traffic consultant, and raised questions about sight distance, which was confirmed, and subsequently necessitated moving of the road access from where it originally was to where it is now red lined.

So those were the concerns that we don't, on the development plan, that we don't feel that the Hearing Officer really comprehended and really understood.

And for those reasons, that's all I'm going it say about the Hearing Officer's hearing.

THE CHAIRMAN: Ms. Demilio?

MS. DEMILIO: Let me just say the concern of our office are the issues raised in the special hearing. We agree with Mr. Holzer, that if any of those issues in the special hearing are ruled upon in favor of the petitioner, you can't approve the development plan.

THE CHAIRMAN: Mr. Alderman.

MR. ALDERMAN: Very briefly. First of all with respect to what the Hearing Officer said or didn't say, as each of you probably know, as a trier of fact, the Hearing Officer has not only the opportunity but certainly the obligation to assess the quality, credibility and

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sufficiency of any evidence and/or testimony offered and then to reach whatever conclusion, any reasonable conclusions that he can draw therefrom.

And to say the Hearing Officer was in any way demeaning or put the qualifiers on what he did or didn't do is, I think, perhaps doing a disservice to the Hearing Officer.

Listen to the tapes. He listened to what everybody had to say, and for those issues where he found credible or substance, and the road issue, I will be the first to admit the road issue was one he said that Mr. Preston was absolutely right.

And you know what? We went out, hired a traffic expert, and when all was said and done, the traffic expert agreed with Mr. Preston, so we moved the road.

The Hearing Officer was able to apply that same type of thought process, reasoning and consideration of all other testimony and evidence, and he did not find that any of it exceeded or arose to the same level as to upset or in any way contradict the balance of the testimony and evidence presented by the developer as well as by the

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review conducted by the county reviewing agencies.

With respect to the location of Mr. Preston's well relative to the proposed septic reserve areas, if you look at what was Protestants' 6 below, and what is Petitioner's Exhibit 4 today, location of septic reserve areas, you will see that there is an existing septic reserve area that is sitting between the two proposed septic reserve areas and the well on Mr. Preston's house, and the reserve areas relative to Mr. Elser's are required by the Code of Maryland Regulations issued by the Department of Environment, that would be the Maryland Department of Environment as well as the local adopted regulations and policies, septic reserve areas are required to be set back a minimum distance from all wells, all septic systems and all other house, and this plan could not have been approved if any of those distances had been violated.

So DEPRM did its job. The developer outlined the location. And that's why the developer, if you look at the development regulations, that's why a developer is required to show all septic reserve areas and all wells

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within 200 feet of the boundary line of the proposed development tract, because once they are located, then you apply those locational standards and setback standards to each of the off site structures to make sure that the septic reserve areas and wells and the houses on site do not encroach into those required setback areas.

So, again, I think that is an issue that was considered by the Hearing Officer and was affirmed by the Hearing Office in all respects.

I don't doubt that the folks don't want to see this land developed, but that's not the issue here today.

The issue is, is it being developed in accordance with the zoning regulations and development regulations of Baltimore County, and we suggest to this Board that, upon review, you will find that, in fact, they are.

That's just argument on the development plan. I am going to perhaps accelerate or step out of bounds here, but I suspect the Board is going to want written memoranda with respect to the zoning issues.

And for the first time, I'm not going to object, because I think it would be helpful, so I'm taking the

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positive approach. This is the new improved Howard.

MR. HOLZER: I like this new version.

THE CHAIRMAN: The jury is still out.

MR. HOLZER: I think it's appropriate we submit memorandum, particularly on the special hearing aspects.

MR. ALDERMAN: Special hearing, yes.

THE CHAIRMAN: Yes. Off the record.

(Discussion held off the record.)

THE CHAIRMAN: Make it Friday, October 15th, end of business.

MR. ALDERMAN: Thank you.

MR. HOLZER: Thank you.

MS. DEMILIO: Thank you.

(Hearing concluded.)

* * * * *

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9

LYNCH

CBA-04-132 - Develop pet. approved

+ 04-198 - SPH - Spec Hearing

Develop - Howard J. Alderman

Petit.

~~Protestant~~ - J. Carroll Holzer

Citizen Dem, Lo - Peoples Counsel

Ltr

Prefer to do spec hearing first

let with

Steven Preston

1. CBA #1 - GB
2. site plan - CBA #2 } exhibits
3. Preston showed location ~~of~~ this house + neighbor's house on both ex 1 + ex 2
4. + property served by well + septic
   surrounding community + many small surrounded by Aspendale + county property
5. my background - work for Chas Bagley - do restoration work - PhD in Env Eng.
6. Pet X 3 - Preston's request
7. petition was modified in #2 to provide greater site distance - had been requested for traffic study
8. revised document prepared for hearing below

- pg 1 - shows property
- pg 2 - drainage
- pg 3 - drainage patterns + surface runoff
- pg 4 - drainage through my property
- pg 5
- pg 6 - shows ponding of water on my prop.
- pg 7 - directions of water flow + erosion
- pg 8 - location of septic reserve in health inspects
- pg 9 - photo set showing septic issues
- pg 10 - map showing layout out of my prop + Lynch prop

offered as part X #4 - the balance of the pages after 10 are no longer relevant - relate to recent topic already - it has been changed

9. tops of the hearing are develop plan - both the develop plan + going hearing are included as part X #5

10. Road that supports RC 5 allowed in RC 2 zone? Issue (1)

I see an effort to maximize density - unfeasible going into RC 2 - roads, storm water management to support one density - it should RC 5 + RC 2 zones on red line plan

✓ storm water manage in RC 2 to support develop in RC 5 Issue (2)

✓ can RC 2 on north side of S. Ave Rd. support both lots 6 + 5 - RC 2 - 2 hmes/100 acres - I see Issue 3)

3 parcels

Exp T

✓ lots 6+7 + part of lot 8 - + at. a many - comm - RC 2 can only be 2 units - & all at least 4 of per unit & a.w.m

Issue 4

✓ creation of non density parcels req. spec hearing - lot 7 in RC 2 zone

Issue 5

Boyle's Counsel

1. Oct 10, 2000 zon. map

RC X # 1

CLOSS X

1. any land in Sweet Air known - county desig. for drainage - & Thirds Rd
2. common grnd RC 5
3. dedicat to get only prop required during 2004 process
4. majority of exterior road is in RC 5
5. drainage flows NE into SWM - the road will drain ~~at~~ into storm w management
6. lots & parcels - lots only have - road on lot 6 in RC 5 2 houses in RC 2 (lot 7 + existing farm house)
7. The homes proposed don't exceed what is allowed in RC 5

Exp T

Pet # 2

Daniel O'HEARY

MVP Eng. Consultants

1. Appl. and engineers - typical current etc in B Co. + Carteret County per X 6 - resumé

H. ALD.

1. Used been a sub consultant - firm typically goes through county process - 5 projects
2. ~~Used as consultant~~ signed plans + responded to county comments

JCH again

1. reviewed sw mx computations for upgrade property from July 2003 + develop Elev - 6/20/03 - with red line revisions - also rev Dev plan cor/ll 8/13/2003 - from B County - from DEHNR
2. + also visited site - about a month ago + early August - viewed ~~site~~ site from Custom property + small air pl.
3. Lot 7 - on RC 2 portion of property - does any portion of lot 7 drain into swm facility - no it does ~~not~~ not - Lot 7 drains east + off the property
4. Does swm pond support any of RC 2 zoned portion of property
   - ~~no~~ Just rainfall, roadway + maybe driveway for lot 7

Empt

5. Does swm pond need to be in RC 2 -
   - no
6. If on RC 5 what effect would it have
   - little effect

Empt

(4)

7. majority of road is in RC 5

People's Counsel

1. SWM pond in RC 2 doesn't really support much of RC 2
2. density might be reduced but SWM pond could be in RC 5

CROSS X

1. There is no impact of ~~zone~~ land on flow of storm water
2. from a swm drop, what diff does it make in RC 2 or RC 5
   - couldn't get as much drainage in RC 5
   - more encroachment in RC 5
3. SWM - is a land form done by grading, using equipment — Impt
4. drop governed by Code of Md Reg. (COMAR)
5. Md manual Hydrology
6. drop on impervious surfaces + not going land - it's ~~about~~ what COMAR requires — Impt
7. roadway gravels must run to + it goes to SWM

Redirect

1. SWM - pipes, wrap wrapping etc - Impt
   - yes - also a concrete riser with overflow hole - in 2000 SW design manual - it's a structural devi

2. If lot 7 was only home but developed would you need SWM
   - I don't think so - it would be required for a single lot develop
3. also density + road system that decides SWM system

Recess

1. SWM req by develop of Church property
   - depends on density
2. w number of homes on side of street, SWM req - yes??
   - yes - at this density
3. is one incidental to the other

Break

Pet #7 - Lippincott comments

Pet #3
Paul Solomon
Planner in charge of RC zone
planner for 36 years

1. 1970 - Council - Bell 100 - put in place all new zones - enacted 2 rural zones - and area rural differed the other was rural suburban
2. left County in 1992
3. appeared before BOA about one a year over past 30 yrs

4. RC zones - encourage and develop in
RC5 - most or around existing villages -
RC 2 - one house for 5 acres
types to preserve farmland
RC4 - watershed zone - protect reservoirs
5. con rod + swm proposed - ok approp
for RC 2 zone?
✓ the RC2 zone was set to provide
area for RC dwellings - houses or
enfrastructure - you are not
preserving agr. land if you do this -
if you look at RC 2 uses - limited -
streets + way - but only for the
agr. dwellings or by spec exception

Fight

✓ I disagree w 2c - not consistent
w policy set by his office

Likely
Fight

6 does policy of wod + swm in RC2
violate zoning?
- yes - it's a de facto rezoning of RC2
into RC5

7. if RC 2 could be used as it is in this case,
what would effect be?
✓ on zoning map - rezone RC5 by putting
all infrastructure in RC2

8. Leimbach Case - vs. City of Baltimore -
tried to use used lot for access to business -
Ct. said no
Olville
Jones Case - one acre - not enough good -
wanted some on RC 2 for ~~the~~ field - my -
decided by ~~the Board~~ BOA - upheld
on appeal

7. this is a somewhat unique question for
pre Board - RC 2 can't be used
this way

(8) lot 6 also extends into RC 2 — even though homes all on RC 5

(9) SWM only allowed on RC 2 to support homes on RC 2

(10) on X 7, & presented Hippocratic comments — Next comments support my testimony — Exp T

(11) gives 3 + 4 on spectrum

(3) RC 2 supp lot 6+7

(4) Can lot 6, 7, 8 + SWM be on separate parcel

the ~~stockpile~~ SWM + part of lot 6 actually make 4 parcels — it's a gas that HO have must

CROSS X

1. streets + roads - ~~only [illegible] not~~ allowed on RC 2?
   - if started to RC 2 develop
2. where does it say only to supp homes on RC 2
   - implicit
   HA - you can't point to it in the regs. — Exp T
3. Cable TV - how does support opp
   - going up all on public row
4. schools
   certain uses not all as expl for public good that may all allowed
5. does code? Flemback? to support commercial

(6) split zoned lots - for density right
- I think it goes further than that
- lot 7 granted by density in
RC 2

Z

(7) RC 5 - min lot ~~7~~ size -
- not sure

(8) How many lots allowed in this RC 5 zone
- my testimony is that it can't flow over
- 6 lots proposed in RC 5 -
Do most lots derive density from RC 5 -

You're not suggesting a transfer of density?
- no
-

9. RS lots on north of S air Rd - do they
all front at least one acre

10. S. side of S. air Rd
- farmstead - dwelling etc

People's Counsel
Redirect

1. Comm. - film production
- typically filming on location -
it's a primary use - refers to
a natural setting - no enclosed
structure.

Pet W #4
Charlotte Pine
Pres Hog Creek Valley Comm Assoc

(8)

(9)

1. permitted Rule 8 process - Pet X 8
2. objected to rezoning of RC2 to RC5
3. opposed to this development
4. We were also involved in the Lands Case - RC2 only for farming
5. Trying to preserve farm land
6. parts of Hypoxden Park is also farmed
7. Built on Rd is scenic road - loss of view - houses distant - it's objectionable - SWM is not attractive
8. Bd Rev Councilman wouldn't ~~support~~ downgrade anything in proposed

CROSS X

1. Bd began RC 5 ~~in~~ is frontier - Bd can't do anything

Lunch

(Appellants) Develop with Charles Mine II

1. Appx 1 - Main road
2. zoned RC 5 & RC 2 - plat zoned
3. is a ~~not~~ ~~permitted~~ roadway in RC2+RC5 permitted use?

- yes - allows streets + ways

4. SWM for RC5 & RC2 - not permitted - they are not listed in any zone
5. what factors go into location of SWM - dictated by topography - we followed that process - then no zoning ~~Cross~~ constraints

Use Exhibit

Review

This

Exhibit

EXH

6. landscaping is also not listed as a permitted use

7. is LC2 on a side of SA Rd being used for more than one lot?

- ~~no~~ no

8. Have min lot in RC5 - 6 proposed lots - 7 are permitted - no LC2 land being used to support more lots — Engr

9. part of lot 6 - residents - on LC2 - no homes can be built here — Yes

10. are non-dev parcels eg to be part of open Hearing - no, it can be outstands used by Hearing Officer - go comments called non-density parcels — Engr

11. SWM is incidental to develop - to no walls

12. open section roadway - no curb & gutter

13. fire boy & subsequent treatment boy

14. SWM - meets all reqs of Rd

15 works in gully reqs to prevent element of SWM in other gully

16 SWM - need to ACT - more ~~run~~ runoff

Open Hearing Case Complete

Develop Plan

JCH

1. Hearing Officer - or topic you'd like on Elsie's concern about water + wells - H & M but that 4 wells on Elsie's property means that won't be a problem - that was on right with features of rural

Developer Case

~~Atty~~ Main - Witness
Charles
- Civil Engineer - Land Dev.
Member of Am Soc. of CE's
20 years working ~~of~~ on Dev. = BC
Expert witness for development = BC
w/ emphasis in zoning matters.
Familiar with Dev. Plan etc.

Hanzaned ?
RC 2 & 5
Visited several times over 4 years ago
HA Based on research documents
HA Owners sought to change all RC 2 to RC 5
Main's Co. was involved
Outcome - Not granted; remained split

Read a permitted use -
based on Regs permitting

HA SWM Facility? Based on your review
is it allowed in RC 2? - as
Main: principal use - not permitted.

SWM facilities not listed as permitted use.

O'L testimony - Do you agree that
SWM picks up road drainage and
part of RC 2 road?

Other portions treated?
Yes
In designing - was hands you decide
locations

A: Determined by typography
HA: Followed home
Yes
HA: Landscape irrespective of zone?
Integrated approach
A: Yes
above Swan Air
HA: RC2 Zoning density - used to
support more than 1 lot?
No.
In RC5
Main: place min house zone
1 lot
7 permitted by density in RC5
6 being built

HA: RC2 - other parcels being developed?
Non density parcel - Lot 6 - can't be
developed due to lot 7

HA: Has owner attempted to double count
density?
No

HA: Non density parcels required by
Sp. H.
A: No - Outstanding issue. HO allowed
to hear.

HA: Do you agree wit O'Leary's testimony
regarding SWM.
Is SWM incidental to Hous - Yes
Is it abuilds? No

Roadway - Open section - swale
no gutter
Into SWM

HA Aware of any prohibition of integrated and incidental of 1 zone address to 2nd zone on same prop.

A No

HA Design of SWT. - Final?

No. Need more drawings to be approved by D. Env.

Cross

No questions

Special Hearing Case Completed

Development Plan

Helzen: HO -
Property Owner

(1) Issues concerning Prestenand Elsen -
whether wells would be affected
HO used the 4 wells to conclude
not a problem
In reality since 4 others had to
drill on Elsen's property indicates
there was a problem w/ water

(2) Presten's concern - about
storm water coming down to his prop.
Septic cut lets near his well.
reserve areas
HO was demeaning of Presten's testimony -
even tho Presten expert in Env. matters.

→ Dev. Plan received short shrift
on these points.
Don't think HO fully understood.

PC - Agrees. Dev. cannot be
approved if Zoning issues
decided

Ackerman - Argues HO heard all
testimony equally.
RE: Presten's well near septic
reserve - Protest. 6 below
Appellants
Plan could not have been approved
if codes not followed.
DPRM did its job

Is Prop. being devel. according to
Zoning regs etc. Argues yes.

Memos on Special Hearing
Due - Oct 15 - Friday

Notes

+ HO Opinion (continued)

Q3+ Can RC 2 support lots 6 & 7?
Lot 6 is primarily on RC 5 side (including dwelling). Portion on RC 2 side is a "non density portion" to be used as yard.

Q4+ Can RC 2 support Lots 6 & 7 and SW?
Some argument.
Says no double counting.

[How large is entire RC 2 area above Sweet Air?
Does Lot 7 include SWM, which becomes public? If not it is a 3rd lot.
Does Lot 6 acres include RC 2 land?
)
¢

Q5 -
Noseparate Sp. H. needed since already raised as part of this petition

p. 9 Development Plan Review

Issue 1 - Concerns of Elsen and Preston regarding privacy/
HO required additional Landscaping buffer

Issue 2 - Well availability -
Per new county requirements, building permits would not be issued if wells cannot be drilled ... most issue Developer will first have to comply with county's well water regs

Issue 3 – Storm water mngmt / drainage
Now as farm land, no protection.
No SW protection.
Dev. submitted SW Plan to County's DEPRM, which was approved.
More protection now than before.

Issue 4 – Septic reserve areas
Also strictly regulated by county
Plan complies with regs.

Issue 5 – Traffic –
Changes required and made
laden (Approved in Supplental OP 6/3/04)

Notes

CBA 04-132 Lynch Property

Supplemental HO Op. 6/3/04

What are "in-fee strips" (driveways?)
Access Road is private (p.2) ?

- 6/3 op does not deal with zoning questions raised; Itonly looks at changes required to road and approves Development Dev. Plan

Dec 16, 2003 Hearing, Offices Op.

- 8 lots - SF dwellings on 47 acres split zoned.

Petition Special Hearing ~~requested~~ filed by LAV Assoc.
to determine zoning issues

Subdivision N of Sweet Air. - 15 acres
contains some forest; has been used for agr. and slopes
1 SF (1.27) lot on RC 2 area
6 SF lots (acres) on RC 5
Lots 1-5 = 1.5 acres; Lot 6 = 4 acres
Private road from Sweet Air - Starts on RC5, crosses into RC 2 but ends on RC 5
2 Storm Water management cells on Lot 7

P.4 Zoning Questions - Sp. Hearing Petition

1) ~~Reliefs~~ RE: Road crossing into RC 2
- HO refers to Jones, which he initially heard. Found use not permitted "as a principal use on RC 2 property, either by right or as an accessory" (p.5)

Septic reserve system

but fcnd septic syster (which was already implemented) could remain under doctrine of estoppal.
Jones appealed to CBA - which concurred. Appealed to Circuit Ct.
Judge Jim Smith concurred but said neighbors could pursue an injunction

p.6 Hearing Officer argues that even tho a private road, it is still a road and is resolved by Sect. 1A01.2 of BCZR Subsection 1A01.2.B5 points "streets and ways" in RC2
IE. streets may need to cross zones and are ∴ allowed.

Q2 Storm water management facility in RC2
- Lots in RC2 also use SWM

HO argues ~~the~~ the SWM is not private but public. It will ~~be~~ serve several private lots. "It is a public facility that is part of the infastructure ~~of~~ of the proposed development." (p.7
Controlling factor: Ownership of SWMF - after construction it will be owned and maintained by B.C.
p.8 Well settled that property owned by BC not subject to BCZR
(Glascock v. Balto Co 1990)
∴ As a county owned facility it is not subject to RC2 or any zoning regs.

7/20/04

CBA-04-132 Lynch Property

Plan Appeal

Appeal of ZC - Plan was approved.

Peoples Counsel - Carol

Holzer Appellant 2 matters

- 1) appeal of dev. plan

2) Petition for Special Hearing
- raises issues about plan regarding zoning use
- Hearing was combined before HO
Dec 2003 - case heard
Petition heard at same time.
Dev. plan approved; Sp. Hearing

Additional traffic analysis was made on request of HO

Supplemental 6/3 Decision
Hearing only related to traffic issue
Required amendment to plan
as result, supplemental plan made
only modification to entrance

Suppl. Dec. -
Filed on both issues

Sz - 1) Appeal of HO decision
2) Hear & present de novo
the petition for a Sp. Hearing

Case heard today (1)
Wants to ask for another day for continuation

additional witnesses for Sp. H. issue

L.S. - Not available today
CH - letters from witnesses why not present

LS - Time Constraints - 45 days for

Underlying Zoning issue needs to be decided to approve Dev. Plan.
Zoning ? negates Plan
could.
Sp. Hearing for Zoning issue

2 Segments of case
1) Oral argument on Dev. Pl.
2) Petition for SH - should not be granted.

CH: Argument for Dev. Plan.

Request for Amended Red Plan
& request for continuance

LS - off record: Wants Dev. & have chance to respond &
RE: Continuance Request - based on
~~Opposition case~~ witnesses not available

Pet 182 - Letters from witnesses - summoses are in the

Case heard Dec 2 03 - First op. made. 12/16
traffic issue found. He answered
Sp H issues - but found sight distance concern
90 days for traffic analysis then new H
2nd H heard 5/27/04 - as a result
he rendered decision / a
Appeal filed immediately
Property not subject to Comprehensive Zoning

CBA-04-132

Dec.
Ext Dev from ~~Dec~~ to June to get 2nd H
Does not recall if traffic analysis was done
~~—~~ ~ 90 days
Thinks in fairness - continuance should be granted for witnesses

Underlying Zoning issue is precedent to Dev. Plan being OK'd.

Question - Bifurcate or not?

H. Alderman - Developer.
1) Ask Dev. Pl. H. - only issues raised are zoning issues -
2) Case originally set 10/17 @ 3 & before HO
Petition for Sp. H not filed by 10/17 - submitted not filed
then suspended
Case cont. to 10/17 ↓
allow ~~bifurcation~~ combined hearing -
Continued Order -
Order on Dec 16 -
Record should reflect March 12, 04
Traffic study delivered along with revised plan. Not Dev. fault
new H set June
Claims Board can't bifurcate case
Since Dev. Pl appeal is dependent on
Zoning
Opset Petitioners are not ready.

On ~~Dec~~ 10/17 Helzer agreed to combine issues.

No reason to delay today. /Oth.

LS - If we presume zoning issue would affect Dev. Plan - what do you want us to do.

HA - Hear in 1 day

LS - Without. Appeal experts?

HA - Yes

PC - Boards rules allow for adjournment. Not post pone ment. (Read rules)

1) - Solomon is expert on RC zones - perfect expert for this case

~~Hear at post test~~

Board needs to address zoning issue first which would affect Dev. Pl

Board has til Aug 3 for fine - Rule False point continuation for another 30 days.

∴ Timing not ~~was~~ a problem.

Rule 4C - reason for adjournment

Board can also issue partial order if it wants to bifurcate.

Requests Grant of adjournment.

HA Response:

If Board wants to continue - case should be heard = 1 day.

Wants to come back another day - continue entire case - with all present.

~~LS -~~

CH - Agrees case could be done in 1 day/ I have 2 non expert witnesses now

CBA-04-132

CH- (cont.)
Does not object to postponing to another day.
- will try to do extra way.

LS- Is there a difficulty - if we can't get done in 75 days does it matter?
CH- Not trying to delay. - HA's call
HA- Okay - 75 to 90 not a problem.

Motion to Adjourn Approved.
Under Rule 4 -

Tent. date Sept 7 - Tues
9:30 start. - pending Petitioner's witness.

Case: CBA-04-132 Lynch Property

RC 2- Agricultural Protection - Preferred use -agricultural
RC 5- Rural Residential - low density res, lot size - 1 acre

Holzer - Log Green Assoc.
Request of Special Hearing first
then Dev. Plan agreed by Alderman

Petitioner for Special Hearing (De Novo)
Holzer atty

First witness - Steve Presten, neighbor
Community member
Presten House on Photo near dep
Elsen - South of & Prestons
Properties served by well & septic
Elsen has 4 wells due to easements
Wells are indicated on map.
(Ridge)
Lynch is hill, runs off east and
west, into Gunpowder and stream
Most other property is lower than
Lynch (incl. G.P)

Community: Mostly rural
Rights. is GPSP, Tepis State prop.
Agriculture to E of Lynch
West small Dev.

Exhibit from below.
Presten Resume - works for Ches. Bay Program
Sponsored by EPA etc.
PhD in Civil Engineering

Following hearing below, record was moved. Packet of pictures from below (Ex 4) were taken before that hearing 2 by Preston

P. 1 shows property surveyed by

2 Drainage contains off property/
3. More Drainage patterns
4. Drainage through Preston prop. from Lynch prop.
6. Water Ponds on Preston adjacent to Lynch
7 Erosion on Preston prop from runoff
8 Map.
9 Location of septic reserve areas
10 Photo set #4 of septic reserves
11 Map shows height diff shows loss of privacy

(X) Side distance pages no longer relevant

Questions

Preston
1 RC5 Road allowed in RC2?
Saw from plan max. density Infrastructure in RC2 portion to support prop on RC 5
# of houses on Prop. S. of Sweet Air is farm working.
Main questions are on prop. above Sweet Air

Concerns about runoff onto Preston prop; impact on state park

2.

Stormwater mngmt - placed in RC 2

Support = RC 5

3- Can RC 2 support lots 6 & 7?

Presten - Concern - thought 2 homes / 100 acres

but 3 planned.

4- Density of .... support lots 6, 7, & 8

Presten - Concerns thought RC 2 could only be 2 parcels, sum is a 4th original + 2 + sum.

5. Creation of non density parcels ...

Presten - SPH needed for these issues

Thought.

Presten - Member of LG Valley Assoc.

Peoples Counsel Questions

1) Oct 10 2000 Zoning map

No zoning changes since 2004 rezoning

Did Presten participate in rezoning of lot? (2 years ago)

Yes - RC 2 was requested to be RC 5 on N side

Ottocycle relass - Board decided not to change / should be part of Comp. rezoning

Alderman Cross

- area N of prop is County prop dedicated for drainage / stream

How large is community?

Not sure - 20 - 30

Presten Community is zoned RC5
Community did not seek rezoning
= 2004 process.

HA: Maj of road = what zone?
Measured road on map.

Presten Concedes most of road is in RC5

HA: How much of side drains into SWM?
- Flow in NE direction near lots
1 and 2
- 1 2 & 3 right into SWM.
Portion goes West
Road will go into SWM if gutter
[Not sure if gutter on road]

HA Let How many homes in RC2?
1 est H 1 dv. House (#7)

HA As lay person - what issues require
SH.? What issue has required SH.

Prest - Legal counsel said SH needed.
Concern about how RC 2 land
being used. Thought SH was needed

HA: How many lots permitted in
Sweet Air Manor?

Prest. Not sure if at density or below
Built = 1960s
- Do you think # of houses exceed
what is allowed

Prest No - does not exceed.

Pet. Witness
O'Leary Testimony -
Engineering Consultant
Ex 6 Resume - Backgrnd -
Hwy Hydraulics Div. of SHA
2 Drainage etc. - in charge
of addressing sum facilities
then at Dev. of Environment - sum & erosion
and sediment control.
~~Career~~ 1996 - ~~B~~ Consultant in Eng. firm
does some thing - gets sum permits etc.
Expert on Sum and Erosion control
~~E~~ Expert Witness on Engineering
Qualified a Expert in BC and Carol County

HA - How many sumps have you prepared
OL - ~~Specifically~~ 15 projects on sum design
HA Has not personally prepared plan?
OL No - has been involved ~~exp~~
HA Only Design?
OL Throughout process & construction
No objection to witness

Docs examined for testimony
- From Lynch plan
Examined ~~#~~ SW Hydrology docs for Lynch Prop etc
Dev. Plan cert. from Balt Co Aug 2003
CH Look at Redline on Board - is Smith?
Yes.
Viewed site? yes about 1 month ago
From Preston Prop. & Sweet Air Rd.

CH In looking at Dev. Plan - Lot #7
on RC 2 - Does any portion of
prop drain into sum
OL No,
Where? Appears Lot 7 drains across

and off property
would not pass thru SW pond.

CH Does SW Pond serve any portion of RC2 prop?
- Pond would treat roadway & portion of lot 7 at roadway

CH Other than rain, only treatment would be water from Road.

CH Should Pond be in RC2 to support Dev.
No

CH If Pond in RC5 how would that change flow.
Would not

CH Do you agree with Preston's test. that road is in RC5 zone?

OL. May at road is in RC5

Peoples Cross

PC- Pond in RC2 does not support dev. in RC2
yes Predominatly serves RC5
Could Pond be in RC5?
Might reduce density - Higher elevation of pond - would not impact dev.

HA Cross

HA Impact of zone line on flow of water?
None

HA Have prop you've worked on ever been split zoned? Can't recall

HA. With respect to zone line, what diff does it make where SWM is placed?

OL In RC 5 higher elev. not as much drainage

HA More uncontrolled flow if in RC 5

Yes

HA What is a SWM facility?

Devise - known tech, works by gravity, flow designed to reduce pollutants in SW; minimize impact on downstream dev.

HA How is SWM made?

Grading of land. Thus creates send filters for impervious services

1. filters (1st cell) Pre Treatment filters big stuff
2. Discharge into sand filter bed with pipes draining east

HA Any infiltration into ground?

No. Designed as pass through devices

through pipes

OL Did not view pond itself

OL Views saved life as HO would have heard.

HA Based on your review ...

OL - SWM Addresses water quality not peak mngmt - waiver requested.

Not designed only for 1 of 7

SWM designed based on impervious surfaces not zoning

Dan Could be constructed in either RC 5 or 2 If in RC 5 less effective? Would

be more uncontrolled runoff in RC5

Road & 2 lots would drain into
SWM pond (nec. for road primarily)
2 lots on West would not

OL: SWM requires underdrain pipes etc.
riprap outlet. Per MD Manual
this is Structural SWM device

If RC2 zone only had 1 house
& ~~let~~ would SWM be needed.
Unusual for single lot

CH. Its density of H in RC5 and road
that requires SW facility?
Yes

HA: Is SWM facility mandated & prop
on N. S. side of Sweet Air.
Depends.

HA: If land to be dev. w/ houses as shown
SWM needed?

OL: Yes. Providing quality control.
Waived quantity

HA: Is SWM incidental to dev on N side
or is H incidental to facility

OL: Would not need SWM w/out houses.

CBA 04-132 Lynch Prep

Witness: Salcman, Paul J
Background: Masters in Planing
Planner for York Co - prepared Comp Plans.
then Planner for BC. headed Env. Planning
Relevant exp: Dev. RC zones for county.
North area planner
Adm for state agr. resource areas.
Expert witness as Planner.
Land
Participation in RC zones
1970 CC. enacted law to create new zones
Bill 100.
2 zones in rural area;
Rural Deferred Planning Zone - CC down zoned to allow dense dev.
Rural Suburban Zone
result: sprawl etc.
∴ Created new plan for N County
N of UDL.
Created RC Zones

Has qualified as Expert before Board
1x per year over 30 yr period
Since retirement acted as consultant

Testimony
County asked him to examine case
looked at redline plan, photos, zone qualifications etc.

Background on RC 2 and RC 5 zones
Framework - to encourage dev in RC5 -
around existing villages
Linked in RC2 1H per 50 acres
Idea to preserve farmland.

Reads Item 1AC1.1B - RC2 classification
to foster conditions for continued
agri use.
RC4 - watershed zone protects reservoirs

Clients posed questions about uses in
RC2 zone.
CH. Read & sum both in RC2 zone -
are they appropriate for RC2 zone?

RC2 not est. to provide for RC5
purpose not to preserve farmland.
facilities can't be placed on
RC2 to support RC5.
Certain uses allowed.
Streets & infra only allowed for
RC2 use / applies to RC2

ZC-addressed point in his op.
Do yo agree w/ his OP?
Solomon No. Refers to 1ACC.5
application to tract ÷ into 2 zones
(not many) when single tract ÷
total density apply individually
to each zone
ZC policy manual 1ACC.5a
Tracts Divid by Zone boundaries -
Utilized -
whatever density is created must be
in the zone incl. all support.

CH. Does Read and pend violate principles
Yes - Defacto rezone of RC2 to
RC5.
Attempt to reclass (Denied by Board)
If it had been approved this dev would
be allowed.

Schemer (cont.) Since they did not succeed in reclass they've tried to achieve this way/

Effect on RC2 zone?

Schemer Refers to zoning map -
RC2 = pale green. interfaces with other zones.
If infrastructure placed on RC2 zones changes use.
Never occurred before in 25 years
Not aware where RC2 used to supplement dev.

CH - Other cases where RC2 not allowed?

Schemer - Other parallel cases:
Old case: Leinbach case vs. city of Balt.
Pet. had trucking terminal, bought res lot to gain access to bus. Court ruled could not be done
10-15 yrs ago: Jones Case: converting 1 cannery use to another; not enough space, requested something be placed on RC2
Denied by Board.
Appealed and upheld.

CH - Based on your exp & knowledge of zone this case is unique?

Schemer Yes Sig. implications
Cannot use RC2 land for RC5 Dev.
Incompatible
Not just road bit sum.
4-5 lots also intrude on RC2
all the homes on RC5

CH - Engineering testimony RE Lot #7
& not going into sum. small portion rd might drain into sum -

Schuman - Zoning line is boundary -
Not matter of degree.

CH. Requirement that what goes into RC2
fosters protects agri land
Sol. Yes - unless prop. used for RC2 uses

CH Pet. Ex 7 Lippincott comments
How do these correspond to testimony.
Solmar Support my/our testimony

CH Sp H. Questions 3 & 4 - about
RC 2 supporting lots 6 & 7;
6, 7, & 8 all on RC2
Comments?
Sallmen - Basically, 4 lots in RC 2 even if
not for homes (only 8 & 7 are homes)
6 & Swm divide this prop. also
[Increased density on RC2 - is that
the point?]

Cross by Alderman

HA - Streets & roads allowed in RC2 zone
Sol: Allowed if supporting RC2

Not allowed
HA Where in zoning regs?
Sol. Implicit in zoning
Cant point to written reg.
Understood by purpose of zone

HA Cable TV facilities - how prem. agri.
Sol. Zoning ordinance allows commun/public
uses

Public schools permitted - Have present agr.
Sol. Uses for common good. / public need
County rd allowed. / overwhelms sm loss of land.
min. # of homes allowed - If no dwellings zoning wouldn't be enacted
RC 2 not effected by these uses.

Commercial film prod. facility? How allowed.

Uses permitted
Sp. Exception — allows commercial film prod.
Sol. Some minor exceptions / Does not threaten agri. use.
Not perfect.

HA - Dev. review process changed since 1992
Yes

Split zone lots - calc. of density
Sol. And where can be used

Proposed home in RC 2 on lot 7 -
Sol allowed by RC 2 min lacre.
HA: RC 5 min lot size -
Don't know, at least min lacre.
with min of lacre

# of Res. lots in RC 5 allowed?
Sol: Don't know
6 lots proposed. - Density allowed by RC 5.
Not suggesting any transfer of density between RC 2 & 5.

HA South side of Sweet A.r?
Sol Farm on Southside, with dwelling

Sol. Farmstead - rec. for farm
includes rec for use.

Sol (Better as already placed on lot)
New dwelling
Part but not support for RC5

No redirect.
— Peoples Counsel —
PC - Sect 101 of Zoning Regs defines
Silv prod.
Sect 435 - requires referral for
Silv prod.
Under these 2 - is it perm use?
No. filming in natural setting
does not take away agr. use.
No perm. structures.

For Record: Testimony to
BC Zoning Map. - Not offered
to 1997 Zoning.

Final Witness: Charlotte Pine -
Pres. of Log Green V. Assoc.
Protestant / Petitioner for 2 years in case

Exhibits: Resolution, Affidavit

Participated in request for reclass of
RC 2 land. Objected.
Dev. plan proposed -
Assoc position - opposed to any
change or use of RC 2 for RC 5
Involved in Jones case - same concern.
Successful in preserving farming in area

Pine (cont.) Farmed on both sides by Lynch family
Some part of GP also farmed Nat
Sweet Air - leased, still farmed

Sweet Air is Scenic Rd.
CH Impact on Scenic Rd? -
Pino More houses ruin scene
One issue - why we didn't request
zoning change - McIntire
We knew Conc'l man/would not
downshift anything in pipeline

Pine Flag GP Bank offered to purchase
prop. Lynch refused.
HA Assoc not opposed to RCS? -
Opposed but can't change of it
Want try

CBA-04-132 Lynch Property

CBOA - ~~BP~~04-198-SPR 7/20/04

J. Carroll Holzer - Rep

Howard Alderman — Respondents

Carol Demko — Dep B.C.

J.C.H

1. 2 matters

A. Lynch property - Dom appellant -

B. Dom petitioner as pet. for spec hearing - raises issues about develop plan in BCL to appr. BCL hearing combined b/fore hearing officer - he heard case in Dec 2003 - board rej pr spec hearing + develop plan & - appr dev plan + asked pr added appr record - suppr only - cal put on rebl would develop pet buff study - raised supp. decision - hearing related only to buffer and - rej amendment of develop plan to provide better site distance - May appeal a revised plan - scope of his BA entered - appeal to this board on both of issues - we believe hearing officer erred below + dismiss for pet for spec hearing

Develop Plan + Zoning Issue

2. Issue of Continuance Request

TCH

1. Bd put case on quickly because of 6 day plan case

2. Contact Dan O'Leary — engineer — we got notice on Jan 30 for July 20 — on July 15 — O'Leary wrote letter about conflict due to court appr

Mr Solomon — town planning engineer — testified in a number of cases re which RC zone enlarge: ad fundamental factor — subdivis — or vacation ~~out~~ retail Avg 5

3 I would prefer to argue develop plan & then ask for continuance of special hearing

4. Case heard on Dec 2003 by hearing appeal — Dec 16, 2003 his ~~to~~ first opinion — ~~the~~ Bd. sent out notice on June 30 about July 20 hearing — took developer from Dec to June to get 2nd hearing — & don't recall if any met 90 day deadline for Engr study called for by hearing appeals

5. It's summarized — vacations — diff to get witness

~~Tony Stahl~~ Tony Stahl

1. ask on develop plan & then want for appeal hearing — underlying zoning issues affects finalization of develop plan — Board has had prior cases continued beyond 45 days

Howard Alderson

Top I

1. only issue ~~left~~ relevant to dev. plan and zoning issues - nothing else is relevant - only issues raised and underlying develop. issues

2. Case set for Oct 17 before hearing officer - only a short time before that hearing was req for ~~app~~ new ~~hearing~~ submitted - it was not filed - it had been submitted

3. Case cont. in Oct to allow for ~~consolidate~~ consolidation - apply hearing to a combined ~~app~~ order

4. on Dec 2 - ~~a~~ present develop plan - order on Dec 16 - traffic study req 2014

5. March 12 - hard deliver Traffic study & updated plan - cycle to Holger

6. Because of asked. problems - picked up to June - develop & owner eager to move forward

7. ~~Board~~ Bd is not permitted to bifurcate

8. I am shocked that they are not ready to move forward

9. on OCT - Hyer agreed 26206.1 - work forward deadly plan & going

10. work below delay in trial should

11. M bases for delay other than "our witnesses are not available"

12. we object to continuance

13. Ind or may other witnesses available

14. Pty wanted 2 weeks to file appeal

CAROL Denied

1. It doesn't matter when we were contacted

2. Bd. rules - Rule 2 - argument allowed - Rule 4.C

3 Hyer followed all procedures

4 26209.f - Going 45-60 days after finalization of dev. plan - also allows for cont. of dev. plan - and Pln 15 days for appeal.

Frank A

1. case should be handled in one day

ADJOURN to Sept 7, 2004

CBA 04-132
04-195 Cph

Lynch 9/2/04
Indgn + Pelat on Sph

Alderman - Owner Pur.
V. Canal Ins. Co. (Greenbelt)
Assn

Petitioner
Carol DeMuro Legal Counsel

Sp. Hearing Event
Steven Plastin - DIR - Others

Variances for prop. small lot & irregular
shape of the property & lower than
the zoning property
Setbacks for prop. property & Compounder
State Port
Variances for Chesapeake
PHD in civil - environmental
engineering

Petitioner
#1,2 - Petition map & Plat
#3 - C.V. of witness

Lynch
9-7-04

Ref #5

Prepare a document package showing damage (incl. photos) & loc + picture packet of types of dev. Pln below

Q I is it OK for road w/ support of RC 5 dwelopment placed in RC 2 zone

RC 2 dwg Comp. of Storm Pond about runoff to his property + wells pressure

II Storm water mgmt facility for RC 2 supports RC 5 development - Should it?

III is there too much dev on RC 2

IV Is there too ~~much~~ much on RC 2 (3) lot in RC 2 (1) lot 7, (3) St. water mgmt (3) lot 6, (4) lot 8

V needed to raise roads

Potter - DR ReMICO

Prop. Use #1 Young Men - church plans toilet room. Rel. on north side of wetland

(3)

9-7-04

Preston - Cust - Aldermen

- Prop. north of Lot 1 is dedicated for storm water mgmt

~~Failed~~ zoned RC5

Didn't ask for change

- majority of 100' in prel. plan is RC5

Lots 1, 2, 3 go directly into S water mgmt area; if rd is curb & gutter it will too

Home in Lot 6 is in RC5

/envelope/pl a home in RC2

+ / existing home

- concern was how land to be used - Aldermen advised that Sp. Dg was necessary

does not include homes in RC2

need zoning.

Daniel O'Leary - DiPi Hodges

NMP eng. consultants

Drainage calcs in report of St. Lyshua Crk.

after 5 yrs. switched to Mid Sept of

went into private parties - to set permits on items related project from any board of new - to a Nonprofit - chief eng. - water conn

4

Lynch
9/7/04

1996 NMP consultants
P.E. since 1989 in Md
- has primarily been in storm
Environmental Civil Engineering in Balto
Co Cecil & Harford Counties

Peter
#6

EXPERT - Civil Engineer
as it relates to St. Water mgmt.
Have carried a project through to
a conclusion but has responded to
comments & related activities
throughout the dev. process
required St. Water Mgmt Plans for storm water mgmt
6-26-03 St. water mgmt plan of
project - develop. plan contents Aug 13, 2003
from DEPRM
- viewed the site about early 8/04
viewed from Preston site & woodlawn
Rd:
Lot 7 drains
St. water mgmt catches Rd
water, what falls on it & driveway of RC5
Stormwater mgmt doesn't have to be
in RC2 bcz to most
~~was~~ majority of road is in R.C.5

5

Lynch 9/7/04

Clean DIR DENIED
St. water pond is in RC- & doesn't impact much in RC-2

St. water pond can go into RC5 but it would limit lots in RC5

Clean Cross Adams water isn't affected by young lin only diff between RC5 & RC2 water impact is less homes in RC5
low tech, family flow devices to reduce pollutants & protect downstream properties
- its done by grading on lots it holds it & the other controls it
- doesn't infiltrate into ground it collects sediment - Southern cell northern cell is sand based - a pass through out the pipe
Std. of min at steam officer level is limited
& Peak control waived

Ken Gustafson - St. water won't cause dem problems in RC5 & D but more uncontrolled runoff if built in RC5

(6)

Exec 9/5/04

Board Question - 3 of lots would go to St. water pond

Clearing Helps Protect its the density & proximity of Rd that requires St. Water right facility.

O'Reilly - Re Cross Aldermen as development proposed - this density & road - it would mean it required for quality - wanted return - Waldorf

Pat #6 Chip O'Leary

#7 Lippincott comments as to 1, 2, 5 Paul Solomon - DIR. Holger

705 Was Co Planner for RC years
Forth Co. Planner for years
Serum adm for Land Agric.
Program. program.

EXPERT IN ZONING & RC Jones
RC Jones - to encourage growth in RC Jones

(7)

RCS is prime for it

Lynch 9/20/x

188.1B

Hs opinion of St. Water mgmt + roads do not belong in RC2

Hanes - in 50 acre RC2

"Streets and ways infrastructure only in RC2 for RC2 purposes.

A01.235

density is not infrastructure

So in his mind, this project is a de facto rezoning of RC2 to RC5

Generally Case v City of Dallas set access to Comm at Pines Corp - of Bd, noted in Pg 6 and 709 Schmidt decision

(He's known opp. to this comments)

I supports his opinion

Solomon Cons x Dolgen

No code ref. He believes its explicit that Rds in RC2 are only for sort Rds and RC2 development

(8)

Typed
9/2/94

Roads are allowed + supporting infrastructure for public use are allowed in RC2

Ag production facilities are allowed by right in RC2 — mining & extraction

Resort type use not in Dev. Review Process since it closed in 1992

Lot #7 is RC2 only - not as a result of subdivision or any RC5 value

The 6 lots in RC5 derive their density (needed to ~~home~~ home lots to build on) from RC5

RC5 lots have the minimum lot size required

Lot 7 is better where it is noted of Sweet on Rd not South where they are now

Salmon - Redwood Dennis

Charlotte W.P.W.S - D.F. - Holmes

Petitioner Rule 2 document Reg. Log Green Falls Rd

(9)

Lynch
9/7/04

Familiar w/ site in question

Associate is opposed to any RC3 use on RC2 land

Farmers need small parcels - Some of Gunpowder part is farmed by lease.

Sweetair Rd. is a scenic road - More homes on pasture land is objectionable.

~~Would Direct~~

Pine Pit Alderman

Asks Main Direct Alderman

DO VOTE Daft, McCune & Walker

NCE

Applied CV

Gen. nature & design process

Gen. Regulations & Zoning regulations

Split on numerous occasions

Split plan & Zoning & Dev.

RC 3 and 2 split ground - limited 2 or 3 times

(10)

Lynch
9/7/04

a reading both mtgs type
a permitted use
for because of B.C. Zoning
regulations
is ST. Worth mgmt plan supporting
RC2 & RC5 & in RC2
Not mentioned anywhere in
zoning regs.
Look at topo maps for design
points for Stormwater mgmt.
each lot in RC5 is one
acre
no RC2 land system used
to get permissable density to RC5
zone lot 7 uses all the density of the
RC2 zone
a high density parcel was
created.
ST. water mgmt facility is incidental
to RC5 development - no walls
of structures
Loading — no curbs - ditch &
swales
no regs at all about S.
W mgmt using water from Kendall
yard.

(11)

Lyneb 9/[redacted]/04

held a Topog Survey, Engl. design and approval are still to be done as of the H.O. approval

Development Plans

Holden - Maple Crest - Rock Rd
was ultimately moved (return
Petit # 4 here - plans etc and
all dialogue from mtgs to
each other and deptic
is all here developed in
accordance w/ reb — Les

CBA04-132

Lynch

Tax 20 2004

04-108-SPH

T. Carroll Hodges Petr

Hay. Ord Jr. Resp.

Dom. Ord

Dep. Plan Appeal - Applicant

S.P.H.

Rec'd same as to RC

prop to support Development

Comprehensive Rez. 2002

Appeal Dev. Plan Disapproved

Petit for Sp. Hg:

F.D. wanted more traffic

analysis - Supp Action

Jul 3, 04

(2)

Lynch
7-20-04

Traffic report required a change & now a new
redline plan showing
entrance.

H.O. wanted appeal
can all
dog. Why Hearing Officer wrong
& DE NOVO Sp. Hg.

SP16 indeed young attn - pages
me of many days
can't appeal Plan
CONTINUE ZONING

Cleary sat summons
letters
Cyn #1
#2 witness

H.O - HO 12-2-03 - / Sl opinion 12-16-03
+ Staff + Chatmo SPH & development

3

12-10-03 - pdp to address ✓ Exch 7-20

new hearing

5-27-04 new H.O. Dev. by

on traffic issue only,

6-3-04 amended H. Order

6-(17)-18-04 appeal filed

Bel. matter on June 30th for 7-20-04

no reports dues

OMO Dec. to June for traffic

June hearing

we sent out summons

immediately to Sgt

expert

Sgt. - if diff from H.O

to "U" about Dev. Plan

to a condition precedent

4

Adelman Argument 7/20/04

Orig. OC hearing - continued & combined under 26-206.1

3.12.04 notice study + red lined copy of Ord required to bifurcate

DENIED - Argument time not allowed

Argument Rule 4 C

Not a continuance under Rule 2 but falls under Rule 4 Shall be RC Sept 26-2004 5:45-60 days

Adelman

NO need to
delay in
sending to medical
Time to contact me
unreasonable.

Verified
9-07-04

Peoples Counsel

CBA-04-132 Lynch Property 04-198-SPH

1 Map showing split zone
Official County Zoning Map

Lynch

Colleen

717-993-

3457

4501 Sweet Air, Rd

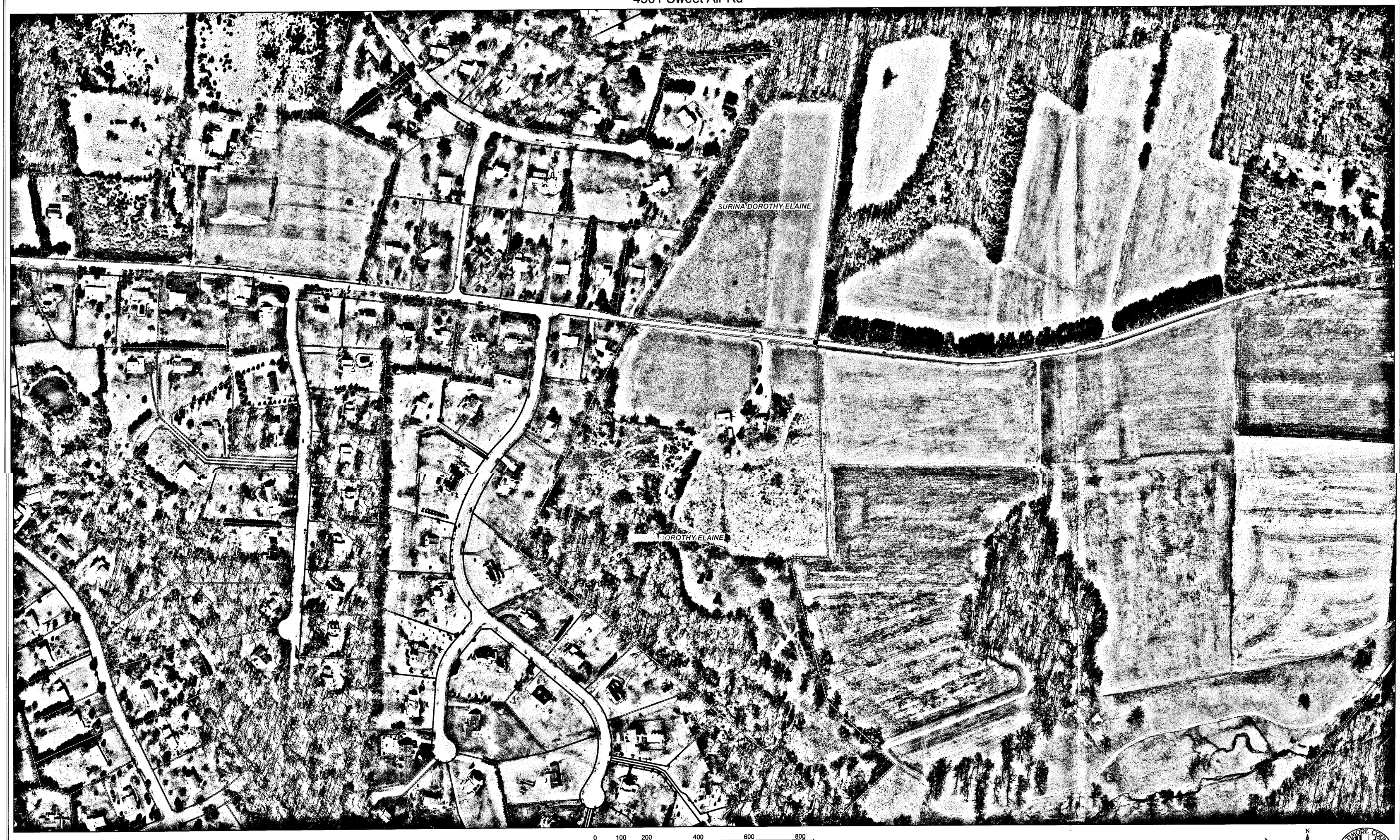
Pga 21703

Jon Dauch

215 Pennington Rd

Tin 21093

4501 Sweet Air Rd



Map Produced By Baltimore County GIS Services
Production Date: June 24, 2004
Aerial Photography From April 2002

0 100 200 400 600 800 Feet

Per #2 CBA

Ret CBA-#1

N W E S

BALTIMORE COUNTY MARYLAND

SITE DATA

ZONE	ACRES	UNITS ALLOWED	UNITS EXISTING	UNITS PROPOSED	TOTAL UNITS
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LANDSCAPING REQUIREMENTS

LANDSCAPING TABULATION				
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ADJACENT ROAD @ 1/40 PER L.F.	702	L.F.	18	P.U.'S
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EVERGREEN TREES	90		45	P.U.'S
ORNAMENTAL TREES	54		27	P.U.'S
SHRUBS	43		8.6	P.U.'S
GROUNDCOVER	653	S.F.	1.3	P.U.'S
TOTAL			108.9	P.U.'S

* SWM PERIMTER IS 620 LF, 200 LF OF WHICH IS ADJACENT TO EXISTING FOREST.

BCMD E 1447750
BCMD N 272600

OPEN SPACE PROPOSAL

Open Space Required for 8 lots:
5,200 s.f. Active
2,800 s.f. Passive
Open Space Provided for 8 lots:
0 s.f. Active
0 s.f. Passive
Waiver requested and fee in lieu to be paid by the developer.

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11. ALL EXISTING BUILDINGS ~~AND STRUCTURES~~ TO REMAIN, AND LOT 8 TO CONTINUE AGRICULTURAL USE,
12. ALL SIGNAGE TO BE COMPLIANT WITH BCZR SECTION 450.
13. MAXIMUM 15% COVERAGE FOR THE R.C.5 ZONED LOTS.
14. "HIGHWAY WIDENING AREA" TO BE DEDICATED AND GRANTED AT NO COST TO BALTIMORE COUNTY, MARYLAND.
15. THE STORMWATER MANAGEMENT FACILITY SHALL BE PUBLIC.
16. STORMWATER MANAGEMENT RESERVATION AREA TO BE DEDICATED AND GRANTED AT NO COST TO BALTIMORE COUNTY, MARYLAND.
17. THE R.C.2 PORTIONS OF LOTS 3,4,5 AND 6 ARE REMAINING NON-DENSITY PARCELS OF THOSE LOTS. THE R.C.5 PORTION OF LOT 7 IS A REMAINING NON-DENSITY PARCEL OF LOT 7.
18. THE NON-DENSITY PORTIONS ZONED R.C.2 OF LOTS 3,4,5 AND 6, AS WELL AS THE NON-DENSITY PORTION ZONED R.C.5 OF LOT 7, DO NOT ALLOW WELL, SEPTIC OR ACCESSORY STRUCTURES/BUILDINGS.
19. PROPOSED WELLS TO COMPLY WITH ARTICLE II, TITLE 35 OF THE BALTIMORE COUNTY CODE.
20. SIXTEEN PARKING SPACES WILL BE PROVIDED, 2 FOR EACH LOT.
21. THIS PROJECT WILL GENERATE 80 AVERAGE DAILY TRIPS.
22. AREAS LABELED AC "100 YR. FLOODPLAIN D & U EASEMENT" SHALL BE DEDICATED AT NO COST TO BALTIMORE COUNTY, MARYLAND.
23. AREAS LABELED AS "DRAINAGE & UTILITY EASEMENT" SHALL BE DEDICATED AT NO COST TO BALTIMORE COUNTY, MARYLAND.
24. SUBJECT TO CASE ORDER # X-404 AND 04-198-SPH HEARING DATED 12-16-03.
25. AS A RESULT OF A TRAFFIC STUDY DONE BY TRAFFIC CONCEPTS, INC., THE ROAD HAS BEEN MOVED 80 FEET TO THE WEST.

FOREST BUFFER / FOREST CONSERVATION NOTES

STANDARD NON-DISTURBANCE NOTE:

"THERE SHALL BE NO CLEARING, GRADING, CONSTRUCTION, OR DISTURBANCE OF VEGETATION IN THE FOREST BUFFER EASEMENT / FOREST CONSERVATION EASEMENT OR OTHER FOREST RETENTION AREAS, EXCEPT AS PERMITTED BY THE BALTIMORE COUNTY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT."

PROTECTIVE COVENANTS NOTE:

"ANY FOREST BUFFER EASEMENT / FOREST CONSERVATION EASEMENT SHOWN HEREON IS SUBJECT TO PROTECTIVE COVENANTS WHICH MAY BE FOUND IN THE LAND RECORDS OF BALTIMORE COUNTY AND WHICH RESTRICT DISTURBANCE AND USE OF THESE AREAS."

SITE DATA

OWNER:	DOROTHY E. SURINA & JEANNE M. GOUGH 4501 SWEET AIR ROAD BALDWIN, MD 21013
DEVELOPER:	GAYLORD BROOKS REALTY COMPANY, INC. 3312 PAPER MILL ROAD P.O. BOX 400 PHOENIX, MD 21131
TAX ACCOUNT NUMBER:	1012084025
DEED REFERENCE:	10376/399
GROSS SITE AREA:	47.0 ACRES ±
ZONING:	R.C.2 & R.C.5
TAX MAP:	44
BLOCK:	3
PARCEL:	68
ELECTION DISTRICT:	10
COUNCILMANIC DISTRICT:	3
CENSUS TRACT:	4402
REGIONAL PLANNING DISTRICT:	305
SCHOOL DISTRICTS:	
ELEMENTARY SCHOOL:	CARROLL MANOR - 1001
MIDDLE SCHOOL:	COCKEYSVILLE - 0853
HIGH SCHOOL:	DULANEY - 0872
WATERSHED:	4 - LITTLE GUNPOWDER
SUB-SEWERSHED:	81 - NO PLANNED SERVICE

CASE NO. R-01-455

ORDER

THEREFORE, IT IS ORDERED, by the Baltimore County Board of Appeals, this 8th day of May, 2003, that the Petitioner's request to reclassify the subject property as shown on the Undocumented Plan to Accompany Petition (Petitioner's Exhibit 1) from R.C. 2 to R.C. 5 be and the same is hereby **DENIED**.

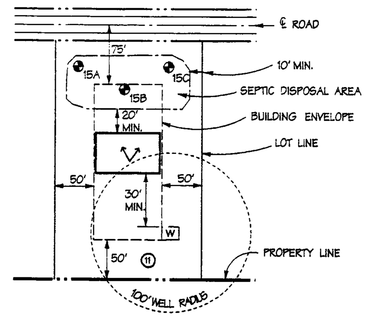
Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence S. Wescott, Panel Chairman

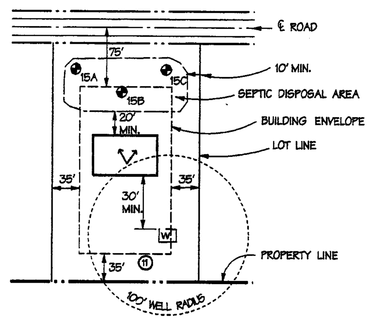
Charles L. Marks

Richard K. Irish



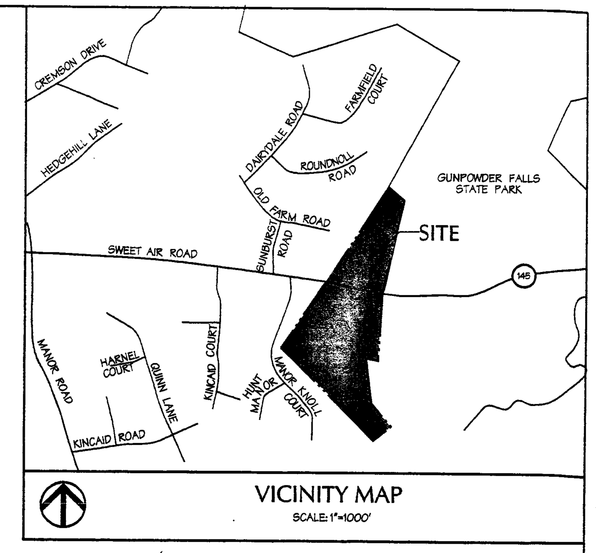
TYPICAL LOT LAYOUT R.C.5

SCALE: 1" = 100'



TYPICAL LOT LAYOUT R.C.2

SCALE: 1" = 100'



VICINITY MAP

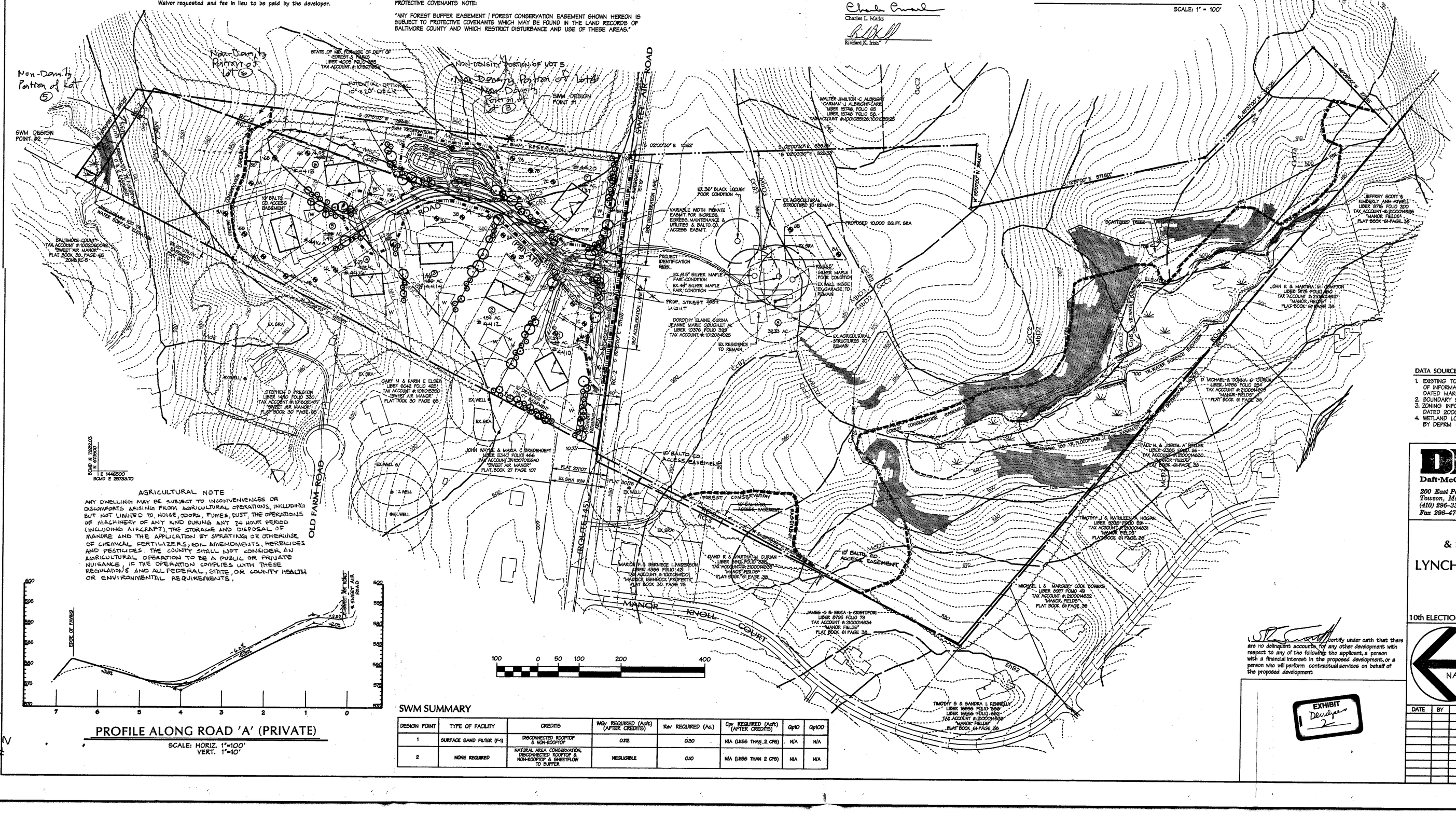
SCALE: 1"=1000'

LEGEND

- SUBJECT PROPERTY LINE
- ADJACENT PROPERTY LINE
- 580 / 582 — EXISTING CONTOURS
- +100.4 — SPOT ELEVATION
- EDGE OF BIT. ASPHALT PAVEMENT
- ℄ OF EXISTING ROAD
- HEAD & ℄ OF EXISTING STREAM
- EXISTING TREE LINE
- 100' WELL SETBACK — EXISTING WELL
- EXISTING SRA
- R.C. 5 / R.C. 2 — ZONING LINE
- SOILS LINE
- WETLAND LIMITS
- WETLANDS
- FBE — FOREST BUFFER EASEMENT
- FOREST CONSERVATION EASEMENT
- PRELIMINARY 100 YEAR WATER SURFACE ELEVATION
- PRELIMINARY 100 YEAR FLOODPLAIN DRAINAGE & UTILITY EASEMENT
- SPECIMEN TREE WITH CRITICAL ROOT ZONE
- W — PROPOSED WELL AREA
- 15A / 15B / 15C — PROPOSED SEPTIC RESERVE AREA (WITH PERC TESTS)
- SLOPES ≥ 25%
- PROPOSED OVERSTORY TREE
- PROPOSED ORNAMENTAL TREE
- PROPOSED EVERGREEN TREE
- LIMIT OF DISTURBANCE (2.21 AC. ±)

DATA SOURCES:

1. EXISTING TOPOGRAPHY INFORMATION TAKEN FROM BALTIMORE COUNTY OFFICE OF INFORMATION TECHNOLOGY GIS SERVICE UNIT (NAD 83 HORIZONTAL DATUM) DATED MARCH 1995.
2. BOUNDARY SHOWN WAS FIELD RUN BY DMW IN JANUARY, 2001.
3. ZONING INFORMATION TAKEN FROM BALTIMORE COUNTY ZONING MAPS DATED 2000.
4. WETLAND LOCATIONS SHOWN HEREON WERE FIELD-REVIEWED AND APPROVED BY DEPRM ON JUNE 11, 2002.



AGRICULTURAL NOTE

ANY DWELLING MAY BE SUBJECT TO INCONVENIENCES OR DISCOMFORTS ARISING FROM AGRICULTURAL OPERATIONS, INCLUDING BUT NOT LIMITED TO, NOISE, ODORS, FUMES, DUST, THE OPERATIONS OF MACHINERY OF ANY KIND DURING ANY 24 HOUR PERIOD (INCLUDING AIRCRAFT), THE STORAGE AND DISPOSAL OF MANURE AND THE APPLICATION BY SPRAYING OR OTHERWISE OF CHEMICAL FERTILIZERS, SOIL AMENDMENTS, HERBICIDES AND PESTICIDES. THE COUNTY SHALL NOT CONSIDER AN AGRICULTURAL OPERATION TO BE A PUBLIC OR PRIVATE NUISANCE, IF THE OPERATION COMPLIES WITH THESE REGULATIONS AND ALL FEDERAL, STATE, OR COUNTY HEALTH OR ENVIRONMENTAL REQUIREMENTS.

PROFILE ALONG ROAD 'A' (PRIVATE)

SCALE: HORIZ. 1"=100'
VERT. 1"=10'

100 0 50 100 200 400

SWM SUMMARY

DESIGN POINT	TYPE OF FACILITY	CREDITS	WQv REQUIRED (Acft) (AFTER CREDITS)	Rev REQUIRED (Ac.)	Cpv REQUIRED (Acft) (AFTER CREDITS)	Qp10	Qp100
1	SURFACE SAND FILTER (F-1)	DISCONNECTED ROOFTOP & NON-ROOFTOP	0.112	0.30	N/A (LESS THAN 2 CPE)	N/A	N/A
2	NONE REQUIRED	NATURAL AREA CONSERVATION, DISCONNECT, ROOFTOP & NON-ROOFTOP, SHEETFLOW TO BUFFER	NEGLIGIBLE	0.10	N/A (LESS THAN 2 CPE)	N/A	N/A

Per Cost #2

DMW
Daft·McCune·Walker, Inc.
200 East Pennsylvania Avenue
Towson, Maryland 21286
(410) 296-3333
Fax 296-4705

A Team of Land Planners, Landscape Architects, Golf Course Architects, Engineers, Surveyors & Environmental Professionals

I certify under oath that there are no delinquent accounts, for any other development with respect to any of the following: the applicant, a person with a financial interest in the proposed development, or a person who will perform contractual services on behalf of the proposed development.

EXHIBIT Developer 2

REDLINE FOR H.O.H.

DEVELOPMENT PLAN & SCHEMATIC LANDSCAPE PLAN

LYNCH PROPERTY - SWEET AIR ROAD

4501 SWEET AIR ROAD
PDM # X-404

10th ELECTION DISTRICT — BALTIMORE COUNTY, MD

NAD83

STATE OF MARYLAND — DONALD K. WALKER — No. 10868 — REGISTERED PROFESSIONAL LAND SURVEYOR — 6/25/03

ISSUE DATES
REVIEW: 6-26-03
BID:
PERMIT:
CONSTRUCTION:

BASE: KO
DRAWN: KMB
DESIGNED:
CHECKED BY:
DATE CHECKED:
SCALE: 1"=100'
PROJECT NO.: 00097
DRAWING: 1 of 1

DATE	BY	REVISIONS

SITE DATA

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15. THE STORMWATER MANAGEMENT FACILITY SHALL BE PUBLIC.
16. STORMWATER MANAGEMENT RESERVATION AREA TO BE DEDICATED AND GRANTED AT NO COST TO BALTIMORE COUNTY, MARYLAND.
17. THE R.C.2 PORTIONS OF LOTS 3, 4, 5 AND 6 ARE REMAINING NON-DENSITY PARCELS OF THOSE LOTS. THE R.C.5 PORTION OF LOT 7 IS A REMAINING NON-DENSITY PARCEL OF LOT 7.
18. THE NON-DENSITY PORTIONS ZONED R.C.2 OF LOTS 3, 4, 5 AND 6, AS WELL AS THE NON-DENSITY PORTION ZONED R.C.5 OF LOT 7, DO NOT ALLOW WELL, SEPTIC OR ACCESSORY STRUCTURES/BUILDINGS.
19. PROPOSED WELLS TO COMPLY WITH ARTICLE II, TITLE 35 OF THE BALTIMORE COUNTY CODE.
20. SIXTEEN PARKING SPACES WILL BE PROVIDED, 2 FOR EACH LOT.
21. THIS PROJECT WILL GENERATE 80 AVERAGE DAILY TRIPS.
22. AREAS LABELED AS "100 YR. FLOODPLAIN D & U EASEMENT" SHALL BE DEDICATED AT NO COST TO BALTIMORE COUNTY, MARYLAND.
23. AREAS LABELED AS "DRAINAGE & UTILITY EASEMENT" SHALL BE DEDICATED AT NO COST TO BALTIMORE COUNTY, MARYLAND.

FOREST BUFFER / FOREST CONSERVATION NOTES

STANDARD NON-DISTURBANCE NOTE:

"THERE SHALL BE NO CLEARING, GRADING, CONSTRUCTION, OR DISTURBANCE OF VEGETATION IN THE FOREST BUFFER EASEMENT / FOREST CONSERVATION EASEMENT OR OTHER FOREST RETENTION AREAS, EXCEPT AS PERMITTED BY THE BALTIMORE COUNTY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT."

PROTECTIVE COVENANTS NOTE:

"ANY FOREST BUFFER EASEMENT / FOREST CONSERVATION EASEMENT SHOWN HEREON IS SUBJECT TO PROTECTIVE COVENANTS WHICH MAY BE FOUND IN THE LAND RECORDS OF BALTIMORE COUNTY AND WHICH RESTRICT DISTURBANCE AND USE OF THESE AREAS."

SITE DATA

OWNER:	DOROTHY E. SURINA & JEANNE M. GOUGH 4501 SWEET AIR ROAD BALDWIN, MD 21013
DEVELOPER:	GAYLORD BROOKS REALTY COMPANY, INC. 3312 PAPER MILL ROAD P.O. BOX 400 PHOENIX, MD 21131
TAX ACCOUNT NUMBER:	1012094025
DEED REFERENCE:	10376/339
GROSS SITE AREA:	47.0 ACRES ±
ZONING:	R.C.2 & R.C.5
TAX MAP:	44
BLOCK:	3
PARCEL:	68
ELECTION DISTRICT:	10
COUNCILMANIC DISTRICT:	3
CENSUS TRACT:	4102
REGIONAL PLANNING DISTRICT:	305
SCHOOL DISTRICTS:	
ELEMENTARY SCHOOL:	CARROLL MANOR - 1001
MIDDLE SCHOOL:	COCKEYSVILLE - 0853
HIGH SCHOOL:	DULANEY - 0872
WATERSHED:	4 - LITTLE GUNPOWDER
SUB-SEWERSHED:	81 - NO PLANNED SERVICE

CASE NO. R-01-455

ORDER

THEREFORE, IT IS ORDERED, by the Baltimore County Board of Appeals, this 16th day of May, 2002, that the Petitioner's request to reclassify the subject property as shown on the Undocumented Plan to Accompany Petition (Petitioner's Exhibit # 1) from R.C. 2 to R.C. 5 be and the same is hereby **DENIED**.

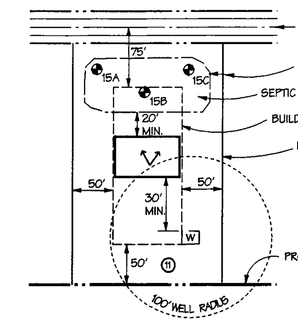
Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence S. Wescott, Panel Chairman

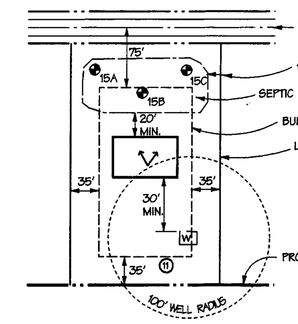
Charles L. Marks

Richard K. Irish



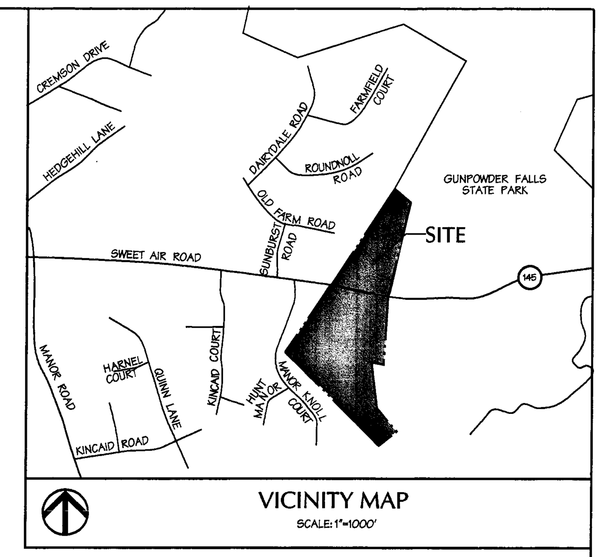
TYPICAL LOT LAYOUT R.C.5

SCALE: 1" = 100'



TYPICAL LOT LAYOUT R.C.2

SCALE: 1" = 100'

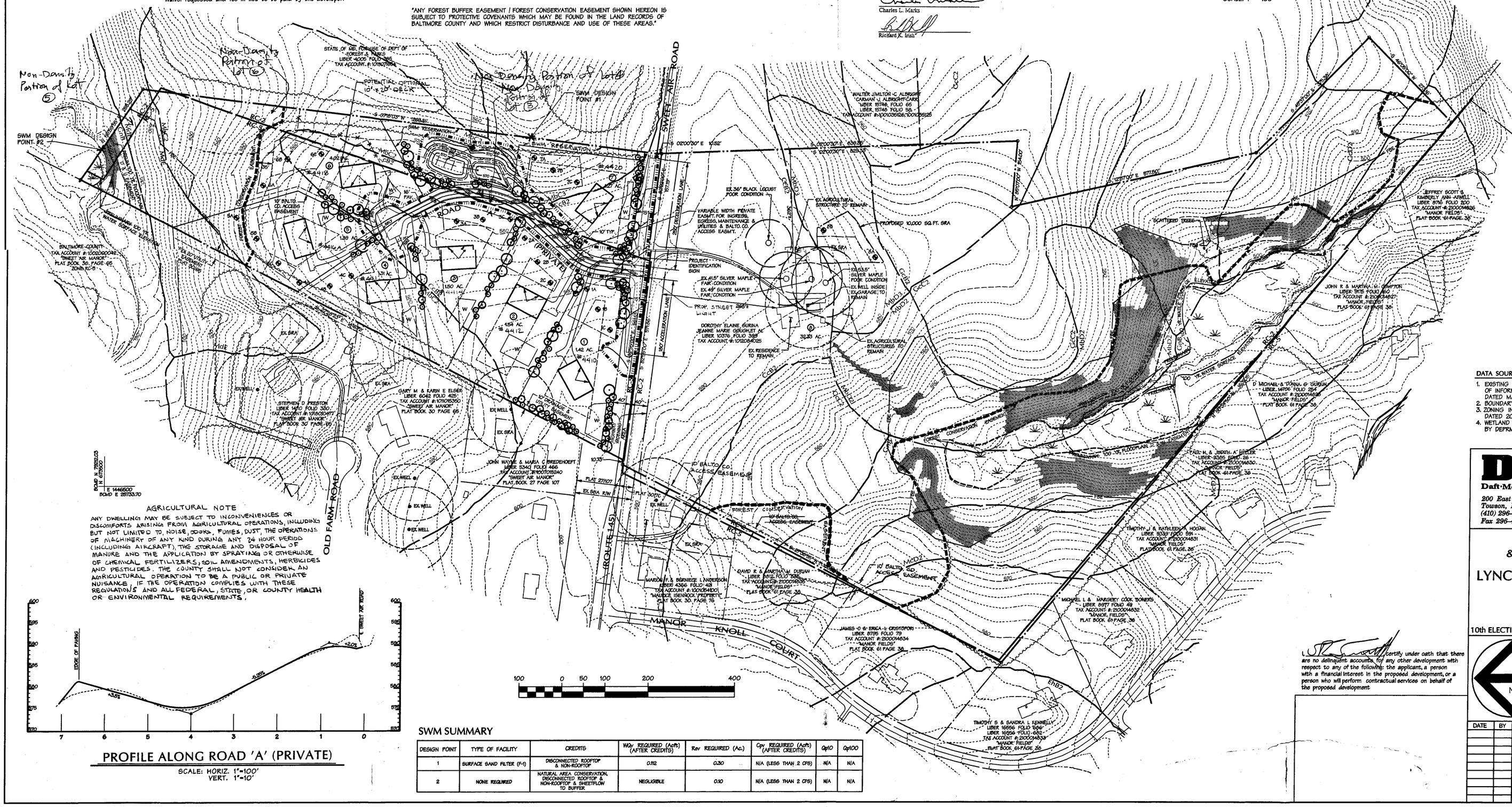


VICINITY MAP

SCALE: 1"=1000'

LEGEND

- SUBJECT PROPERTY LINE
- ADJACENT PROPERTY LINE
- 580 / 582 EXISTING CONTOURS
- +100.4 SPOT ELEVATION
- EDGE OF BIT. ASPHALT PAVEMENT
- ℄ OF EXISTING ROAD
- HEAD & ℄ OF EXISTING STREAM
- EXISTING TREE LINE
- 100' WELL SETBACK — EXISTING WELL
- EXISTING SWA
- R.C. 5 / R.C. 2 — ZONING LINE
- SOILS LINE
- WETLAND LIMITS
- WETLANDS
- FBE — FOREST BUFFER EASEMENT
- FOREST CONSERVATION EASEMENT
- PRELIMINARY 100 YEAR WATER SURFACE ELEVATION
- PRELIMINARY 100 YEAR FLOODPLAIN DRAINAGE & UTILITY EASEMENT
- SPECIMEN TREE WITH CRITICAL ROOT ZONE
- W — PROPOSED WELL AREA
- 15A / 15B / 15C — PROPOSED SEPTIC RESERVE AREA (WITH PERC TESTS)
- SLOPES ≥ 25%
- PROPOSED OVERSTORY TREE
- PROPOSED ORNAMENTAL TREE
- PROPOSED EVERGREEN TREE
- LIMIT OF DISTURBANCE (2.21 AC. ±)



PROFILE ALONG ROAD 'A' (PRIVATE)

SCALE: HORIZ. 1"=100'
VERT. 1"=10'

AGRICULTURAL NOTE

ANY DWELLING MAY BE SUBJECT TO INCONVENIENCES OR DISCOMFORTS ARISING FROM AGRICULTURAL OPERATIONS, INCLUDING BUT NOT LIMITED TO, NOISE, ODORS, FUMES, DUST, THE OPERATIONS OF MACHINERY OF ANY KIND DURING ANY 24 HOUR PERIOD (INCLUDING AIRCRAFT), THE STORAGE AND DISPOSAL OF MANURE AND THE APPLICATION BY SPRAYING OR OTHERWISE OF CHEMICAL FERTILIZERS, SOIL AMENDMENTS, HERBICIDES AND PESTICIDES. THE COUNTY SHALL NOT CONSIDER AN AGRICULTURAL OPERATION TO BE A PUBLIC OR PRIVATE NUISANCE, IF THE OPERATION COMPLIES WITH THESE REGULATIONS AND ALL FEDERAL, STATE, OR COUNTY HEALTH OR ENVIRONMENTAL REQUIREMENTS.

SWM SUMMARY

DESIGN POINT	TYPE OF FACILITY	CREDITS	WQv REQUIRED (Ac/ft) (AFTER CREDITS)	Rev REQUIRED (Ac.)	Cpv REQUIRED (Ac/ft) (AFTER CREDITS)	Qp10	Qp100
1	SURFACE SAND FILTER (P-1)	DISCONNECTED ROOFTOP & NON-ROOFTOP	0.112	0.30	N/A (LESS THAN 2 CFS)	N/A	N/A
2	NONE REQUIRED	NATURAL AREA CONSERVATION, DISCONNECTED ROOFTOP & NON-ROOFTOP & SHEETFLOW TO BUFFER	NEGLIGIBLE	0.10	N/A (LESS THAN 2 CFS)	N/A	N/A

DMW
Daft·McCune·Walker, Inc.
200 East Pennsylvania Avenue
Towson, Maryland 21286
(410) 296-3333
Fax 296-4705

A Team of Land Planners, Landscape Architects, Golf Course Architects, Engineers, Surveyors & Environmental Professionals

EXHIBIT 1 Developer

REVLINE FOR H.O.H.

DEVELOPMENT PLAN & SCHEMATIC LANDSCAPE PLAN

LYNCH PROPERTY - SWEET AIR ROAD

4501 SWEET AIR ROAD
PDM # X-404

10th ELECTION DISTRICT — BALTIMORE COUNTY, MD

I certify under oath that there are no delinquent accounts, for any other development with respect to any of the following: the applicant, a person with a financial interest in the proposed development, or a person who will perform contractual services on behalf of the proposed development.

NAD83

STATE OF MARYLAND — ANTHONY HOWELL — No. 21403 — PROFESSIONAL LAND SURVEYOR — 6/19/03

ISSUE DATES
REVIEW: 6-26-03
BID:
PERMIT:
CONSTRUCTION:

BASE: KO
DRAWN: KMB
DESIGNED:
CHECKED BY:-
DATE CHECKED:
SCALE: 1"=100'
PROJECT NO.: 00097
DRAWING:

DATE	BY	REVISIONS

1 of 1

Thu Jun 26 08:25:26 2003 n:\00097\00097.dwl

SITE DATA

ZONE	ACRES	UNITS ALLOWED	UNITS EXISTING	UNITS PROPOSED
RC-2	36.2 AC	2	1	1
RC-5	10.8 AC	7	0	6
TOTAL	47.0 AC	9	1	7

THIS PROPERTY AS SHOWN ON THE PLAN HAS BEEN HELD INTACT SINCE NOVEMBER 25, 1979. THE DEVELOPER'S ENGINEER HAS CONFIRMED THAT NO PART OF THE GROSS AREA OF THIS PROPERTY AS SHOWN ON THE PLAN HAS EVER BEEN UTILIZED, RECORDED OR REPRESENTED AS DENSITY OR AREA TO SUPPORT ANY OFF-SITE DWELLINGS.

LANDSCAPING REQUIREMENTS

LANDSCAPING TABULATION		
INTERIOR ROAD @ 1:20 PER L.F.	662 L.F.	33 P.U.'S
ADJACENT ROAD @ 1:40 PER L.F.	702 L.F.	18 P.U.'S
*SWM @ 1:15 PER L.F.	420 L.F.	28 P.U.'S
SIDE YARD SCREENING @ 1:15 PER L.F.	443 L.F.	30 P.U.'S
TOTAL		109 P.U.'S
LANDSCAPING PROVIDED		
OVERSTORY TREES	27	27 P.U.'S
EVERGREEN TREES	90	45 P.U.'S
ORNAMENTAL TREES	54	27 P.U.'S
SHRUBS	43	8.6 P.U.'S
GROUNDCOVER	653 S.F.	1.3 P.U.'S
TOTAL		108.9 P.U.'S

* SWM PERIMTER IS 620 LF, 200 LF OF WHICH IS ADJACENT TO EXISTING FOREST.

SITE NOTES

1. SOILS ARE MAPPED AND LABELED IN ACCORDANCE WITH THE "SOIL SURVEY, BALTIMORE COUNTY, MARYLAND".
2. TOPOGRAPHY SHOWN HEREON IS BALTIMORE COUNTY GIS.
3. ZONING LINES SHOWN HEREON ARE BASED UPON THE BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING OFFICIAL 2000 COMPREHENSIVE ZONING MAP.
4. THERE ARE NO 100-YEAR FEMA MAPPED FLOODPLAINS ON-SITE.
5. THERE ARE NO KNOWN EXISTING UNDERGROUND STORAGE TANKS ON OR WITHIN 100 FEET OF THE DEVELOPMENT SITE.
6. THERE ARE NO KNOWN DESIGNATED AREAS ON-SITE AS PER THE MARYLAND ARCHEOLOGICAL SURVEY.
7. THERE ARE NO KNOWN DESIGNATED HISTORIC STRUCTURES OR AREAS ON-SITE AS PER THE LANDMARKS PRESERVATION COMMISSION OR THE MARYLAND HISTORICAL TRUST INVENTORY.
8. OPEN SPACE REQUIRED - 5,200 SF ACTIVE AND 2,800 SF PASSIVE OR A COMBINATION THEREOF AS SPECIFIED IN SECTION III.D.3; OPEN SPACE PROVIDED - 0 SF; WAIVER REQUESTED AND FEE IN LIEU TO BE PAID.
9. SWEET AIR ROAD IS DESIGNATED AS A "SCENIC CORRIDOR" ON THE "SCENIC RESOURCES MAP" IN THE MASTER PLAN 2010.
10. THE MAXIMUM HEIGHT FOR NON-AGRICULTURAL PRINCIPAL STRUCTURES IS 35 FEET.
11. ALL EXISTING BUILDINGS AND USES OF LOT B TO REMAIN.
12. ALL SIGNAGE TO BE COMPLIANT WITH BCZR SECTION 450.
13. MAXIMUM 15% COVERAGE FOR THE R.C.5 ZONED LOTS.
14. "HIGHWAY WIDENING AREA" TO BE DEDICATED AND GRANTED AT NO COST TO BALTIMORE COUNTY, MARYLAND.
15. THE STORMWATER MANAGEMENT FACILITY SHALL BE PUBLIC.
16. STORMWATER MANAGEMENT RESERVATION AREA TO BE DEDICATED AND GRANTED AT NO COST TO BALTIMORE COUNTY, MARYLAND.
17. THE R.C.2 PORTIONS OF LOTS 3, 4, 5 AND 6 ARE REMAINING NON-DENSITY PARCELS OF THOSE LOTS. THE R.C.5 PORTION OF LOT 7 IS A REMAINING NON-DENSITY PARCEL OF LOT 7.
18. THE NON-DENSITY PORTIONS ZONED R.C.2 OF LOTS 3, 4, 5 AND 6, AS WELL AS THE NON-DENSITY PORTION ZONED R.C.5 OF LOT 7, DO NOT ALLOW WELL, SEPTIC OR ACCESSORY STRUCTURES/BUILDINGS.
19. PROPOSED WELLS TO COMPLY WITH ARTICLE II, TITLE 35 OF THE BALTIMORE COUNTY CODE.
20. SIXTEEN PARKING SPACES WILL BE PROVIDED, 2 FOR EACH LOT.
21. THIS PROJECT WILL GENERATE 80 AVERAGE DAILY TRIPS.

SITE DATA

OWNER:	DOROTHY E. SURINA & JEANNE M. GOUGH 4501 SWEET AIR ROAD BALDWIN, MD 21013
DEVELOPER:	GAYLORD BROOKS REALTY COMPANY, INC. 3312 PAPER MILL ROAD P.O. BOX 400 PHOENIX, MD 21131
TAX ACCOUNT NUMBER:	1012084025
DEED REFERENCE:	10376/389
GROSS SITE AREA:	47.0 ACRES ±
ZONING:	R.C.2 & R.C.5
TAX MAP:	44
BLOCK:	3
PARCEL:	68
ELECTION DISTRICT:	10
COUNCILMANIC DISTRICT:	3
CENSUS TRACT:	4102
REGIONAL PLANNING DISTRICT:	305
SCHOOL DISTRICTS:	
ELEMENTARY SCHOOL:	CARROLL MANOR - 1001
MIDDLE SCHOOL:	COCKEYSVILLE - 0853
HIGH SCHOOL:	DULANEY - 0872
WATERSHED:	4 - LITTLE GUNPOWDER
SUB-SEWERSHED:	B1 - NO PLANNED SERVICE

CASE NO. R-01-455

ORDER

THEREFORE, IT IS ORDERED, by the Baltimore County Board of Appeals, this 6th day of May, 2002, that the Petitioner's request to reclassify the subject property as shown on the Undocumented Plan to Accompany Petition (Petitioner's Exhibit # 1) from R.C. 2 to R.C. 5 be and the same is hereby **DENIED**.

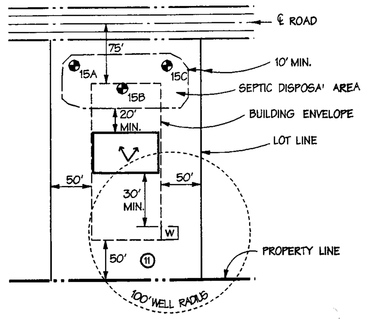
Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence S. Wescott, Panel Chairman

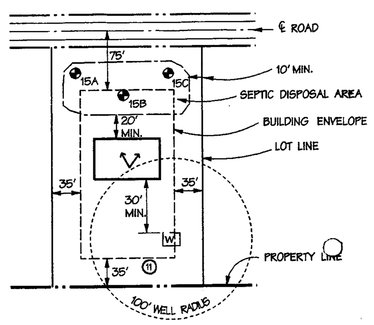
Charles L. Marks

Richard K. Irish



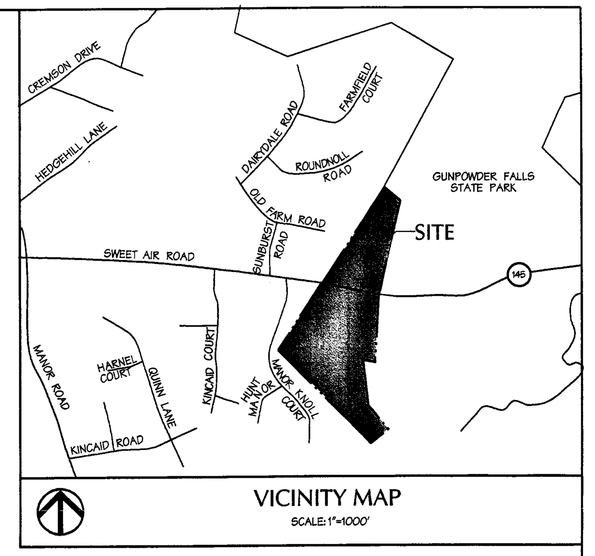
TYPICAL LOT LAYOUT R.C.5

SCALE: 1" = 100'



TYPICAL LOT LAYOUT R.C.2

SCALE: 1" = 100'



VICINITY MAP

SCALE: 1"=1000'

OPEN SPACE PROPOSAL

Open Space Required for B lote:
5,200 s.f. Active
2,800 s.f. Passive
Open Space Provided for B lote:
0 s.f. Active
0 s.f. Passive
Waiver requested and fee in lieu to be paid by the developer.

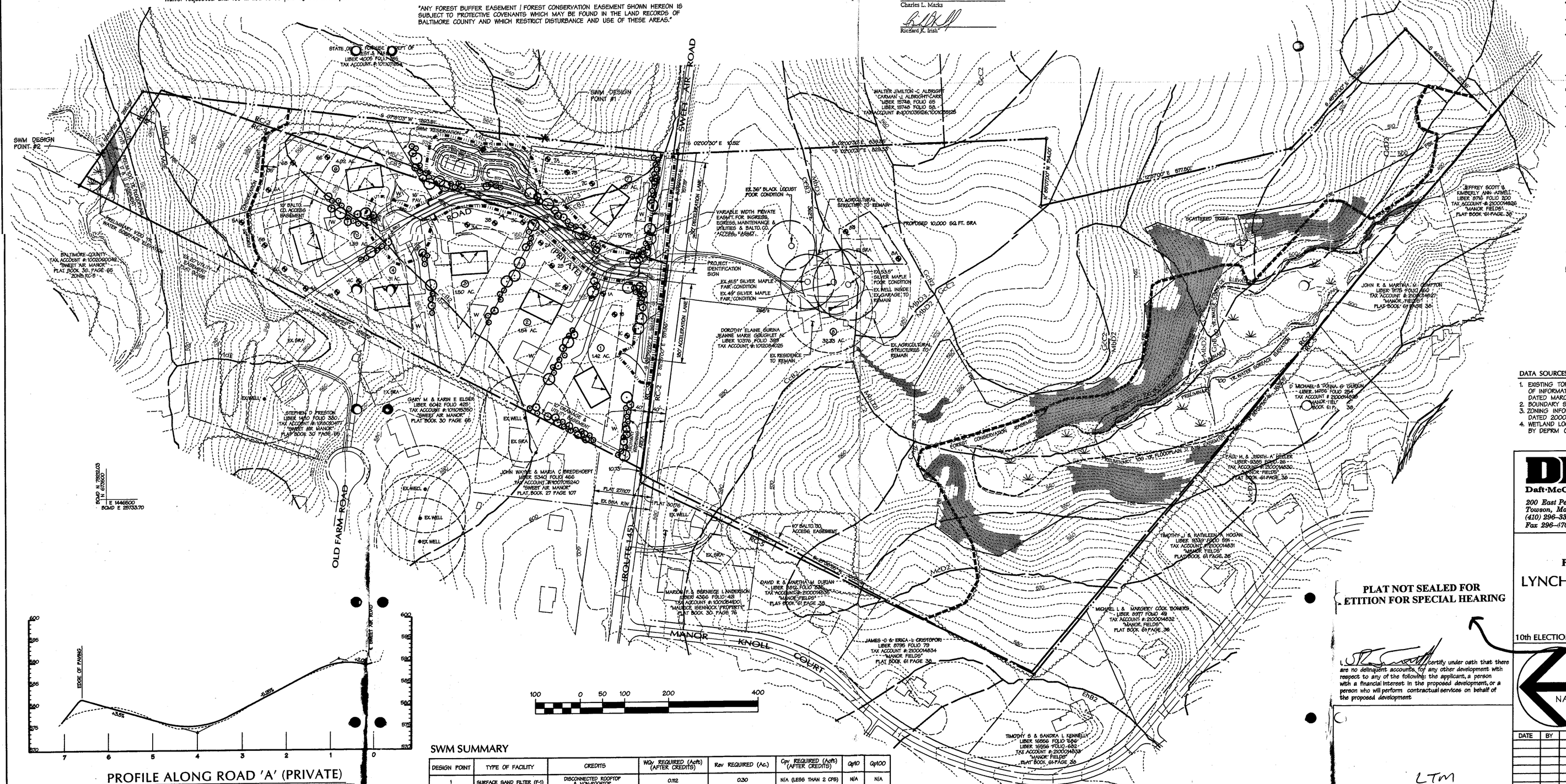
FOREST BUFFER / FOREST CONSERVATION NOTES

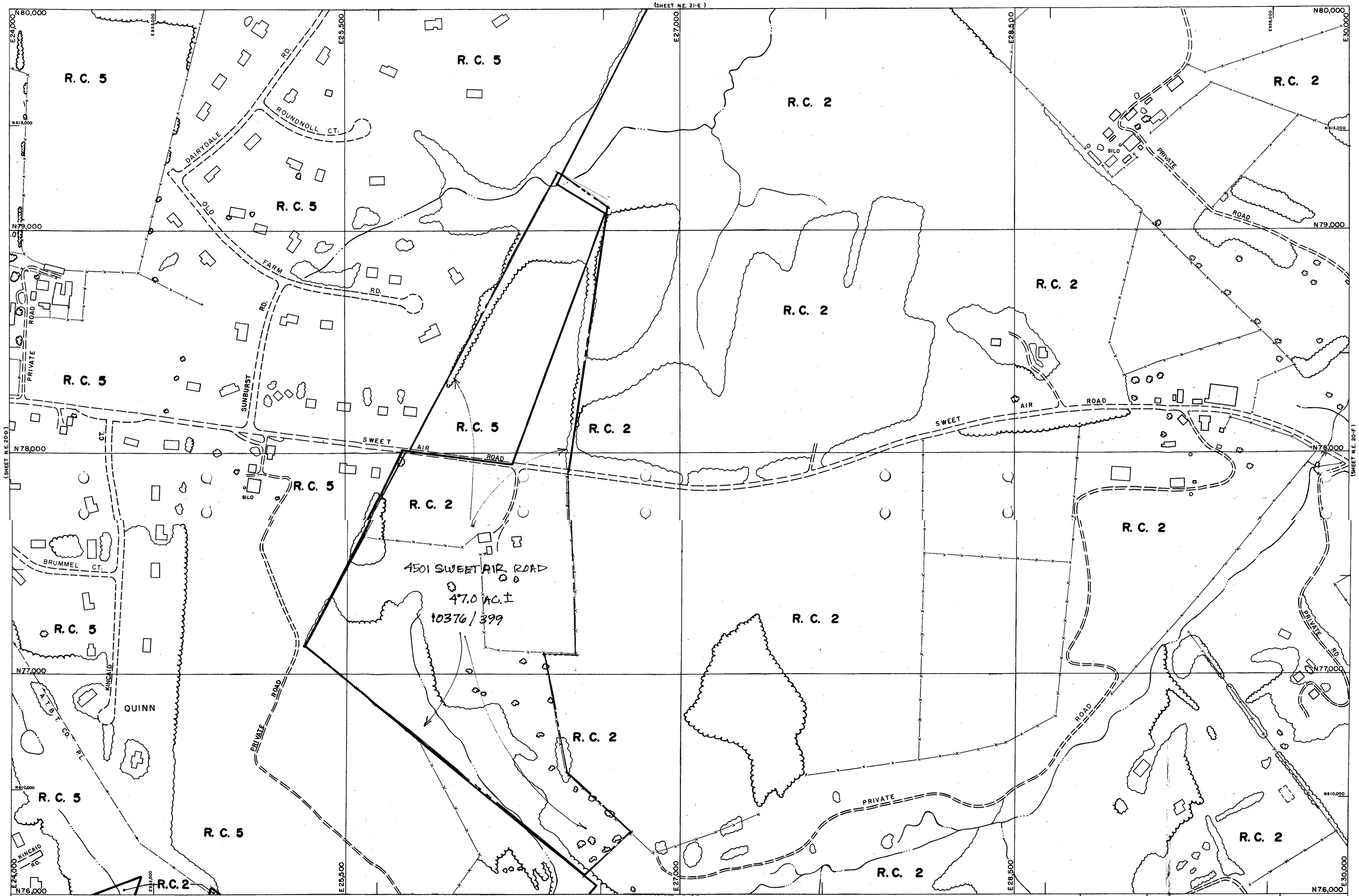
STANDARD NON-DISTURBANCE NOTE:

"THERE SHALL BE NO CLEARING, GRADING, CONSTRUCTION, OR DISTURBANCE OF VEGETATION IN THE FOREST BUFFER EASEMENT / FOREST CONSERVATION EASEMENT OR OTHER FOREST RETENTION AREAS, EXCEPT AS PERMITTED BY THE BALTIMORE COUNTY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT."

PROTECTIVE COVENANTS NOTE:

"ANY FOREST BUFFER EASEMENT / FOREST CONSERVATION EASEMENT SHOWN HEREON IS SUBJECT TO PROTECTIVE COVENANTS WHICH MAY BE FOUND IN THE LAND RECORDS OF BALTIMORE COUNTY AND WHICH RESTRICT DISTURBANCE AND USE OF THESE AREAS."


SWM DESIGN POINT #2
SWM DESIGN POINT #1
SWEET AIR ROAD
OLD FARM ROAD
ROUTE 45
MANOR KNOLL COURT
PROJECT IDENTIFICATION SIGN
VARIABLE WIDTH PRIVATE EASMT. FOR INGRESS, EGRESS, MAINTENANCE & UTILITIES & BALTO. CO. ACCESS EASMT.
PROPOSED 10,000 SQ.FT. SRA
EX. AGRICULTURAL STRUCTURE TO REMAIN
EX. RESIDENCE TO REMAIN
EX. AGRICULTURAL STRUCTURES TO REMAIN
EX. SRA
EX. WELL
EX. SEPTIC
EX. DRIVEWAY
EX. 36" BLACK LOCUST POOR CONDITION
EX. 48" SILVER MAPLE FAIR CONDITION
EX. 49" SILVER MAPLE FAIR CONDITION
EX. 63.5" SILVER MAPLE POOR CONDITION
EX. BELL WELL INSIDE GARAGE, TO REMAIN
EX. 36" SILVER MAPLE POOR CONDITION
EX. 24" SILVER MAPLE POOR CONDITION
EX. 30" SILVER MAPLE POOR CONDITION
EX. 24" SILVER MAPLE POOR CONDITION
EX. 24" SILVER MAPLE POOR CONDITION
EX. 24



V-NE UU-NW
EE-SE VV-SW

THIS MAP HAS BEEN REVISED IN SELECTED AREAS.
TOPOGRAPHY COMPILED BY PHOTOGRAMMETRIC METHODS
BY BUCHART-HORN, INC. BALTIMORE, MD. 21210

2000 COMPREHENSIVE ZONING MAP
ADOPTED by
THE BALTIMORE COUNTY COUNCIL
OCTOBER 10, 2000
Bills Nos. 87-00, 88-00, 89-00, 90-00, 91-00, 92-00, 93-00,

Joseph Bartenfelder
Chairman, County Council

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
OFFICIAL ZONING MAP

SCALE	LOCATION	SHEET
1" = 200'±	EAST OF SWEET AIR	N.E. 20-E
DATE OF PHOTOGRAPHY JANUARY 1986		

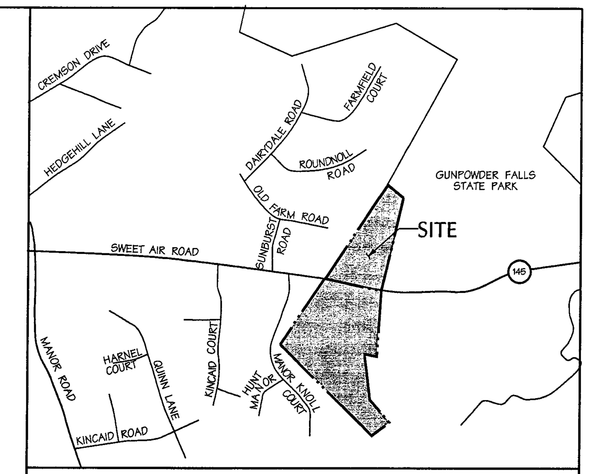
To accompany
4501 SWEET AIR ROAD
PETITION
200' ZONING MAP

NE 20 E

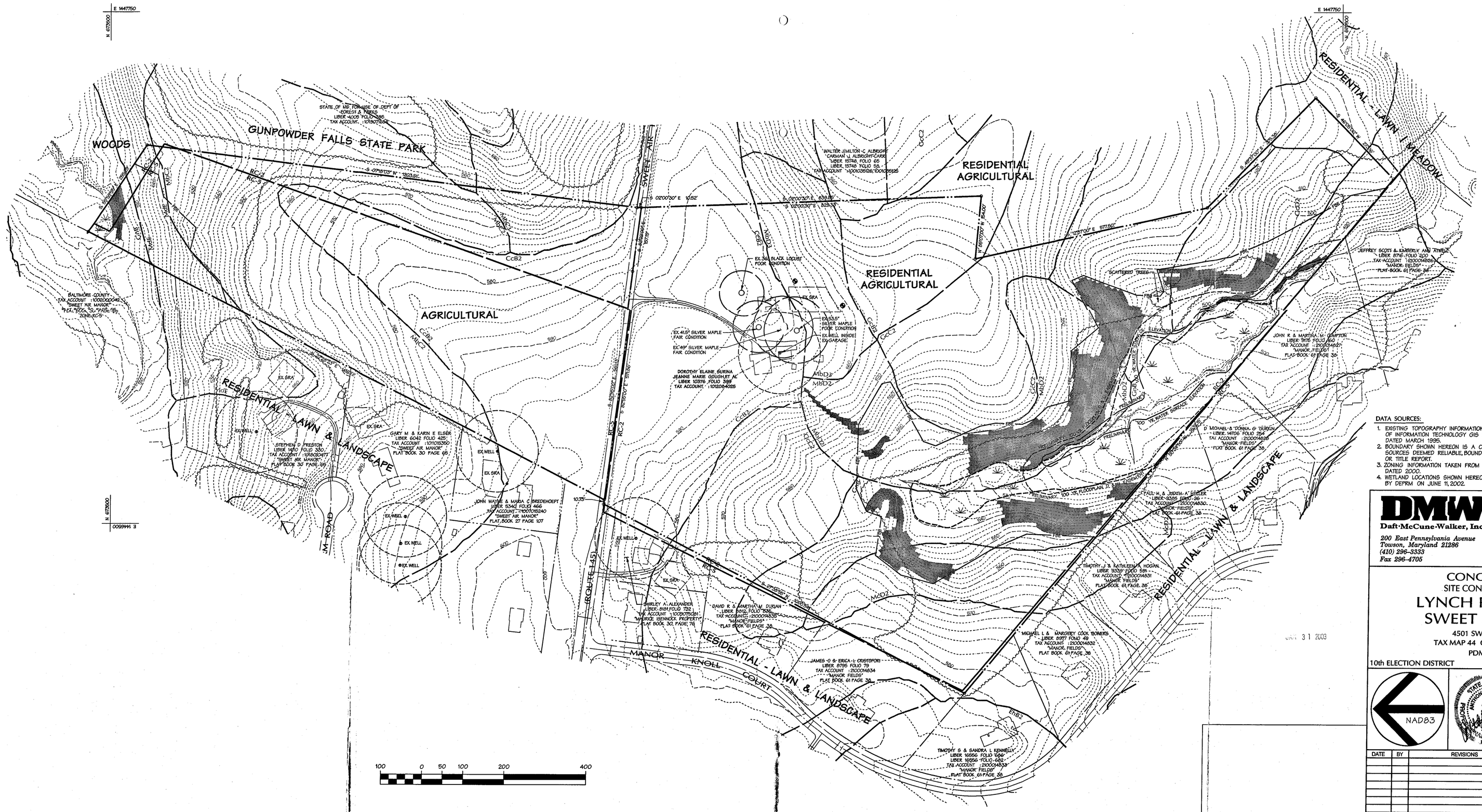
#198

LEGEND

- SUBJECT PROPERTY LINE
- ADJACENT PROPERTY LINE
- 580 / 582 — EXISTING CONTOURS
- +100.4 — SPOT ELEVATION
- EDGE OF BIT. ASPHALT PAVEMENT
- ℄ OF EXISTING ROAD
- HEAD & ℄ OF EXISTING STREAM
- EXISTING TREE LINE
- 100' WELL SETBACK — EXISTING WELL
- EXISTING SRA
- R.C. 5 / RO-CR — ZONING LINE
- SOILS LINE
- WETLAND LIMITS
- WETLANDS
- FBE — FOREST BUFFER EASEMENT
- PRELIMINARY 100 YEAR WATER SURFACE ELEVATION
- PRELIMINARY 100 YEAR FLOODPLAIN DRAINAGE & UTILITY EASEMENT
- SPECIMEN TREE WITH CRITICAL ROOT ZONE



VICINITY MAP
SCALE: 1"=1000'



DATA SOURCES:

1. EXISTING TOPOGRAPHY INFORMATION TAKEN FROM BALTIMORE COUNTY OFFICE OF INFORMATION TECHNOLOGY GIS SERVICE UNIT (NAD 83 HORIZONTAL DATUM) DATED MARCH 1995.
2. BOUNDARY SHOWN HEREON IS A COMPOSITE OF DEEDS, PLATS, AND OTHER SOURCES DEEMED RELIABLE. BOUNDARY SHOWN WITHOUT BENEFIT OF SURVEY OR TITLE REPORT.
3. ZONING INFORMATION TAKEN FROM BALTIMORE COUNTY ZONING MAPS DATED 2000.
4. WETLAND LOCATIONS SHOWN HEREON WERE FIELD-REVIEWED AND APPROVED BY DEPRM ON JUNE 11, 2002.

DMW
Daft·McCune·Walker, Inc.
200 East Pennsylvania Avenue
Towson, Maryland 21286
(410) 296-3333
Fax 296-4705

A Team of Land Planners, Landscape Architects, Golf Course Architects, Engineers, Surveyors & Environmental Professionals

CONCEPT PLAN
SITE CONSTRAINTS PLAN
LYNCH PROPERTY - SWEET AIR ROAD

4501 SWEET AIR ROAD
TAX MAP 44 GRID 3 PARCEL 68
PDM # X-404

10th ELECTION DISTRICT — BALTIMORE COUNTY, MD

NAD83

STATE OF MARYLAND — ANTHONY J. JACKSON — No. 21403 — REGISTERED PROFESSIONAL LAND SURVEYOR

ISSUE DATES	
REVIEW:	1/29/03
BID:	
PERMIT:	
CONSTRUCTION:	
BASE:	KO
DRAWN:	KMB
DESIGNED:	
CHECKED BY:	
DATE CHECKED:	
SCALE:	1"=100'
PROJECT NO.:	00097
DRAWING:	1 of 1

DATE	BY	REVISIONS

JAN 31 2003

sshaff 1/29/2003 12:41:8 PM hbaseSwff dk\Work\00097\02\pm 00097.dgn

Wed Jan 29 13:42:22 2003 n:\00097\00097.wp2

SITE DATA

ZONE	ACRES	UNITS ALLOWED	UNITS EXISTING	UNITS PROPOSED
RC-2	36.2 AC	2	1	1
RC-5	10.8 AC	7	0	6
TOTAL	47.0 AC	9	1	7

SITE DEVELOPMENT PROPOSAL

DWELLING TYPE	PROPOSED UNITS	PARKING REQUIRED	PARKING PROVIDED	AVG. DAILY TRIPS	PHASE	DEVELOPMENT SCHEDULE
SINGLE-FAMILY	7	14	14	70	N/A	N/A
TOTAL	7	14	14	70	N/A	N/A

COUNTY ADOPTED PLANS

EXISTING	NOT EXISTING	IN CONFORMANCE	
		X	Balt. Co. Master Plan 1989-2000
	X		Community or Revitalization Plan(s)
	X		Recreation and Parks Plan
	X		Streetscape Plan
	X		Greenways Plan
			Other:_____

ENVIRONMENTAL INFORMATION

EXISTING	NOT EXISTING	FIELD DELINEATED	FIELD VERIFIED	
X				Topography and street grades (min. 5 ft. contour appropriately labeled)
	X			Slopes greater than 25%
	X			100 yr. floodplain
X				Soils mapped according to Soil Survey, Baltimore County, Maryland
X				Streams, seeps, ponds or other water bodies shown on site and within 200ft. of site boundaries
X				Wetlands
X				Forest buffer limits including adjustments for steep slopes and/or erodible soils
X				Land cover on and within 200ft. of site
	X			Significant regulated plant or wildlife communities
X				Wells on site and within 100ft. of site
X				Septic on site and within 100ft. of site
	X			Underground fuel tanks on site and within 100ft. of site
X				Soil evaluation tests (perc tests) performed YES NO DATE

EXISTING BUILT CONDITIONS

EXISTING	NOT EXISTING	
X		Locations of existing buildings within 200ft. of site boundaries
X		Location of existing roads within 200ft. of site boundaries
	X	Designated historic sites
	X	Designated archeological sites
	X	Significant views
X		Significant features (specimen trees, buildings, streetscapes, etc.)
X		Land uses on and within 200ft. of site
X		Roads rights-of-way and easements

LANDSCAPING REQUIREMENTS

LANDSCAPING TABULATION			
INTERIOR ROAD @ 1:20 PER L.F.	558 L.F.	28	P.U.'S
ADJAC ' ROAD @ 40 PER L.F.	702 L.F.	18	P.U.'S
*SWM @ 1:15 PER L.F.	420 L.F.	28	P.U.'S
SIDE YARD SCREENING @ 1:15 PER L.F.	443 L.F.	30	P.U.'S
TOTAL		104	P.U.'S
LANDSCAPING PROVIDED			
OVERSTORY TREES	23	23	P.U.'S
EVERGREEN TREES	90	45	P.U.'S
ORNAMENTAL TREES	53	26.5	P.U.'S
SHRUBS	43	8.6	P.U.'S
GROUN' 'VER	653 S.F.	1.3	P.U.'S
TOTAL		104.4	P.U.'S

* SWM PERIMTER IS 620 LF, 200 LF OF WHICH IS ADJACENT TO EXISTING FOREST.

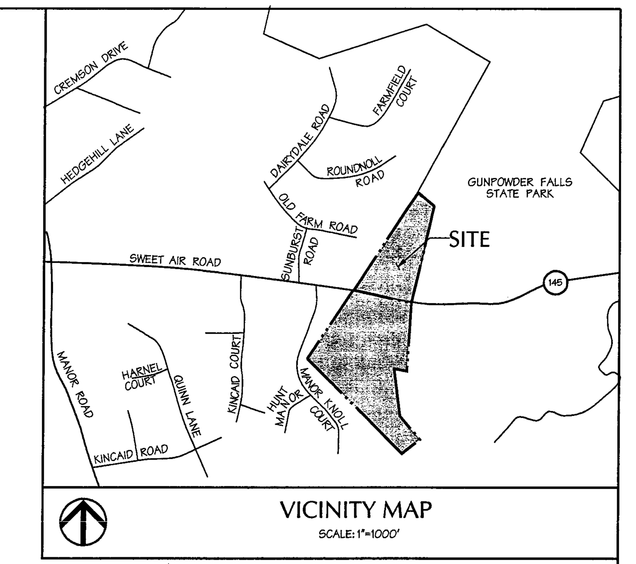
SITE DATA

DEVELOPER:	GAYLORD BROOKS REALTY CO. 3312 PAPERMILL ROAD P.O. BOX 403 PHOENIX, MD 21131
TAX ACCOUNT NUMBER:	1012084025
GROSS SITE DATA:	47.0 ACRES
ZONING:	RC-2 & RC-5
DEED REFERENCE:	10376/399
TAX MAP:	44
PARCEL:	68

NOTES:
1. THERE ARE NO 100-YEAR FEMA MAPPED FLOODPLAINS ON-SITE.
2. THERE ARE NO KNOWN EXISTING UNDERGROUND STORAGE TANKS ON OR WITHIN 100 FEET OF THE DEVELOPMENT SITE.
3. THERE ARE NO KNOWN DESIGNATED AREAS ON-SITE AS PER THE MARYLAND ARCHEOLOGICAL SURVEY.
4. THERE ARE NO KNOWN DESIGNATED HISTORIC STRUCTURES OR AREAS ON-SITE AS PER THE LANDMARKS PRESERVATION COMMISSION OR THE MARYLAND HISTORICAL TRUST INVENTORY.
5. THE CONTRACTOR INTENDS TO PAY A FEE IN LIEU OF OPEN SPACE REQUIRED.

LEGEND

- SUBJECT PROPERTY LINE
- ADJACENT PROPERTY LINE
- 580 582 EXISTING CONTOURS
- +100.4 SPOT ELEVATION
- EDGE OF BIT. ASPHALT PAVEMENT
- ℄ OF EXISTING ROAD
- HEAD & ℄ OF EXISTING STREAM
- EXISTING TREE LINE
- 100' WELL SETBACK — EXISTING WELL
- EXISTING SRA
- R.C. 5 / RO-CR — ZONING LINE
- SOILS LINE
- WETLAND LIMITS
- WETLANDS
- FBE — FOREST BUFFER EASEMENT
- PRELIMINARY 100 YEAR WATER SURFACE ELEVATION
- PRELIMINARY 100 YEAR FLOODPLAIN DRAINAGE & UTILITY EASEMENT
- SPECIMEN TREE WITH CRITICAL ROOT ZONE
- W — PROPOSED WELL AREA
- 1A, 1B, 1C — PROPOSED SEPTIC RESERVE AREA (WITH PERC TESTS)
- SLOPES ≥ 25%
- PROPOSED OVERSTORY TREE
- PROPOSED ORNAMENTAL TREE
- PROPOSED EVERGREEN TREE



VICINITY MAP
SCALE: 1"=1000'

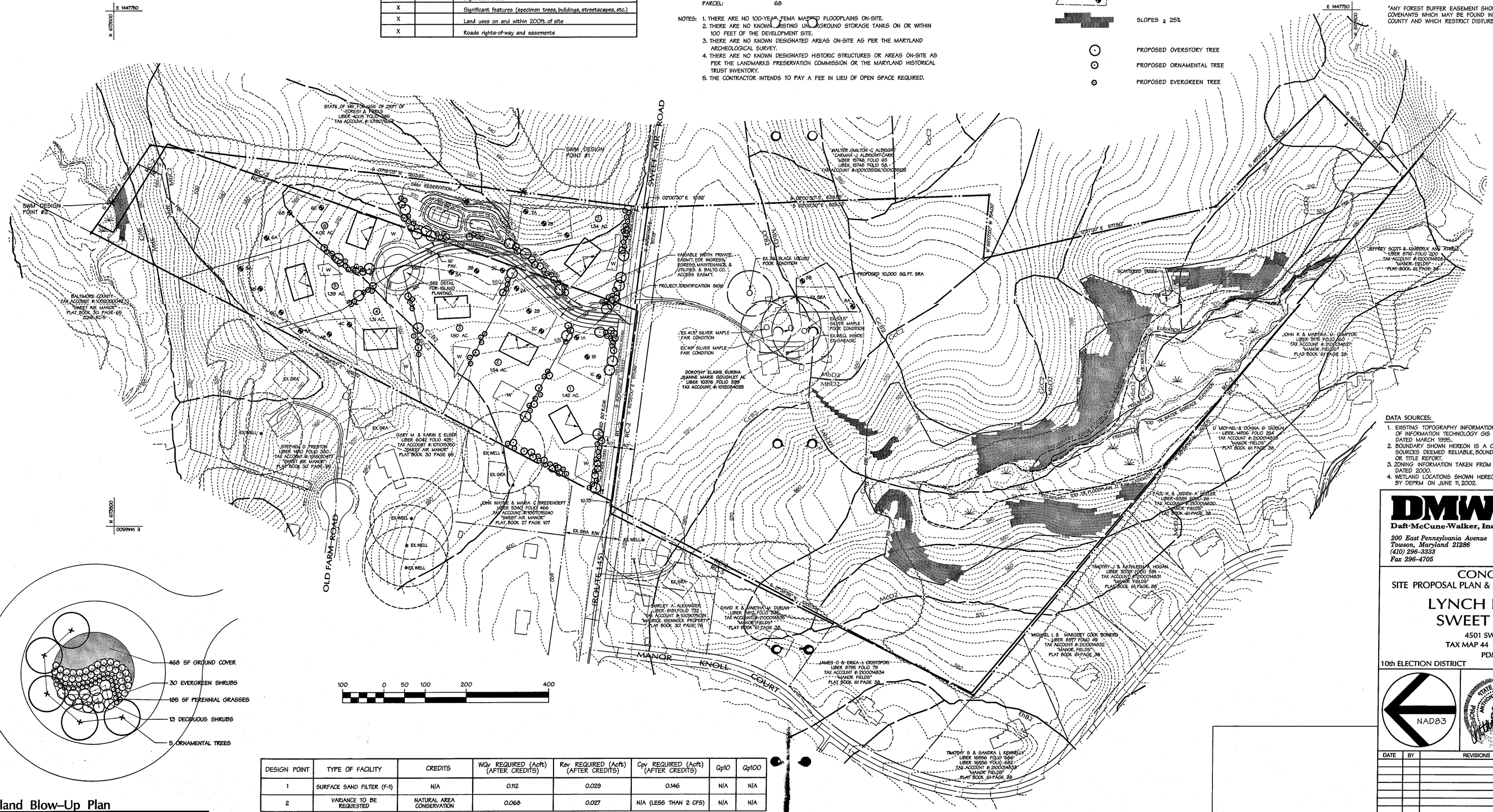
FOREST BUFFER NOTES

STANDARD NON-DISTURBANCE NOTE:

"THERE SHALL BE NO CLEARING, GRADING, CONSTRUCTION, OR DISTURBANCE OF VEGETATION IN THE FOREST BUFFER EASEMENT / RESERVATION OR OTHER FOREST RETENTION AREAS, EXCEPT AS PERMITTED BY THE BALTIMORE COUNTY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT."

PROTECTIVE COVENANTS NOTE:

"ANY FOREST BUFFER EASEMENT SHOWN HEREON IS SUBJECT TO PROTECTIVE COVENANTS WHICH MAY BE FOUND IN THE LAND RECORDS OF BALTIMORE COUNTY AND WHICH RESTRICT DISTURBANCE AND USE OF THESE AREAS."



Island Blow-Up Plan
Scale: 1" = 20'

DESIGN POINT	TYPE OF FACILITY	CREDITS	WQv REQUIRED (Acft) (AFTER CREDITS)	Rev REQUIRED (Acft) (AFTER CREDITS)	Cpv REQUIRED (Acft) (AFTER CREDITS)	Qp10	Qp100
1	SURFACE SAND FILTER (F-1)	N/A	0.112	0.029	0.146	N/A	N/A
2	VARIANCE TO BE REQUESTED	NATURAL AREA CONSERVATION	0.068	0.027	N/A (LESS THAN 2 CFS)	N/A	N/A

DATA SOURCES:
1. EXISTING TOPOGRAPHY INFORMATION TAKEN FROM BALTIMORE COUNTY OFFICE OF INFORMATION TECHNOLOGY GIS SERVICE UNIT (NAD 83 HORIZONTAL DATUM) DATED MARCH 1995.
2. BOUNDARY SHOWN HEREON IS A COMPOSITE OF DEEDS, PLATS, AND OTHER SOURCES DEEMED RELIABLE, BOUNDARY SHOWN WITHOUT BENEFIT OF SURVEY OR TITLE REPORT.
3. ZONING INFORMATION TAKEN FROM BALTIMORE COUNTY ZONING MAPS DATED 2000.
4. WETLAND LOCATIONS SHOWN HEREON WERE FIELD-REVIEWED AND APPROVED BY DEPRM ON JUNE 11, 2002.

DMW
Daft·McCune·Walker, Inc.
200 East Pennsylvania Avenue
Towson, Maryland 21286
(410) 296-3333
Fax 296-4705
A Team of Land Planners, Landscape Architects, Golf Course Architects, Engineers, Surveyors & Environmental Professionals

CONCEPT PLAN
SITE PROPOSAL PLAN & SCHEMATIC LANDSCAPE PLAN

LYNCH PROPERTY - SWEET AIR ROAD

4501 SWEET AIR ROAD
TAX MAP 44 GRID 3 PARCEL 68
PDM # X-404
10th ELECTION DISTRICT BALTIMORE COUNTY, MD

NAD83

STATE OF MARYLAND — ANTHONY JOSEPH MARCHETTI — No. 21436 — REGISTERED PROFESSIONAL ENGINEER

ISSUE DATES

REVIEW:	1/29/03
BID:	
PERMIT:	
CONSTRUCTION:	
BASE:	KO
DRAWN:	KMB
DESIGNED:	
CHECKED BY:	
DATE CHECKED:	
SCALE:	1"=100'
PROJECT NO.:	00097
DRAWING:	1 of 1

DATE	BY	REVISIONS

Wed Jan 29 15:22:42 2003 m\00097\00097.spl

Plotted: 1/29/2003, 12:22:41 PM kkosko ff d:\fsm\00097\Plan 00097.dgn

SITE DATA

ZONE	ACRES	UNITS ALLOWED	UNITS EXISTING	UNITS PROPOSED
RC-2	36.2 AC	2	1	1
RC-5	10.8 AC	7	0	6
TOTAL	47.0 AC	9	1	7

THIS PROPERTY AS SHOWN ON THE PLAN HAS BEEN HELD INTACT SINCE NOVEMBER 25, 1979 THE DEVELOPER'S ENGINEER HAS CONFIRMED THAT NO PART OF THE GROSS AREA OF THIS PROPERTY AS SHOWN ON THE PLAN HAS EVER BEEN UTILIZED, RECORDED OR REPRESENTED AS DENSITY OR AREA TO SUPPORT ANY OFF-SITE DWELLINGS

LANDSCAPING REQUIREMENTS

LANDSCAPING TABULATION				
INTERIOR ROAD @ 1.20 PER L.F.	662	L.F.	33	P.U.'S
ADJACENT ROAD @ 1.40 PER L.F.	702	L.F.	18	P.U.'S
*SWM @ 1.15 PER L.F.	420	L.F.	28	P.U.'S
SIDE YARD SCREENING @ 1.15 PER L.F.	443	L.F.	30	P.U.'S
TOTAL			109	P.U.'S
LANDSCAPING PROVIDED				
OVERSTORY TREES	27		27	P.U.'S
EVERGREEN TREES	90		45	P.U.'S
ORNAMENTAL TREES	54		27	P.U.'S
SHRUBS	43		8.6	P.U.'S
GROUNDCOVER	653	S.F.	1.3	P.U.'S
TOTAL			108.9	P.U.'S

* SWM PERIMTER IS 620 LF, 200 LF OF WHICH IS ADJACENT TO EXISTING FOREST

SITE NOTES

1. SOILS ARE MAPPED AND LABELED IN ACCORDANCE WITH THE "SOIL SURVEY, BALTIMORE COUNTY, MARYLAND"
2. TOPOGRAPHY SHOWN HEREON IS BALTIMORE COUNTY GIS
3. ZONING LINES SHOWN HEREON ARE BASED UPON THE BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING OFFICIAL 2000 COMPREHENSIVE ZONING MAP
4. THERE ARE NO 100-YEAR FEMA MAPPED FLOODPLAINS ON-SITE
5. THERE ARE NO KNOWN EXISTING UNDERGROUND STORAGE TANKS ON OR WITHIN 100 FEET OF THE DEVELOPMENT SITE
6. THERE ARE NO KNOWN DESIGNATED AREAS ON-SITE AS PER THE MARYLAND ARCHEOLOGICAL SURVEY
7. THERE ARE NO KNOWN DESIGNATED HISTORIC STRUCTURES OR AREAS ON-SITE AS PER THE LANDMARKS PRESERVATION COMMISSION OR THE MARYLAND HISTORICAL TRUST INVENTORY
8. OPEN SPACE REQUIRED - 5,200 SF ACTIVE AND 2,800 SF PASSIVE OR A COMBINATION THEREOF AS SPECIFIED IN SECTION 1B1.B.3, OPEN SPACE PROVIDED - 0 SF, WAIVER REQUESTED AND FEE IN LIEU TO BE PAID.
9. SWEET AIR ROAD IS DESIGNATED AS A "SCENIC CORRIDOR" ON THE "SCENIC RESOURCES MAP" IN THE MASTER PLAN 2010.
10. THE MAXIMUM HEIGHT FOR NON-AGRICULTURAL PRINCIPAL STRUCTURES IS 35 FEET.
11. ALL EXISTING BUILDINGS AND USES OF LOT B TO REMAIN
12. ALL SIGNAGE TO BE COMPLIANT WITH BCZR SECTION 450
13. MAXIMUM 15% COVERAGE FOR THE R.C.5 ZONED LOTS
14. "HIGHWAY WIDENING AREA" TO BE DEDICATED AND GRANTED AT NO COST TO BALTIMORE COUNTY, MARYLAND
15. THE STORMWATER MANAGEMENT FACILITY SHALL BE PUBLIC.
16. STORMWATER MANAGEMENT RESERVATION AREA TO BE DEDICATED AND GRANTED AT NO COST TO BALTIMORE COUNTY, MARYLAND
17. THE R.C.2 PORTIONS OF LOTS 3,4,5 AND 6 ARE REMAINING NON-DENSITY PARCELS OF THOSE LOTS THE R.C.5 PORTION OF LOT 7 IS A REMAINING NON-DENSITY PARCEL OF LOT 7
18. THE NON-DENSITY PORTIONS ZONED R.C.2 OF LOTS 3,4,5 AND 6, AS WELL AS THE NON-DENSITY PORTION ZONED R.C.5 OF LOT 7, DO NOT ALLOW WELL, SEPTIC OR ACCESSORY STRUCTURES/BUILDINGS
19. PROPOSED WELLS TO COMPLY WITH ARTICLE 11, TITLE 35 OF THE BALTIMORE COUNTY CODE.
20. SIXTEEN PARKING SPACES WILL BE PROVIDED, 2 FOR EACH LOT.
21. THIS PROJECT WILL GENERATE 80 AVERAGE DAILY TRIPS.

SITE DATA

OWNER:	DOROTHY E SURINA & JEANNE M GOUGH 4501 SWEET AIR ROAD BALDWIN, MD 21013
DEVELOPER:	GAYLORD BROOKS REALTY COMPANY, INC 3312 PAPER MILL ROAD P.O. BOX 402 PHOENIX, MD 21131
TAX ACCOUNT NUMBER:	1012084025
DEED REFERENCE	10376/399
GROSS SITE AREA:	47.0 ACRES ±
ZONING	R.C.2 & R.C.5
TAX MAP	44
BLOCK:	3
PARCEL	68
ELECTION DISTRICT:	10
COUNCILMANIC DISTRICT	3
CENSUS TRACT	4102
REGIONAL PLANNING DISTRICT:	305
SCHOOL DISTRICTS	
ELEMENTARY SCHOOL	CARROLL MANOR - 1001
MIDDLE SCHOOL	COCKEYSVILLE - 0853
HIGH SCHOOL:	DULANEY - 0872
WATERSHED	4 - LITTLE GUNPOWDER
SUB-SEWERSHED:	B1 - NO PLANNED SERVICE

CASE NO. R-01-455

ORDER

THEREFORE, IT IS ORDERED, by the Baltimore County Board of Appeals, this 6th day of May, 2002, that the Petitioner's request to reclassify the subject property as shown on the Undocumented Plan to Accompany Petition (Petitioner's Exhibit # 1) from R.C. 2 to R.C. 5 be and the same is hereby **DENIED**

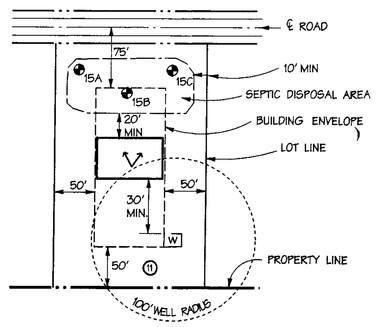
Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence S. Wescott, Panel Chairman

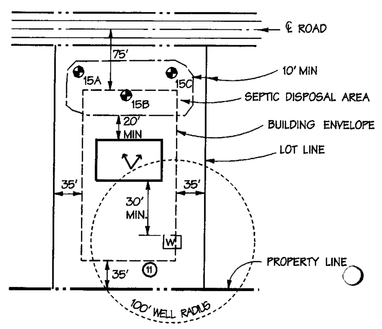
Charles L. Marks

Richard K. Irish



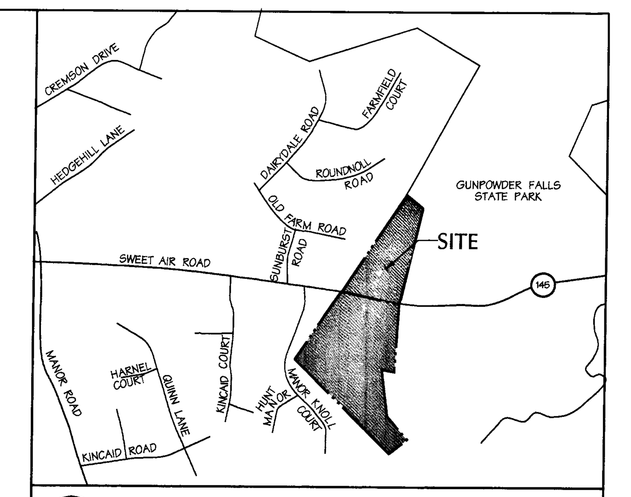
TYPICAL LOT LAYOUT R.C.5

SCALE: 1" = 100'



TYPICAL LOT LAYOUT R.C.2

SCALE: 1" = 100'



VICINITY MAP

SCALE: 1"=1000'

OPEN SPACE PROPOSAL

Open Space Required for 8 lots
5,200 s.f. Active
2,800 s.f. Passive
Open Space Provided for 8 lots-
0 s.f. Active
0 s.f. Passive
Waiver requested and fee in lieu to be paid by the developer.

FOREST BUFFER / FOREST CONSERVATION NOTES

STANDARD NON-DISTURBANCE NOTE

"THERE SHALL BE NO CLEARING, GRADING, CONSTRUCTION, OR DISTURBANCE OF VEGETATION IN THE FOREST BUFFER EASEMENT / FOREST CONSERVATION EASEMENT OR OTHER FOREST RETENTION AREAS, EXCEPT AS PERMITTED BY THE BALTIMORE COUNTY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT."

PROTECTIVE COVENANTS NOTE.

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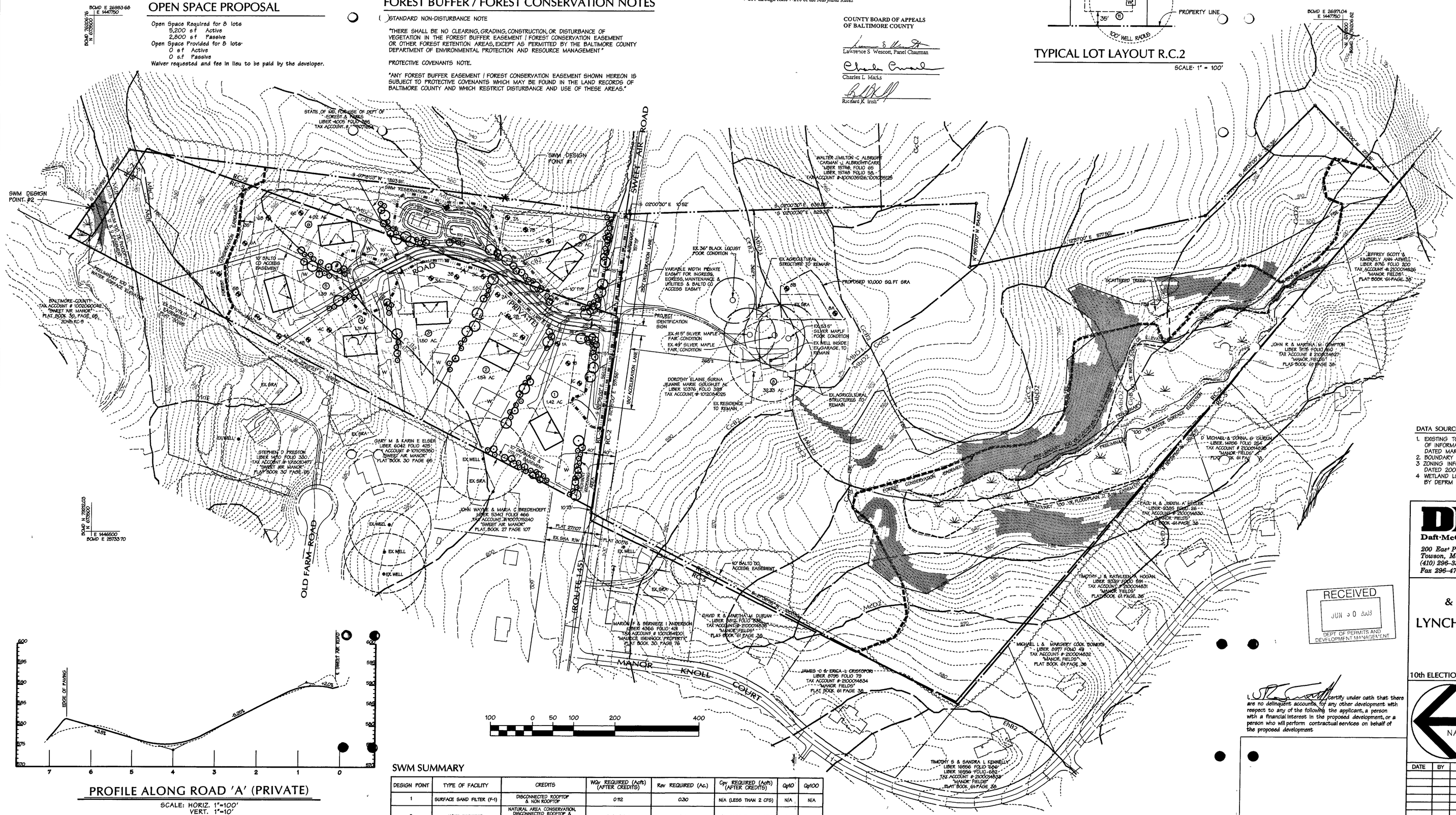

(SHEET N.E. 21-E)

N80,000 E24,000 E23,500 E25,500 E27,000 E28,500 E30,000 N80,000

R. C. 5 R. C. 5 R. C. 2 R. C. 2

DAIRYDALE RD. ROUNDNOLL CT. OLD FARM RD. SILO PRIVATE ROAD

N79,000 N79,000

R. C. 5 R. C. 5 R. C. 2 R. C. 2

PRIVATE ROAD SUNBURST RD. CT.

R. C. 5 R. C. 5 R. C. 2 R. C. 2

SWEET AIR ROAD SWEET AIR ROAD

(SHEET N.E. 20-D) N78,000 N78,000 (SHEET N.E. 20-F)

R. C. 5 R. C. 2 R. C. 2

SILO BRUMMEL CT.

4501 SWEET AIR ROAD
47.0 AC.±
10376/399

R. C. 5 R. C. 2 R. C. 2

KINCAID PBI WLF ROAD PRIVATE ROAD

N77,000 N77,000

QUINN R. C. 2 R. C. 2

A.T.&T. CO. R/L

N810,000 N810,000

R. C. 5 R. C. 5 R. C. 2 R. C. 2

KINCAID RD. PRIVATE

E24,000 E23,500 E25,500 E27,000 E28,500 E30,000

R. C. 2 R. C. 2 R. C. 2

N76,000 N76,000

(SHEET N.E. 19-E)

Re #1

V-NE UU-NW
EE-SE VV-SW

THIS MAP HAS BEEN REVISED IN SELECTED AREAS.
TOPOGRAPHY COMPILED BY PHOTOGRAMMETRIC METHODS
BY BUCHART-HORN, INC. BALTIMORE, MD. 21210

2000 COMPREHENSIVE ZONING MAP
ADOPTED by
THE BALTIMORE COUNTY COUNCIL
OCTOBER 10, 2000
Bills Nos. 87-00, 88-00, 89-00, 90-00, 91-00, 92-00, 93-00,

Joseph Bartenfelder
Chairman, County Council

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
OFFICIAL ZONING MAP

SCALE	LOCATION	SHEET
1" = 200'±	EAST OF SWEET AIR	N.E. 20-E
DATE OF PHOTOGRAPHY JANUARY 1986		

To Accompany
4501 SWEET AIR ROAD
PETITION
200' ZONING MAP

NE 20 E

#198

5-A

MARKER

3' HEIGHT

for water

2. Mr Preston's concern — concern about storm ~~wood~~ water & septic reserve area ~~PA~~ That of adjacent to his well — HO was demonstrating

PC

if you walk in our town or go H — Can you can't approve D. plan

HA

1. HO believed to everyone — ex is that he reacted to traffic issue - we moved road - it was this and brought proves to other roads at Mavis

2. Preston's well — not 6 below + 4 today - added septic + reserve area - distances set by DEP/Rm — Not'd any all wells + septics must be shown within 200 ft of property line

Expert

3 it is then developed in accord w subs + rgs of B. Cmte

Memorandum Due By Oct 15, 2004