9/27/07

IN THE MATTER OF THE APPLICATION OF TREVOR AND KELLY WELLS –LEGAL OWNERS FOR SPECIAL EXCEPTION ON PROPERTY LOCATED ON THE NE/S MIDDLETOWN ROAD, 2570 NW OF RUHL RD (21225 MIDDLETOWN RD) **(Case No. 04-343-X)** AND FOR SPECIAL EXCEPTION ON PROPERTY LOCATED AT 21225 MIDDLETOWN ROAD **(Case No. 06-073-X)**	* * * * * * * *	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Case No. 04-343-X and Case No. 06-073-X
6TH Election District 3RD Councilmanic District	*	

* * * * * * * * *

ORDER OF DISMISSAL OF PETITION (04-343-X)
and DISMISSAL OF APPEAL (06-073-X)

The subject cases came to the Board on appeals filed by Peter Max Zimmerman, People's Counsel for Baltimore County, and Carole S. Demilio, Deputy People's Counsel, and by J. Carroll Holzer, Esquire, on behalf of Josephine and Francis Galczynski, Donald and Stacey Waynick, and Anita Gerwig from the decision of the Zoning Commissioner dated September 30, 2004, in which the special exception request was dismissed as moot (Case No. 04-343-X); and on appeal filed by J. Carroll Holzer, Esquire, on behalf of Josephine and Francis Galczynski, Sr., from the decision of the Zoning Commissioner dated May 3, 2007 in which the requested special exception was granted with restrictions (Case No. 06-073-X).

WHEREAS, the Board is in receipt of a letter of withdrawal of Petition for Special Exception dated September 11, 2007, filed in Case No. 04-343-X by Bruce Doak of Gerhold, Cross and Etzel, on behalf of Trevor and Kelly Wells, Petitioners, (a copy of which is attached hereto and made a part hereof); and

WHEREAS, the Board is in receipt of a Notice of Withdrawal of Appeal dated September 11, 2007, filed in Case No. 06-073-X by J. Carroll Holzer, Esquire, on behalf of Josephine and Francis Galczynski, Sr., Appellants /Protestants, (a copy of which is also attached hereto and made a part hereof); and

WHEREAS, Mr. Doak on behalf of Trevor and Kelly Wells, Petitioners, requests that the Petition for Special Exception filed in Case No. 04-343-X be withdrawn as of September 11, 2007; and

WHEREAS, Mr. Holzer, on behalf of Josephine and Francis Galczynski, Sr., Appellants /Protestants, requests that the appeal filed in Case No. 06-073-A be withdrawn as of September 11, 2007;

IT IS THEREFORE this 7th day of September, 2007, by the County Board of Appeals of Baltimore County

ORDERED that said Petition for Special Exception filed in Case No. 04-343-X be and the same is hereby **WITHDRAWN AND DISMISSED** pursuant to the attached letter of withdrawal, causing the appeals filed in Case No. 04-343-X to become moot; and it is further

ORDERED that the decision of the Zoning Commissioner in Case No. 04-343-X, including any and all relief granted to Petitioners therein, is rendered null and void; and it is further

ORDERED that the appeal filed in Case No. 06-073-X be and the same is hereby **WITHDRAWN AND DISMISSED**, allowing the ruling of the Zoning Commissioner in Case No. 06-073-A to stand as a final Order.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Margaret Brassil, Ph.D., Chairperson

Lawrence M. Stahl

Robert W. Witt

CASE #: 06-073-X

IN THE MATTER OF: TREVOR WELLS, ET UX -
Legal Owners /Petitioners 21225 Middletown Road
6th Election District; 3rd Councilmanic District

5/03/07 – Z.C.'s Order in which requested special exception for riding stable was GRANTED with restrictions.

See previous -
CASE NO. 04-343-X

In the Matter of: Trevor Wells, et ux

9/30/04 -- Z.C.'s Order in which requested SE was DISMISSED AS MOOT; proposed use of property is that of a farm and permitted as of right, subject to restrictions.

3/30/07 – Notice of Assignment for hearing scheduled for Wednesday, April 25, 2007 at 10:30 a.m. sent to the following:

J. Carroll Holzer, Esquire
Josephine and Francis Galczynski, Sr.
Donald and Stacey Waynick
Anita Gerwig
Kelly Reed
Vicky Collins
Mary Louise Foster
Patsy McDonald
Shawn Duncan
Office of People's Counsel
Trevor and Kelly Wells
Bruce Doak / Gerhold Cross & Etzel
William J. Wiseman /Zoning Commissioner
Pat Keller, Planning Director

4/11/07 – Letter requesting postponement filed by Bruce E Doak; both he and client will be out of town during scheduled time of hearing. Also – unavailable 5/26 through 6/02/07; 7/21 through 7/28/07; and the month of August 2007.
- Notice of PP and Reassignment sent to parties; case reassigned to Tuesday, September 11, 2007 at 10:00 a.m. Added Carl Miller 2736 W. Ruhl Road Freeland, MD 21053 to notice list.

4/18/07 – Letter from C. Holzer via FAX – neither he nor his client received notice of 4/25/07 hearing. Has no objection to postponement request.

9/10/07 – Meeting with Mr. Holzer regarding possible resolution of this matter. His client will withdraw the appeal in 06-073-X but only after assurance that the relief granted in that case will be the final relief granted, including the restrictions applied by the ZC. If the Petitioners withdraw their Petition in Case No. 04-343-X, then the appeal in 06-073-X will be withdrawn as well.
-- Mr. Holzer indicated that he is not prepared to go forward; that his clients will not be here on 9/11/07. Contacted Mr. Doak; left message. Also spoke with Sterling Leese, who indicated that he had spoken with Bruce and that he is attempting to reach Mr. and Mrs. Wells regarding this hearing.
-- Called Mr. Crizer and advised that the matter will not go forward on 9/11/07 inasmuch as Mr. Holzer's clients are ready to withdraw their appeal in the 2006 case, allowing the relief granted with restrictions to stand as a final order, upon withdrawal of the petition filed in the 2004 case.
-- Attempted to reach Mr. Doak on the evening of 9/10/07; unable to do so.

CASE #: 06-073-X

IN THE MATTER OF: TREVOR WELLS, ET UX -
Legal Owners /Petitioners 21225 Middletown Road
6th Election District; 3rd Councilmanic District

5/03/07 – Z.C.'s Order in which requested special exception for riding stable was GRANTED with restrictions.

See previous -
CASE NO. 04-343-X

In the Matter of: Trevor Wells, et ux

9/30/04 -- Z.C.'s Order in which requested SE was DISMISSED AS MOOT; proposed use of property is that of a farm and permitted as of right, subject to restrictions.

9/11/07 – Prior to the hearing in this matter, and before the Board had convened for hearing, Mr. Doak submitted a letter on behalf of Mr. and Mrs. Wells withdrawing the Petition in Case No. 04-343-X, nullifying any relief granted to the Petitioners in that case. In addition, Mr. Holzer submitted a Notice of Withdrawal of Appeal in Case No. 06-073-X on behalf of the Appellants /Protestants, rendering the Zoning Commissioner's decision the final Order in that case. An Order of Dismissal will be issued by the Board.

September 11, 2007

Ms. Kathleen C. Bianco
County Board of Appeals
Room 49, Old Courthouse
Towson, MD 21204

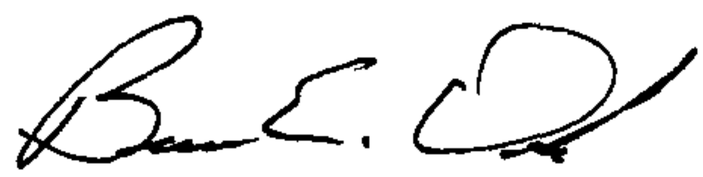
Re: Case No. 04-343-X /In the Matter of: Trevor Wells, et ux
Withdrawal of Petition

Dear Ms. Bianco:

I am writing on behalf of the Petitioners in the subject matter, Trevor and Kelly Wells, who are hereby withdrawing the Petition for Special Exception filed in Case No. 04-343-X.

Should you have any questions, please contact me.

Very truly yours,



Bruce Doak

c: J. Carroll Holzer, Esquire

Case No. 04-343-X

In the Matter of: Trevor Wells, et ux

SE – To permit riding stable on subject property in R.C. 2 zone.

9/30/04 – Z.C.'s Order in which requested SE was DISMISSED AS MOOT; proposed use of property is that of a farm and permitted of right, subject to restrictions.

2/10/05 – Notice of Assignment sent to following; assigned for hearing on Thursday, April 28, 2005 at 10 a.m.:

Office of People's Counsel
J. Carroll Holzer, Esquire
Josephine and Fran Galczynski
Donald and Stacey Waynick
Anita Gerwig
Trevor and Kelly Wells
Bruce Doak / Gerhold Cross & Etzel
William J. Wiseman /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

4/05/05 – Letter from P. Zimmerman filing People's Counsel's Memorandum. Copies to be distributed to panel prior to hearing.

4/11/05 – Letter from J. Carroll Holzer, Esquire, via FAX, requesting change in start time and additional date for this matter scheduled for 4/28/05 due to District Court criminal matter (one postponement granted in DCt already) starting at 1 p.m.

4/12/05 – T/C w/Sterling Leese – date of June 28 is available on Board's calendar; in addition to District Court conflict on 4/28/05, expert witness is unavailable on 4/28 as well. Cannot begin on 4/28 at 9 a.m.; 9 a.m. case already scheduled on 4/28/05. Therefore, will postpone the case to 6/28/05 and will begin that date at 9 a.m.

- Notice of PP and Reassignment sent to parties; reassigned to Tuesday, June 28, 2005 at **9:00 a.m.**

4/18/05 – Letter from P. Zimmerman with attachments – zoning cases involving riding stable issues.

5/25/05 – Courtesy copy of letter from Bruce Doak to Carroll Holzer regarding 6/28/05 hearing scheduled before the Board in this matter.

6/14/05 – Letter from Bruce Doak requesting a postponement in this matter on behalf of Petitioners; no date to be set at this time; Petitioners will be re-applying "for a zoning special exception hearing to request approval for a riding stable." HOLD; set only on request.

3/30/07 – Notice of Assignment for hearing scheduled for Wednesday, April 25, 2007 at 10:30 a.m. sent to the following for Case No. 06-073-X (x-ref 04-343-X) /ZC decision rendered 5/03/06 – GRANTED SE with restrictions:

J. Carroll Holzer, Esquire
Josephine and Francis Galczynski, Sr.
Donald and Stacey Waynick
Anita Gerwig
Kelly Reed
Vicky Collins
Mary Louise Foster
Patsy McDonald
Shawn Duncan
Office of People's Counsel
Trevor and Kelly Wells
Bruce Doak / Gerhold Cross & Etzel
William J. Wiseman /Zoning Commissioner
Pat Keller, Planning Director

4/11/07 – Letter requesting postponement filed by Bruce E Doak; both he and client will be out of town during scheduled time of hearing. Also – unavailable 5/26 through 6/02/07; 7/21 through 7/28/07; and the month of August 2007.

- Notice of PP and Reassignment sent to parties; case reassigned to Tuesday, September 11, 2007 at 10:00 a.m. Added Carl Miller 2736 W. Ruhl Road Freeland, MD 21053 to notice list.

County Board of Appeals of Baltimore County

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

Petition w/D 04-343-X
Appeal w/D 06-073-X
9-11-07

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

April 11, 2007

NOTICE OF POSTPONEMENT & REASSIGNMENT

CASE #: 06-073-X — **IN THE MATTER OF: TREVOR WELLS, ET UX -**
Legal Owners /Petitioners 21225 Middletown Road 6th E; 3rd C
5/03/07 – Z.C.'s Order in which requested special exception for riding stable was GRANTED with restrictions.

See previous
CASE #: 04-343-X — **IN THE MATTER OF: TREVOR WELLS, ET UX -**
Legal Owners /Petitioners 21225 Middletown Road 6th E; 3rd C
6th Election District; 3rd Councilmanic District

which was scheduled to be heard on 4/25/07 has been **POSTPONED** at the request of Petitioner due to previously scheduled conflicts with hearing date; and has been

REASSIGNED FOR: TUESDAY, SEPTEMBER 11, 2007 at 10:00 a.m.

NOTICE: This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.

Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.

IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

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 **/06-073-X** : J. Carroll Holzer, Esquire
Appellants /Protestants : Josephine and Francis Galczynski, Sr.

Appellants /Protestants **/04-343-X** : Josephine and Francis Galczynski
Donald and Stacey Waynick
Anita Gerwig

Kelly Reed — Vicky Collins
Mary Louise Foster — Patsy McDonald
Shawn Duncan — Carl Miller

Appellant / **04-343-X** : Office of People's Counsel

Legal Owners /Petitioners : Trevor and Kelly Wells
Bruce Doak / Gerhold Cross & Etzel

William J. Wiseman /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

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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

PP'd @ req of petitioner; reset do 9-11-07 (letter in # 06-073-X)

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

March 30, 2007

NOTICE OF ASSIGNMENT

CASE #: 06-073-X

IN THE MATTER OF: TREVOR WELLS, ET UX -
Legal Owners /Petitioners 21225 Middletown Road 6th E; 3rd C

5/03/07 – Z.C.'s Order in which requested special exception for riding stable was GRANTED with restrictions.

See previous
CASE #: 04-343-X

IN THE MATTER OF: TREVOR WELLS, ET UX -
Legal Owners /Petitioners 21225 Middletown Road 6th E; 3rd C
6th Election District; 3rd Councilmanic District

ASSIGNED FOR: WEDNESDAY, APRIL 25, 2007 at 10:30 a.m.

NOTICE: **This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.**

Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.

IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

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 **/06-073-X** : J. Carroll Holzer, Esquire
Appellants /Protestants : Josephine and Francis Galczynski, Sr.

Appellants /Protestants **/04-343-X** : Josephine and Francis Galczynski
Donald and Stacey Waynick
Anita Gerwig

Kelly Reed
Vicky Collins
Mary Louise Foster
Patsy McDonald
Shawn Duncan

Appellant / **04-343-X** : Office of People's Counsel

Legal Owners /Petitioners : Trevor and Kelly Wells
Bruce Doak / Gerhold Cross & Etzel

William J. Wiseman /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

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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

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

June 15, 2005

NOTICE OF POSTPONEMENT

CASE #: 04-343-X

IN THE MATTER OF: TREVOR WELLS, ET UX -
Legal Owners /Petitioners 21225 Middletown Road
6th Election District; 3rd Councilmanic District

9/30/04 – Z.C.'s Order in which requested special exception for riding stable was DISMISSED AS MOOT; proposed use of the property is that of a farm and permitted as of right, subject to restrictions.

which was reassigned for hearing on 6/28/05 has been **POSTPONED** at the request of Petitioners, without objection by Counsel for Appellants /Protestants. To be rescheduled only upon request.

NOTICE: **This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.**

Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.

IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

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: Appellant : Office of People's Counsel

Counsel for Appellants /Protestants : J. Carroll Holzer, Esquire
Appellants /Protestants : Josephine and Fran Galczynski
Donald and Stacey Waynick
Anita Gerwig

Legal Owners /Petitioners : Trevor and Kelly Wells
Bruce Doak / Gerhold Cross & Etzel

William J. Wiseman /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

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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

June 13, 2005

Kathleen C. Bianco
County Board of Appeals of Baltimore County
Old Court House, Room 49
400 Washington Ave.
Towson, Md 21204

Re: Postponement of the Wells Board of Appeals Hearing

Dear Ms. Bianco,

Please accept this letter as our request for a postponement of the June 28th hearing to a date that does not need scheduled at this time. The Wells will be re-applying for a zoning special exception hearing to request approval for a riding stable. I have enclosed a copy of a letter from Carroll Holzer stating that he has no objection to this request for a postponement. Please feel free to call me with any questions or anything else you may need.

Sincerely,

Bruce E. Doak
Principal

RECEIVED
JUN 14 2005
BALTIMORE COUNTY
BOARD OF APPEALS

C:\Documents and Settings\bdoak\Desktop\2003 Blank Forms\CLetter.doc

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

June 7, 2005
#7471

Mr. Bruce E. Doak
Principal
Gerhold, Cross & Etzel, Ltd.
Suite 100
320 East Towsontown Boulevard
Towson, Maryland 21286-5318

RE: Wells Property

Dear Mr. Doak:

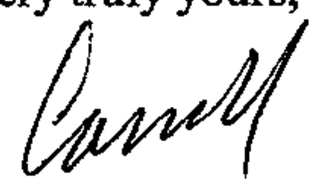
Please be advised that I conveyed your letter to my client, Josephine Galczynski, and she indicates that she has no objection if you desire to request a continuance of the Board of Appeals hearing of our appeal in the Wells matter. I would suggest that you write a letter to Kathleen Bianco at the Board of Appeals requesting a postponement and you may indicate in that letter that I have no objection.

As part of our agreement, we would request that we be copied on your application and Petition for Special Exception and any other documents that are submitted to the County including the Site Plan.

I am also told by my client that the Wells have trespassed onto her property recently and my request is that you advise them they should not conduct themselves in such a fashion or appropriate action will be taken.

Please copy me on your postponement request.

Very truly yours,



J. Carroll Holzer

JCH:mlg

cc: Ms. Josephine Galczynski
Peter Max Zimmerman, Esquire
Ms. Kathleen Bianco

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

April 18, 2005

RECEIVED

BALTIMORE COUNTY
BOARD OF APPEALS

Lawrence M. Stahl, Chairman
County Board of Appeals
of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, MD 21204

Re: In the Matter of: Trevor & Kelly Wells - Petitioners
Case No.: 04-343-X

Dear Mr. Stahl:

Enclosed for your information, please find the following zoning cases involving riding stable issues which may be helpful here:

1. Appeal of Jaffe 514 A.2d 1016 (Pa.Cmwlth. 1986);
2. Berry v. Recorder's Court of Town of West Orange 11 A.2d 743, 15 A.2d 758 (N.J. 1940); and
3. Silvernail v. Rago 404 N.Y.S.2d 457 (1978).

Thank you for your consideration.

Sincerely,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

PMZ\rmw
Enclosures

cc: J. Carroll Holzer, Esquire
Trevor & Kelly Wells

County Board of Appeals of Baltimore County

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

pp'd @ req. of Petitioner w/o obj by the Chairman

No reset @ this time

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

April 12, 2005

NOTICE OF POSTPONEMENT & REASSIGNMENT

CASE #: 04-343-X

IN THE MATTER OF: TREVOR WELLS, ET UX -
Legal Owners /Petitioners 21225 Middletown Road
6th Election District; 3rd Councilmanic District

9/30/04 – Z.C.'s Order in which requested special exception for riding stable was DISMISSED AS MOOT; proposed use of the property is that of a farm and permitted as of right, subject to restrictions.

which was assigned for 4/28/05 has been **POSTPONED** at the request of Counsel for Appellants /Protestants due to Court schedule conflict and unavailability of expert witness; and has been

REASSIGNED FOR: **TUESDAY, JUNE 28, 2005 at 9:00 a.m.**

NOTICE: **This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.**

Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.

IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

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: Appellant : Office of People's Counsel

Counsel for Appellants /Protestants : J. Carroll Holzer, Esquire
Appellants /Protestants : Josephine and Fran Galczynski
Donald and Stacey Waynick
Anita Gerwig

Legal Owners /Petitioners : Trevor and Kelly Wells
Bruce Doak / Gerhold Cross & Etzel

William J. Wiseman /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

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HOLZER

& LEE

LAW OFFICES
J. CARROLL HOLZER, PA
J. HOWARD HOLZER
1907-1989
THOMAS J. LEE
OF COUNSEL

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TOWSON, MD 21286
(410) 825-6961
FAX: (410) 825-4923
E-MAIL: JCHOLZER@BCPL.NET

April 11, 2005
#7471

VIA FAX 410-887-3182
Ms. Kathleen Bianco
Administrator
Board of Appeals
400 Washington Avenue
Room 49
Towson, Maryland 21204

RE: Case No.: 04-343-X
Appellants: In the Matter of Trevor Wells, et ux.
21225 Middletown Road, Freeland

Dear Ms. Bianco:

The above captioned matter has been scheduled before the Board of Appeals for Thursday, April 28, 2005 starting at 10:00 a.m. On the same day, I have a District Court Case for a criminal matter that is due to start at 1:00 p.m. after having been postponed from March 30, 2005. The District Court Case is State of Maryland vs. Carlisle Roger Mitcherling, Case No. 4C00203872 to be heard at 8914 Kelso Drive.

Therefore, I respectfully request that the Board start its hearing at 9:00 a. m. instead of 10:00 and also that another day be scheduled at the Board's convenience to complete the case. As usual, I appreciate the Board's cooperation.

Very truly yours,

J. Carroll Holzer

JCH:mlg

cc: Josie Galczynski
People's Counsel for Baltimore County
Bruce Doak, Gerhold, Cross & Etzel

RECEIVED
BALTIMORE COUNTY
BOARD OF APPEALS

RE: PETITION FOR SPECIAL EXCEPTION NE/S Middletown Road, 2,570' NW Ruhl Road (21225 Middletown Road)	*	BEFORE THE COUNTY BOARD OF APPEALS
6th Election District, 3rd Councilmanic District	*	FOR
Legal Owner(s): Trevor & Kelly Wells	*	BALTIMORE COUNTY
Petitioners	*	Case No. 04-348-X

RECEIVED
BALTIMORE COUNTY
BOARD OF APPEALS

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

PEOPLE'S COUNSEL'S MEMORANDUM

This case is before the County Board of Appeals upon appeal of the Zoning Commissioner's decision dated September 30, 2004. This office and, separately, neighboring citizens represented by J. Carroll Holzer, Esq. have filed the appeals. A *de novo* hearing is scheduled for April 28, 2005.

Although the case came in as a special exception for a riding stable, the Commissioner ruled that the use is a farm permitted by right, so that the special exception provision is inapplicable. We disagree.

There is, first of all, an interesting question as to whether, having petitioned for a special exception, a property owner may convert the case into what amounts to a special hearing to determine whether a special exception is required. See, e.g. Futoryan v. Mayor & City Council 150 Md. App. 157, 163-64 (2002). The public notice indicated that the issue is a special exception, not a special hearing. Proper notice is a jurisdictional prerequisite. Cassidy v. County Board of Appeals 218 Md. 418 (1958). See 4 Young, Anderson's American Law of Zoning 4th Sec. 22.17, et seq., especially 22.21 (1997).

Secondly, as to the merits, our position is that the proposed use does amount to a riding stable, according to the plain language of the BCZR 101 definition and the spirit and intent of the entire statute. It is noteworthy that many of the R.C. zones list a farm as a use permitted by right and a riding stable as permitted by special exception. The same pattern is found in the D.R. 1 and D.R. 2 zones for farms and commercial riding stables. Ordinarily, in these zones, especially the R.C. zones, a riding stable will be located on a farm. That does not make it any less a riding stable: "A building where riding horses are boarded or kept for hire."

In holding that the proposed stable and indoor arena for the instruction of polo riders and ponies is "accessory" to the farm use, the Commissioner ignored and negated the special exception use. A careful review of his opinion reveals that it devoted great attention to the relationship of the polo program to farm use but none to the undeniable fact that it fits the riding stable definition.

The fact that a special exception use may be combined with or have a relationship to a permitted use does not result in merger of the two uses. Many special exception uses in a variety of zones may locate on the same property as a use permitted by right. For example, a gas station or service garage may serve a shopping center or industrial park. That type of relationship does not justify avoidance of a special exception requirement.

The Court of Appeals has dealt with this type of issue on a number of occasions. Property owners have attempted to fold or merge their proposed use into a more general category in order to circumvent the more specific definition which clearly is applicable. Smith v. Miller 249 Md. 900 (1968); Arundel Supply Co. v. Cason 265 Md. 371 (1972);

Marzullo v. Kahl 366 Md. 158 (2001). In each case, the Court held the specific use category applicable and rejected the attempted end run. Both Smith and Marzullo dealt with agricultural zones. Arundel Supply is remarkable because the Court emphasized that it would not allow the avoidance of a defined special exception.

This reflects the principle that it is essential to consider the entire statutory scheme in order to discern legislative intent. The Court of Appeals has said many times that a statute must read in its entirety and in context. Board of Physicians v. Mullan 381 Md. 157, 168 (2004) recapitulated:

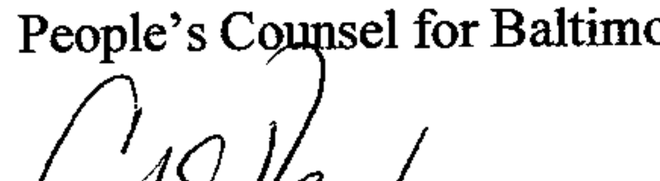
> "...we 'avoid constructions that are illogical, unreasonable, or inconsistent with common sense..., and instead interpret and harmonize statutes as a whole, giving meaning and effect to all parts of the statutory language and refraining from interpretations that render any part of a law surplusage or contradictory."

See Lucas v. People's Counsel for Baltimore County 147 Md. App. 209 (2002).

To be sure, the County Board of Appeals held, in a case with many similarities, that a stable used to house horses used for riding instructions and for "layup" purposes is part of a farm use and does not fit into the riding stable definition. That was in the Meittinis case on Traceys Road. No. 01-530-X. Our office respectfully disagreed with the CBA's decision there and, along with interested citizens, requested judicial review. On March 30, 2005, the Circuit Court (Christian Kahl, J.) issued the attached opinion, which reversed the CBA decision as to its interpretation of the "riding stable" and "farm" definitions and held that the keeping of horses for riding instruction and "layup" use is in fact a "riding stable" use which is subject to special exception approval. We will advise the CBA if an appeal is filed to the Court of Special Appeals.

Under these circumstances, People's Counsel requests, first of all, that the CBA revisit the issue of the definition of the use. This should include a discussion of whether the issue is properly raised and whether there is adequate notice. Secondly, even if the CBA decides to adhere to the position taken in Meittinis, it would be prudent for the CBA to review, in the alternative, whether a special exception is appropriate on the merits. The advantage of this approach is twofold. If the appellate courts eventually find that the CBA's expansive view of farm use is unwarranted, the record will have been made with respect to the merits of the special exception. Moreover, in reviewing the details and impact of the proposed special exception, the CBA may gain more insight into the nature of the use and where it fits in the definitional scheme.

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County



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

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of April, 2005, a copy of the People's Counsel's Memorandum was mailed, postage prepaid, to Trevor & Kelly Wells, 21225 Middletown Road, Freeland, MD 21053, Bruce E. Doak, Gerhold, Cross & Etzel, Ltd, 320 E Towsontown Blvd, Towson, MD 21286 and J. Carroll Holzer, Esquire, Holzer & Lee, 508 Fairmount Avenue, Towson, MD 21286, 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

April 5, 2005

RECEIVED
APR 5 - 2005
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: Trevor & Kelly Wells - Petitioners
Case No.: 04-343-X

Dear Ms. Bianco:

Enclosed please find the original People's Counsel's Memorandum along with three copies of such memorandum for filing with regard the above-referenced case.

Thank you for your consideration.

Sincerely,

Peter Max Zimmerman/RMW

Peter Max Zimmerman
People's Counsel for Baltimore County

PMZ\rmw
Enclosures

cc: J. Carroll Holzer, Esquire
Bruce E. Doak
Trevor & Kelly Wells

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

February 10, 2005

NOTICE OF ASSIGNMENT

CASE #: 04-343-X

IN THE MATTER OF: TREVOR WELLS, ET UX -
Legal Owners /Petitioners 21225 Middletown Road
6th Election District; 3rd Councilmanic District

9/30/04 – Z.C.'s Order in which requested special exception for riding stable was DISMISSED AS MOOT; proposed use of the property is that of a farm and permitted as of right, subject to restrictions.

ASSIGNED FOR: **THURSDAY, APRIL 28, 2005 at 10:00 a.m.**

NOTICE: **This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.**

Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.

IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

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: Appellant : Office of People's Counsel

Counsel for Appellants /Protestants : J. Carroll Holzer, Esquire
Appellants /Protestants : Josephine and Fran Galczynski
Donald and Stacey Waynick
Anita Gerwig

Legal Owners /Petitioners : Trevor and Kelly Wells
Bruce Doak / Gerhold Cross & Etzel

William J. Wiseman /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

Printed with Soybean Ink
on Recycled Paper

IN RE: PETITION FOR SPECIAL EXCEPTION NE/S Middletown Road, NW of Ruhl Road **21225 Middletown Road** 6th Election District 3rd Councilmanic District Treveor Wells, et ux. Petitioners	* * * * *	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY Case No.: 04-343-X

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

NOTICE OF APPEAL

Josephine and Fran Galczynski, 2922 Berwick Ave., Baltimore, MD 21234; Donald and Stacey Waynick, 21303 Middletown Road, Freeland, MD 21053; and Anita Gerwig, 21305 Middletown Road, Freeland, MD 21053, individual 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 in the above captioned cases, 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 September 30, 2004 and attached hereto, and incorporated herein as **Exhibit #1**.

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

RECEIVED

OCT 20 2004

Per.....

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

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

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 20th day of October, 2004, a copy of the foregoing Notice of Appeal was mailed first class, postage pre-paid to Bruce Doak, Gerhold, Cross & Etzel, 320 E. Towsontowne Blvd.,Towson, MD 21286; 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\Galczynski CBA October 20, 2004

IN RE: PETITION FOR SPECIAL EXCEPTION
NE/S Middletown Road, 2,570' NW of
Ruhl Road
(21225 Middletown Road)
6th Election District
3rd Council District

Trevor Wells, et ux
Petitioners

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No: 04-343-X
*

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Exception filed by the owners of the subject property, Trevor Wells, and his wife Kelly Wells. The Petitioners request a special exception to permit a riding stable on the subject property, pursuant to Section 1A01.2.C.21 of the Baltimore County Zoning Regulations (B.C.Z.R.). It is of note that there is no zoning variance or special hearing relief requested. The subject property and requested relief are more particularly described on the original site plan submitted, which was accepted into evidence as Petitioner's Exhibit 1, and a revised plan which was accepted as Petitioner's Exhibit 7.

This matter was scheduled for a public hearing which was conducted over two days. The first hearing date was March 15, 2004. Appearing at that time were the Petitioners, Trevor and Kelly Wells, and Bruce E. Doak, the Surveyor who prepared the site plan for this property. Several individuals from the surrounding neighborhood appeared at the original hearing date in opposition to the request, or as interested citizens. They included Josephine and Fran Galczynski, owners of an adjacent parcel, Donald and Stacey Waynick, and Anita Gerwig, nearby property owners. At the first hearing, these Protestants and neighbors were unrepresented by legal counsel. However, when the case was reconvened for a second hearing date on September 21, 2004, Mr. & Mrs. Galczynski were represented by J. Carroll Holzer, Esquire. There were no other interested persons present on the second hearing date.

As is the case with many contested matters before the Office of the Zoning Commissioner, the facts of the underlying case are not in dispute. Rather, the issue turns on an interpretation of the B.C.Z.R. as it relates to this property. The subject site is an irregular shaped parcel located on the east side of Middletown Road, north of Ruhl Road in northern Baltimore County. The property contains a gross area of 54.71 acres, more or less, zoned R.C.2 and is improved with a single-family dwelling in which the Petitioners reside. Apparently, the Petitioners have owned and resided on the property for nearly four years. In addition to the house, there is also a one-story frame barn, an outdoor enclosed riding area, and several small sheds and outbuildings. Presently, vehicular access to the property is by way of a driveway that leads to the interior of the site from Middletown Road. This driveway abuts the northern property line and lies immediately adjacent to the Galczynski and Waynick properties.

Mr. Wells is a Veterinarian by occupation; however, he does not practice at the property. Rather, his business was described as a mobile practice in that he visits animals that need veterinary care at farms in the general area.

The crux of the case actually involves Mrs. Wells' occupation. Ms. Wells teaches polo and apparently has been engaged in this pursuit for several years. When the hearing was initially conducted in March 2004, she taught polo at the Garrison Forest School. However, when the case was reconvened in September, she advised that she was no longer teaching at that private school, but was now affiliated with the Maryland Polo Club based in Jarrettsville.

The case actually involves proposed improvements to the subject property and the conduct of Ms. Wells' occupation on the site. The Petitioners propose the construction of a large, indoor riding stable on the property. In fact, between the first and continued hearing dates, construction was begun and photographs submitted at the second hearing show that a significant portion of the work has been completed. The building is 80' wide by 240' deep and is attached to an area containing stables, which is measured at approximately 30' x 48' in dimension. It is to be noted that no zoning variance relief is requested for this building. The building as proposed is permitted by the B.C.Z.R. It is neither too tall nor too large under those zoning regulations. Its

location on the site also meets all applicable requirements. Thus, the Petitioners were able to secure a building permit and construction is ongoing.

It is also to be noted that other changes were effectuated after the initial hearing. In this regard, a comparison of the original site plan submitted at the first hearing (Petitioner's Exhibit 1) is relevant when compared to the revised plan submitted at the second hearing (Petitioner's Exhibit 7). In addition to the actual construction of the building and a modification in terms of its location on the property, the other significant change relates to a proposed driveway. As noted above, the existing driveway that provides access to the subject property abuts the Galczynski and Waynick properties immediately to the north. This driveway is actually a shared drive that is used also by those parties to access their properties. Due to the concerns expressed by those neighbors at the initial hearing about the potential for increased traffic, a new driveway is proposed. The new driveway is proposed to be located towards the center portion of the property and further south on Middletown Road. Its precise location and configuration are more particularly shown on the revised site plan. The purpose of the relocation of this driveway was to insure that traffic generated by the Petitioner's use of the property will not overburden the existing driveway, nor adversely impact the neighbors' use of that private drive. It was indicated at the second hearing that the location of the new driveway was approved by the Bureau of Traffic Engineering and also by the Agricultural Review Board of Baltimore County.

Testimony and evidence offered by the Petitioners was that they own approximately 18 horses, all of which are kept on the property. Some of the horses are kept in the field while others are stabled in the existing barn and upon completion of the proposed improvements, will be stabled in the new stable area shown on the revised plan (Petitioner's Exhibit 7). Additionally, of the total acreage of the property, the Petitioners farm approximately 25 acres with hay, corn and soybean.

Ms. Wells testified about the proposed polo instruction operation. She described the game generally and educated the undersigned Zoning Commissioner and those in attendance at the hearing as to the details of the sport of polo. Essentially, she indicated that she trains horses and individuals in the nuances of that sport. She indicated that a maximum number of students on site

at any particular time would not exceed eight in number. An individual lesson, however, could be provided. She proposes to teach lessons no more than five (5) hours on any given day, and the lessons may occur at any time during the hours of 10:00 AM to 8:00 PM. Additionally, lessons will be taught seven days a week.

Actual instruction will be given on various portions of the site. The large building that is under construction is anticipated to be an indoor arena. There, polo games can be conducted featuring competitions with three horses/riders on each side. Additionally, instruction could be given in the area designated on the plan as the outdoor riding arena, or in an open field in the front portion of the site.

The Petitioners also propose to board additional horses, over and above the 18 that they own on the site. Under the new proposal, there will be 19 internal stalls in the barn and polo arena buildings. Any horses in excess of that number will be boarded out of doors. It is anticipated that there may be up to 26 horses kept on the property.

It is significant to note that horses apparently learn the sport of polo in progression. That is, horses are trained in the sport of polo with certain levels of sophistication. Certain horses may be trained to a sufficient degree to participate in an individual lesson but cannot be used in actual team competition. Ultimately, the Petitioner hopes to train horses so as to develop them for use in team competition. Horses will be sold to aficionados of the sport of polo if they are sufficiently trained.

The Protestants who appeared generally fear the impacts associated with the proposed polo operation on their property. They are concerned about additional traffic that will be brought to the site through students who will train on the property. They also expressed concerns about the increase in the number of horses on the property and the impacts caused thereby including noise, odors (manure), etc.

It is to be noted that Mr. & Mrs. Galczynski do not actually reside on their property. Although that property has been in their family for many years, it is unimproved at this time. However, Mr. & Mrs. Galcynzki, who are the most immediately affected neighbors, testified that

they intend to build their retirement home on the site. The Protestants request that the proposed operation be prohibited or limited.

The issue in this case is to define the proposed use pursuant to the provisions of the B.C.Z.R. There are several definitions within Section 101 of the B.C.Z.R. that are relevant. A **farm** is defined in the B.C.Z.R. as "Three acres or more of land, and any improvements thereon, used primarily for commercial agriculture, as defined in these regulations, or for residential and associated agricultural uses. The term does not include the following uses as defined in these regulations: limited – acreage wholesale flower farms, riding stables, landscape service, firewood operations, and horticultural nursery businesses."

Commercial agriculture is defined in Section 101 of the B.C.Z.R. as "The use of land, including ancillary structures and buildings, to cultivate plants or keep animals for income, provided that the land also qualifies for farm or agricultural use assessment, pursuant to Section 8-209 of the Tax – Property Article of the Annotated Code of Maryland, as Amended. Commercial agriculture includes the production of field crops, dairying, pasturage agriculture, horticulture, floraculture, acquculture, apiculture, viticulture, forestry, animal and poultry husbandry, the operation of an equestrian center, horse breeding and horse training, and also includes ancillary activities such as processing, packing, storing, financing, managing, marketing or distributing, provided that any such activity shall be secondary to the principal agricultural operations." **Riding stable** is defined as "A building where riding horses are boarded or kept for hire."

The Petitioners cite a number of cases relevant to the issue presented. In the matter of Stephanie and Nicholas Meittinis (Case No. 01-530-X), former Deputy Zoning Commissioner Timothy M. Kotroco and subsequently, the County Board of Appeals, considered the nature of an agricultural operation located on Traceys Road in northern Baltimore County. In that case, the Petitioners conducted what was determined to be a horse farm, wherein horses were cared for, maintained, trained, worked and exercised. It was also observed that riders were trained at the site. Deputy Commissioner Kotroco concluded that the activity on the Meittinis property was a farm

carrying out commercial, agriculture purposes. On appeal following a de novo hearing, the County Board of Appeals reached a similar conclusion.

The undersigned Zoning Commissioner considered a somewhat similar case in the matter of Phoebe M. DeVoe in Case No. 99-389-SPHX. In that case, Ms. DeVoe taught the sport of dressage on her property. Upon due consideration of the testimony and evidence offered in that case, I concluded that the proposed use of the property for dressage activities falls within the commercial, agriculture definition and therefore the subject property was considered a farm. The activity proposed thereon was permitted by right. Neither of the decisions rendered in those cases has been overturned on appeal.

A similar conclusion is reached here. Based upon the testimony and evidence offered, it is my judgment that the existing and proposed operations on the subject property are considered commercial, agriculture under the B.C.Z.R. Thus, I find that the property is being used as a farm and that the uses, existing and proposed, are permitted by right. Surely, the crops that are grown on the property are easily determined to be a component of a commercial, agriculture operation. Additionally, the training of horses is specifically identified within the commercial, agriculture operation. Whether the training of horses is for thoroughbred racing purposes, dressage, or polo is not distinguished in the B.C.Z.R. Thus, just as Ms. DeVoe's dressage training was considered a commercial, agriculture activity, I concur that the polo activity is also part of commercial, agriculture activity.

It is also acknowledged that riders are also trained on the activity. As was the case in Meittinis, this training is an ancillary and appropriate part of the horse training activity. Moreover, the limited competitions that are proposed do not, in my judgment, convert the proposed use to a "commercial recreational facility" as defined in the B.C.Z.R. That use is generally defined in Section 101 as a facility whose purpose is to provide space and equipment for non-professional athletic activities. Although polo is no doubt a sport or athletic activity, the purpose of the proposed use of the property, based on the testimony and evidence presented, is to train horses

they intend to build their retirement home on the site. The Protestants request that the proposed operation be prohibited or limited.

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who are then sold as polo ponies. The carryon of a limited number of polo matches on the site does not convert the use of the property to a "commercial recreational facility."

Having therefore determined that the proposed use is a farm, the Petition for Special Exception will therefore be dismissed as moot. The proposed use is not a riding stable and thus, special exception relief is not needed for the Petitioners to conduct the activities that they propose on the farm. However, it need be noted that the undersigned Zoning Commissioner makes this decision pursuant to the provisions of Section 500.7 of the B.C.Z.R. That Section authorizes the Zoning Commissioner to interpret and apply the zoning regulations to any given property. Indeed, it is my interpretation of those regulations that leads to a finding that the proposed use is permitted by right as a farm and is not a riding stable. Moreover, Section 500.7 specifically authorizes the Zoning Commissioner to impose such restrictions in the interpretation of the regulations as may be warranted in order to protect the surrounding locale. In accordance therewith, the following restrictions shall be entered:

1) The Petitioner's polo training/riding lesson operation shall be limited to six (6) days a week, Monday through Saturday, from 10:00 AM to 8:00 PM. There shall be no lessons on Sunday. Additionally, lessons shall not occur for more than five (5) hours on any one day, with no more than eight (8) individuals receiving lessons in any one training session.

2) There will be no storage of manure between the indoor arena building and the Galczynski property line.

3) Exterior lighting on the property shall only be as is necessary for reasonable security purposes.

4) Mr. Wells cannot operate his veterinary practice on the site.

5) There shall be no more than two employees on the property at any one time.

6) There shall be no more than 30 horses boarded at any one time, including those owned by the Petitioners.

Pursuant to the advertisement, posting of the property and public hearing on this Petition held, and for the reasons set forth above, the relief requested shall be dismissed as moot.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 30th day of September 2004 that the Petition for Special Exception to permit a riding stable on the subject property, pursuant to Section 1A01.2.C.21 of the Baltimore County Zoning Regulations (B.C.Z.R.), in accordance with Petitioner's Exhibit 1, be and is hereby DISMISSED AS MOOT.

IT IS FURTHER ORDERED that the existing and proposed use of the property is that of a farm, and shall be permitted as of right, subject to the following restrictions:

1) The Petitioners are hereby made aware that proceeding at this time is at their own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.

2) The Petitioner's polo training/riding lesson operation shall be limited to six (6) days a week, Monday through Saturday, from 10:00 AM to 8:00 PM. There shall be no lessons on Sunday. Additionally, lessons shall not occur for more than five (5) hours on any one day, with no more than eight (8) individuals receiving lessons in any one training session.

3) There will be no storage of manure between the indoor arena building and the Galczynski property line.

4) Exterior lighting on the property shall only be as is necessary for reasonable security purposes.

5) Mr. Wells cannot operate his veterinary practice on the site.

6) There shall be no more than two employees on the property at any one time.

7) There shall be no more than 30 horses boarded at any one time, including those owned by the Petitioners.

8) When applying for any permits, the site plan filed must reference this case and set forth and address the restrictions of this Order.

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

Petition for Special Exception

to the Zoning Commissioner of Baltimore County

for the property located at 21225 MIDDLETOWN ROAD

which is presently zoned RC 2

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Exception under the Zoning Regulations of Baltimore County, to use the herein described property for

A RIDING STABLE PER SECTION 1A01.2.C.21 (BCZR)

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above Special Exception, 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.

Contract Purchaser/Lessee:

Name - Type or Print

Signature

Address Telephone No.

City State Zip Code

Attorney For Petitioner:

Name - Type or Print

Signature

Company

Address Telephone No.

City State Zip Code

Legal Owner(s):

Trevor Wells
Name - Type or Print

Trev Wells
Signature

Kelly Wells
Name - Type or Print

Kelly Wells
Signature

21225 Middletown Rd. 410-357-4907
Address Telephone No.

Freeland MD 21053
City State Zip Code

Representative to be Contacted:

BRUCE DOAK
GONTOLD CROSS & ETZEL
Name

320 E. TOWSONTOWN BLVD 410-823-4470
Address Telephone No.

TOWSON
FREELAND MD 21286
City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Reviewed By D. THOMPSON Date 1/29/04

Case No. 04-343-X

REV 09/15/98

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

January 13, 2004

ZONING DESCRIPTION
WELLS PROPERTY
BALTIMORE COUNTY, MARYLAND

Beginning for the same on the northeast side of Middletown Road, 2,570 feet, more or less, northwesterly along the center of Middletown Road from the intersection of Middletown Road and Ruhl Road, thence northeasterly 30 feet more or less, to the Zoning Point of Beginning, thence running with Middletown Road (1) North 28 degrees West 858.00 feet, thence leaving said road and running the following eight following courses and distances: (2) North 67 degrees 30 minutes 00 seconds West 571.34 feet, (3) North 85 degrees 45 minutes 31 seconds West 275.50 feet, (4) North 26 degrees 54 minutes 29 seconds West 461.24 feet, (5) North 39 degrees 01 minutes 00 seconds East 485.22 feet, (6) North 03 degrees East 829.12 feet, (7) South 44 degrees East 990.00 feet, (8) South 09 degrees 30 minutes 00 seconds East 1164.90 feet, and (9) South 61 degrees 30 minutes 00 seconds West 1608.75 feet to the place of beginning.

Containing 54.712 Acres of land, more or less.

Note: This description only satisfies the requirements of the Office of Zoning and is not to be used for the purposes of conveyance.

STATE OF MARYLAND
BRUCE EDWIN BOAK
No. 531
REGISTERED
PROPERTY LINE SURVEYOR
1/13/04

X:\Wells\zoningdescrip..doc

04-343-X

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: #04-343-X
21225 Middletown Road
N/side of Middletown Road, 2,570 feet n/west of Ruhl Road
6th Election District
3rd Councilmanic District
Legal Owner(s): Trevor and Kelly Wells
Special Exception: to permit a riding stable.
Hearing: Monday, March 15, 2004 at 10:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue.

LAWRENCE E. SCHMIDT
Zoning Commissioner for
Baltimore County
NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please 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.
2/355 Feb. 26 C651153

CERTIFICATE OF PUBLICATION

2/26/, 2004

THIS IS TO CERTIFY, that the annexed advertisement was published in the following weekly newspaper published in Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 2/26/, 2004.

- [x] The Jeffersonian
- [ ] Arbutus Times
- [ ] Catonsville Times
- [ ] Towson Times
- [ ] Owings Mills Times
- [ ] NE Booster/Reporter
- [ ] North County News

S. Wilkinson

LEGAL ADVERTISING

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 23059

DATE 1/29/04 ACCOUNT 001-006-6150

AMOUNT $ 380.00

RECEIVED FROM: TREVOR WELLS

FOR: ITEM # 043 OH-243-X

01225 MIDDLETOWN RD. BY D. THOMPSON

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT

BUSINESS	ACTUAL	TIME	DRW
1/29/2004	1/29/2004	10:47:40	2

REG WS02 MAIL JEVA JEE
RECEIPT A 318485 1/29/2004 OFLN
Dept 5 528 ZONING VERIFICATION
CR NO. 023059
Recpt Tot $380.00
$380.00 CK $.00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION

APPEAL SIGN POSTING REQUEST

CASE NO.: 04-343-X

TREVOR AND KELLY WELLS– LEGAL OWNER

21225 MIDDLETOWN ROAD – FREELAND

6TH ELECTION DISTRICT APPEALED: 10/12/2004

ATTACHMENT – (Plan to accompany Petition – Petitioner's Exhibit No. 1)

**********COMPLETE AND RETURN BELOW INFORMATION*****

CERTIFICATE OF POSTING

TO: Baltimore County Board of Appeals
400 Washington Avenue, Room 49
Towson, Maryland 21204

Attention: Kathleen Bianco
Administrator

CASE NO.: 04-343-X

Petitioner/Developer:

TREVOR AND KELLY WELLS – LEGAL OWNER

This is to certify that the necessary appeal sign was posted conspicuously on the property located at:

21225 MIDDLETOWN ROAD - FREELAND

The sign was posted on 12/22/4, 2004

By: Chen J
(Signature of Sign Poster)

Chen J
(Printed Name)

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 NO. 04-343-X
PETITIONER/DEVELOPER:
Trevor & Kelly Wells
DATE OF HEARING: September 21, 2004

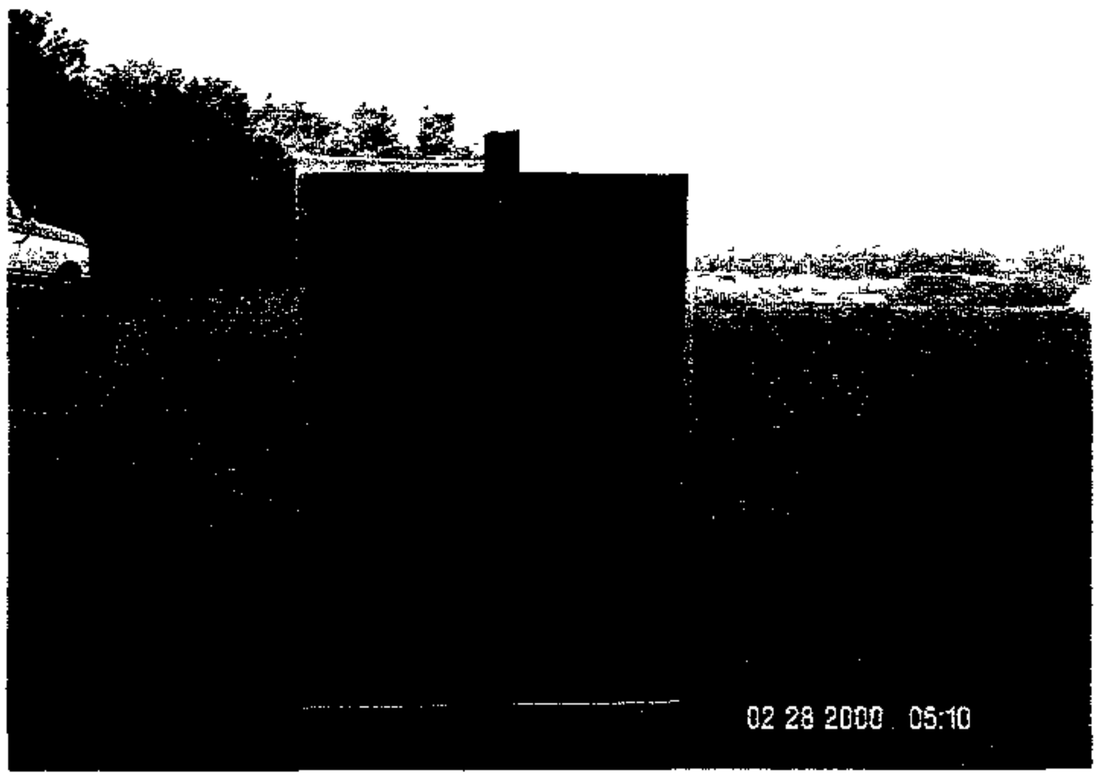
BALTIMORE COUNTY DEPARTMENT OF
PERMITS AND DEVELOPMENT MANAGEMENT
COUNTY OFFICE BUILDING, ROOM 111
111 WEST CHESAPEAKE AVE.
TOWSON, MARYLAND 21204

ATTENTION: KRISTEN MATTHEWS

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

LOCATION:
21225 Middletown Road



POSTED ON: September 2, 2004

DATE:
September 3, 2004

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

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 NO. 04-343-X
PETITIONER/DEVELOPER:
Trevor & Kelly Wells
DATE OF HEARING: March 15, 2004

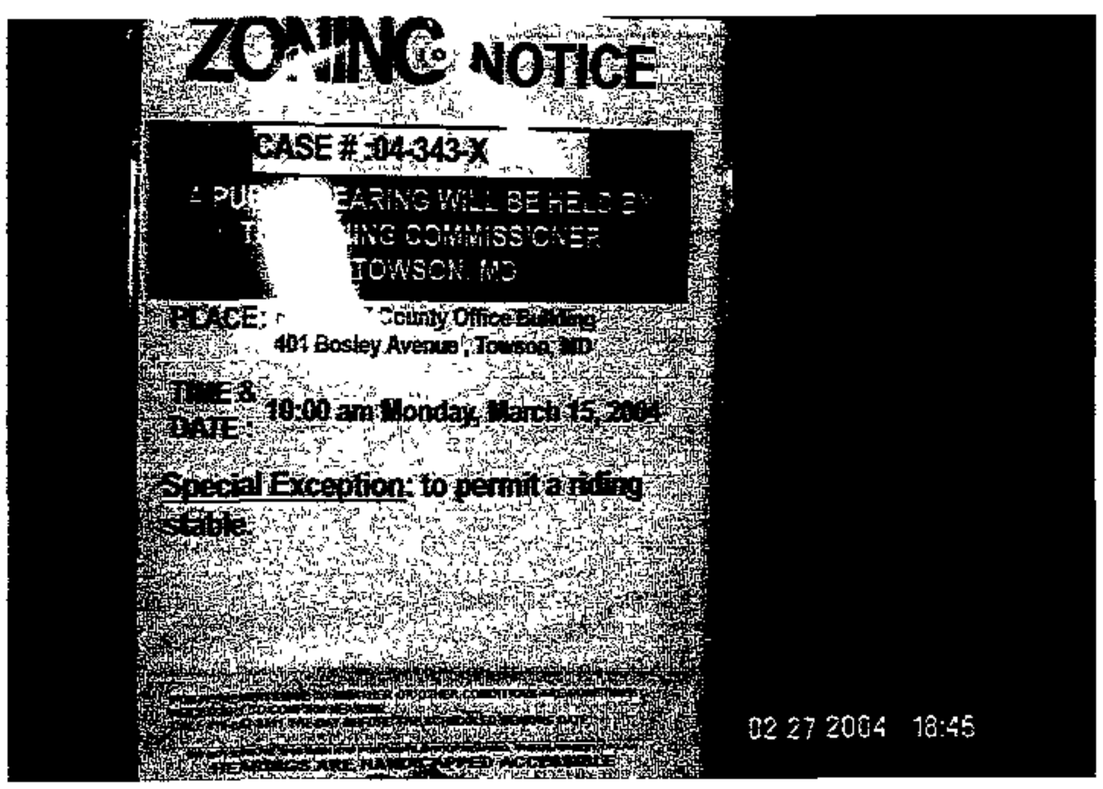
BALTIMORE COUNTY DEPARTMENT OF
PERMITS AND DEVELOPMENT MANAGEMENT
COUNTY OFFICE BUILDING, ROOM 111
111 WEST CHESAPEAKE AVE.
TOWSON, MARYLAND 21204

ATTENTION: KRISTEN MATTHEWS

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

LOCATION:
21225 Middletown Road



POSTED ON: 2/ 27/04

DATE:
3/2/04

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

TO: PATUXENT PUBLISHING COMPANY
Thursday, February 26, 2004 Issue - Jeffersonian

Please forward billing to:
Mr. and Mrs. Trevor Wells
21225 Middletown Road
Freeland, MD 21053

410-357-4907

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: 04-343-X
21225 Middletown Road
N/side of Middletown Road, 2,570 feet n/west of Ruhl Road
6th Election District – 3rd Councilmanic District
Legal Owners: Trevor and Kelly Wells

Special Exception to permit a riding stable.

Hearing: Monday, March 15, 2004, at 10:00 a.m. in Room 407, County Office Building, 401 Bosley Avenue

Lawrence E. Schmidt

LAWRENCE E. SCHMIDT
ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, 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.

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: 04-343-X

Petitioner: WELLS

Address or Location: 21225 MIDDLETOWN RD.

PLEASE FORWARD ADVERTISING BILL TO:

Name: MR. + MRS. TREVOR WELLS

Address: 21225 MIDDLETOWN RD
FREELAND, MD 21053

Telephone Number: 410-357-4907

Revised 2/20/98 - SCJ

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

February 10, 2004

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: 04-343-X
21225 Middletown Road
N/side of Middletown Road, 2,570 feet n/west of Ruhl Road
6th Election District – 3rd Councilmanic District
Legal Owners: Trevor and Kelly Wells

Special Exception to permit a riding stable.

Hearing: Monday, March 15, 2004, at 10:00 a.m. in Room 407, County Office Building, 401 Bosley Avenue

Timothy Kotroco
Director

TK:klm

C: Trevor and Kelly Wells, 21225 Middletown Rd., Freeland 21053
Bruce Doak, 320 E. Towsontown Blvd., Towson 21286

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY SATURDAY, FEBRUARY 28, 2004.**
(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

Trevor and Kelly Wells
21225 Middletown Rd.
Freeland, MD 21053

Ret No 5

Proposed Riding Stable:
For the purpose of engaging in the instruction of the basics of polo and in basic riding lessons.

Facilities:
65x125 outdoor ring
80x240 Indoor arena (construction plans included)
with heated lounge/bathroom
2 existing barns:
a.) with 6 10x10 box stalls, feed room, tack room, upstairs hay storage
b.) with 5 12x12 box stalls, feed room, tack room, upstairs hay storage
Proposed addition to barn b: 30'x 40' to include 12 tie stalls

Outdoor Lighting:
For security purposes only on and between existing horse barn a and b
Hours (Dusk - 2:00am)
No lighting on outdoor riding ring

Polo Lesson Students:
No more than 8 students in the arena at one time
2 lessons/day
Maximum 8 students/lesson
Lessons will not overlap, there will be 1/2 hour break between lessons for clearing of parking lot

Proposed days & times: **Mondays 4:00-5:00 pm**
5:30-6:30 pm } 3 hrs

Tuesdays 5:30-6:30 pm
7:00-8:00 pm } 3 hrs

Riding Lesson Students:
No more than 4 students in the arena at one time
3 lessons/day
Maximum 4 students/lesson
Proposed days & times: **Wednesdays 4:00-4:30 pm**
4:30-5:00 pm
5:00-5:30 pm } 2 hrs. activity

Saturdays 10:00-10:30 am
10:30-11:00 am
11:00-11:30 am } 2 hrs.

Make-up days for inclement weather: **Fridays and Sundays**

Hours of Operation:
Mon. -Sun. 10:00am-8:00pm
Closed Thursdays

Employees:
Total of 2
One riding instructor in addition to owners
One barn staff

Boarding of Horses:
Maximum of 6

Number of horses on premises:
Not to exceed 25 (including boarders)

Lessons will be on facility owned horses or boarders' horses only

Clinics:
4 times/year-Primarily summer months
number of students: 8 max.
Could consist of three day clinics (Friday, Sat., Sun.)
Could consist of one week (Monday-Friday)
Students would not sleep on premises/ Day clinic only
Hours: 10:00-4:30pm

Polo Games:
4 times/year - one each season
would be played on facility owned horses or boarders' horses
would consist of two teams with 3 players on a team and one mounted official (7 horses & riders in arena)
Estimate of 3-7 spectators/ most of whom will be family members of players
played in the indoor arena
Games last 1 1/2 with 1 hour pre-game preparation and 1 hour post game cleanup.
Proposed game days and times: **Fridays 5:00 pm**
Sundays 3:00 pm

No Horse Shows

IN RE: PETITION FOR SPECIAL EXCEPTION
W/S Bird River Beach Road, 2500'
N of Ebenezer Road, 480' SW of
its intersection w/a private road
15th Election District
5th Councilmanic District

Estate of A. V. Williams, et al
Petitioners

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 93-88-X

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Deputy Zoning Commissioner as a Petition for Special Exception filed by the legal owners of the subject property, the Estate of A. V. Williams, by William G. Zimmermann, Albert H. Williams, and Jennie L. Fowlkes, Personal Representatives, and the Contract Lessees, Thomas and Linda Shifflett. The Petitioners request a special exception to use the subject property, zoned R.C. 2, for a riding stable, pursuant to Section 1A01.2.C.17 of the Baltimore County Zoning Regulations (B.C.Z.R.), as more particularly described on Petitioner's Exhibit 1.

Appearing on behalf of the Petition were Bruce E. Doak, Registered Property Line Surveyor, Thomas and Linda Shifflett, and Brandon and Donald Wolfe. Appearing as a Protestant in the matter was William Sunderland, nearby property owner.

Testimony and evidence revealed that the subject property, located between Bird River Beach Road and Stumps Lane, consists of 4.03 acres, more or less, zoned R.C. 2, and is improved with a riding stable, parking area, a private drive, and six wood frame barns as depicted on Petitioner's Exhibit 1. The Petitioners are desirous of legalizing the use of the subject property as a riding stable. Testimony indicated that Mr. & Mrs. Thomas Shifflett have operated the subject riding stable for the past 8 years and that they lease the adjacent 63 acres surrounding this property

for use as pastureland and riding area. Mrs. Shifflett testified that the hours of operation are daylight only and that there are no lights on the premises. The Petitioners further testified that there currently exists 24 horses on the subject property, 9 of which belong to the Petitioners themselves. The other horses belong to individuals who board their horses at this location and visit from time to time to ride and feed their horses. The Petitioners testified they plan to expand their operation to board up to 30 horses, but have no intention of boarding more than 30 horses at any one time. Testimony indicated the riding stable is for the owners of the horses only, or their friends, and that no member of the public is permitted to ride horses at this location, unless their horse is boarded at this riding stable. The Petitioners further testified as to improvements made to the subject property. Testimony indicated that when the Shiffletts took over the operation, the property was in a poor state of disrepair. The Petitioners testified they bush-hogged and mowed the property and continue to maintain it in a neat and orderly manner. They also spent considerable sums of money renovating the barns that are situated on the site.

William Sunderland appeared and testified in opposition to the Petitioners' request. Mr. Sunderland resides on approximately 4 acres located at the intersection of Bird River Beach Road and Ebenezer Road, known as 6602 Ebenezer Road. Mr. Sunderland testified that he is 81 years of age and has lived there for the past 56 years. Mr. Sunderland testified that he has experienced problems with horseback riders leaving the site of the riding stable and riding their horses along Bird River Beach Road and Ebenezer Road. Testimony at the hearing revealed that many of the horse owners will take their horses to the nearby quarry and other

farms to ride. Mr. Sunderland testified that as the horses travel to other locations in the community they have on a number of occasions taken a short-cut across his property. In an attempt to discourage the horses from crossing his property, Mr. Sunderland erected a steel cable across his property. In addition, Mr. Sunderland testified about the number of occasions he has found horse dung on his property and along Bird River Beach Road. He also testified that he has seen horse dung on Ebenezer Road. Mr. Sunderland was quick to point out that failure to remove this dung is a blatant violation of Section 6-206 of the Baltimore County Code. That Section reads as follows: "The owner of every animal shall be responsible for the removal of excreta deposited by his animal on public byways, recreational areas, or private property." Mr Sunderland testified that the horseback riders failed to clean up after their horses pursuant to the requirements of Section 6-206. Mr. Sunderland agreed in his testimony that the Petitioners operate a first-class establishment at the subject location. He has no qualms with the operation itself, but objects to the problems he has encountered with the riders travelling by his property. Testimony indicated that the Petitioners have repeatedly asked their boarders to avoid Mr. Sunderland's property when they are riding and they have been doing so; however, Mr. Sunderland is concerned that once this hearing is granted, the riders will go back to trespassing upon his property.

While Mr. Sunderland was concerned about the horse dung found along Bird River Beach Road and Ebenezer Road, the Petitioners stated that there are other horses kept in the community and that some of the dung seen on the streets could have been from those horses and not their own. However, the evidence is clear that the majority of horses kept in the

area are kept at their riding stable. Further, the Petitioners have testified that they intend to expand their operation to 30 horses. Given the fact that the Petitioners admit that their riders use these streets as their routine travelway to ride their horses, I find that the dung found on these streets is associated with the horses boarded at their stable. Therefore, it shall be the responsibility of the Petitioners, the owners of the riding stable, to ensure the proper cleanup and removal of all horse dung along Bird River Beach Road and that portion of Ebenezer Road which fronts Mr. Sunderland's property, regardless of where that dung originated from. It would be impossible to distinguish the dung from one horse to another; however, because of the commercial operation for which the Petitioners seek approval, I find it shall be their responsibility for the cleanup of this dung regardless of where it came from.

It is clear that the B.C.Z.R. permits the use proposed in an R.C.2 zone by special exception. It is equally clear that the proposed use would not be detrimental to the primary uses in the vicinity. Therefore, it must be determined if the conditions as delineated in Section 502.1 are satisfied.

The Petitioner had the burden of adducing testimony and evidence which would show that the proposed use met the prescribed standards and requirements set forth in Section 502.1 of the B.C.Z.R. The Petitioner has shown that the proposed use would be conducted without real detriment to the neighborhood and would not adversely affect the public interest. The facts and circumstances do not show that the proposed use at the particular location described by Petitioner's Exhibit 1 would have any adverse impact above and beyond that inherently associated with such a spe-

cial exception use, irrespective of its location within the zone. Schultz v. Pritts, 432 A.2d 1319 (1981).

The proposed use will not be detrimental to the health, safety, or general welfare of the locality, nor tend to create congestion in roads, streets, or alleys therein, nor be inconsistent with the purposes of the property's zoning classification, nor in any other way be inconsistent with the spirit and intent of the B.C.Z.R.

After reviewing all of the testimony and evidence presented, it appears that the special exception should be granted with certain restrictions as more fully described below.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested in the special exception should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 23rd day of October, 1992 that the Petition for Special Exception to use the subject property, zoned R.C. 2, for a riding stable, pursuant to Section 1A01.2.C.17 of the Baltimore County Zoning Regulations (B.C.Z.R.), in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restrictions:

1) The Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition.

2) There shall be no signs associated with the Petitioners operation located anywhere other than on the subject 4.03 acres of land owned by the Petitioners.

3) The Petitioners shall be limited to boarding only 30 horses. Any increase over and above the 30 horses will require another public hearing to determine the appropriateness of any expansion over 30 horses.

Case Entry/Update Mode . . . . . : CHANGE
Format . . . . . : CASREC File . . . . . : PDLV0001

Dt Rec: 9172004 Intake: ALTMEYER, J Act: _____ Case #: 04-8256
Insp: ALTMEYER, J Insp Grp: ENF Insp Area: 17 Tax Acct: 1600001503
Address: 21225 MIDDLETOWN RD Apt #: ____ Zip: _____
Owner: _____

Problem Descript.: SETBACKS ARE INCORRECT

Complainant Name (Last): GALCZYNSKI (First): JOSIE
Complainant Addr: _____ ___ __ _____ __ _____
Complainant City: _____ State: __ Zip: _____
Complainant Phone (H): 4109253530 (W): _____
Date of Reinspection: _____ Date Closed: 9172004 Delete Code (P): P

F3=Exit F5=Refresh F6=Select format
F9=Insert F10=Entry F11=Change

Ret No
11

Case Entry/Update Mode . . . . : CHANGE
Format . . . . : CASREC File . . . . : PDLV0001

Notes: 09/17/04 I SPOKE WITH THE OWNER AFTER A LENGTHY CONVERSATION WITH THE COMPL. AT OUR OFFICE. THE FIRM OF GERHOLD, CROSS, & ETZEL WAS HIRED BY THE KELLEYS' TO PRODUCE A PLOT PLAN OF THEIR PROP. & ACCESSORY STRUCTURE POLE BLDG. BRUCE DOAK, THE SURVEYOR, BROUGHT A COPY INTO OUR OFFICE THE SAME AFTERNOON. I HAD A CONVERSATION W/MR. DOAK CONCERNING THE ISSUE AT HAND CONCERNING THE SETBACK ISSUE. HE STATED THE BLDG. LOCATION IS IN ACCORDANCE W/THE PLOT PLAN. ON FRIDAY 09/17/04 I CALLED THE COMPL. & TOLD HER OF THE LOCATION SURVEY & PLOT PLAN & STATED WE HAD NO VIO. BASED ON THE INFO AT HAND. MRS GALCZYNSKI WAS ALSO TOLD THAT IF SHE DISPUTED THE KELLYS' SUVEYORS PLAN, SHE WOULD HAVE TO HIRE A SURVEYOR OF HER CHOOSING TO SSURVEY HER PROP. LINE. SHE STATED THAT IT WOULD NOT BE NECCESSARY. CLOSE CASE. J.ALTMEYER/KH.***

F3=Exit F5=Refresh F6=Select format
F9=Insert F10=Entry F11=Change

9/20/04

TO: Carroll Holver

RE: Wells Property

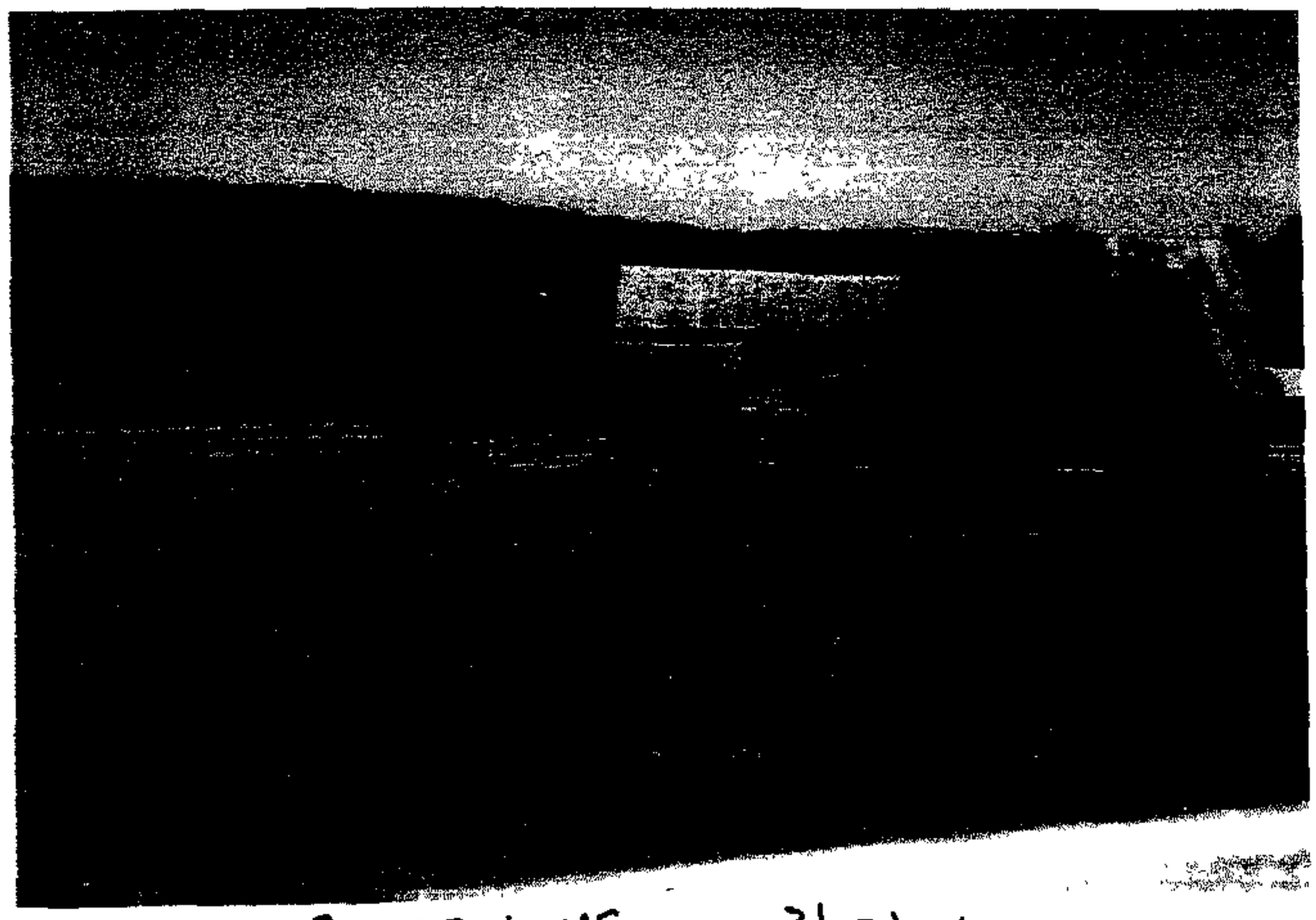
Concerns: We are opposed because:

1. We believe the Wells will build a paddock adjacent to Wescott and Waynick homes. This will cause noise, disturb our peace, flies, odors and may be a health hazard.
2. Proposed hours are too late. Additional traffic, noise, lights, intrusion of privacy.
3. We believe this will be a business and commercial enterprise. Kelly said, "I have to go to work" to me. This will not be an agricultural endeavor, but instead work as they are taking in money to compensate for polo training.
4. Will they be closed on Sunday?
5. A safety hazard. Horses loose on numerous occasions. They previously damaged our property... tore down part of fence, broke part of deck.
6. What will the horse droppings due to all of our well water?

Dayan and Meredith Wescott
21301 Middletown Road
Home: 410-343-1622
Dayan Work: 410-393-0028

Dayan Wescott
Meredith Wescott

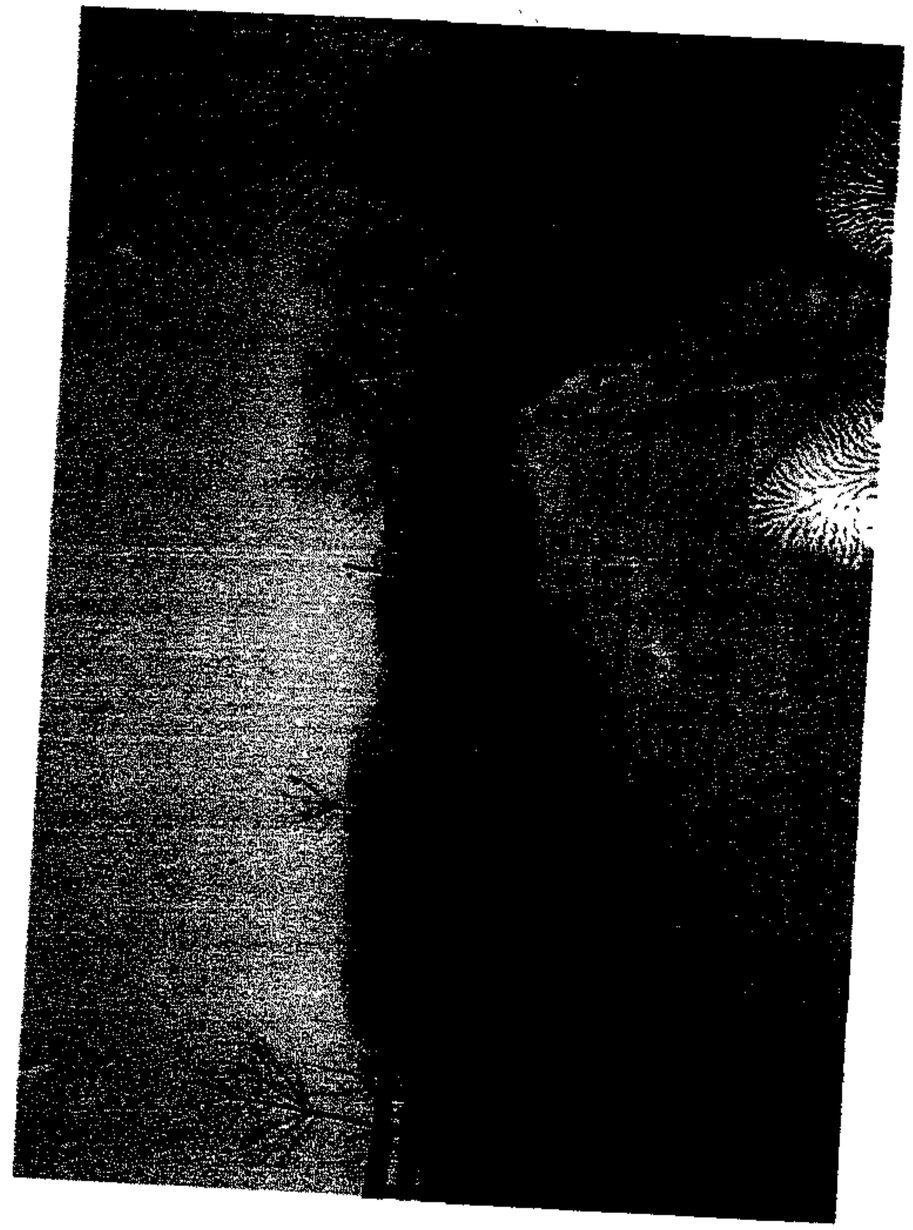
Probably No 1

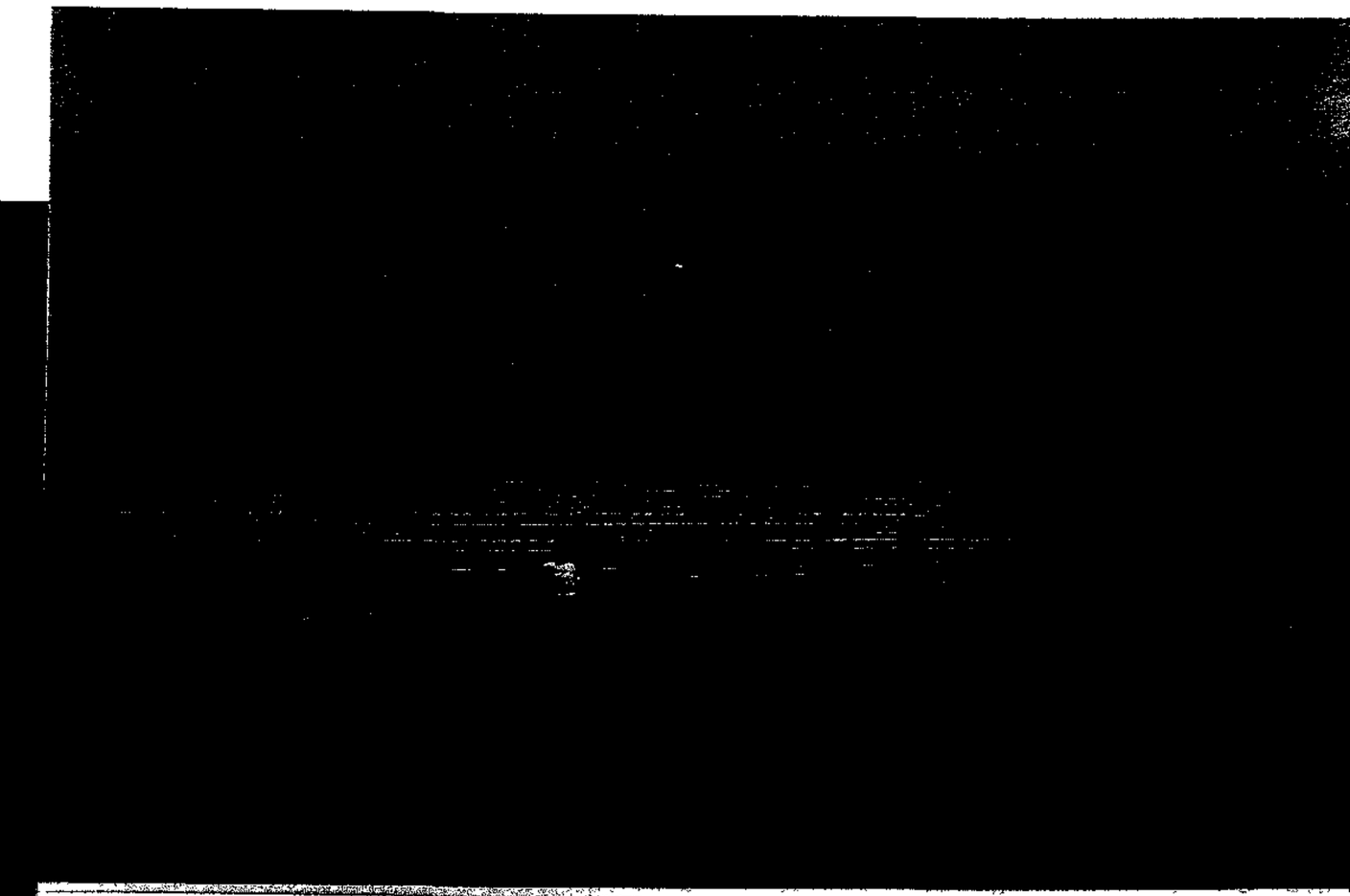


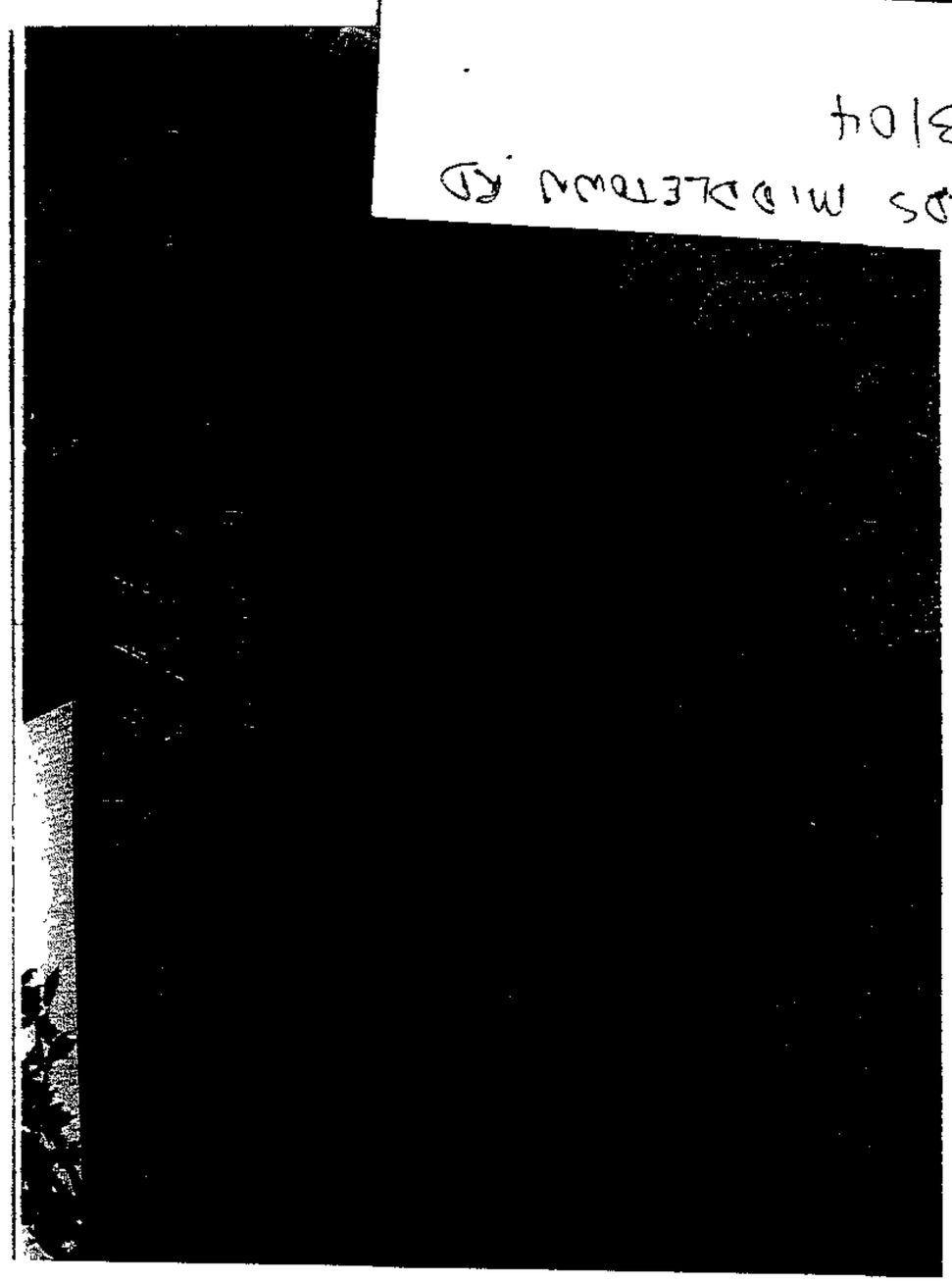
VIEW FROM FENCE LINE 3/13/04

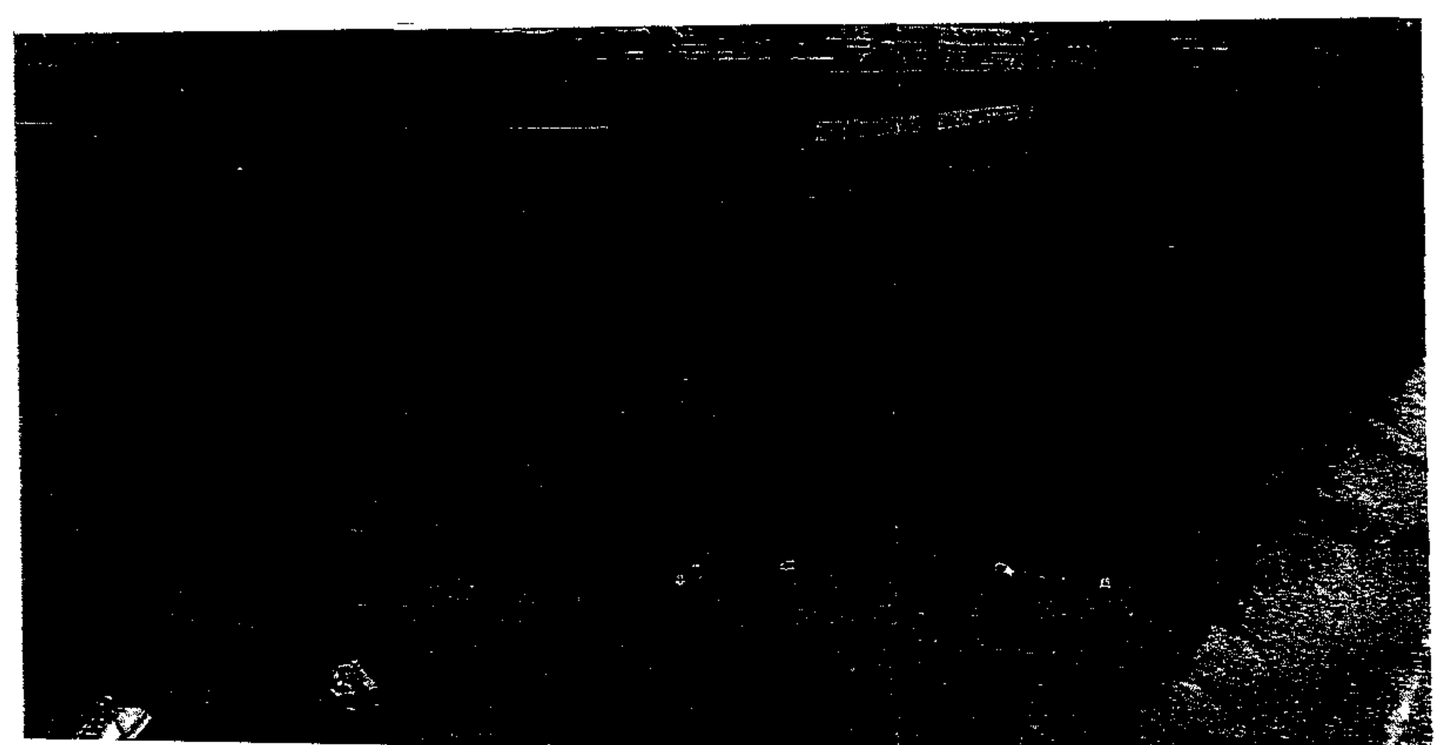
VIEW FROM BEHIND BARN
WHERE BLDG GOES 3/13/04

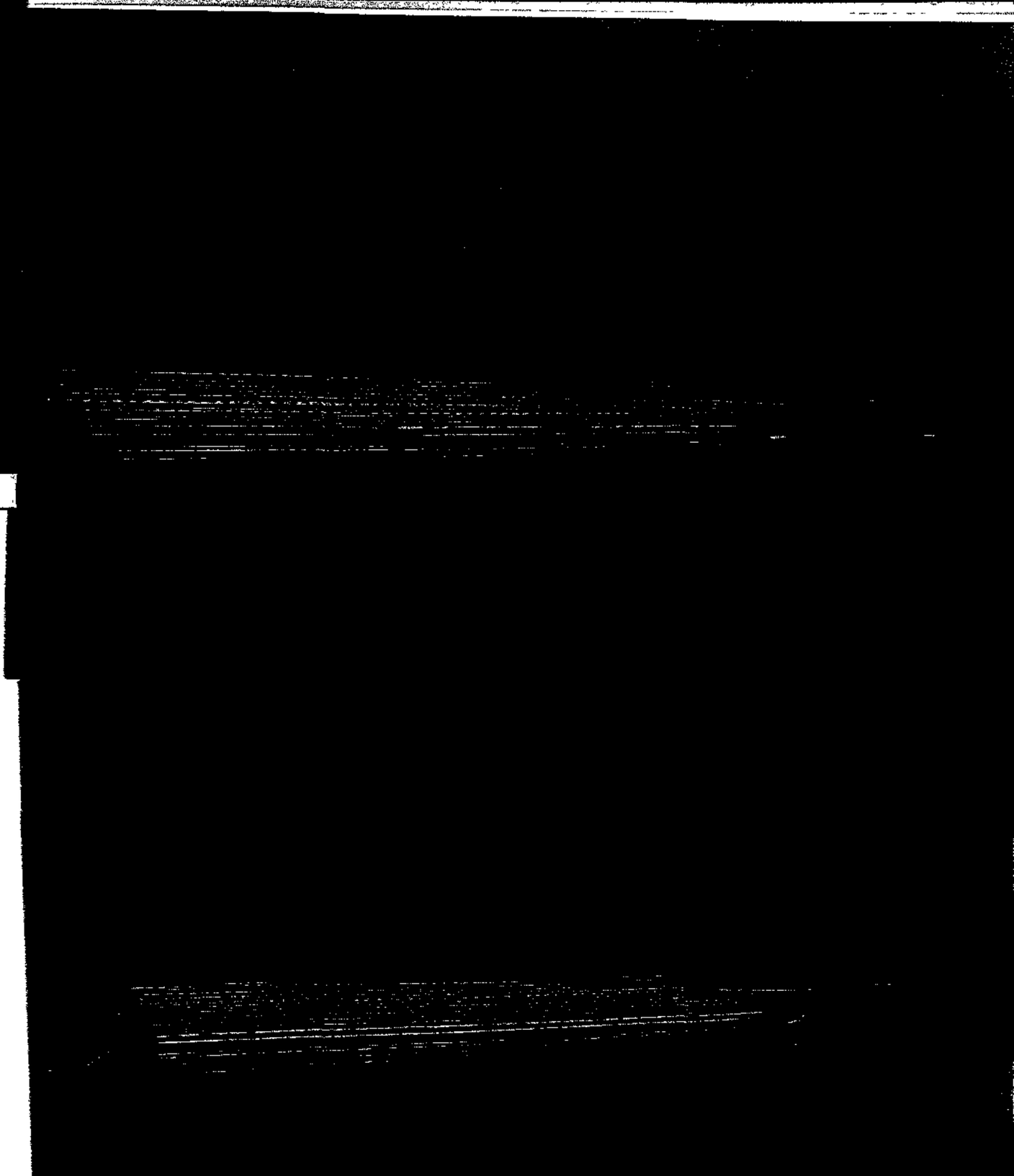
LOOKING WEST 1999











JAKE TOWARDS MIDDLETOWN RD
3/13/04

Pet 6A

IN RE: PETITION FOR SPECIAL EXCEPTION AND VARIANCE SE/S Traceys Road, 1500' SE centerline of Yeoho Road 5th Election District 3rd Councilmanic District (2311 Traceys Road) Stephanie S. & Nicholas Meittinis Petitioners	* * * * * *	BEFORE THE DEPUTY ZONING COMMISSIONER OF ~~BALTIMORE COUNTY~~ CASE NO. 01-530-X

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Special Exception filed by the legal owners of the subject property, Nicholas and Stephanie Meittinis. The Petitioners are requesting a special exception for property they own at 2311 Traceys Road, located in the Sparks area of Baltimore County. The special exeeption is to approve a riding stable and equine veterinarium.

Appearing at the hearing on behalf of the special exception request were Nicholas and Stephanie Meittinis, owners of the property, as well as several others who appeared on their behalf. Those individuals appearing on behalf of the Petitioners have registered their names on the Petitioners' sign-in sheet. The Petitioners were represented by John B. Gontrum, attorney at law. Appearing in opposition to the Petitioners' request were many residents of the surrounding community, all of whom signed in on the protestant's sign-sheet. The protestants were unrepresented as a group. However, Joseph and Annetta Evans, adjacent property owners and both attorneys at law, did appear as protestants in the case, and assisted their neighbors in the presentation of the testimony in opposition to this request.

Testimony and evidence indicated that the property, which is the subject of this special exception request, consists of 40.34 acres of land, zoned R.C.2. The subject property is located

on the south side of Traceys Road, approximately 1500 ft. to the west of the intersection of Traceys Road and Yeoho Road, in Sparks, Maryland. The subject property is improved with a two-story, single-family residential dwelling wherein Mr. & Mrs. Meittinis reside with their children. To the rear of the subject dwelling exists a one-story residential garage. There is also a 95.5 ft. x 174.2 ft. fenced riding area, as well as a two-story frame barn and storage building. All of these improvements are more particularly shown on the plat to accompany this petition for special exception entered into evidence as Petitioners' Exhibit No. 1. The plat was prepared by Gerhold, Cross & Etzel, registered professional land surveyors who were represented at the hearing by Bruce Doak.

The subject property is serviced by Traceys Road, which is a dead-end country lane, only wide enough to accommodate the width of one vehicle. It is absolutely necessary for one vehicle to have to leave the traveled portion of Tracey's Road when encountering another vehicle traveling in the opposite direction. The actual paved width of Tracey's Road varies over the length of this travel way It was estimated to be 11 ft. to 14 ft. by the various witnesses who testified at the hearing. This type of road width is not uncommon in these rural areas of Baltimore County.

Testimony and evidence offered at the hearing demonstrated that Mr. & Mrs. Meittinis purchased the subject property in 1997. At the time of their purchase, the subject property was farmed and crops were grown thereon. The front portion of the subject property along Tracey's Road was always cultivated with crops. while the rear portion of the property, which consists of woodlands and steep slopes, remained in its natural state. Shortly after their purchase, the Petitioners constructed their house, garage and other improvements.

The two-story barn, as shown on the site plan, contains 16 stalls and has enough parking to accommodate 12 automobiles. The barn is situated approximately 213 ft. from the western property line of the subject property. The barn is served by a separate well and septic system other than those associated with the house that is situated on the property.

Mrs. Meittinis has an extensive background in horse training and providing instructional lessons to riders. She has been actively involved in giving lessons to students off-site to the subject property and is requesting permission, at this time, by way of this special exception to give lessons from the subject property. She foresees having up to 14 students at any one time and proposes to give no more than 2 lessons in any given day. It is possible for her to accommodate up to 5 students attending any one particular session. These sessions generally take 45 minutes to 1 hour.

In addition to giving lessons on the property, the Petitioner also trains, breeds and sells horses. At the present time, she has approximately 9 horses on the property. Mrs. Meittinis would be willing to limit her operation to containing no more than 16 horses on the subject property at any one time. She also agreed to other restrictions on her operation, in the event the special exception is approved.

In addition to the Petitioners' request for a riding stable, a separate request is made to allow an equine veterinarium. Testimony indicated that Mr. Meittinis is a licensed Doctor of Veterinary Medicine, having obtained a degree from Cornell University. He is currently involved in a partnership providing veterinary services to the various Maryland thoroughbred racetracks. The purpose of the special exception request for the equine veterinarium is to allow Mr. Meittinis to perform services on the horses which are kept on their property. This request is

limited only to performing services on the horses that are kept on this property, belonging to the Petitioners, as well as horses that are laying up or boarded on site.

The testimony offered by the Petitioners also demonstrated that they currently board horses on their property in addition to the horses they own. At the time of the public hearing before me, the Petitioners were boarding 2 horses on the property which, of course, were not owned by them.

. As stated previously, many residents of the surrounding neighborhood appeared in strong opposition to the Petitioners' requested special exception relief. The opposition testimony was led by Mr. & Mrs. Evans who reside on property situated directly across Tracey's Road from the subject property. Mr. & Mrs. Price, who reside on adjacent property immediately to the west of the subject property, also strongly opposed this request. Others in the neighborhood appeared and testified in opposition to the Petitioners' request. The testimony offered by the protestants demonstrated that Tracey's Road is not of sufficient width to accommodate the number of daily trips that are generated by the special exception relief requested by the Petitioners. These neighbors feel that the amount of students coming and going to the Meittinis farm for the purpose of taking riding lessons would cause congestion on Tracey's Road, given that two cars are unable to pass on this narrow lane. The passing of vehicles requires one driver to pull off into one of the property owner's front yard. In addition, neighbors complained of blind spots along Tracey's Road where it is difficult for one vehicle to see oncoming traffic. The increase in traffic on this narrow lane was also a concern of those residents who walk, ride bikes, or jog along this roadway. The narrowness of Tracey's Road coupled with the fact that it is a dead-end street, having only one access point to Yeoho Road, was of great concern to the surrounding neighbors. This was their main reason for opposing the special exception request.

The issue regarding the narrowness of Tracey's Road was not the only cause of concern raised by these neighbors. Mr. & Mrs. Ruston Price, the adjacent property owners, also testified that the special exception relief, if granted, would have a tremendous detrimental impact on their use of their property. Their home is situated in close proximity to the Meittinis farm. The two property owners share a common property line. The riding of horses and the giving of lessons have a greater impact on Mr. & Mrs. Price's property, given the close proximity of their dwelling to where the horses are ridden and kept. They, therefore, ask that the special exception request be denied and that the Petitioners be prohibited from providing horseback riding lessons on their farm.

Also particularly affected by the Petitioners' special exception request were adjacent property owners, Joseph and Annetta Evans. These protestants live on the north side of Tracey's Road, opposite the entrance driveway to the Meittinis farm. Mr. & Mrs. Evans strongly objected to the Petitioners' trespassing on the front portion of their property. This occurs when large farm vehicles and horse trailers negotiate the turn into the Meittinis farm. The 90° angle access coupled with the landscaping rocks located at the entrance, cause these large vehicles to travel into the front yard owned by Mr. & Mrs. Evans while turning left. That grassy area has been reduced to dirt by virtue of this left-turning traffic. Mr. & Mrs. Evans are also concerned over storm water runoff that is generated onto their property by virtue of the additional construction that has taken place on the Meittinis farm. The Evans' property sits lower in elevation than the Petitioners' farm and is, therefore, the drainage area for surface water running off the Petitioners' land.

The testimony and evidence offered both in support and in opposition to the Petitioners' request was voluminous. The hearing comprised three days of testimony. It is not possible to

recount all of the testimony and evidence offered at the hearing in the body of this Order. The record of the case was recorded and reference is made to that transcription for a more detailed account of the testimony and evidence offered at the hearing. In addition, the Petitioners, as well as the Protestants, submitted Memoranda of Law regarding their positions.

Before ruling on the Petitioners' specific request for special exception, it is first necessary to determine what is permitted on the Petitioners' property as a matter of right. The Petitioners' property is zoned R.C.2. Section 1A01.2 of the Baltimore County Zoning Regulations designates those uses that are permitted as of right within such a zone. Agricultural operations, when conducted in accordance with good and reasonable husbandry practices, shall be afforded preferential treatment over and above all other permitted used in the R..C.2 zones. Specifically listed as a use permitted as of right are farms. The Baltimore County Zoning Regulations defines "Farm" as follows:

> "Three acres or more of land, and any improvements thereon, used primarily for commercial agriculture, as defined in these regulations, or for residential and associated agricultural uses. The term does not include the following uses as defined in these regulations: limited-acreage wholesale flower farms, riding stables, landscape service, firewood operations and horticultural nursery businesses."

The Petitioners' property comprising 40.34 acres of land, zoned R.C.2, satisfies the definition of farm as that term in defined within Section 101 of the Baltimore County Zoning Regulations, so long as the activities occurring thereon are consistent with the definition of the term "Commercial Agriculture" <u>or</u> "Associated Agricultural Uses".

The term "Commercial Agriculture" is defined within Section 101 of the Baltimore County Zoning Regulations. The relevant portion of that definition provides that,

> "commercial agriculture includes the production of field crops, dairying, pasturage agriculture, horticulture, floriculture, aquaculture, apiculture, viticulture, forestry, animal and poultry husbandry, <u>horse</u> <u>breeding</u> and <u>horse</u>

> training and also includes ancillary activities such as processing, packing, storing financing, managing, marketing, or distributing provided that any such activity shall be secondary to the principal agricultural operations."

This definition clearly indicates that "horse breeding and horse training" are uses that are permitted as of right on the Meittinis farm.

Therefore, the keeping of horses on the Petitioners' property either owned by them or belonging to others, for the purpose of breeding or training, is a use permitted as of right, and does not require the granting of a special exception. This horse training and horse breeding clearly allows the Petitioners to keep horses belonging to others on their farm for this purpose. The language of the definition does not limit the breeding and training of horses to those of the property owner only. Furthermore, it shall also be permissible for someone other than the property owner to actually perform the training of a horse on the Petitioners' property. That is, it may be necessary for this property owner to bring other individuals of skill and expertise in the field of training horses onto this property, in order to train a particular horse in a specific exercise or regimen. Therefore, the breeding and training of horses, which shall include the keeping of horses not belonging to this property owner on the property, and allowing other trainers to come to this property to ride and train a particular horse is a permitted use for which a special exception is not necessary.

The question arose at the hearing, whether the Petitioner, by virtue of keeping other persons horses on her property was operating an animal boarding place. The term "animal boarding" place is defined within Section 101 of the Baltimore County Zoning Regulations as,

> "any building, other structure or land or any portion thereof which is used, intended to be used or arranged for the board, breeding or other care of animals for profit, but excluding a farm, kennel, pet shop, veterinarian's office or veterinarium."

The definition itself specifically excludes a farm from being considered an animal boarding place. Therefore, in conjunction with the operation of a farm on the Petitioners' property, Mr. & Mrs. Meittinis shall be permitted to board other people's horses thereon. This, therefore, would not be considered an animal boarding place and would not require the granting of a special exception for same.

While it has been determined that the Petitioners shall be permitted to board, train, breed and sell horses from their property as a matter of right, all in accordance with the definitions as contained within the Baltimore County Zoning Regulations and the uses permitted as of right in the R.C. zone, it must now be determined whether the special exception requests should be granted. The property owners have requested two particular uses by way of their special exception petition. The less controversial of the two requested uses was the equine veterinarian and shall be the first such use addressed by this Order.

As stated previously in the body of this Order, Mr. Meittinis is a licensed Doctor of Veterinary Medicine who maintains a successful veterinary practice. Dr. Meittinis limits his practice of veterinary medicine to horses. The majority of his practice is associated with the Maryland thoroughbred racetracks. Dr. Meittinis would like the ability to provide services to the horses which are kept on this property, either those belonging to him or the horses belonging to others.

Dr. Meittinis testified that his practice of veterinary medicine is specialized in that he works completely out of his Toyota Land Cruiser SUV. He does not maintain a clinic. He testified that he travels from race track to race track caring for and maintaining the thoroughbred horses that are involved in the racing industry. He does have an office trailer at each race track wherein he performs paperwork and maintains his records. All of his equipment and medicines

are kept within his vehicle which allows him to readily perform site visits in order to provide care to a particular horse.

Dr. Meittinis is requesting, by way of this special exception, to be able to perform similar such services on his own property. He does not intend to construct a building on this property wherein a clinic will be housed. He intends to utilize the existing barn or a stall located therein in order to administer medicine and provide care to a particular horse. He will not perform any surgeries on site. He simply wishes to provide veterinary services to the horses kept on his property and be permitted to charge a fee for his services. He does not intend to erect any sign on the property and he does not contemplate any advertising for his business.

After considering this portion of the Petitioners' special exception request, I find that Dr. Meittinis should be permitted to perform veterinary services on the horses which are kept on his property and accordingly, that portion of the special exception request shall be granted. The operation of an equine veterinarian on this property will have little or no impact on the surrounding property owners, given that the horses which are to receive care are already kept on the property and the doctor performing such services already lives on site. Since he is the resident veterinarian, no additional amount of traffic will be generated by this use. Accordingly, the special exception shall be granted subject to the conditions and restrictions imposed at the end of this Order.

The second and more controversial of the two special exception requests involved the use of the property as a riding stable. As stated previously within the body of this Order, providing instruction and lessons to a horse falls within the category of horse training and is a use permitted as of right on the property. However, providing instructions and lessons to riders falls outside of that permitted use and within the special exception category of a riding stable.

Therefore, in order to give riding lessons on the subject property, the Petitioners must satisfy those requirements as specified within Section 502.1 of the Baltimore County Zoning Regulations and all applicable case law relating thereto.

After considering the testimony and evidence offered in support of the Petitioners' riding stable and that offered in opposition thereto, as well as the memoranda of law submitted by each side, I find that the special exception request for a riding stable should be denied. A riding stable operating on this property would have a greater detrimental impact at this location than it would on a similarly zoned parcel of property located elsewhere within this locality. Perhaps the greatest factor relative to this finding is the access to the subject property, particularly the narrow width of Tracey's Road. In addition to my concern over the narrowness of Tracey's Road was the inability of the residents living along Tracey's Road to exist harmoniously. The testimony offered at the hearing revealed that vehicles entering the Petitioners' property have had to trespass onto property owned by Mr. & Mrs. Evans when attempting to turn left into the entrance driveway to the Petitioners' farm. Furthermore, residents testified that at times motorists have refused to yield the right-of-way to oncoming traffic causing vehicles to have to leave the traveled portion of Tracey's Road. This apparently has also occurred to pedestrians, joggers, bike riders, persons walking dogs and/or pushing baby carriages. In addition, landscaping rocks, pine trees and wooden sticks and posts have been placed along the sides of this narrow right-of-way, thereby interfering with and hampering the passage of traffic along Tracey's Road. The behavior and actions of these residents have created a tremendous amount of frustration to exist within this neighborhood. This was clearly evident at the hearing before me, as evidenced by the temperament of the witnesses who testified and the tone of the voice of those participants asking

questions. The problems with the access to this property, as stated previously, persuade me that the special exception request should be denied.

THEREFORE, IT IS ORDERED this 22nd day of March, 2002, by this Deputy Zoning Commissioner, that the Petitioners' special exception request to approve an equine veterinarian, be and is hereby GRANTED.

IT IS FURTHER ORDERED, that the special exception request to approve a riding stable on the subject property, be and is hereby DENIED.

The granting of the special exception for the equine veterinarian shall be subject to the following conditions and restrictions:

1. There shall be no signage associated with the equine veterinarian.

2. The Petitioner shall be prohibited from advertising the business of equine veterinarian on the property and shall only service those horses which are kept or boarded on site. Naturally, the Petitioner shall be permitted to travel to off site locations in order to practice his profession.

3. The Petitioner shall be prohibited from performing major operations to any animal on the subject property.

4. No additional structures shall be erected in order to house or accommodate a veterinary clinic. The Petitioner shall utilize the existing barn for the purpose of administering care and performing services on the horses kept on the property.

5. There shall be no additional employees of the equine veterinarian, other than Dr. Meittinis.

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

Timothy Kotroco

TIMOTHY M. KOTROCO
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

County Board of Appeals of Baltimore County

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

Ref
6B

June 18, 2004

John B. Gontrum, Esquire
WHITEFORD TAYLOR & PRESTON LLP
210 W. Pennsylvania Avenue
Towson, MD 21204-4515

RE: *In the Matter of: Stephanie and Nicholas Meittinis - Legal Owners /Petitioners*
Case No. 01-530-X

Dear Mr. Gontrum:

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*, **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/tw
Kathleen C. Bianco
Administrator

Enclosure

c: Stephanie and Nicholas Meittinis
Wes Guckert /The Traffic Group
Bruce Doak /Gerhold, Cross & Etzel Ltd
Nedda Evans /Joseph Evans
Cheryl H. Schweizer
Debbie & Rustin Price
Jack Dillon /Valleys Planning Council
Edward A. Halle, Jr. /Fowley & Beckley, P.A.
Barbara M. Kees
People's Counsel for Baltimore County
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
James H. Thompson, Code Enforcement /PDM **[CC-00-7156]**
Timothy M. Kotroco, Director /PDM

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on Recycled Paper

PETITION OF PROTESTANTS FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY	:	IN THE CIRCUIT COURT
	:	FOR BALTIMORE COUNTY
IN THE MATTER OF THE APPLICATION OF STEPHANIE & NICHOLAS MEITTINIS FOR A SPECIAL EXCEPTION	:	
	:	Case No. 03-C-04-7316
Case No. 01-530-X before the Board of Appeals of Baltimore County	:	

RECEIVED
MAR 31 2005
PEOPLE'S COUNSEL

OPINION AND ORDER OF COURT

This matter has come to the Court through appeal and cross-appeal of the opinion of the County Board of Appeals of Baltimore County (hereinafter, "CBA") in a *de novo* appeal from a decision of the Deputy Zoning Commissioner of Baltimore County, who on March 22, 2002, granted one special exception, for a veterinarium, and denied another, for a riding stable, on the property of Petitioners/Applicants, Dr. and Mrs. Meittinis. Arguments were heard by the Court on March 4, 2005.

The CBA heard testimony over the course of some seven days, beginning on March 25, 2003 and concluding on February 12, 2004. The Court has had an opportunity to review the transcripts of that testimony and finds that it is fairly summarized in the CBA's Opinion of June 18, 2004.

Petitioners' property has a somewhat torturous history of review by various zoning officials. It consists of a parcel of some 40.34 acres zoned R.C., located on the south side of Tracey's Road, approximately 1500 feet west of its intersection with Yeoho Road, Fifth Election District, and was purchased its present owners in 1997. Its use as a farm property attracted no unusual attention until Petitioners began horseback riding instruction upon it, and neighboring property owners filed a zoning complaint, giving

rise to a civil citation from the County zoning office. The County's Enforcement Hearing Officer, Stanley J. Schapiro, conducted a hearing on January 24, 2001. Petitioners argued that teaching riding was a legitimate part of their farm use, and therefore permitted by right. Mr. Schapiro, however, found that it was not, but that it constituted use as a riding stable, and therefore required the obtaining of a special exception. Petitioners appealed this ruling to the CBA, which remanded the matter to Mr. Schapiro for clarification on May 22, 2001. Three days later, Mr. Schapiro issued another opinion, reiterating that the use in question is a "riding stable", requiring a special exception.

This ruling was again appealed to the CBA, which affirmed. Petitioners appealed to the Circuit Court, but ultimately abandoned the effort, resulting in the dismissal of the appeal.

In lieu of pursuing the appeal of the CBA's affirmance of the Schapiro ruling, Petitioners filed the present application for special exceptions for two existing uses on their property, for both a riding stable and for a veterinarium in connection with Dr. Meittinis' practice as a large-animal veterinarian. As noted previously, then Deputy Zoning Commissioner Timothy Kotroco granted the one requested for the veterinarium, but denied the one for the riding stable, and the appeal of this case to the CBA ensued.

ISSUES PRESENTED

The various parties have submitted to this Court the following issues:

By Petitioners: 1. Did the CBA apply the appropriate legal standard when it denied the special exception for a riding stable, and within the context of the appropriate legal standard, did the CBA find sufficient facts to support the denial?

By Protestant Evans: 1. Did the doctrine of collateral estoppel preclude [Petitioners] from arguing that they did not need a special exception since the issue in question had already been decided against them in a final judicial ruling in a related matter?

2. Is a special exception required in order to give riding lessons for compensation in an R.C.2 zone?

By Peoples Counsel: 1. Whether Petitioners' claim that its use is permitted by right is barred, on grounds of *res judicata,* by the CBA's final decision in the earlier violation case?

2.a. Whether the CBA also erred, as a matter of law, in ruling that the proposed use of the barn and outdoor area for riding lessons and boarding of "layups" is not a "riding stable"?

2.b. Whether the CBA's reasoning was defective in subsuming the riding stable activities under the umbrella of farm use and, as a practical matter, rendering superfluous and nugatory the riding stable special exception in agricultural areas?

2.c. Whether the CBA's ruling conflicts with the relevant case law?

3. Whether the CBA's alternative ruling that it was not persuaded of the merits of the special exception should be sustained because based on substantial evidence?

It appears that there is no challenge by anyone to the CBA's determination that the special exception requested for the veterinarium should be granted. Accordingly, the Court will not view this decision as one requiring judicial review.

STANDARD OF REVIEW

The scope of judicial review is narrow. The Court must affirm the decision of the administrative agency where it is fairly debatable with respect to the agency's findings of fact and inferences drawn therefrom. See *Board of Physicians Quality Assurance v. Banks,* 354 Md. 59 (1999); *Board of County Commissioners v. Holbrook,* 314 Md. 210 (1988); *Eger v. Stone,* 253 Md. 533 (1969); *Snowden v. City of Baltimore,* 224 Md. 443 (1961).

The scope of review is likewise narrow with respect to the application of law to the facts and/or to mixed questions of law and fact. *Stover v. Prince Georges County,*

132 Md. App. 373 (2000); *Caucus Distributors v. Maryland Sec. Comm'r,* 105 Md. App. 25 (1995); *Maryland State Police v. Lindsey,* 318 Md. 325 (1990); *Baltimore Lutheran H. S. v. Employment Security Admin.,* 302 Md 649 (1985); *Ramsay, Scarlett & Co. v. Comptroller,* 302 Md. 825 (1985). Even with regard to matters of legal interpretation, the scope of review remains narrow. In *Banks, supra,* the Court focused on matters of legal interpretation. Judge Eldridge wrote:

> "Even with regard to some legal issues, a degree of deference should often be accorded the position of the administrative agency. Thus, an administrative agency's interpretation and application of the statute which the agency administers should ordinarily be given considerable weight by reviewing courts... Furthermore, the expertise of the agency in its own field should be respected...(legislative delegations of authority to administrative agencies will often include the authority to make 'significant discretionary policy determinations.')...." 354 Md. at 69. (Citations omitted).

Accordingly, where there is room for interpretation, the courts "ordinarily give some weight" to agency construction of the statute. *Magan v. Medical Mutual Liab. Ins. Co.,* 331 Md. 535 (1993). In *Magan,* Judge McAuliffe wrote:

> "The degree of weight to be given an administrative interpretation varies according to a number of factors, including whether the interpretation has resulted in a contested adversary proceeding or rule-making process, whether the interpretation has been publicly established, and the consistency and length of the administrative interpretation or practice. *Comptroller v. John C. Louis Co.,* 285 Md. 527, 544-45 (1979)."

In administrative proceedings in Maryland concerning the grant of a variance or special exception, the "substantial evidence" and "fairly debatable" standard is applicable. e.g., *Schultz v. Pritts,* 291 Md. 1 (1981); *Turner v. Hammond,* 270 Md. 41 (1973). The "fairly debatable" standard was defined in *Eger, supra*:

> "If the issue before an administrative body is 'fairly debatable,' that is, that its determination involved testimony from which a reasonable man could come to different conclusions, the Court will not substitute its judgment for that of the

administrative body,... even if the administrative body came to a conclusion which [the Court] probably would not have reached on the evidence."

See also *Germenko v. County Board of Appeals of Baltimore County,* 257 Md. 706 (1970). Accord, *Ginn v. Farley,* 43 Md. App. 229 (1979); *Board of County Comm'rs for Prince Georges County v. Meltzer,* 239 Md. 144 (1965).

In *Prince Georges County v. Meininger,* 264 Md. 148, 152 (1972), it was held that the "substantial evidence" requirement in a case of denial was satisfied by little more than a "scintilla of evidence" because the burden of proof is on the appellant. The zoning agency's decision should be affirmed unless there is "no evidence at all" to support the decision. *Rockville Fuel & Feed Co. v. Board of Appeals,* 257 Md. 183,193 (1970). These and other cases indicate that an administrative appellant has a very heavy burden to demonstrate as arbitrary an agency finding that the applicant did, or, especially, did not, sufficiently prove his case. In *Pollard's Towing v. Berman's Towing,* 137 Md. App. 277 (2001), Judge Moylan discussed the function of the reviewing court when an agency is simply not persuaded by the petitioner. He wrote:

> "In this case, all that was required was that the Board be not persuaded that there was a need for additional towing service. To the extent that its finding was weightier than that, the incremental weight was surplusage. Far less is required to support a merely negative instance of non-persuasion than is required to support an affirmative instance of actually being persuaded of something." 137 Md. App. at 289.

Judge Moylan also quoted *Starke v. Starke,* 134 Md. App. 663 (2000), at 137 Md. App. 290:

> "[I]t is far easier to sustain as not clearly erroneous the decisional phenomenon of not being persuaded than it is to sustain the very different decisional phenomenon of being persuaded... Mere non-persuasions... require nothing but a state of honest doubt. It is virtually, albeit perhaps not totally, impossible to find reversible error in that regard."

DISCUSSION AND ANALYSIS

For its purposes in analyzing this case, the Court will restate the issues presented in a more simplified fashion than presented by the parties, as follows:

1. Did either collateral estoppel or *res judicata* preclude CBA from reconsidering whether or not a special exception for the proposed riding instruction use, was necessary?
2. Did the CBA err in ruling that the proposed use is one secondary or ancillary to the farming operation, and is not a "riding stable"?
3. Was the CBA correct in concluding that, if the proposed use is not a permitted one, the necessary special exception should be denied?

In the Court's view, the short answers to these issues are:

Issue One: Possibly, but probably not. However, a definitive answer is unnecessary to analysis of the other issues.

Issue Two: Yes.

Issue Three: Yes.

As to Issue Two, the Court finds that the CBA, while probably not bound by the ruling of its predecessor Board affirming Enforcement Hearing Officer Stanley J. Schapiro's March 13, 2001 finding that Petitioners were operating a riding stable without having the required special exception to do so, should not have disregarded that ruling. Rather, it should have considered the ruling as persuasive, at the very least. The fact that the current panel did not do so negates, in the Court's view, any presumption of validity of the later decision, and removes the duty of the Court to defer to this Board's interpretations of the applicable zoning law. Thus, this Court can feel unconstrained in applying its own independent interpretations, having before it two seemingly

contradictory findings based upon strikingly similar evidence concerning the activities which are the focus of the need, *vel non,* for a "riding stable" special exception.

What the Court finds particularly suspect in the current panel's Opinion is its view that the use of a site as a riding stable is "referable to the building or structure utilized and is not land-based", however that language may be analyzed.

There is nothing inconsistent with a farm's operation about the presence of a stable among its outbuildings. Proper animal husbandry includes protecting the stock from time to time from inclement or severe weather. It is not the **existence** of the building that triggers the need for the special exception; rather, it is the nature of the **activities** carried on about the structure and its environs that does so. Raising, training and even selling one's own horses and the "laying up"of other's appear consistent with permitted commercial agricultural uses, particularly in view of Dr. Meittinis' professional activities as an equine veterinarian.

However, when the boarding of riding horses, the keeping of them for hire and the provision of riding instruction and training to the public are added to the mix, in whole or in part, a line is crossed that is impermissible and inconsistent with the apparent legislative intent of the County Council, which specifically excluded riding stables from those uses permitted by definition upon farm properties.

"Riding Stable" is defined in the Baltimore County Zoning Regulations as: "A building where riding horses are boarded or kept for hire". A more apt description might well be "riding academy". Regardless, however, the activities sought to be conducted at this site are really not dependent upon a particular structure, and, the Court finds, would require the obtaining of a special exception.

In addition to the foregoing discussion, the Court wishes to adopt as its own reasoning that portion of the contents of People's Counsel For Baltimore County's Memorandum, docketed herein as Paper No. 25,000, sub-headed "II. The CBA Erred in its Legal Interpretation of the Character of the Use" beginning on page 10 and

concluding on page 17 of the Memorandum.

As to Issue Three, the Court will affirm the CBA in its alternative ruling that, should the Court reverse on Issue Two, the panel felt unanimously that Petitioners had failed to meet their burden to establish their entitlement to a special exception. Simply stated, the CBA was not persuaded of the existence of the necessary criteria. This Court cannot, and will not, substitute its judgment for that of the panel in this regard, even if the evidence caused the Court to feel otherwise (which it does not). In this scenario, Petitioners' burden is nearly, if not totally insurmountable, as discussed by Judge Moylan in *Pollard's Towing, supra.* The CBA cannot be found to have erred because it rejected, did not believe, or was unpersuaded by the evidence before it.

Accordingly, for the reasons hereinbefore set forth, this Court will AFFIRM IN PART AND REVERSE IN PART, the Opinion of the CBA dated June 18, 2004 in this matter. More specifically, the Court finds that the uses of the subject property requested by Petitioners relating to the boarding of riding horses, the hiring of them by the public, and the provision of horseback riding instruction, are not permitted as of right in the R.C.2 (Resource Conservation) Zone, but may only be carried on where a special exception has been granted for the property. Moreover, the Court finds that the criteria set forth in Section 502.1 of the Baltimore County Zoning Regulations for the granting of a special exception for a "Riding Stable" have not been established and the said special exception for that purpose will be, and it is hereby, DENIED, and it is SO ORDERED by this Court, this 30th day of March, 2005.

/s/

Christian M. Kahl, Judge

cc: CBA

All counsel of record

Pa.Commonwealth Ct. 409, 492 A.2d 798 (1985), for the proposition that the term "fifteen percent" as provided in this section refers to a fifteen *point* deviation in the figures rather than a fifteen *percent* deviation from the county's established predetermined ratio.

[3] While we did not directly address this issue in *Croasdale*, we must reject this argument rather emphatically for three reasons. First, the statute itself is clear on its face and states "fifteen percent from the established predetermined ratio." *See* 1 Pa.C.S. § 1921(b); *Black v. Billy Penn Corp.*, 72 Pa.Commonwealth Ct. 628, 457 A.2d 192 (1983). Secondly, the statement from *Croasdale* relied upon by the Board is totally inapposite because the court in that instance was addressing a much different factual situation where the Dauphin County Board of Assessment was using a *base year* fair market value established ten years earlier and the Board, making an adjustment, was using a 30% inflation factor to determine the present market value.[5] And lastly, if we interpreted Section 9(a.1) as the Board suggests it would permit a deviation of fifteen percentage points *above* the county's established predetermined ratio as well as a deviation of fifteen percentage points *below* that ratio; in other words, a thirty point spread between the highest allowable ratio of 36% (21% + 15%) and the lowest of 9% (21% − 15%). Such a circumstance is palpably violative of Article 8, Section 1 of our State Constitution requiring all taxes to be uniform upon the same class of subjects, and in addition violates the principle of statutory construction that the General Assembly does not intend an absurd or unreasonable result. *See generally* Section 1922(1) of the Statutory Construction Act of 1972, § 1 Pa.C.S. § 1922(1); *see also In Re: Appeal of Armco, Inc.*, — Pa.Commonwealth Ct. — 516 A.2d 326 (1986).

Accordingly we are constrained to once again remand this case to the trial court for findings relating to each additional year on appeal under the automatic appeal provisions of Section 9(c) of the Act, and in a manner otherwise consistent with this opinion.

ORDER

NOW, September 11, 1986, the order of the Court of Common Pleas of Luzerne County, No. 4079–C of 1982, dated September 17, 1985, is hereby affirmed with respect to the 1982 tax assessment, and the matter remanded for additional findings of fact and conclusions of law with respect to each subsequent tax year on appeal in accordance with Sections 9(a) and 9(c) of the Act of June 26, 1931, P.L. 1379, as *amended*, 72 P.S., §§ 5350(a), 5350(c).

Jurisdiction relinquished.

5. We stated in *Croasdale:*

> Because the Board has determined that the predetermined ratio should be 30%, the product of $12,063.00 must be divided by 30%. Such an adjustment is necessary to correct for the inflation in market value from 1973 to 1983.

Croasdale, 89 Pa.Commonwealth Ct. at 412, 492 A.2d at 795.

Appeal of Louis and Frances JAFFE from the Decision of West Vincent Township Zoning Hearing Board.

Appeal of Louis and Frances JAFFE.

Commonwealth Court of Pennsylvania.

Argued April 11, 1986.
Decided Sept. 12, 1986.

Landowners sought review of denial of permit for construction of building to board horses, along with caretaker apartment. The Common Pleas Court, Chester County, Charles B. Smith, J., dismissed the appeal and landowners appealed. The Commonwealth Court, No. 1778 C.D. 1985, Barry, J., *held that:* (1) proposed use did not fall within definitions of "agriculture" or "stable" within zoning ordinance, and (2) even if building met requirements of permissible conditional use, caretaker apartment was not permitted by zoning ordinance as accessory to that conditional use.

Affirmed.

Colins, J., dissented.

1. Zoning and Planning ⇐279

Proposed use of building to board horses and provide apartment for caretaker did not come within definitions of "agriculture" or "stable" in township zoning ordinance.

2. Zoning and Planning ⇐464

Fact that landowners' building was conditional use did not restrict them from using property in manner consistent with other uses set forth in zoning ordinance.

3. Zoning and Planning ⇐441

Landowners did not follow proper procedures when seeking conditional use of property when they appealed to zoning hearing board rather than to township legislative body.

4. Zoning and Planning ⇐302

Even if building constructed to board horses did meet requirements of permissible conditional use on land, caretaker's apartment in the building was not permitted as accessory to that conditional use.

Daniel P. Mannix, Butler & Griffin, West Chester, for appellant.

Bruce Niccolo, Wayne, for appellee.

Before BARRY and COLINS, JJ., and BLATT, Senior Judge.

OPINION

BARRY, Judge.

This is an appeal by Louis and Frances Jaffe, appellants, of an order of the Chester County Court of Common Pleas. The trial court dismissed the Jaffes' appeal from a decision of the appellee, the Zoning Hearing Board of West Vincent Township (ZHB), which denied the Jaffes' application for a use and occupancy permit for a caretaker's apartment within a building, recently constructed to board horses on the Jaffes' property.

The Jaffes, residents and property owners in a district zoned R–2 Residential in West Vincent Township, applied for a building permit to construct a house and a building designed to board horses. This application was granted on September 2, 1980. In December of 1981, appellants sought a variance from the ZHB for an apartment located within this building to house a caretaker or groom for the horses. The request for a variance was denied. The Jaffes appealed to the Chester County Court of Common Pleas but abandoned this appeal. On October 14, 1982, the Jaffes applied for a use and occupancy permit pursuant to Sections 603.c and 603.f of the West Vincent Township Zoning Ordinance (Ordinance), which read:

> 603[.] *Permitted Uses*
>
> ....
>
> 603.c Farming and agricultural use, including horticultural and nursery, provided proper techniques are utilized to minimize erosion and sedimentation, stream pollution and preservation of existing woodlands and a lot area of no less than five (5) acres is provided.
>
> ....
>
> 603.f Accessory buildings and uses customarily incidental to the above uses.

This application was refused on November 15, 1982 by the zoning hearing officer. The Jaffes appealed to the ZHB. After holding two hearings, the ZHB ruled against the Jaffes, finding that since the

Jaffes' property was principally residential the building was an accessory use and the apartment was, under the ordinance, an impermissible accessory use to an accessory use. The Jaffes' appeal to the Chester County Court of Common Pleas was denied but on different grounds. The trial court found that the building housing the horses was a "stable" as defined by Section 202 of the Ordinance, which reads:

> *STABLE:* Any establishment including a building or structure and surrounding enclosures wherein horses or other equine animals are kept for the purpose of breeding, boarding, sale, hunting or show purposes, and must be so constructed that such animals cannot stray therefrom.

The court said that since Section 602 of the Ordinance lists stables as a conditional use and the apartment was an accessory use to the stable, the request for a use and occupancy permit must be denied inasmuch as the Ordinance makes no provision for an accessory use to a conditional use. On appeal, the Jaffes maintain, as they have all along, that this structure is an agricultural use and the apartment is an accessory use to an agricultural use permitted under Sections 603.c and 603.f of the Ordinance. The Jaffes argue that even if this structure was considered a conditional use, under established case law, they are nevertheless entitled to the Use and Occupancy Permit because they proved that they complied with the objective requirements of the Ordinance and that there is no compelling evidence that the proposed use is a detriment to the community's health, safety and welfare.

Where the trial court takes no additional testimony, our scope of review is limited to whether the Zoning Hearing Board abused its discretion or committed an error of law. *Barnhart v. Zoning Hearing Board of Nottingham Township,* 49 Pa.Commonwealth Ct. 481, 411 A.2d 1266 (1980).

The Jaffes cite *Zoning Hearing Board of Mahoning Township v. Zlomsowitch,* 87 Pa.Commonwealth Ct. 123, 486 A.2d 568 (1985), and *Barnhart* to support their argument that the building has an agricultural use. This reliance on *Zlomsowitch* and *Barnhart* is misplaced. In *Zlomsowitch* the Mahoning Township Zoning Hearing Board challenged a trial court ruling which sustained the applicants' appeal from a Zoning Hearing Board denial of a building permit for a public stable on the applicants' property. Section 505 of the Mahoning Township Ordinance stated that "buildings devoted to *farm use* shall be exempt from area regulations." The court stated:

> The ordinance does not define the term 'farm use' as used in Section 505(a); it must therefore be construed according to its plain, usually understood meaning. *Farmland Industries, Inc. v. Zoning Hearing Board of Pequea Township,* 65 Pa.Commonwealth Ct. 288, 442 A.2d 395 (1982). The term 'agricultural use' is synonomous with farm use as that term is used in Section 505(a). A stable is a familiar structure used for farm and agricultural purposes.

Zlomsowitch, 87 Pa.Commonwealth Ct. at 126, 486 A.2d at 568. The Jaffes argue that since this court defined a stable as "a familiar structure used for farm and agricultural purposes" we must hold that the Jaffe horse stalls are an agricultural use; however, contrary to the Ordinance in *Zlomsowitch,* Section 202 of the Ordinance specifically provides for a definition of "stable". In *Zlomsowitch* we emphasized that words must be given their plain meaning when not otherwise defined by the ordinance. Here, the ordinance's definition of stable includes the keeping of horses for *any* purpose, whether commercial or private. The Jaffes' building falls squarely within this definition.

In *Barnhart,* the issue was whether the boarding of horses was a permissible agricultural use under the statute. We found that the language of the ordinance permitted such a use because the relevant statute defined agriculture as including "pasturage" and the stipulated facts indicated that the horses were pastured on either a full-time or part-time basis. The Ordinance here (West Vincent Township) contains specific provisions defining "stables" which must be accepted in preference to the general definition defining "agriculture". *See* Section 1933 of the Statutory Construction Act of 1972, 1 Pa.C.S. § 1933.

[1] Given the definition of stable in the ordinance and the provision setting forth the permitted conditional uses, we do not believe that even a permissively broad reading of the definitions of "agriculture" or "stable" would include the Jaffes' proposed use of their building.[1] The trial court correctly interpreted and applied the ordinance when it found that the proposed apartment was an accessory use to a conditional use. The court also properly concluded that an accessory use to a conditional use, since not listed under the ordinance as a permitted use, was, logically, an impermissible one. The Jaffes object to this conclusion, citing *Gilbert v. Montgomery Township Zoning Hearing Board,* 58 Pa. Commonwealth Ct. 296, 427 A.2d 776 (1981), to support their claim that more than one principal use of land is permitted. In *Gilbert,* the Zoning Hearing Board denied the landowner's application for a special exception because the ordinance precluded more than one principal use of a given lot. That ordinance read:

> Section 700. Use Regulations. A building may be erected, altered or used and a lot may be used or occupied for any of the following purposes and no other:
>
> ....
>
> I. The following uses when authorized as a Special Exception:
>
> ....
>
> 8. Sales agency for new automobiles, service and repair shop, gasoline filling station, storage and public garage, including used car sales as an accessory use.
>
> ....
>
> 6. Wholesale establishments, warehousing or merchandise, sale of building materials.

[2] The landowner's existing use of this property was under clause 8 while his application sought permission to operate under clause 6, as well. We agreed that the trial court's decision in the *Gilbert* case was correct when it decided that the Zoning Hearing Board inexplicably attached a narrow meaning to otherwise broad statutory language when it interpreted the words "any of the following" to mean "any *one* of the following." *Gilbert* was a clear case of adhering to the language of the ordinance. Inasmuch as the trial court found that the Jaffes' new building was a conditional use, it does not restrict the Jaffes from using their property in a manner consistent with the other uses set forth in section 603 of the Ordinance. The Jaffes do not ask that we give the language of the Ordinance its natural effect but that we construe the ordinance in a manner which permits a use which is clearly omitted from the listed permitted uses.

In *Gilbert* we held that, "absent express limitations, permissive phrases in zoning ordinances are given their broadest meaning." *Gilbert,* 58 Pa.Commonwealth Ct. at 303, 427 A.2d at 780. We find that Section 202, which defines the Jaffes' property as a "stable," and Section 604, which designates such a use as conditional, are express limitations on the designation of the structure as an agricultural use under Section 202, or a permitted use under Section 603.

[3, 4] The Jaffes argue that under the rule of *Foster Grading Co. v. Venango Township Zoning Hearing Board,* 49 Pa. Commonwealth Ct. 1, 412 A.2d 647 (1980), they are entitled to the permit because they have demonstrated compliance with the reasonable standards set forth in the ordi-

1. The court referred to Section 604(a) of the Ordinance, which lists the conditional uses permitted in an R-2 residential district:

> Commercial stables and kennels provided they are situated no less than four hundred (400) feet from a public right-of-way and an adjoining property line.

Section 603 of the Ordinance does not list stables as a permitted use.

nance. In *Foster Grading*, we summarized the law in this area as follows:

> The applicant for a special exception has both the duty of presenting evidence and the burden of persuading the competent tribunal that his proposal complies with all objective requirements of the ordinance—that the use intended is one permitted by the Ordinance as a special exception and that all other objective requirements specifically required have been or will be supplied; the objectors to the application have both the duty of presenting evidence and the burden of persuasion, that the use will have a generally detrimental effect on health, safety and welfare or will conflict with expressions of general policy contained in the Ordinance.

Foster Grading Co., 49 Pa.Commonwealth Ct. at 3-4, 412 A.2d at 649. However, in *Foster Grading*, a conditional use was defined as a special exception, thus vesting jurisdiction in the Zoning Hearing Board to entertain the request. Here, according to Section 405 of the Ordinance, a request for permission for a conditional use falls within the exclusive jurisdiction of the township legislative body—not the ZHB. The Jaffes simply did not follow the proper procedures for seeking a conditional use of the property when they appealed to the ZHB and have failed to show that the use intended is one permitted by the Ordinance as a special exception. Moreover, even if the Jaffes would have successfully proven that the building constructed met the requirements of a permissible conditional use, the apartment, as an accessory use to this conditional use, is not listed as a permitted use under the Ordinance.

We affirm the Zoning Hearing Board.

ORDER

NOW, September 12, 1986, the order of the Chester County Court of Common Pleas, dated June 10, 1985, denying the Jaffes' appeal from a decision of the Zoning Hearing Board of West Vincent Township, is affirmed.

COLINS, J., dissents.

In re Appeal of Officer Keith N. JORDAN from the Order of the Lower Merion Township Civil Service Commission.

Appeal of Keith N. JORDAN.

Commonwealth Court of Pennsylvania.

Argued June 10, 1986.
Decided Sept. 15, 1986.

Appeal No. 2236 C.D. 1985 from Common Pleas, Montgomery County; Anita Brody, Judge.

J. Scott O'Keefe, O'Keefe & Bruno, P.C., Philadelphia, for appellant.

Gilbert P. High, Jr., High, Swartz, Roberts & Seidel, Norristown, for Lower Merion Twp. & Lower Merion Bd. of Com'rs.

Before MacPHAIL and DOYLE, JJ., and ROGERS, Senior Judge.

DOYLE, Judge.

This is an appeal by Keith N. Jordan from an order of the Court of Common Pleas of Montgomery County which upheld the order of the Civil Service Commission of Lower Merion Township (Commission) which sustained Jordan's thirty day suspension from his position as an officer with the Lower Merion Township Police Department (Department). On appeal Jordan alleges the same errors as he did before the trial court. Because we find that the trial court, which decided the case on the record made before the Commission, disposed of those issues in a well-reasoned and thorough analysis we affirm on the opinion of the Honorable Anita B. Brody published at — Pa.D. & C. 3rd — (1985). Judge Brody held, in summary, that due process does not require a full blown hearing prior to the implementation of a suspension [1]; that Pa.R.C.P. No. 4001, pertaining to discovery, is inapplicable to the Commission; that Jordan was not prejudiced by the Commission's refusal to bifurcate his hearing or by the introduction of Jordan's prior disciplinary record; and that the Commission did not err in concluding that the Department had followed its own rules and regulations and in further concluding that the suspension was premised upon a valid legal basis and was justified.

ORDER

NOW, September 15, 1986, the order of the Court of Common Pleas of Montgomery County in the above captioned matter is hereby affirmed.

Russel D. HEATH, Petitioner,

v.

WORKMEN'S COMPENSATION APPEAL BOARD (AGWAY, INC.), Respondents.

Commonwealth Court of Pennsylvania.

Submitted on Briefs May 13, 1986.
Decided Sept. 16, 1986.

Employee claimed workman's compensation benefits for ventral hernia. Workmen's Compensation Appeal Board affirmed referee's decision denying benefits. Employee petitioned for review. The Commonwealth Court, No. 2070 C.D. 1985, Doyle, J., held that: (1) Board was entitled to render legal determination whether physician's testimony was equivocal or unequivocal, and (2) physician's testimony was unequivocal that employee's injury was aggravated by employee's work.

Reversed.

1. Workers' Compensation ⇐1939.8

Issue whether medical evidence as to causation of worker's injury is equivocal or unequivocal requires determination of competency, not credibility, for purpose of Commonwealth Court's duty on review.

2. Workers' Compensation ⇐1545

Physician's testimony, when taken as whole, was unequivocal on issue that employee's ventral hernia was aggravated by employment and thus was improperly disregarded by referee, in that physician testified no less than four times that with reasonable medical certainty, employee's work had aggravated his condition, despite other testimony that physician could not rule out possibility that other factors may have contributed to aggravation of condition.

William H. Poole, Jr., McCullough & Poole, York, for petitioner.

Mark Woodbury, III, York, for respondents.

Before CRAIG and DOYLE, JJ., and BARBIERI, Senior Judge.

DOYLE, Judge.

Russell D. Heath (Claimant) appeals from a decision of the Workmen's Compensation Appeal Board (Board) which affirmed a referee's decision denying Claimant benefits for failure to establish a causal connection between his work and his injury.

On February 4, 1983, Claimant discovered a lump in his abdomen while bathing at home. This lump was later diagnosed by his physician, Dr. Edward Garber, as a

1. In addition to the citational authority relied upon by the trial court for this issue, we also note that its disposition is not inconsistent with *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 105 S.Ct. 1487 (1985), where the discipline was a termination of employment and not merely a suspension.

exact nature of the injuries sustained by insured in fall down stairs, speculations that cause of death of insured was internal injuries caused by the fall were irrelevant and not prejudicial to insurer against whom recovery was sought under double indemnity provision of life policy.

Appeal from Court of Common Pleas, Hudson County.

Action on double indemnity provision of life policy by Frances Chmielowicz, also known as Frances Milowicz, against the Prudential Insurance Company of America. From a judgment for the plaintiff, defendant appeals.

Affirmed.

Argued January term, 1940, before BROGAN, C. J., and DONGES and PORTER, JJ.

Paul Supinski, of Jersey City (Isidore Hornstein, of Jersey City, of counsel), for plaintiff-respondent.

Drewen & Nugent, of Jersey City (John Drewen, of Jersey City, of counsel), for defendant-appellant.

PORTER, Justice.

The appellant appeals from a judgment entered in the Hudson County Court of Common Pleas on a verdict rendered by a jury in an action against it by the respondent on a contract of insurance in which she was the named beneficiary. The contract was contained in an insurance policy issued by appellant on the life of John Milowicz for $1,000, and which provided for double indemnity in the event of the death of the insured by accident "directly and independently of all other causes of bodily injuries effected solely through external, violent and accidental means, of which, except in case of drowning or of internal injuries revealed by an autopsy, there is visible contusion or wound on the exterior of the body and that such death occurred within ninety days of the accident". The insured died on January 19th, 1935. The respondent alleges that his death was occasioned solely by bodily injuries caused by the accidental fall of the insured on the day of his death of which injuries there were visible contusions on the exterior of his body. Upon presentation of proof of death appellant paid the death benefit provided for in the policy but denied its liability for double indemnity for accidental death.

From the testimony it appears that the insured fell down the cellar stairs on the morning of January 19th, 1935, at his home and died there the evening of the same day. His wife, the respondent, and his son in law who was a member of the household and is a physician, were in the kitchen from which he went into the cellar and both hearing the noise of the fall went to his assistance. She testified that she saw him "lying behind the stairs". Dr. Staciva, the son in law, says that he saw him in the act "of picking himself up, brushing himself off of some dust, and moaning and complaining of pain in his —over his left side of his chest". Dr. Staciva had him put in bed, gave him some medicine and rubbed his chest with liniment. Dr. Loksa who had attended the deceased on previous occasions was called and came twice to attend him, once in the morning after Dr. Staciva had left the house and again in the afternoon. He testified that he found him in much discomfort and distress with complaints of pain in his left chest and forehead; that the pain in his chest was persistent; that when he saw him in the afternoon the symptoms were the same but that his condition was then "very favorable"; that he found abrasions on the forehead and left chest. Dr. Staciva, whose office was at the residence of deceased, further testified that he saw deceased at intervals when he returned for his evening office hours, that he found that he had been resting comfortably but that in the evening he again complained and was moaning so that he sent for a priest for the administration of the last rites of the church and that he died about nine o'clock. Both respondent and Dr. Staciva said that he had been in good health, that his work was that of a laborer at which he had worked for many years and that he had worked as such on the day before his death. Both attending physicians testified that in their opinions the death of decedent was caused by internal injuries sustained by the fall down the stairs.

The defense disputed that deceased had been in good health before the accident and adduced testimony that he had been suffering from a heart ailment and had received medical treatment for same. Dr. Lucynski testified for the appellant that he was called to the deceased's house on the night of January 19th, 1935, "in an emergency", and was told upon his arrival by Dr. Staciva that "his father had had an attack and

had died. Would I go and see him?" He says that he examined the dead body and concluded from its appearance that death had been caused by a sudden heart failure. He does not recall discussing the cause of death with Dr. Staciva. He says that he told Dr. Staciva that because of its being a case of sudden death he would notify "the superintendent of identification, Mr. Rigley" and that being conducted to a telephone he telephoned Mr. Rigley and reported to him the death and in reply to Mr. Rigley's question as to his opinion as to the cause of death told him he thought it was heart failure. He also testified that he had been given no history of the case, knew of no bodily injuries and did not examine the body for wounds or abrasions.

The certificate of death, which the appellant introduced in evidence without objection, was not signed by the attending physician but by Dr. Marshak as Assistant County Physician—now deceased. He certified that he had investigated the circumstances attending the death and that in his opinion the cause of death was "syncope due to myocardial heart disease, patient fell down cellar stairs at 10 A.M. but showed no external signs of injury". The source of his information was not shown. The respondent testified that he did not view the body nor discuss the matter with her.

[1] It seems to us from a careful examination of the testimony that a jury question was presented on the question at issue; i.e., whether the death was caused by accident within the provisions of the contract of insurance.

[2,3] The appellant contends, however, that the testimony given by Drs. Staciva and Loksa, to the effect that the cause of death was internal injuries caused by the fall, should have been struck because it was based on surmise and speculation and that the court erred in allowing same over objection. That without that testimony no factual question was presented and a verdict for the appellant should have been directed as moved. We think the argument to be without merit and that there was no harmful error by the trial court. Both these witnesses gave as their expert opinions, based on the previous good health of the deceased, the fall down the stairs, the symptoms of his injuries and their own observations, that the fall was the sole cause of death. That was competent testimony and it was for the jury to evaluate it together with such testimony as was adduced to the contrary and the proper inferences to be drawn therefrom. It was not incumbent on the respondent to cause an autopsy to be made nor to show otherwise what vital organs were injured and failed by reason of the injuries. It was enough to have established death by violent accidental cause where contusions or wounds were visible on the exterior of the body. Both witnesses in question clearly testified that in the absence of an autopsy they could not give the exact nature of the injuries. Nor do they attempt to do so, except when pressed on cross-examination. One then said that it "may have been" this cause or that and the other "surmised" that it might be this cause or that. Under the circumstances, considering their direct testimony, these questions could have elicited nothing but conjectural answers. These speculations were of course immaterial and irrelevant but we conclude were not prejudicial to the appellant.

The judgment is affirmed.

BERRY v. RECORDER'S COURT OF TOWN OF WEST ORANGE et al.

No. 228.

Supreme Court of New Jersey.

March 18, 1940.

1. Municipal corporations ⟹60!

A use of realty, violative of prior zoning ordinance, was not rendered valid by enactment of subsequent ordinance, containing repealer of prior ordinance and exempting pre-existing nonconforming uses, defined as any use not complying with subsequent ordinance and which was not in violation of any prior ordinance in effect at time of enactment of subsequent ordinance, since purpose of subsequent ordinance relating to nonconforming uses was to continue use restrictions embodied in prior ordinance unless expressly excluded from or modified by subsequent ordinance.

2. Municipal corporations ⟹60!

The legislative body of a municipality had power, in the enactment of a zoning ordinance, to continue the valid limitations of a pre-existing zoning ordinance.

3. Municipal corporations ⟹601

It is to be presumed, in the absence of a revealed contrary intention, that purpose of enactment of a zoning ordinance, containing a repealer of a prior zoning ordinance, was to substitute the new provisions for the old with no interruption of continuity, and thus to continue the old provisions as modified by the new provisions of zoning ordinance.

4. Municipal corporations ⟹601

Where a zoning ordinance was enacted, which contained a repealer of a prior zoning ordinance, the repealer became effective simultaneously with the approval of the new ordinance.

5. Certiorari ⟹1

"Certiorari" to review a conviction for violating zoning ordinance performs the office of the common-law writ of error only, and hence is governed by the same principles.

See Words and Phrases, Permanent Edition, for all other definitions of "Certiorari".

6. Certiorari ⟹36

On certiorari to review a conviction for violating zoning ordinance, the appellate court will not take cognizance of a question not raised in the inferior tribunal, unless it be an error of law exhibited on the face of the record or one involving jurisdiction or public policy.

7. Municipal corporations ⟹642(1)

On certiorari to review a conviction for violating zoning ordinance, reviewing court would not consider questions as to whether a use constituted a nonconforming use within saving clause of zoning ordinances where such questions were not raised in the lower court.

8. Livery stable keepers ⟹4½

Under zoning ordinance, a permissible nonconforming use of land for "farming," with incidental use of horses in furtherance of farming, would not justify the conduct of a riding academy or stable, notwithstanding that others were conducting riding academies in violation of zoning ordinance.

See Words and Phrases, Permanent Edition, for all other definitions of "Farming".

9. Certiorari ⟹45

On certiorari, the names of necessary parties should appear on the indorsement. Rules of Supreme Court, rule 15, N.J.S.A. tit. 2.

Certiorari proceeding by Harold J. Berry against the Recorder's Court of the Town of West Orange and Norman L. Brundage, Recorder, to review conviction of prosecutor for violating local zoning ordinance.

Judgment of conviction affirmed.

Argued January term, 1940, before TRENCHARD, CASE, and HEHER, JJ.

Lewis G. Hansen, of Jersey City (Eric H. Jentz, of Jersey City, of counsel), for prosecutor.

Gerald T. Foley, of Newark, for respondent.

HEHER, Justice.

[1, 2] Certiorari was granted to review the conviction of prosecutor in the Recorder's Court of the Town of West Orange upon a complaint charging that on July 15, 1938, and on "divers other dates thereafter", he "did use a building" known as 405 St. Cloud Avenue, in West Orange, situate "within a Residence 'A' District" delineated in the local zoning ordinance, approved on March 12, 1935, "for the purpose of stabling horses, and letting horses out to hire, and carrying on and conducting the business of a riding academy", contrary to the provisions of that ordinance; and the primary question at issue is whether the stated use, conceded to be outside the category of permissible uses in a "Residence 'A'" zone, was saved as a pre-existing nonconforming use under a provision of the ordinance defining such nonconforming use as "any use of a property which does not comply with the regulations of this ordinance for the district in which it is located and which use is not in violation of any ordinance in effect at the time of the enactment of this ordinance." The ordinance contained a repealer of a zoning ordinance adopted on October 20, 1921; and defendant maintains that, assuming that his particular use of the premises, which commenced in the year 1931, was violative of the earlier ordinance, the effect of the repealer was "to nullify the 1921 ordinance", and therefore, "at the time the 1935 ordinance was adopted, there was no 1921 ordinance and prosecutor, having commenced to use his property in 1931, was clearly entitled to continue the use of his property despite the adoption of the 1935 ordinance." It is said that, if the municipality "wanted to continue in effect the 1921 ordinance", it "could have done so by passing an amendment or supplement to it", or

by a "'saving clause' keeping in force those provisions of the 1921 ordinance it desired to preserve", and that defendant "could not be found guilty in July, 1939, of violating an ordinance which was expressly repealed in 1935."

This reasoning is obviously faulty. It ignores the evident legislative intent. There was no other ordinance extant limiting the use of real property; and the clear design of the cited provision relating to nonconforming uses was to continue the use restrictions embodied in the 1921 ordinance unless expressly excluded from or modified by the new regulations. It was indubitably within the province of the local legislative body to continue the valid limitations of the preexisting ordinance, and this it did, except as explicitly modified, by language admitting of no doubt of that purpose. Defendant was not charged with a violation of the repealed ordinance, but with a use of the premises prohibited by the ordinance of 1935.

[3, 4] It is to be presumed, in the absence of a revealed contrary intention, that the Legislature, in the course thus taken, purposed to substitute the new provisions for the old with no interruption of continuity—to continue the old regulations as modified by the new. It is a secondary rule of construction that in such circumstances, nothing to the contrary appearing, the repealer becomes effective simultaneously with the approval of the new enactment, and that the new provisions are substituted for the old, and are to be considered as a continuance and modification of the old laws rather than as an abrogation of the old statutes and the re-enactment of new ones. Middleton v. New Jersey West Line R. Co., 26 N.J.Eq. 269; reversed sub. nom. Randolph v. Larned, 27 N.J.Eq. 557, on a ground not affecting this rule; Freehold Mutual Loan Ass'n v. Brown, 29 N.J.Eq. 121; Pacific Mail Steamship Co. v. Joliffe, 2 Wall. 450, 17 L.Ed. 805.

But it is also contended, in the alternative, (a) that defendant's "use of the premises was a 'nonconforming use' under the zoning ordinance of 1921"; (b) "The keeping of horses is permitted by the terms of both ordinances"; and (c) "The enforcement of the ordinance of 1935 is harsh and unreasonable."

Depositions were taken by prosecutor under a rule allowed in this proceeding; and it is asserted that it has been thereby established that the particular nonconforming use preexisted the enactment of the 1921 ordinance, and is therefore within the saving clause of both ordinances, and that, in any event, the presence in the vicinity of "three other stables similar to prosecutor's" would render the enforcement of the existing ordinance unreasonable as to him.

[5-7] None of these points was made in the proceedings below; and it is therefore not incumbent on us to consider them. Here, certiorari performs the office of the common law writ of error only, and is therefore governed by the same principles; and it is the settled procedural rule, applicable to such reviews on certiorari, that the appellate court will not take cognizance of a question not raised in the inferior tribunal, unless it be an error of law exhibited on the face of the record or one involving jurisdiction or public policy. State v. Czarnicki, 124 N.J.L. 43, 10 A.2d 461; Hoxsey v. Paterson, 39 N.J.L. 489; Frank J. Durkin Lumber Co. v. Fitzsimmons, 106 N.J.L. 183, 147 A. 555; Pennsylvania R. Co. v. Jersey City, 47 N.J.L. 286. Compare Mowery v. Camden, 49 N.J.L. 106, 6 A. 438; State, Danforth, Pros. v. City of Paterson, 34 N.J.L. 163; Specht v. Central Passenger R. Co., N.J.Sup., 68 A. 785, affirmed 76 N.J.L. 631, 72 A. 356.

[8] Moreover, we find these contentions to be not well-founded in fact. There is an evident essential difference between the devotion of lands to farming, with the incidental use of horses in furtherance of that purpose, and the conduct of a riding academy or stable, including as it does the hiring of saddle horses for use on the adjacent highways and bridle paths. And other infringements of the ordinance, if the like uses may be so classified, afford no justification for defendant's violation. One unsuppressed transgression would sustain others, and thus the general regulation would be rendered unenforceable in defiance of the will of the local constituency expressed through its legislative body.

[9] In conclusion, we feel constrained to note that essential practice requirements have been ignored in the entitling of the writ. Necessary parties have been omitted from the endorsement. State v. Hanford, 11 N.J.L. 71; Griscom v. Gilmore, 15 N.J.L. 475; State, Coar, Pros. v. Mayor and Aldermen of Jersey City, 35 N.J.L. 404; Zeller v. Guttenberg, 81 N.J.L. 305, 83 A. 466. See, also, Rule 15 of this Court,

N.J.S.A. tit. 2. But, since no point was made of it, we concluded to consider the merits rather than dismiss the writ for this deficiency.

The judgment of conviction is accordingly affirmed, but without costs.

KEY NUMBER SYSTEM

JAEGER v. ELIZABETHTOWN CONSOLIDATED GAS CO. (two cases).

Nos. 415, 416.

Supreme Court of New Jersey.

March 18, 1940.

1. Trial ⟹178

In determining sufficiency of evidence in negligence action as against motions of nonsuit and for a directed verdict, inquiry is whether there is any evidence which, if accepted and given its fullest probative force, reasonably tends to sustain the pleaded cause of action, and whether the evidence is such that fair and reasonable men would be justified in concluding that the burden of proof had been sustained.

2. Negligence ⟹136(18)

In suit by purchasers of coal and gas range against seller to recover damages resulting from explosion of range, evidence that range was constructed so as to provide inadequate air circulation and to permit more gas to be fed into range than could be lighted, and that seller had attempted to remedy such defects and had told purchasers that range was no longer dangerous to use presented jury question as to negligence of seller.

3. Negligence ⟹1

The negligent performance of work gratuitously undertaken is actionable if damage ensues as the proximate result thereof.

4. Negligence ⟹121(5)

In action by purchasers of coal and gas range against seller to recover for damages resulting from explosion of range, burden was not on purchasers to establish that poor circulation in room in which range was installed was not a contributing factor of explosion, since it was incumbent on seller to take into consideration room's air circulation when it assured purchasers after installation and adjustment of range, and readjustment following complaints of improper functioning, that range was capable of safe usage.

5. Negligence ⟹134(2)

In reasoning from circumstances, the test is whether the evidence on the whole brings the proposition affirmed within realm of probability, and it is not requisite that circumstances also exclude beyond doubt inference that damage ensued from a cause not imputable to defendant, since certainty is not the standard, and it is sufficient if circumstantial evidence be such as to afford a fair and reasonable presumption of facts inferred.

6. Evidence ⟹596(1)

In civil cases a mere preponderance of probability, due regard being had to burden of proof, is a sufficient basis of decision, and it is jury's duty to decide in favor of party on whose side weight of evidence preponderates, and according to reasonable probability of truth.

7. Negligence ⟹27

In action to recover damages resulting from explosion of coal and gas range which was allegedly improperly constructed, it was immaterial, as respects liability, that defendant was the distributor and not the manufacturer of the range.

8. Negligence ⟹136(27)

In action by purchasers of coal and gas range against seller to recover for damages resulting from explosion of range, evidence that purchasers continued to use range which was allegedly improperly constructed, on assurances by seller that there had been a rearrangement of mechanism to insure normal use free from danger, presented jury question as to contributory negligence of purchaser.

9. Appeal and error ⟹1050(1)

In action by purchasers of coal and gas range against seller to recover for damages resulting from explosion of range, admission of testimony by purchaser that extinguishment of range flame resulted from poor circulation of oxygen did not constitute prejudicial error, where it was conceded that extinguishment resulted from inadequate air circulation.

10. Evidence ⟹359(1)

Exclusion of two photographs of coal and gas range which exploded giving rise to cause of action, and of four photographs, covering parts of a range of like make and style, which were sought to be introduced to prove the physical aspects of the range, did not constitute an abuse of discretion.

11. Appeal and error ⟹1052(5)

In husband's action to recover consequential damages resulting from injuries to wife, admission of testimony that husband had paid expenses of wife's trip to Oklahoma, on advice of physician that a change of environment would improve wife's nervous state, did not constitute prejudicial error, where jury disregarded cost of trip in the appraisement of husband's damages.

Appeal from Fifth Judicial District Court, Union County.

Two actions by Olga Jaeger and by Theodore Jaeger against Elizabethtown Consolidated Gas Company, a body corporate, to recover damages resulting from explosion of coal and gas range. From a judgment for the plaintiffs, defendant appeals.

Judgments affirmed.

Argued October term, 1939, before TRENCHARD, CASE, and HEHER, JJ.

Francis A. Gordon, of Elizabeth (Frank A. Welt, of Elizabeth, of counsel), for appellant.

Benjamin Gershenson, of Elizabeth (Harry J. Weiner, of Elizabeth, of counsel), for respondents.

HEHER, Justice.

The gravamen of these actions is negligence; and the specifications are that, on August 26, 1936, the defendant corporation, a dealer in gas ranges for domestic use, (a) sold to plaintiff, Theodore Jaeger, and shortly thereafter installed in his dwelling house, a combination coal and gas range, consisting of an oven and four burners, that, for lack of "proper circulation" and deficiencies of construction, adjustment and function, was unsafe for use, and (b) "did not use reasonable care to investigate and find out dangerous character of said chattel"; whereby Jaeger's wife, Olga, suffered burns from a gas explosion occurring while the instrument was in use.

A jury was empanelled to try the issue; and there were verdicts for plaintiffs— $400 for Olga, and $150 for Theodore, who sued per quod. Defendant appeals from the consequent judgments.

The primary questions, raised by motions to nonsuit and to direct a verdict for defendant, are (a) whether the evidence presented a factual issue as regards the specifications of negligence, and (b) whether contributory negligence conclusively appeared. We are constrained to resolve them against appellant.

[1] As to negligence, the inquiry is whether there is any evidence which, if accepted and given its fullest probative force, reasonably tends to sustain the pleaded cause of action. Is it such that fair and reasonable men would be justified in concluding that the onus probandi had been sustained? Sivak v. New Brunswick, 122 N.J.L. 197, 3 A.2d 566. There was such evidence.

[2] Defendant represented the range to be of proper construction and function for safe domestic use; and there was tangible evidence tending to establish the contrary. Apart from the indisputable failure of function, there was expert evidence of improper construction, in that there was inadequate air circulation, and "more gas" was fed in than could be lighted, whereby, "when the flame was turned to one-sixteenth inch flame there wasn't sufficient air entering into it to keep the burner lighted when you closed the door fast", and thus there was danger of explosion of the accumulated gas when the door was opened. This is what happened here.

[3] Moreover, upon complaints by the plaintiffs, made on three separate occasions, defendant undertook to remedy this defect; and, upon the conclusion of its efforts in that direction, advised plaintiffs that necessary adjustments had been made and the instrument was no longer dangerous to use. It is elementary that the negligent performance of work gratuitously undertaken is actionable if damage ensues as the proximate result thereof.

[4-6] Pointing to the testimony of the expert witness that "poor circulation" in the room in which the range was installed might be a contributing factor, the contention is made that the onus was on plaintiffs to "exclude inferences of negligence which could be drawn from causes or omissions not attributable to appellant."

But, in reasoning from circumstances, the test in the ultimate analysis is whether the evidence on the whole brings the proposi-

125 N.J.L. 273 1

Harold J. BERRY, Appellant, v. RECORDER'S OFFICE OF the TOWN OF WEST ORANGE et al., Respondents.

No. 45.

Court of Errors and Appeals of New Jersey.

Oct. 10, 1940.

Appeal from Supreme Court.

Lewis G. Hansen, of Jersey City, for appellant.

Gerald T. Foley, of Newark, for respondents.

PER CURIAM.

The judgment under review herein should be affirmed for the reasons expressed in the opinion delivered by Mr. Justice Heher in the Supreme Court, reported in 124 N.J.L. 385, 11 A.2d 743.

For affirmance: The CHANCELLOR, the CHIEF JUSTICE, Justices PARKER, BODINE, DONGES, PERSKIE, and PORTER, and Judges DEAR, WELLS, WOLFSKEIL, RAFFERTY, and HAGUE—12.

For reversal: None.

125 N.J.L. 365 2

Muriel H. EICHELBERGER, Adm'x, ad pros., Respondent, v. INTER-CITY TRANSPORTATION CO., Inc., et al., Appellants.

No. 15.

Court of Errors and Appeals of New Jersey.

Oct. 10, 1940.

Appeal from Supreme Court.

Cecil A. Hart, of Hackensack, for respondent.

Charles A. Rooney, of Jersey City, for appellants.

PER CURIAM.

The judgment under review herein should be affirmed for the reasons expressed in the opinion delivered by Mr. Justice Donges in the Supreme Court reported at 123 N.J.L. 595, 10 A.2d 267.

For affirmance: The CHANCELLOR, Justices PARKER, CASE, BODINE, and PERSKIE, and Judges DEAR, WELLS, WOLFSKEIL, RAFFERTY, and HAGUE—10.

For reversal: None.

Concurs in the result: Justice HEHER—1.

8 128 N.J.Eq. 179

Julius S. RIPPEL et al., Complainants, v. Harriet KING et al., Defendants. Appeal of Alma D. S. SKINNER.

No. 211.

Court of Errors and Appeals of New Jersey.

Oct. 10, 1940.

Appeal from Court of Chancery.

Irving Hupart, Aquila N. Venino, and Pitney, Hardin & Skinner, all of Newark, for complainants.

Clancy & Murphy, Louis Bondy, and T. Star Dunning, Jr., all of Newark, for defendants.

PER CURIAM.

The decree appealed from will be affirmed for the reasons stated in the opinion filed in the Court below by Vice Chancellor Bigelow, reported in 126 N.J.Eq. 297, 8 A.2d 777.

For affirmance: The CHIEF JUSTICE, Justices PARKER, CASE, BODINE, DONGES, HEHER, PERSKIE, and PORTER, and Judges DEAR, WELLS, WOLFSKEIL, RAFFERTY, and HAGUE—13.

For reversal: None.

125 N.J.L. 271

Frances CHMIELOWICZ, Also Known as Frances Milowicz, Respondent, v. The PRUDENTIAL INSURANCE COMPANY OF AMERICA, Appellant.

No. 49.

Court of Errors and Appeals of New Jersey.

Oct. 10, 1940.

Appeal from Supreme Court.

Paul Supinski and Isidore Hornstein, both of Jersey City, for respondent.

Drewen & Nugent, of Jersey City, for appellant.

PER CURIAM.

The judgment under review herein should be affirmed for the reasons expressed in the opinion delivered by Mr. Justice Porter in the Supreme Court, reported in 124 N.J.L. 317, 11 A.2d 741.

For affirmance: The CHANCELLOR, Justices PARKER, CASE, BODINE, HEHER, and PERSKIE, and Judges DEAR, WELLS, WOLFSKEIL, RAFFERTY, and HAGUE—11.

For reversal: None.

125 N.J.L. 324

HERMAN v. HANDLER.

No. 429.

Supreme Court of New Jersey.

Oct. 18, 1940.

1. Vendor and purchaser ⚷351(1)

The recovery by purchaser of reasonable search fees upon failure to consummate contract for sale of realty under statute is limited to instances where there was a breach of the contract of sale because of defects in the title. N.J.S.A. 2:45-1.

2. Vendor and purchaser ⚷351(1)

Where contract for sale of realty expressly provided that its consummation was conditioned upon vendor obtaining title, and contract was not consummated because of vendor's failure to obtain title, purchaser was not entitled under statute to recover reasonable search fees. N.J.S.A. 2:45-1.

Appeal from First District Court of Newark.

Action by Joseph Herman against George R. Handler to recover the deposit and reasonable search fees upon a contract to purchase realty which was never consummated. From a judgment for plaintiff, the defendant appeals.

Reversed.

Argued October term, 1940, before BODINE and PORTER, JJ.

George R. Handler, pro se, of Newark, for defendant-appellant.

Haines & Chanalis and Paul M. Strack, all of Newark, for plaintiff-respondent.

BODINE, Justice.

The agreed state of the case was as follows: "The action was to recover the deposit and reasonable search fees upon a contract to purchase real estate which was never consummated. Mr. Lintott was sworn for the plaintiff and gave evidence as to the reasonableness of the search fee and offered the contract which was received in evidence. * * * The Court gave judgment for the plaintiff against the defendant, allowing the deposit and search fees, in the sum of $216.25."

The contract provided: "The consummation of this contract is conditioned upon the Building and Loan Association, owner, conveying the premises above described to the party of the first part, and to the approval of such conveyance by the Department of Banking and Insurance."

It is conceded that the purchaser was entitled to his deposit since the building and loan association, the owner of the premises, would not convey for the price mentioned, and the Department of Banking and Insurance would not approve the same. The judgment should not have included the search fees.

N.J.S.A. 2:45-1 is as follows: "When any person shall contract to sell real estate and shall not be able to carry out such contract because of a defect in the title to the real estate the person with whom such contract was made, or his legal representatives or assigns, may, in an action for breach of the contract of sale, recover from the vendor, not only the deposit money, with interest and costs, but also the reasonable expenses of examining the title and making survey, unless the con-

initially excluding, during much of trial, document offered by plaintiff owner, which was prepared by architect and went to correctness of prior documents submitted by architect, and by restricting owner's use and reference to such document after eventually receiving it.

5. Pretrial Procedure ⟹78

Where defendant architects, in professional malpractice action, were permitted to read portions of testimony given on examination before trial by witness who was not at trial, which testimony was damaging to plaintiff owner, trial court erred by refusing to allow owner to read other pages of examination containing witness' acknowledgment that action which architect had commenced against him was later withdrawn, since such testimony went to credibility of witness.

6. Trial ⟹29(3)

In professional malpractice action brought against architects, trial court's statements that one of defendant's witnesses was "cooperative" and "perhaps I'd go further and say he's a graduate of the U.S. Naval Academy, which endears him to my heart a little bit" were prejudicial to plaintiff's case and improper; court should not lend its position to support witness.

Frank G. Pratt, Utica, for appellant.

Sugarman, Wallace, Manheim & Schoenwald, Syracuse, by Alan J. Goldberg, Syracuse, for respondents.

Before MARSH, P. J., and MOULE, SIMONS, DENMAN and WITMER, JJ.

MEMORANDUM:

This is an appeal from a judgment of trial term dismissing the complaint of Hotel Utica, Inc. which contains two causes of action against defendants, architects, the first cause of action being for breach of contract and the second for negligent performance of the contract. In reliance on *Carr v. Lipshie*, 8 A.D.2d 330, 187 N.Y.S.2d 564, affd. 9 N.Y.2d 983, 218 N.Y.S.2d 62, 176 N.E.2d 512 and *530 East 89 Corp. v. Unger*, 54 A.D.2d 848, 388 N.Y.S.2d 284, trial term quite understandably dismissed the contract action as a matter of law as not maintainable in a case such as this, involving professional malpractice against architects. The court also ruled that plaintiff failed to prove a prima facie case in contract. The jury rendered a no cause of action verdict on the second cause of action, and hence the court dismissed the complaint in its entirety.

Plaintiff contends that the court erred in dismissing the cause of action in contract and that because of trial errors with respect to the negligence action, the judgment dismissing the complaint should be reversed and a new trial granted with respect to both causes of action.

[1-3] The later cases, although most arise on the issue of the statute of limitations, establish that an owner who alleges that an architect has breached his contract to design and supervise construction work may sue both in contract and in negligence, the latter often referred to as "malpractice" (*Sears Roebuck & Co. v. Enco Associates, Inc.*, 43 N.Y.2d 389, 401 N.Y.S.2d 767, 372 N.E.2d 555; *Steiner v. Wenning*, 43 N.Y.2d 831, 402 N.Y.S.2d 567, 373 N.E.2d 366; *Naetzker v. Brocton Cent. School Dist.*, 41 N.Y.2d 929, 394 N.Y.S.2d 627, 363 N.E.2d 351; *Matter of Paver & Wildfoerster [Catholic High School Assn.]*, 38 N.Y.2d 669, 382 N.Y.S.2d 22, 345 N.E.2d 565). In the action in contract in this case the plaintiff can only recover from the architects if it establishes that the architects failed to perform in accordance with the standard of professional care usually exercised by such professionals in the community (*Sears Roebuck & Co. v. Enco Associates, Inc.*, supra, 43 N.Y.2d p. 396, 401 N.Y.S.2d p. 771, 372 N.E.2d p. 558). We observe that, since no statute of limitations question is involved in this case, the different rules stated in *Sears Roebuck & Co. v. Enco Associates, Inc.*, supra, pp. 396-397, 401 N.Y.S.2d p. 771, 372 N.E.2d pp. 558-559 with respect to the receipt of evidence of damages in tort and in contract will not be applicable. Of course, plaintiff can only have one recovery with respect to an identical damage claim (*Simon v. Royal Business Funds Corp.*, 34 A.D.2d 758, 310 N.Y.S.2d 409, affd. 29 N.Y.2d 692, 325 N.Y.S.2d 649, 275 N.E.2d 21). Defendant's argument that the two causes of action are virtually identical and that since plaintiff had its day in court on the negligence cause of action it should be barred by estoppel from reinstatement and trial of the contract action, is without merit, for the judgment of dismissal has not yet become final (see 5 Weinstein-Korn-Miller, N.Y.Civ. Prac. par. 5011.10).

[4-6] With respect to plaintiff's claim of trial errors, we agree that the court erred in excluding exhibit 28 during much of the trial and, after eventually receiving this exhibit, in restricting plaintiff's use and reference to it. It was a document prepared by defendant and went to the correctness of prior documents submitted by defendants. The court also erred in excluding from evidence certain pages of testimony given by Mr. Rohadfox on an examination before trial. Since the witness was not at the trial, the court permitted defendants to read portions of his testimony on an examination before trial, which was damaging to plaintiff; but the court refused to allow plaintiff to read other pages of the examination containing the witness' acknowledgment that an action which defendants had commenced against him was later withdrawn. The testimony went to the credibility of this important witness, and plaintiff was entitled to have the jury hear it (*Ryan v. Dwyer*, 38 A.D.2d 878, 307 N.Y.S.2d 565; 85 N.Y.Jur., Witnesses, § 71). Plaintiff also points to comments of the court tending to protect one of defendants' witnesses, the court stating that the witness was "cooperative" and "Perhaps I'd go further and say he's a graduate of the U.S. Naval Academy, which endears him to my heart a little bit". The court should not lend its position to support a witness, and the remark was prejudicial to plaintiff's case.

The judgment is reversed in all respects and a new trial granted.

Judgment unanimously reversed on the law and facts and a new trial granted with costs to abide the event.

62 A.D.2d 1144

Application of Gary L. SILVERNAIL, Appellant,

v.

Frank A. RAGO et al., Constituting the Zoning Board of Appeals of the Town of Onondaga, Respondents.

Supreme Court, Appellate Division, Fourth Department.

April 7, 1978.

Landowner petitioned for annulment of determination of zoning board of appeals which denied petitioner's application for special exception permit to use the land for public riding stables. The Supreme Court, Onondaga County, John O'C. Conway, J., entered judgment denying relief and petitioner appealed. The Supreme Court, Appellate Division, held that facts in record did support determination on ground that corral would create noise, dirt and odor as well as cause pollution of private wells because of runoff.

Affirmed.

1. Zoning ⟹384

Where ordinance provided special exception use permit for use of land in residential district for public riding stables and officials were required to grant riding stable permit applied for unless they had reasonable grounds for denying them.

2. Administrative Law and Procedure ⟹784

Determination of facts is for the administrative body and not the courts.

3. Zoning ⟹645

There were facts in record to support determination of zoning board of appeal denying application for special exception permit to allow applicant to use his 31.4-acre parcel of land in residential district for

public riding stables on basis of generation of noise, dirt and odors as well as pollution of private wells because of runoff.

Grasso, Rivizzigno, Woronov, Aloi & DiLauro, Syracuse, for appellant, by John P. DiLauro, Syracuse.

Alexander J. Hersha, Camillus, for respondents, by Alexander J. Hersha, Camillus.

Before MARSH, P. J., and DILLON, HANCOCK, DENMAN and WITMER, JJ.

MEMORANDUM:

Special Term dismissed the petition for annulment of the determination of the Zoning Board of Appeals denying petitioner's application for a special exception permit to use his 31.4 acre parcel of land for public riding stables. The Board made several findings or reasons for its action, including that petitioner's corral generates noise, dirt and odors and in wet seasons the run-off therefrom pollutes private wells used for water supply in the area, and that petitioner has offered no plan to obviate such conditions. Findings in support of Zoning Board action must, of course, be supported by facts in the record (*Matter of T.J.R. Enterprises v. Town Bd. of Town of Southeast*, 50 A.D.2d 836, 376 N.Y.S.2d 586). Although petitioner contends that this record does not support the Board's findings, the minutes of the hearing show that three witnesses gave testimony supporting the findings.

The ordinance in this case provides for the issuance of special exception use permits of the character sought by petitioner in this residential district, and so respondents were required to grant the permit unless they had reasonable grounds for denying it (*Matter of Pleasant Val. Home Constr. v. Van Wagner*, 41 N.Y.2d 1028, 395 N.Y.S.2d 631, 363 N.E.2d 1376; *Matter of North Shore Steak House v. Board of Appeals of Inc. Vil. of Thomaston*, 30 N.Y.2d 238, 243–45, 331 N.Y.S.2d 645, 648, 282 N.E.2d 606, 608). The determination of the facts is for the administrative body and not for the courts (*Matter of Lemir Realty Corp. v. Larkin*, 11 N.Y.2d 20, 25, 226 N.Y.S.2d 374, 377, 181 N.E.2d 407, 409); and since there are facts in the record to support the Board's determination, Special Term properly dismissed the petition (*Matter of Tandem Holding Corp. v. Board of Zoning Appeals, Town of Hempstead*, 43 N.Y.2d 801, 402 N.Y.S.2d 388, 378 N.E.2d 282; *Matter of Mobil Oil Corp. v. Oaks*, 55 A.D.2d 809, 390 N.Y.S.2d 276; *Matter of C & G Developers v. Granito*, 58 A.D.2d 612, 384 N.Y.S.2d 15).

[1–3] Judgment unanimously affirmed, without costs, without prejudice to a new application showing elimination of objectionable conditions.

62 A.D.2d 1141

Application of Lloyd A. WADSWORTH, Respondent,

v.

James F. GARNSEY, Mayor, et al., Individually and as Members of the Board of Trustees of the Village of Ilion, and Paul E. Currie, Chief of Police of the Village of Mohawk, New York, Appellants.

Supreme Court, Appellate Division, Fourth Department.

April 7, 1978.

In Article 78 proceeding, the Oneida Supreme Court, John R. Tenney, J., entered judgment directing that sergeant be reinstated as a permanent appointee in position of police chief of village, that date of his appointment be deemed to have been May 10, 1976, and that he be awarded back wages and benefits from date of his dismissal less compensation received as a police sergeant. Village trustees appealed.

The Supreme Court, Appellate Division, held that under circumstances, sergeant's appointment as "temporary police chief" became permanent on August 7, 1976 as result of action of village trustees in retaining him for more than eight weeks, the applicable minimum probationary period, beyond the one-month time limit statutorily prescribed for a temporary appointment.

Judgment as modified affirmed.

1. Municipal Corporations ⟹182

Where on May 10, 1976, the effective date of sergeant's appointment as "temporary police chief" there was a vacancy in permanently existing position of police chief and sergeant had been certified as standing third on current list of eligibles for such position and village trustees retained him as "temporary police chief" until May 17, 1977, over 11 months beyond one month permitted duration of a temporary appointment, sergeant's temporary appointment became permanent on August 7, 1976 as a result of village trustees' action in retaining him for more than eight weeks, the applicable minimum probationary period, beyond the one-month time limit statutorily prescribed for a temporary appointment. Civil Service Law § 64.

2. Officers ⟹11.6

The general rule that a temporary appointment will not become permanent does not apply where appointee is eligible for a permanent appointment due to standing among the first three upon list and when such appointment is made to a permanent vacancy during life of a competitive class promotion list. Civil Service Law § 64.

3. Officers ⟹76

Minimally, two conditions must coexist before a temporary appointment may be succeeded by or become a permanent appointment, so as to entitle ousted employee to reinstatement: (1) appointee must be among first three on eligible list at time of appointment so as to be qualified and capable of receiving appointment, and (2) there must be a vacancy. Civil Service Law § 64.

4. Officers ⟹11.6

While temporary appointments may on occasion be succeeded by a permanent appointment, this may only be by virtue of examination and eligibility under Civil Service Laws, and not by reason of any ripening of temporary or provisional appointment into a permanent appointment. Civil Service Law § 64.

5. Municipal Corporations ⟹217.6

It is fundamental civil service policy that vacancies in classified civil service shall be filled by permanent appointments from the appropriate eligible list compiled pursuant to results of competitive examination.

6. Municipal Corporations ⟹217.1

Circumstances under which a permanent position in the classified civil service may be filled by other than regular appointment from an appropriate eligible list are precisely defined and narrowly confined.

7. Municipal Corporations ⟹182

Sergeant, who was appointed "temporary police chief" from among those graded highest on appropriate eligible list to fill vacancy in permanently existing position of police chief, had not received a temporary appointment of indefinite duration under section of Civil Service Law with result that he could not be discharged at pleasure of village trustees, inasmuch as such section was not applicable and interpreting such section to permit indefinite temporary appointments from top of eligible list would conflict with another section mandating that every original appointment to position in competitive class be for probationary term and with policy that vacancies in classified civil service be filled by permanent appointments from appropriate eligible lists. Civil Service Law §§ 63, 64, 64, subds. 1(a–c), 2.

Kernan & Kernan, P. C., Utica, for appellants, by Earle C. Bastow, Utica.

Getman & LaRaia, Ilion, for respondent, by George H. Getman, Ilion.

Before MARSH, P. J., and DILLON, HANCOCK, DENMAN and WITMER, JJ.

IN THE MATTER OF THE APPLICATION OF STEPHANIE S & NICHOLAS MEITTINIS – LEGAL OWNERS /PETITIONERS FOR SPECIAL EXCEPTION ON PROPERTY LOCATED ON THE SE/S TRACEY'S ROAD, 1,500' SE OF CENTERLINE YEOHO ROAD (2311 TRACEY'S ROAD) 5TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	* * * * * *	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Case No. 01-530-X

* * * * * * * * *

OPINION

This matter comes before the Board of Appeals on a *de novo* appeal from a decision by the Deputy Zoning Commissioner of Baltimore County dated March 22, 2002. In that decision concerning two requested special exceptions, one was granted for a veterinarium and one, for a riding facility, was denied.

The case was presented to the Board over 7 days of extensive testimony beginning on March 5, 2003 and concluding on February 2, 2004. Petitioners were represented by John B. Gontrum, Esquire, and Protestants, Joseph and Nedda Evans, both licensed members of the Maryland Bar, appeared *pro se* as did a number of other residents of the affected area. The Office of the People's Counsel for Baltimore County was represented by Peter Max Zimmerman, Esquire.

Background and Testimony

In testimony, it was established by Petitioners that they had purchased the subject site of 40.34 acres of land zoned R.C. 2 in 1997. The property is on the south side of Tracey's Road, a narrow dead-end country lane, approximately 1,500 feet to the west of its intersection with Yeoho Road in Sparks, Maryland. It was further established that the subject property is taxed for

agricultural use. It includes 25 acres of woods and a residence for the Petitioners and their children, with the remaining acreage utilized for a barn, outside ring, and pastures.

Over the course of the hearing, each witness was subjected to direct and extensive cross-examination. The Board sees no purpose served in recreating in substantial form the sum and substance of all that was said. Rather, we would note that the Petitioners' case included testimony by Mr. Meittinis, the Petitioner, who described for the Board his view of the subject site, and his proposed uses. Specifically, he described his veterinary practice among thoroughbred horses and related that most of his activities took place at the racetracks around the region. He did note that horses were accepted at their farm for "lay up," which was described as a form of rest and rehabilitation for thoroughbred horses.

Mrs. Meittinis also testified. She described the day-to-day workings of the farm, including how the horses were cared for, maintained, trained, worked, and exercised. She stated that training included not only three times a week of exercise, but also teaching the horses to be responsive to riders' commands and directions. She further described the teaching methods and the inter-relationship between horses, horse farms, and the training of riders and rider /horse. She related to the Board that all of these activities were directed at the ultimate sale of horses, and noted that at least eight animals had been sold from their facility. She noted that hay had been, in the past, harvested from the pasture areas, mostly to be used by the horses on the premises. She concluded by opining that it was many times difficult, if not counterproductive, to separate the training of riders and the training of horses. She believes that the activities carried on, as described by her, constitute commercial agricultural uses and that their facility is, in fact, a "farm" as defined by Maryland law.

Bruce Doak, a land surveyor and planner who prepared the plats which accompanied the Petitioners' request, testified and discussed not only the description of the premises and its uses, but commented on what he believed to be agricultural uses which were "of right" carried out on the property.

Jack Dillon and Paul Solomon, both former County planners and accepted by the Board as experts in rural planning and zoning, testified as to the nature of the activities and operations of the subject site as applied to the issues in this case. They both clearly determined that the activities of the Petitioners were consistent with permitted commercial agricultural activity at the subject site, that the barn was in fact an accessory structure to the farm and not a "riding stable," and that the use "by right" should be allowed.

Thomas Reynolds, Vice President of the Baltimore County Farm Bureau, testified that, based upon the testimony of the Meittinises, it was not uncommon for farmers to pasture, rest, or have horse-related activities on their farms. He felt that the subject site was clearly a farm carrying out agricultural activities and should be recognized as such.

Ann Merryman, a resident of Baltimore County and an individual experienced in the raising and training of horses, also opined that the activities carried on on the property by the Petitioners was appropriate to its use as a horse farm. It should be noted in passing that Protestants called another member of the Baltimore County Farm Bureau who testified that their support for the "concept" of the agricultural horse-related use did not necessarily indicate the Farm Bureau's approval or endorsement of this particular request.

Wes Guckert of The Traffic Group was the primary witness for Protestants regarding the use and viability of Tracey's Road in supporting the special exception request. Accepted as an expert in traffic matters, he testified as to the extensive traffic study carried out by him in this

matter and his utilization of what he described as comparable road and site use situations. As a result, he opined that only a small increase in traffic volume would result from the uses and activities requested by the Petitioners. He was cross-examined extensively, not only as to the methodology of his study, but, more importantly, as to the choice and characteristics of the supposedly "comparable sites."

The Protestants' testimony included that of Nedda Evans, who described her property's proximity to the subject site and her various concerns as to the Petitioners' request. These included questions as to the dangerous and narrow nature of Tracey's Road and the volume which Petitioners' request would conceivably add to the already overburdened road. She was also concerned about increased business traffic as the result of the Petitioners' use of the facility, as well as the possibilities of deleterious effects on the lifestyles of all neighboring residents. She described the somewhat lengthy history of controversy between the Meittinises and the neighbors, and expressed her concern as to the enforcement of any conditions which the Board could conceivably attach to the granting of any special exceptions.

Joseph Evans, her husband, also testified. He described their residence's proximity to Petitioners' site and particularly voiced his concern regarding storm runoff on to his property. As did Mrs. Evans, he testified at length as to his traffic concerns and the effect he believed would be visited upon all the residents of the area by the granting of the Petitioners' requests.

A number of neighbors voiced their opinions as to the Petitioners' proposed uses. Barbara and Sherry Kees, long-time residents and horse farm owners, described their concerns as to the Petitioners' use of the property, and especially the traffic problems on Tracey's Road. Likewise, Cheryl Sweizer, another neighbor, described the "blind spots" on Tracey's Road located near her driveway. She described her recollection of a prior accident at that location and

stated her opposition to the site, not only for the difficulties on Tracey's Road but also based upon her concern about the proposed uses' effect on the local water supply.

Debra and Ruston Price, residents of Tracey's Road next to the subject site, described their property and its interrelationship with the subject site. They testified as to the difficulties caused by that proximity, including dust, noise, odors, and other descriptions as to the negative effects on their lifestyles which they relate directly to the activities of the Petitioners. They too had questions as to enforcement, and described how they had previously kept logs and videotapes of the activities at the Meittinis' property. They were also clearly concerned and opined that, in their opinion, the property value of their home would suffer if the Petitioners' request were granted.

Wendy McIver, recording secretary and member of the Board of Directors of the Greater Sparks-Glencoe Community Council, testified for the Board after the presentation of appropriate Rule 8 documents. The organization was in support of the special exception for the veterinarium but, due primarily to the traffic concerns regarding Tracey's Road, were opposed to the granting of any other special exception at the site.

George Harold, a 36-year resident of Tracey's Road who lives across from the subject site, concurred with the testimony of the other Protestants regarding the traffic situation on Tracey's Road and added that he is not desirous of the County doing anything to change the road's structure or size.

A written statement by Vernon W. Wirtz, Jr., and Susan Twigg-Wirtz, residents of Tracey's Road, was accepted by the Board. The communication reiterated the traffic and other safety concerns already presented and was also in opposition to the requests of the Petitioners.

Steven Weber, Chief of the Division of Traffic Engineering for Baltimore County, provided his own detailed evaluation of the traffic situation on Tracey's Road, describing at as among the narrowest and most difficulty roads (as to width) in the County. He outlined the difficulties experienced by traffic utilizing Tracey's Road and was clearly not in favor of any additional traffic burden on it.

Discussion

The first question to be addressed is whether or not the Meittinis property is indeed a "farm"; and if so, are the Petitioners engaged in commercial agricultural activities at that location. Presuming an affirmative answer to both, are the activities of the Petitioners consistent with and permitted under that commercial agricultural use.

Section 101 of the General Provisions of the *Baltimore County Zoning Regulations* (BCZR) defines a "**farm**" as:

> Three acres or more of land, and any improvements thereon, used primarily for commercial agriculture, as defined in these regulations, or for residential and associated agricultural uses. The term does not include the following uses as defined in these regulations: limited-acreage wholesale flower farms, riding stables, landscape service, firewood operations and horticultural nursery businesses.

It defines "**commercial agriculture**" as

> The use of land, including ancillary structures and buildings, to cultivate plants or raise or keep animals for income, provided that the land also qualifies for farm or agricultural use assessment pursuant to § 8-209 of the Tax –Property Article of the Annotated Code of Maryland, as amended. Commercial agriculture includes the production of field crops, dairying, pasturage agriculture, horticulture, floriculture, apiculture, viticulture, forestry, animal and poultry husbandry, the operation of an equestrian center, horse breeding and horse training and also includes ancillary activities such as processing, packing, storing, financing, managing, marketing or distributing, provided that any such activity shall be secondary to the principal agricultural operations.

This Board is unanimously and clearly convinced by the testimony presented by the Petitioners and their expert witnesses that, even if taken in the light of Protestants' testimony, the

subject site is in fact a farm carrying on commercial agricultural activities. It is uncontroverted that the property is in excess of 3 acres, is located in an agricultural zone, and is taxed for agricultural use. Moreover, individual horses are kept for sale for shows and riding by the Petitioners, "lay up facilities," including pasturage, produce income for the farm, hay is grown on site and has been used for the animals on the farm; training and related activities for both horses and riders have resulted in at least eight sales of individual animals.

All parties have referred to, and the Board has reviewed, in connection with this matter, the case of *Marzullo v. Kahl*, 366 Md. 158, 783 A.2d 169 (2001). In that matter, both the Board of Appeals and the Court of Appeals of Maryland had agreed that the raising of snakes and reptiles did not qualify as commercial agriculture based on the determination that the subject animals were neither domestic animals nor was the site use for them land-based. Utilizing the same criteria in this matter, as pointed out by our own review and Petitioners' experts, the animals concerned here are certainly domestic in nature and the use related to them is definitely land-based.

Having determined that the subject site is indeed a farm carrying out commercial agricultural purposes, this Board also finds that, based upon the testimony presented by the Petitioners and their experts, that there is in fact an interrelationship of training and exercising of horses and riders and the responsiveness of the animals to a rider's use, commands and instructions. Moreover, we agree with Petitioners' experts that the focus of the land use in this instance is the keeping, raising, training, servicing and, in many cases, the selling of individual horses. We agree with the Petitioners and their experts that the training of the rider and the horse may be often virtually indistinguishable and that any lessons or other instruction given, for pay

or otherwise, by Petitioners is only an accessory activity and is tangential to the main purposes of the subject site as set forth above.

We also find that the "lay up" and utilizing by horses of the pastureland on the subject site are clearly examples of "pasturage agriculture" which is included in the zoning regulation definition of "commercial agriculture."

Finally, we reject the suggestion that the site is a "riding stable." This use is referable to the building or structure utilized and is not land-based. We are unconvinced by any substantive testimony to support this view of the property's use.

In sum, this Board finds that the subject property is in fact a "farm" under the BCZR and is in fact carrying out "commercial agriculture" as defined in the regulations. Additionally, the boarding, "lay up" of horses, as well as the training of riders, whether or not for compensation, are ancillary and secondary uses to the agricultural activities permitted "of right" as the result of our findings herein. The Board will therefore impose no conditions to these primary or ancillary and secondary uses.

Special Exceptions

Petitioners have requested special exceptions both as to the use of the property as a veterinarium and to be allowed to give horse-riding lessons.

This Board will address the requested special exceptions, first as it relates to the veterinarium. We do so as we do not find that the carrying out of the veterinarium activities falls within "of right" activities set forth above. The Board realizes that its findings as to the existence of a farm and the carrying out of commercial agriculture discussed above renders unnecessary any finding as to the granting or denial of a special exception for the horse raising, horse and horse /rider training, and related activities permitted "as right" as previously noted.

However, in an effort to provide a full and complete determination of all issues presented to us in the instant matter, the Board will, nevertheless, address itself to both original special exception requests.

Special exceptions are governed by § 502.1 of the BCZR. That section states:

> Before any Special Exception may be granted, it must appear that the use for which the Special Exception is requested will not:
>
> A. Be detrimental to the health, safety, or general welfare of the locality involved;
>
> B. Tend to create congestion in roads, streets or alleys therein;
>
> C. Create a potential hazard from fire, panic or other dangers;
>
> D. Tend to overcrowd land and cause undue concentration of population;
>
> E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences, or improvements;
>
> F. Interfere with adequate light and air; **[Bill No. 45-1982]**
>
> G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations; **[Bill No. 45-1982]**
>
> H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor **[Bill No. 45-1982]**
>
> I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C. 2, R.C. 4, R.C. 5 or R.C. 7 Zone. **[Bill No. 74-2000]**

As to the veterinarium, we find that, based upon the testimony of Dr. Meittinis, which was uncontroverted in any substantive way by Protestants, the requirements for the special exception have been met. We find that the requested activity will not be detrimental to health, safety or the general welfare of the locality; will not tend to create congestion in roads or related streets; will not create a potential hazard from fire or panic; will certainly not overcrowd land and cause undue concentration of population; will not interfere with adequate provisions for school, parks, water, sewerage, transportation or other public requirements; will not interfere with adequate light and air; will not be inconsistent with the purpose of the property's zoning classification or in any other way

be inconsistent with the spirit and intent of these regulations; will not be inconsistent with the impermeable surface and vegetative retention provisions of these regulations; and will not be detrimental to the environment and natural resources of the site and vicinity.

This Board finds the granting of a special exception for the training and other horse and rider activities to be more problematical. Based upon the testimony of Petitioners, their experts, and those testifying on behalf of the Protestants, we believe that there are very real issues connected with the use and overuse possibilities as they relate to Tracey's Road. This Board has no illusions as to the physical limitations of Tracey's Road. The testimony of the neighbors in the area, along with the very specific testimony of Steven Weber, clearly outlines the traffic related difficulties, which concern the Protestants. Additionally, we have a number of doubts and questions as to the comparisons and procedures utilized by Mr. Guckert in his traffic study. As such, we are not convinced that the special exception would not be detrimental to the health, safety and general welfare as the result of its tendency to create congestion in roads, streets, and alleys.

We would have, therefore, declined, had we been called upon to do so, to grant the special exception.

Conclusion

Therefore, this Board finds unanimously that the Meittinis property is indeed a farm carrying out commercial agricultural purposes. We further find that the boarding, "lay up" activities, pasturage, horse training, rider training, and other related activities are, in fact, permitted as set forth above. A special exception is granted to Dr. Meittinis for the purpose of operation of a veterinarium, but that for reasons stated above, a special exception request for a riding stable is denied, but is rendered moot by our determination of the existence of a farm and related commercial agricultural activities on site.

ORDER

THEREFORE, IT IS ORDERED, by the Baltimore County Board of Appeals, this 18th day of June, 2004, that this Board finds unanimously that the Meittinis property is indeed a farm carrying out commercial agricultural purposes; and we further find that the boarding, "lay up" activities, pasturage, horse training, rider training, and other related activities are, in fact, permitted as set forth above; and it is further

ORDERED that the Petition for Special Exception for the purpose of operation of a veterinarium be and is hereby **GRANTED;** and it is further

ORDERED that the special exception request for a riding stable is denied, but rendered **moot** by the determination of the existence of a farm and related commercial agricultural activities on site.

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

Lawrence S. Wescott

Charles L. Marks

Baltimore County Agriculture Advisory Board

May 6th, 2004 Board Meeting Minutes

7:00pm Baltimore County Courts Building, Zoning Hearing Room, Rm. 407, Towson

Board Members: David Greene, Harriet McGinnis, Pat Patterson, David Hayden, Dan Colhoun
Board Members Absent: None
Staff/Advisors: Wally Lippincott, Robert Hirsch, David Martin
Attendees: Trevor Wells, Kelly Wells, Stacey Waynick, Donald Waynick, Bruce E. Doak, John Gontrum, Anita Gerwis, Josie Galcyznski, J. Galczynski, Wayne Armacost, Melissa Foster, Joe Woolman, David Tayler, Arthur Tracey, Richard Tracey, Neil Zurowksi, Russ Dickens, Kenneth Huber, Sherlock Gillete, Susan Yoder, John Yoder

1. Approval of March 16, 2004 meeting minutes.

   Amendments to minutes

   Item 2.A.1. – Motion made by Dan Colhoun was worded "Do not recommend approval of this request to zoning, until such time as there is an actual farm operation that justifies a tenant house on the property

9

Pd NO

Motion: *Dan Colhoun, approve minutes as amended.*
Second: *Harriet McGinnis, Passed 4 to 0*

2. Old Business
   A. County Imminently Threatened Farmland protection program
      1. Hale property

         When the Land Acquisition office received the draft Deed of Conservation Easement back from the Hale's attorney, the location of a 2.1 acre exclusion from the easement was different from where the County thought it was desired. The Ag board was asked to approve or disapprove of the new location. Due to the imminently threatened nature of this property, materials were hand-delivered to Ag Board members, and their comments and votes were requested via telephone. Some Ag Board members had questions that weren't answered by the materials, and so the issue was discussed again and voted upon at the Ag Board Meeting on 5-6-04.

         Staff explained that an area larger than 2.1 acres was drawn on the map to show where a 2.1 acre lot would be acceptable to the Ag Board. This allows flexibility for the Hale family, and will ensure the area they intended to be excluded is available for exclusion. David Greene called for a vote to ratify the telephone poll.

Motion: Dan Colhoun. Approve new exclusion location.
Second: Pat Patterson. 3:0, Harriet McGinnis recused herself because the Hales are neighbors to her.

3. New Business

A. MALPF Easement Applications: **Discussion**
Staff will prepare to take the Ag Board to see about half of the MALPF applicant properties in June this year, to get a head start on the ranking process.

B. MALPF Easement Amendments: **Recommendation to MALPF Board of Trustees**

1. Easement Overlay
Arthur and Richard Tracey
20815 Middletown Road, 299 acres

Tracey is requesting approval of overlay easements that will apply to 64 acres of the 299-acre MALPF easement. The majority of those 64 acres will be overlain with Forest Buffer and Forest Conservation Easements.

Mr. Woolman, Mr Richard Tracey, Mr. Arthur Tracey and Mr Zurowski spoke for the request. Mr. Tracey has farmed the property since 1951. The goals of the request are to preserve the farmland and develop a portion of less used farmland to support his agricultural operation. They see the conflict here arising out of the process – in that the agricultural easement was recorded before the development plan was approved and now to get the development plan approval they need the environmental easement overlays. They suggested that if the development had occurred first, this conflict would not have occurred.

In the opinion of the Tracey team, the requested overlays will cause minimal impact to the agricultural operation. The overlays will cover 7.94 acres of land currently used for agricultural production. The rest of the 64 acres of land to be covered by the environmental easements are not currently used for agricultural production

There was discussion about loss of agricultural easement land to widening of county roads.

Potential child lot locations were discussed. Staff stated that if environmental easements go on the forests, the child lots would have to go in the ag fields. The Traceys said they may not be applying for child lots, because the developer will set aside house lots for their children

The ag board stated that the environmental and agricultural easements are both perpetual. The environmental overlays would preclude productive agricultural use of the land the overlays apply to Timber harvests are not allowed in the Stream Buffer Easements, and

are allowed only with DEPRM approval in the Forest Conservation Easements The Board was concerned about setting a bad precedent: the overlaying of these particular kinds of easements has never been done before in Baltimore County, and if the Traceys are allowed to do it, others will in the future.

Motion: Dan Colhoun. Recommend the overlay application be denied because it would restrict the long-term agricultural use of the farm.
Second: David Hayden. Passed, 4:0

2. Tenant Trailer
   Hickory Hill Farm, Wayne Armacost
   17011 Pleasant Meadow Road, 342 acres

   Hickory Hill Farm wants to locate a 14' x 42' trailer on their dairy farm for use by Melissa Foster, Hickory Hill's assistant herdsperson. She is a key person in their dairy operation. All other tenant dwellings on the property are currently occupied. The trailer will be located next to the dairy barn and behind an existing dwelling.

   The tenant farmer, Melissa Foster, explained her role on the farm. She does herd health, looking after the well-being of the cows, and does on the farm veterinary work, and works extensively with the Spanish-speaking laborers.

   The owner, Wayne Armacost, stated Melissa has worked on the family dairy farm for longer than any of the other workers, and is now the top person below Mr Armacost in the dairy part of the operation

   Board members asked if the proposed location of the tenant trailer could be changed to avoid impacting the scenic view from Black Rock Road. Mr. Armacost was agreeable.

   Mr. Armacost mentioned that he is proposing to hook the new trailer to the septic and well of the existing house The septic and well were upgraded recently.

Motion: Dan Colhoun. Motion to recommend approval of tenant trailer with revised location as discussed.
Second: Pat Patterson. 4:0 approved.

C. County Easement Applications: **Discussion**

   Staff will prepare to take the Ag Board to see about half of the Baltimore County applicant properties in June this year, to get a head start on the ranking process.

D. County Easements: Interpretation of Permitted Uses. **Recommendation to Zoning Office and Landowner**

   1. Riding Stable and Polo Training
      Trevor and Kelly Wells

21224 Middletown Road, 53 acres

The Wells property is subject to a Baltimore County Agricultural Easement. The Wells have been involved in a Special Exception Request for a Riding Stable with the zoning office. In the course of the request, the County has requested a relocation of the driveway. Agricultural Land Preservation Program staff have also raised issues in the course of the review. The Board is asked to recommend whether the proposed use is in conformance with the County Agricultural Easement.

Kelly and Trevor Wells and Mr. John Gontrum presented the Wells' plans and situation. Lessons would be used to put the horses in polo game situations Lesson income would be ancillary to main income source, which is the resale of trained polo horses. The indoor arena is necessary for the horses to play polo in the winter, and year round training is mandatory for successful sales. Hours the farm will be open for boarders will be from 10am to 8pm, Friday through Wednesday. There will be four informal polo scrimmages per year Scrimmages would take place indoors, and involve two teams of three riders and one mounted referee.

The driveway is being moved to increase the safety of moving horse trailers and farm equipment in and out of the property The entrance location they are considering will maximize the site distances.

Some of the Wells' neighbors were present, and they explained their concerns with the driveway, riding lessons, and riding arena, and the Wells' horse operation in general. The concerns included, but were not limited to: due process violation because they were not given adequate time to review plans before the Ag Board meeting, hazard of having a driveway anywhere on the Wells property onto Middletown Road, continued use of the existing lane after a new driveway is constructed, and questions about the protection of soil and water resources through a soil conservation plan. It was requested that the board table the issue until they had adequate plans and time to review them.

The board responded that the meeting is not the zoning hearing, and that the Ag easement controls the uses and limitations provided for under the easement.

Motion: David Hayden, Approve the concept of indoor riding arena, and approve concept of driveway according to determination of the transportation authority. Second: Dan Colhoun. 4:0 approved.

2. Processing and Sale of Cheese
   Land of Promise Farm – Mr. and Mrs. John Yoder
   4603 Long Greene Road, 52 acres

   The Yoders run a dairy operation on their property, which is subject to a Baltimore County Agricultural Easement. They are

proposing to produce cheese solely from the milk produced on their farm. The easement language is, unfortunately, unclear on whether cheese production and sale is permitted. The easement permits "primary processing" of agricultural products on the eased land.

Susan Yoder described the planned cheese making operation. The facilities will be housed in a proposed 30' x 52' pole barn, and milk will be piped directly from the cows to the cheese facility. They currently have 30 cows, with calves and heifers. Mrs. Yoder plans to build agricultural education into the facility, improving their existing farm tours by making space for 12 students to examine the cheese facility from the inside. Mrs Yoder stated she has been in contact with Baltimore County high school teachers about lessons at the proposed cheese facility, and they expressed interest. Planned cheese production is 1,500 lbs of cheese per month, requiring 15,000 lbs of milk per month.

Board members asked about what the Yoders plan to do with their excess whey and milk liquids. Mrs Yoder said it will be fed to the cows, and made into ricotta and other cheeses. The Yoders stated they have enough animals to refeed the whey.

Board members asked what they would do if they step up cheese production. Susan Yoder answered that they will only produce 1,500 lbs of cheese each month They don't have room for facilities to do more than that. They also will not take milk from other operations, and they don't want to make their operation larger than they already are. When asked if they have an financial plan to recoup their investment in equipment, and if they meet State health requirements, Mrs Yoder said yes.

The Board and staff explained the easement language issue of "primary processing." The interpretation of the language needed to be clear to avoid any future interpretation that could jeopardize the Yoders investment.

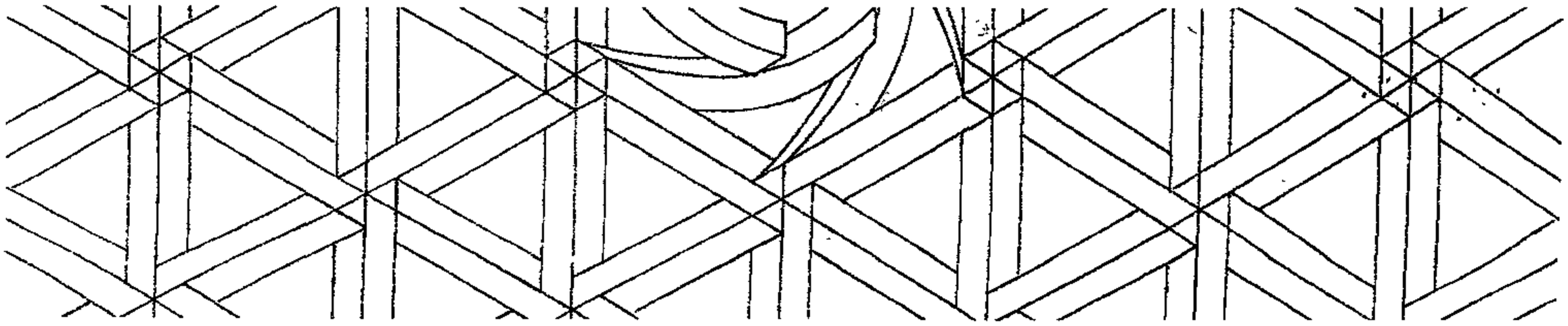
Motion: Dan Colhoun, move to approve their request.
Second: Pat Patterson, 4:0 approved.

E. County Program. **Discussion**
   1. Project Status Report
      a. Imminently Threatened Farmland Program
         i) Patrick Rogers

            Mr. Rogers did not submit application materials for this meeting.

2. County Budget: Executive's proposed budget.

3. Federal Farm and Ranch Lands Protection Program (FRPP).
   Application submitted to state on 4/27/04 deadline. We were informed of the application deadline on 4/5/04.



3. Land Evaluation and Site Assessment (LESA) for ranking easement sale properties.

Discuss differences between LESA used for Federal FRPP program and LESA used for Baltimore County Agricultural Land Preservation Program. Staff recommends we continue to use Baltimore County LESA.

The Board requested a list of differences between the two ranking systems, so they may make a decision at a future meeting.

F. Zoning Items - **Action: Recommendation to Zoning Office**

1. Farmer's Road-Side Stand
Huber's Produce Farm, Kenneth P. Huber
12431 Bel Air Road, zoned RC-5

The Huber family has operated a produce stand in Perry Hall for forty years. The property the stand is located on is being sold, and Mr. Huber needs to find a new place to locate his business. Mr. Huber leases about 99 acres in Kingsville and Perry Hall and grows his produce there. He grows over 85% of the produce sold at his produce stand.

Mr Huber has located a property (12431 Bel Air Road) in Kingsville he would like to purchase and relocate his produce stand business to. Farmer's Road-Side Stands are permitted in RC-5 zones as a right with a use permit. The zoning office has asked that the Ag Board review Mr. Huber's operation and application to see that it meets the requirements for the use permit. Mr. Huber has indicated interest in building a pole barn and greenhouse on the land. He also intends to grow crops such as herbs and strawberries on the purchased property.

The zoning code asks the Ag Board to determine if the applicant produces, at operations he runs, at least 50% of the produce sold at the stand. David Martin investigated this for the Ag Board, and reported that almost all the produce sold at the stand is produced by Kenneth Huber.

Mr Huber stated that he grows his own flowers and produce. The site he has chosen for the Stand could be used to grow a small amount of cherry tomatoes or something like that. He plans to purchase the site. Mr Huber is the third generation in his family to farm. Mr. Huber has spoken to a few of the new property's neighbors, and has not heard any serious concerns from them.

Motion: Dan Colhoun. Move to recommend approval to the zoning office.
Second: David Hayden. 4:0 approved.

2. Subdivision for Agricultural Protection and Preservation Purposes
Gillette, Sherlock

Pet 104

IN RE: PETITION FOR SPECIAL EXCEPTION NW/S Caves Road at end of private drive, 1600' NE of Caveswood Lane (2722 Caves Road) 4th Election District 3rd Council District Howard D. Wolfe, Jr. Petitioner	* * * * * *	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY Case No. 02-452-X

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Exception filed by the owner of the subject property, Howard D. Wolfe, Jr., through his attorney, Robert A. Hoffman, Esquire. The Petitioner requests a special exception to utilize a portion of the subject property for a riding stable, pursuant to Section 1A01.2.C.21 of the Baltimore County Zoning Regulations (B.C.Z.R.). The subject property and requested relief are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioner's Exhibit 1.

Appearing at the requisite public hearing on behalf of the Petition were Howard D. Wolfe, Jr., property owner, Bruce E. Doak, the Registered Property Line Surveyor who prepared the site plan, and Patricia A. Malone, Esquire and Robert A. Hoffman, Esquire, attorneys for the Petitioner. Also appearing in support of the request were Julie Wright, a horsewoman/instructor who utilizes the subject property, and Jack Dillon, who appeared on behalf of the Valleys Planning Council. There were no Protestants or other interested persons present.

Testimony and evidence offered revealed that the subject property is an irregular shaped parcel located on the northwest side of Caves Road at the end of a private driveway, just east of Caveswood Lane in Owings Mills. The property is comprised of four separate parcels, which contain a combined gross area of 162.49 acres, more or less, zoned R.C.2. In addition to the subject property, Mr. Wolfe also owns or has interest in other properties in the vicinity. In fact, Mr. Wolfe resides nearby on Caveswood Lane. In total, he controls approximately 400 acres of land in the area, much of which is used for agricultural purposes and is under easement with the Maryland Environmental Trust.

The subject of the instant Petition relates to a proposed riding stable on a portion of the subject property. In this regard, there are three areas of the property that are generally utilized for this purpose and are more particularly shown on the site plan as shaded Areas 1, 2 and 3. Collectively, these areas contain barns and riding arenas used in connection with the riding stable.

Testimony was received from Ms. Wright in this regard. Ms. Wright is a riding instructor who teaches riding lessons to "serious riders" on the subject property. Most of the riders are children of high school age, or slightly younger, who are interested in improving their horsemanship. Ms. Wright teaches fox hunt riding as well as the other disciplines related to horse shows. Generally, the riding arenas are utilized for these lessons.

Photographs were submitted which show that the property and buildings are attractively maintained. In this regard, a letter from Mr. Dillon, President of the Valleys Planning Council (VPC) describes the property. Apparently, Mr. Wolfe acquired the property approximately 7 years ago and has been in the process of rehabilitating same since that time. Mr. Dillon's letter notes that Mr. Wolfe has created a viable horse and grain farm on the property as well as a wildlife preserve and that the VPC applauds the efforts Mr. Wolfe has made to improve the property and retain same in agricultural uses consistent with the area.

Special exception relief is requested to permit a riding stable in the R.C.2 zone. A riding stable is defined in Section 101 of the B.C.Z.R. as "A building where horses are boarded or kept for hire." Counsel for the Petitioner noted at the hearing that the definition is apparently limited to only aboveground, man-made improvements (i.e., "buildings") and not the land, per se. Thus, a question arose as to the proper area of the special exception and whether same should be restricted to only the barns where the horses are stabled.

Although such an interpretation of the B.C.Z.R. is supported by the literal reading of the definition of riding stable in Section 101, I do not believe that the County Council intended to be so precise. Obviously, much of the activity associated with the keeping of horses on the property occurs on the land immediately adjacent to the buildings and within the riding arenas. In my judgment, the shaded areas as originally shown on the site plan would be the appropriate areas of the special exception. Given the totality

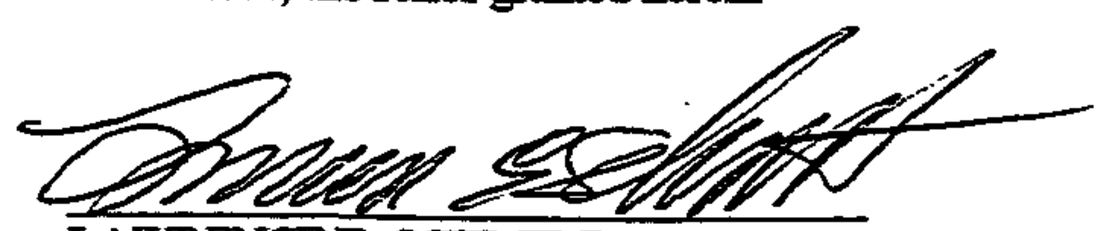
of the circumstances surrounding the operation, I believe that the barns, riding arenas, and pasture/lawn area around same are properly included within the area of the special exception.

Based upon the undisputed testimony and evidence offered, I am persuaded to grant the Petition for Special Exception. It is clear that the proposed use is not detrimental to the health, safety or general welfare of the locale. I share the sentiments set out in Mr. Dillon's letter that Mr. Wolfe's efforts in rehabilitating and using the subject property as proposed are to be applauded. It was indicated at the hearing that Mr. Wolfe may have infrequent competitions on the property for students and other horsepersons. Indeed, one of the riding arenas is lighted; however, the lights are used only in the winter hours and are always turned off by 7:00 PM. Additionally, there is a loudspeaker system, which is used to play music (opera) while the students are taking lessons, or during a horse event; however, the system is not used during late evening hours. Mr. Wolfe's efforts to monitor the lights and noise associated with the subject operation should continue; however, in view of the size of the property and character of the neighborhood, I decline to enter any set restriction.

Pursuant to the advertisement, posting of the property and public hearing on this Petition held, and for the reasons set forth above, the relief requested shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 10th day of July, 2002 that the Petition for Special Exception to utilize a portion of the subject property for a riding stable, pursuant to Section 1A01.2.C.21 of the Baltimore County Zoning Regulations (B.C.Z.R.), in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restriction:

1) The Petitioner may apply for his use permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at his own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.



LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

IN RE: PETITION FOR SPECIAL EXCEPTION
W/S Bird River Beach Road, 2500'
N of Ebenezer Road, 480' SW of
its intersection w/a private road
15th Election District
5th Councilmanic District

Estate of A. V. Williams, et al
Petitioners

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 93-88-X
*

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Deputy Zoning Commissioner as a Petition for Special Exception filed by the legal owners of the subject property, the Estate of A. V. Williams, by William G. Zimmermann, Albert H. Williams, and Jennie L. Fowlkes, Personal Representatives, and the Contract Lessees, Thomas and Linda Shifflett. The Petitioners request a special exception to use the subject property, zoned R.C. 2, for a riding stable, pursuant to Section 1A01.2.C.17 of the Baltimore County Zoning Regulations (B.C.Z.R.), as more particularly described on Petitioner's Exhibit 1.

Appearing on behalf of the Petition were Bruce E. Doak, Registered Property Line Surveyor, Thomas and Linda Shifflett, and Brandon and Donald Wolfe. Appearing as a Protestant in the matter was William Sunderland, nearby property owner.

Testimony and evidence revealed that the subject property, located between Bird River Beach Road and Stumps Lane, consists of 4.03 acres, more or less, zoned R.C. 2, and is improved with a riding stable, parking area, a private drive, and six wood frame barns as depicted on Petitioner's Exhibit 1. The Petitioners are desirous of legalizing the use of the subject property as a riding stable. Testimony indicated that Mr. & Mrs. Thomas Shifflett have operated the subject riding stable for the past 8 years and that they lease the adjacent 63 acres surrounding this property

for use as pastureland and riding area. Mrs. Shifflett testified that the hours of operation are daylight only and that there are no lights on the premises. The Petitioners further testified that there currently exists 24 horses on the subject property, 9 of which belong to the Petitioners themselves. The other horses belong to individuals who board their horses at this location and visit from time to time to ride and feed their horses. The Petitioners testified they plan to expand their operation to board up to 30 horses, but have no intention of boarding more than 30 horses at any one time. Testimony indicated the riding stable is for the owners of the horses only, or their friends, and that no member of the public is permitted to ride horses at this location, unless their horse is boarded at this riding stable. The Petitioners further testified as to improvements made to the subject property. Testimony indicated that when the Shiffletts took over the operation, the property was in a poor state of disrepair. The Petitioners testified they bush-hogged and mowed the property and continue to maintain it in a neat and orderly manner. They also spent considerable sums of money renovating the barns that are situated on the site.

William Sunderland appeared and testified in opposition to the Petitioners' request. Mr. Sunderland resides on approximately 4 acres located at the intersection of Bird River Beach Road and Ebenezer Road, known as 6602 Ebenezer Road. Mr. Sunderland testified that he is 81 years of age and has lived there for the past 56 years. Mr. Sunderland testified that he has experienced problems with horseback riders leaving the site of the riding stable and riding their horses along Bird River Beach Road and Ebenezer Road. Testimony at the hearing revealed that many of the horse owners will take their horses to the nearby quarry and other

farms to ride. Mr. Sunderland testified that as the horses travel to other locations in the community they have on a number of occasions taken a short-cut across his property. In an attempt to discourage the horses from crossing his property, Mr. Sunderland erected a steel cable across his property. In addition, Mr. Sunderland testified about the number of occasions he has found horse dung on his property and along Bird River Beach Road. He also testified that he has seen horse dung on Ebenezer Road. Mr. Sunderland was quick to point out that failure to remove this dung is a blatant violation of Section 6-206 of the Baltimore County Code. That Section reads as follows: "The owner of every animal shall be responsible for the removal of excreta deposited by his animal on public byways, recreational areas, or private property." Mr Sunderland testified that the horseback riders failed to clean up after their horses pursuant to the requirements of Section 6-206. Mr. Sunderland agreed in his testimony that the Petitioners operate a first-class establishment at the subject location. He has no qualms with the operation itself, but objects to the problems he has encountered with the riders travelling by his property. Testimony indicated that the Petitioners have repeatedly asked their boarders to avoid Mr. Sunderland's property when they are riding and they have been doing so; however, Mr. Sunderland is concerned that once this hearing is granted, the riders will go back to trespassing upon his property.

While Mr. Sunderland was concerned about the horse dung found along Bird River Beach Road and Ebenezer Road, the Petitioners stated that there are other horses kept in the community and that some of the dung seen on the streets could have been from those horses and not their own. However, the evidence is clear that the majority of horses kept in the

area are kept at their riding stable. Further, the Petitioners have testified that they intend to expand their operation to 30 horses. Given the fact that the Petitioners admit that their riders use these streets as their routine travelway to ride their horses, I find that the dung found on these streets is associated with the horses boarded at their stable. Therefore, it shall be the responsibility of the Petitioners, the owners of the riding stable, to ensure the proper cleanup and removal of all horse dung along Bird River Beach Road and that portion of Ebenezer Road which fronts Mr. Sunderland's property, regardless of where that dung originated from. It would be impossible to distinguish the dung from one horse to another; however, because of the commercial operation for which the Petitioners seek approval, I find it shall be their responsibility for the cleanup of this dung regardless of where it came from.

It is clear that the B.C.Z.R. permits the use proposed in an R.C.2 zone by special exception. It is equally clear that the proposed use would not be detrimental to the primary uses in the vicinity. Therefore, it must be determined if the conditions as delineated in Section 502.1 are satisfied.

The Petitioner had the burden of adducing testimony and evidence which would show that the proposed use met the prescribed standards and requirements set forth in Section 502.1 of the B.C.Z.R. The Petitioner has shown that the proposed use would be conducted without real detriment to the neighborhood and would not adversely affect the public interest. The facts and circumstances do not show that the proposed use at the particular location described by Petitioner's Exhibit 1 would have any adverse impact above and beyond that inherently associated with such a spe-

cial exception use, irrespective of its location within the zone. Schultz v. Pritts, 432 A.2d 1319 (1981).

The proposed use will not be detrimental to the health, safety, or general welfare of the locality, nor tend to create congestion in roads, streets, or alleys therein, nor be inconsistent with the purposes of the property's zoning classification, nor in any other way be inconsistent with the spirit and intent of the B.C.Z.R.

After reviewing all of the testimony and evidence presented, it appears that the special exception should be granted with certain restrictions as more fully described below.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested in the special exception should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 23rd day of October, 1992 that the Petition for Special Exception to use the subject property, zoned R.C. 2, for a riding stable, pursuant to Section 1A01.2.C.17 of the Baltimore County Zoning Regulations (B.C.Z.R.), in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restrictions:

1) The Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition.

2) There shall be no signs associated with the Petitioners operation located anywhere other than on the subject 4.03 acres of land owned by the Petitioners.

3) The Petitioners shall be limited to boarding only 30 horses. Any increase over and above the 30 horses will require another public hearing to determine the appropriateness of any expansion over 30 horses.

4) Pursuant to Section 6-206 of the Baltimore County Code, all horse owners/riders shall be responsible for the cleanup and removal of any dung left behind by their particular horse. This shall apply no matter where the rider is riding his/her horse.

5) The Petitioners, Thomas and Linda Shifflett, and their successors and/or assigns, shall be responsible for the daily removal of any and all horse dung left along Bird River Beach Road and Ebenezer Road, where it passes in front of Mr. Sunderland's property. The Shifflett's, their successors and/or assigns, shall be responsible for the cleanup of this dung on a daily basis regardless of whether or not the dung was left by one of the horses boarded at their riding stable or another horse in the community. This will eliminate any confusion regarding the cleanup of horse dung along this road and along the Sunderland property. Failure to abide by this provision shall consitute a zoning violation and subject the Petitioners to prosecution in the District Court of Maryland by the Zoning Enforcement Division of the Zoning Administration and Development Management Office.

6) The Petitioners, Linda and Thomas Shifflett, and their successors and/or assigns, shall ensure that any and all riders associated with their riding stable do not ride their horses on the side of Bird River Beach Road nearest to Mr. Sunderland's property. They shall also ensure that all riders associated with the subject riding stable do not ride on the side of Ebenezer Road which is nearest to and adjacent to Mr. Sunderland's property. Failure to abide by this provision shall consitute a zoning violation and subject the Petitioners to prosecution in the District Court of Maryland by the Zoning Enforcement Division of the Zoning Administration and Development Management Office.

7) The operation of this riding stable shall be limited to daylight hours only and there shall be no lighting of the premises other than what is necessary to operate the barns and stable on the subject site.

8) When applying for any permits, the site plan filed must reference this case and set forth and address the restrictions of this Order.

TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs

Case Entry/Update Mode . . . . . : CHANGE
Format . . . . . : CASREC File . . . . . : PDLV0001

Dt Rec: 9172004 Intake: ALTMEYER, J Act: _____ Case #: 04-8256
Insp: ALTMEYER, J Insp Grp: ENF Insp Area: 17 Tax Acct: 1600001503
Address: 21225 ___ MIDDLETOWN RD _____ Apt #: ____ Zip: _____
Owner: _____

Problem Descript.: SETBACKS ARE INCORRECT

Complainant Name (Last): GALCZYNSKI (First): JOSIE
Complainant Addr: _____ ___ __ _____ __ _____
Complainant City: _____ State: __ Zip: _____
Complainant Phone (H): 4109253530 (W): _____
Date of Reinspection: _____ Date Closed: 9172004 Delete Code (P): P

F3=Exit F5=Refresh F6=Select format
F9=Insert F10=Entry F11=Change

Ret No
11

Case Entry/Update Mode . . . . . : CHANGE

Format . . . . : CASREC File . . . . . : PDLV0001

Notes: 09/17/04 I SPOKE WITH THE OWNER AFTER A LENGTHY CONVERSATION WITH THE COMPL. AT OUR OFFICE. THE FIRM OF GERHOLD, CROSS, & ETZEL WAS HIRED BY THE KELLEYS' TO PRODUCE A PLOT PLAN OF THEIR PROP. & ACCESSORY STRUCTURE POLE BLDG. BRUCE DOAK, THE SURVEYOR, BROUGHT A COPY INTO OUR OFFICE THE SAME AFTERNOON. I HAD A CONVERSATION W/MR. DOAK CONCERNING THE ISSUE AT HAND CONCERNING THE SETBACK ISSUE. HE STATED THE BLDG. LOCATION IS IN ACCORDANCE W/THE PLOT PLAN. ON FRIDAY 09/17/04 I CALLED THE COMPL. & TOLD HER OF THE LOCATION SURVEY & PLOT PLAN & STATED WE HAD NO VIO. BASED ON THE INFO AT HAND. MRS GALCZYNSKI WAS ALSO TOLD THAT IF SHE DISPUTED THE KELLYS' SUVEYORS PLAN, SHE WOULD HAVE TO HIRE A SURVEYOR OF HER CHOOSING TO SSURVEY HER PROP. LINE. SHE STATED THAT IT WOULD NOT BE NECCESSARY. CLOSE CASE. J.ALTMEYER/KH.***

F3=Exit F5=Refresh F6=Select format

F9=Insert F10=Entry F11=Change

BALTIMORE COUNTY, MARYLAND

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT

TOWSON, MARYLAND 21204

TIMOTHY M. KOTROCO
DIRECTOR

JOHN R. REISINGER
BUILDINGS ENGINEER

BUILDING PERMIT

PERMIT #: B563034 CONTROL #: MR DIST: 06 PREC: 01
DATE ISSUED: 07/15/2004 TAX ACCOUNT #: 1600001503 CLASS: 05

PLANS: CONST 00 PLOT 1 R PLAT 0 DATA 0 ELEC YES PLUM NO
LOCATION: 21225 MIDDLETOWN RD
SUBDIVISION: 1920 N WEST RURL RD

OWNERS INFORMATION
NAME: WELLS, TREVOR & KELLY
ADDR: 21225 MIDDLETOWN ROAD, FREELAND MD 21053-9747

THIS PERMIT EXPIRES ONE YEAR FROM DATE OF ISSUE

TENANT:
CONTR: OWNER
ENGNR:
SELLR:
WORK: CONSTRUCT AN ADDITION ONTO EXISTING BARN ON REAR PROPERTY.80'X260'X28'=18,800SF.ACCESSORY LETTER ATTACHED.SITE IS A FARM PER APPLICANT. SEALED CONST DRAWINGS ON SITE FOR INSPECTOR WAIVE PLANS PER MS

BLDG. CODE:
RESIDENTIAL CATEGORY: OWNERSHIP: PRIVATELY OWNED

PROPOSED USE: SFD/HORSE FARM & POLE BARN ADDITION
EXISTING USE: SFD/HORSE FARM

TYPE OF IMPRV: NEW BUILDING CONTRUCTION
USE: OTHER - RESIDENTIAL
FOUNDATION: BASEMENT:
SEWAGE: PRIV. EXISTS WATER: PRIV. EXISTS

Ex No 12

LOT SIZE AND SETBACKS

SIZE: 52.750AC
FRONT STREET:
SIDE STREET:
FRONT SETB: NC
SIDE SETB: 110/300+
SIDE STR SETB:
REAR SETB 100+

PLEASE REFER TO PERMIT NUMBER WHEN MAKING INQUIRIES.

9/20/04

TO: Carroll Holver

RE: Wells Property

Concerns: We are opposed because:

1. We believe the Wells will build a paddock adjacent to Wescott and Waynick homes. This will cause noise, disturb our peace, flies, odors and may be a health hazard.
2. Proposed hours are too late. Additional traffic, noise, lights, intrusion of privacy.
3. We believe this will be a business and commercial enterprise. Kelly said, "I have to go to work" to me. This will not be an agricultural endeavor, but instead work as they are taking in money to compensate for polo training.
4. Will they be closed on Sunday?
5. A safety hazard. Horses loose on numerous occasions. They previously damaged our property... tore down part of fence, broke part of deck.
6. What will the horse droppings due to all of our well water?

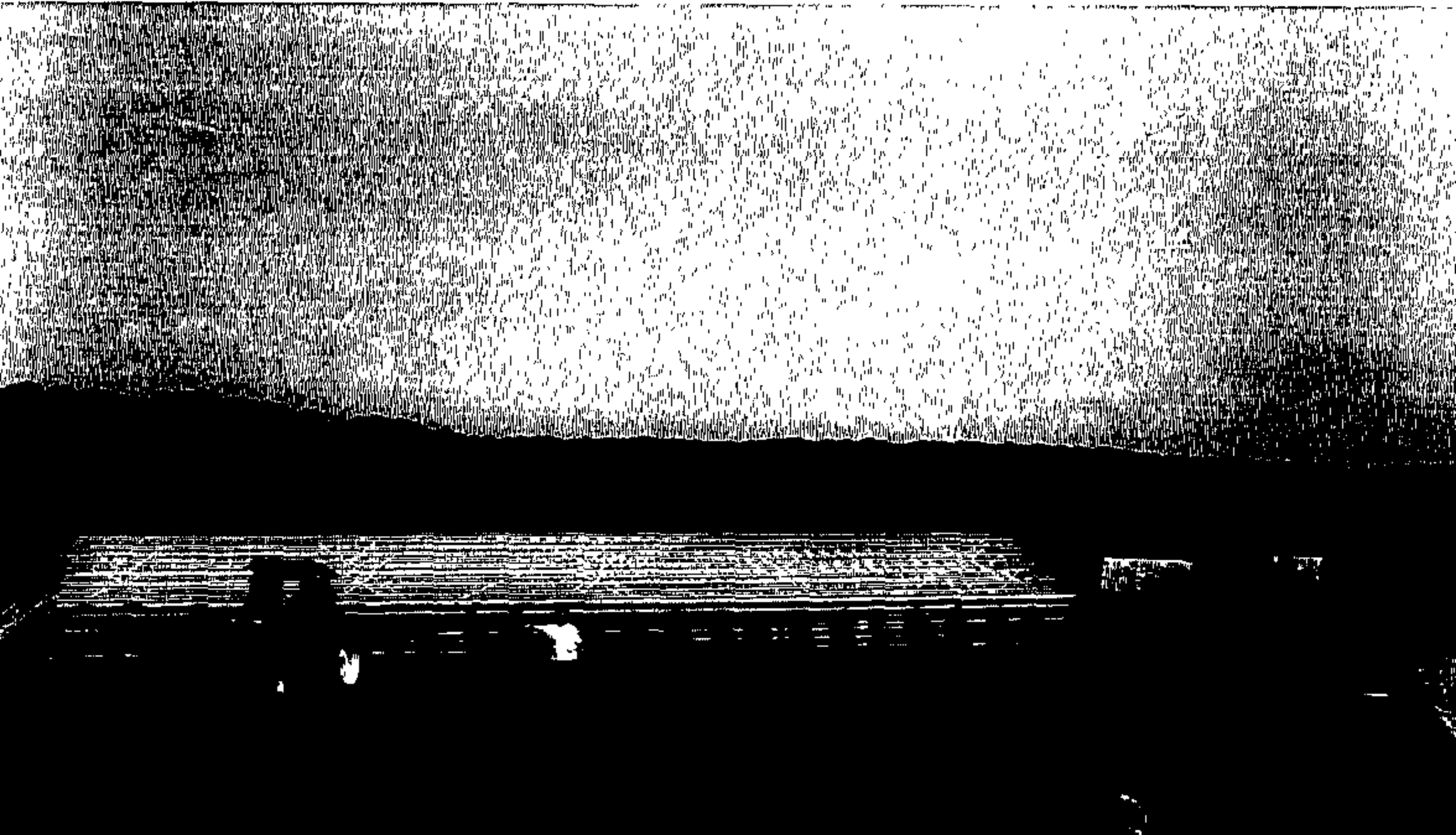
Dayan and Meredith Wescott
21301 Middletown Road
Home: 410-343-1622
Dayan Work: 410-393-0028

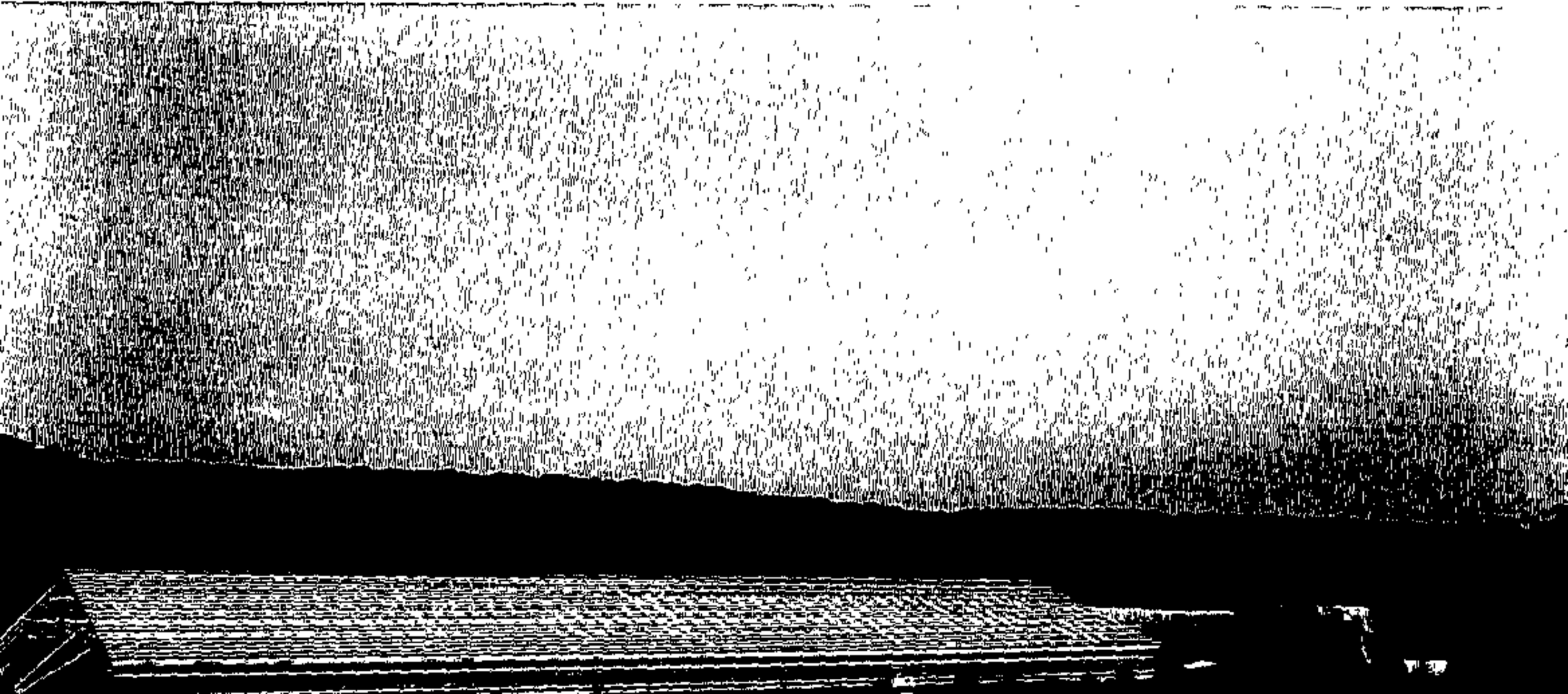
Dayan Wescott
Meredith Wescott

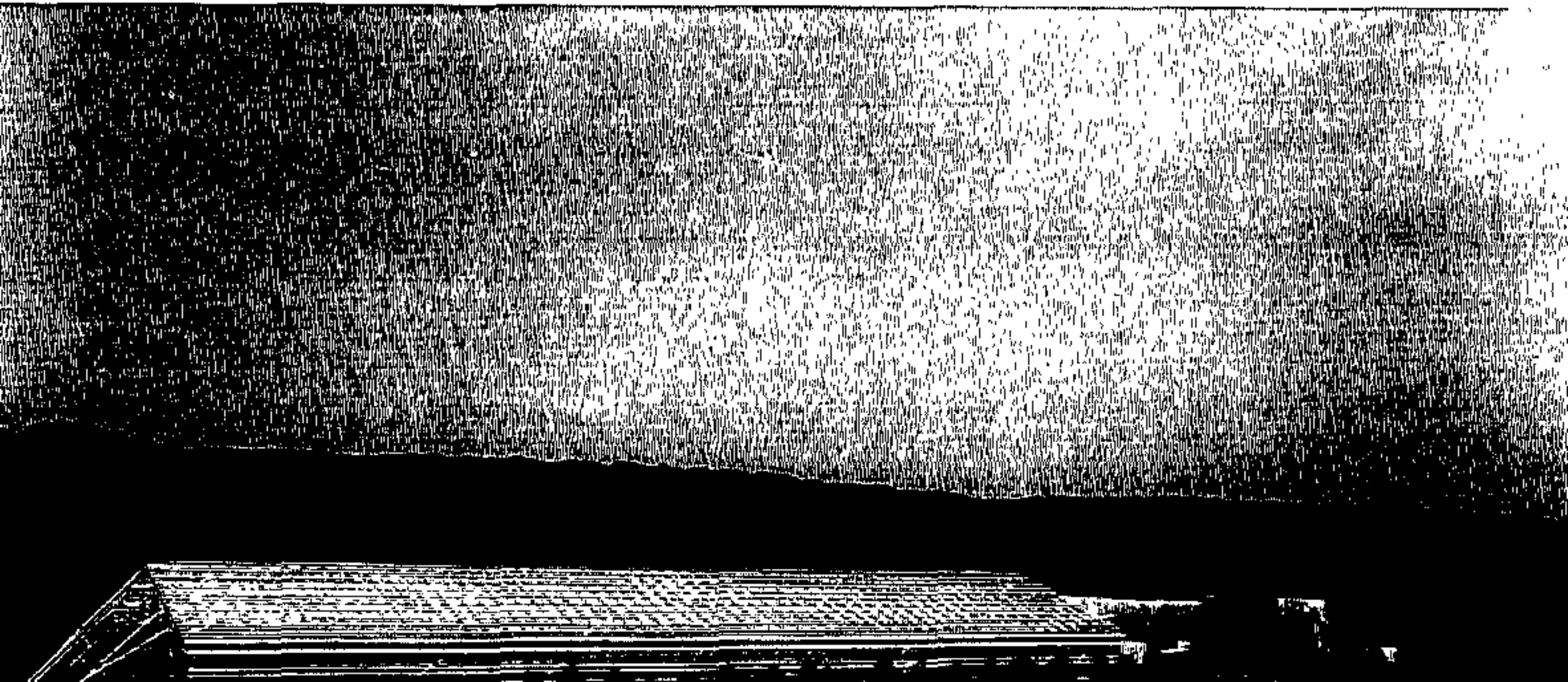
Certainly No!

997

Prof ZA



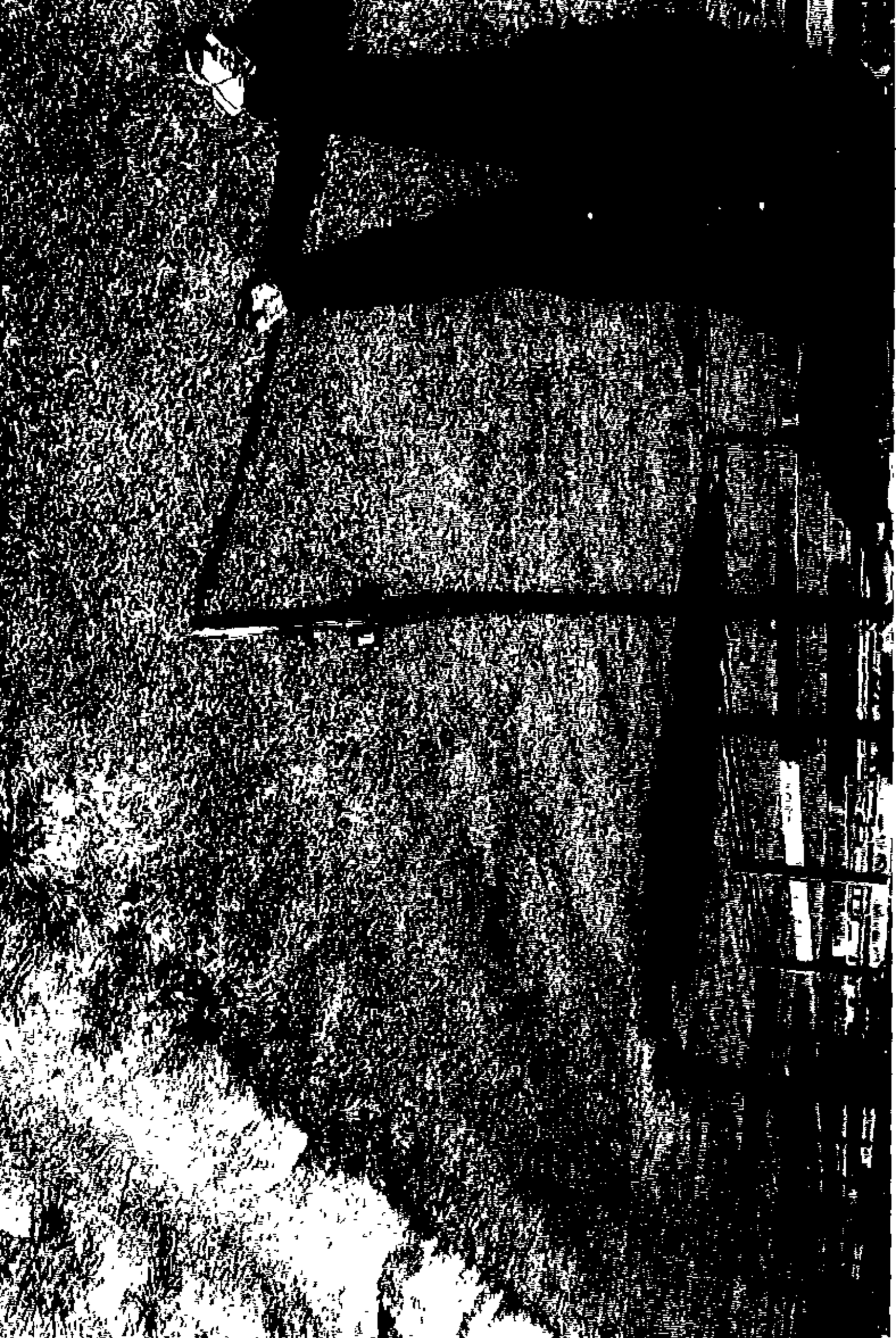




LOOKING WEST . 144

DRIVE TOWARDS MIDDLETOWN RD

3/13/04



DAMAGED PROPERTY MARKER
9/19/04

Pat

ZG

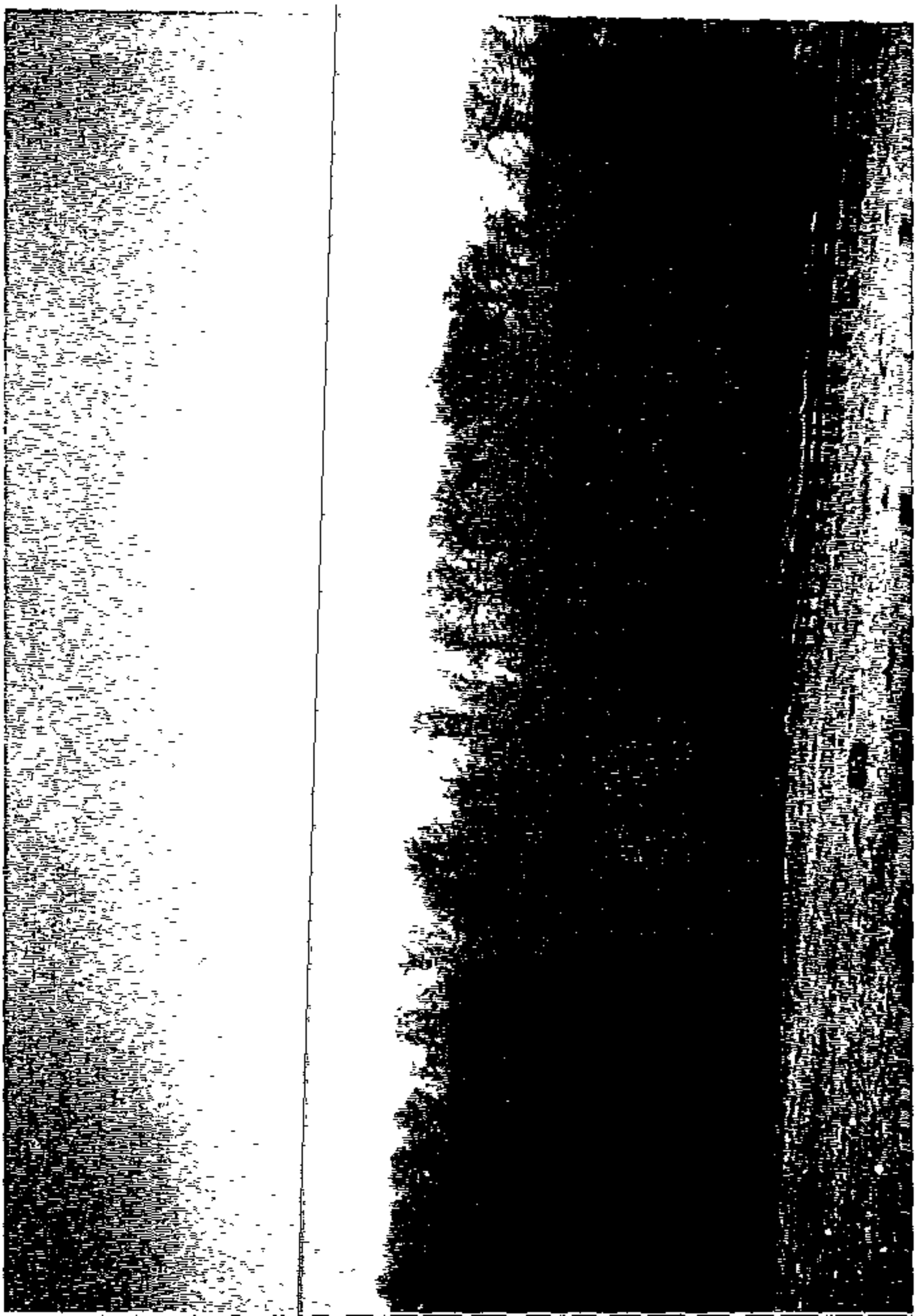
DAMAGED FENCE POST

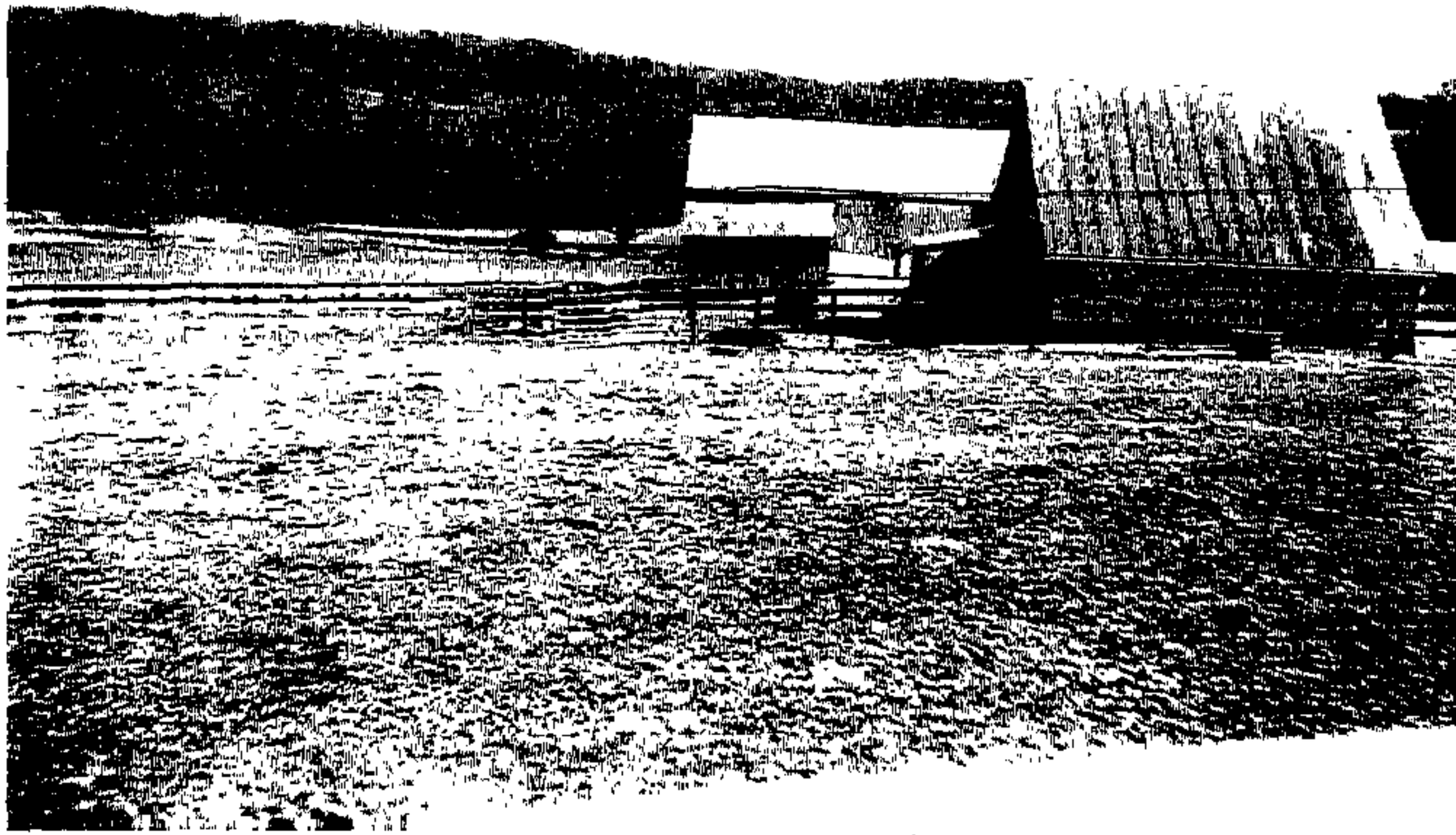
PROPERTY MARKER

9/19/04

Bud 2/4

VIEW FROM BEHIND BARN
WHERE BLDG GOES 3/13/04





VIEW FROM FENCE LINE 3/13/04

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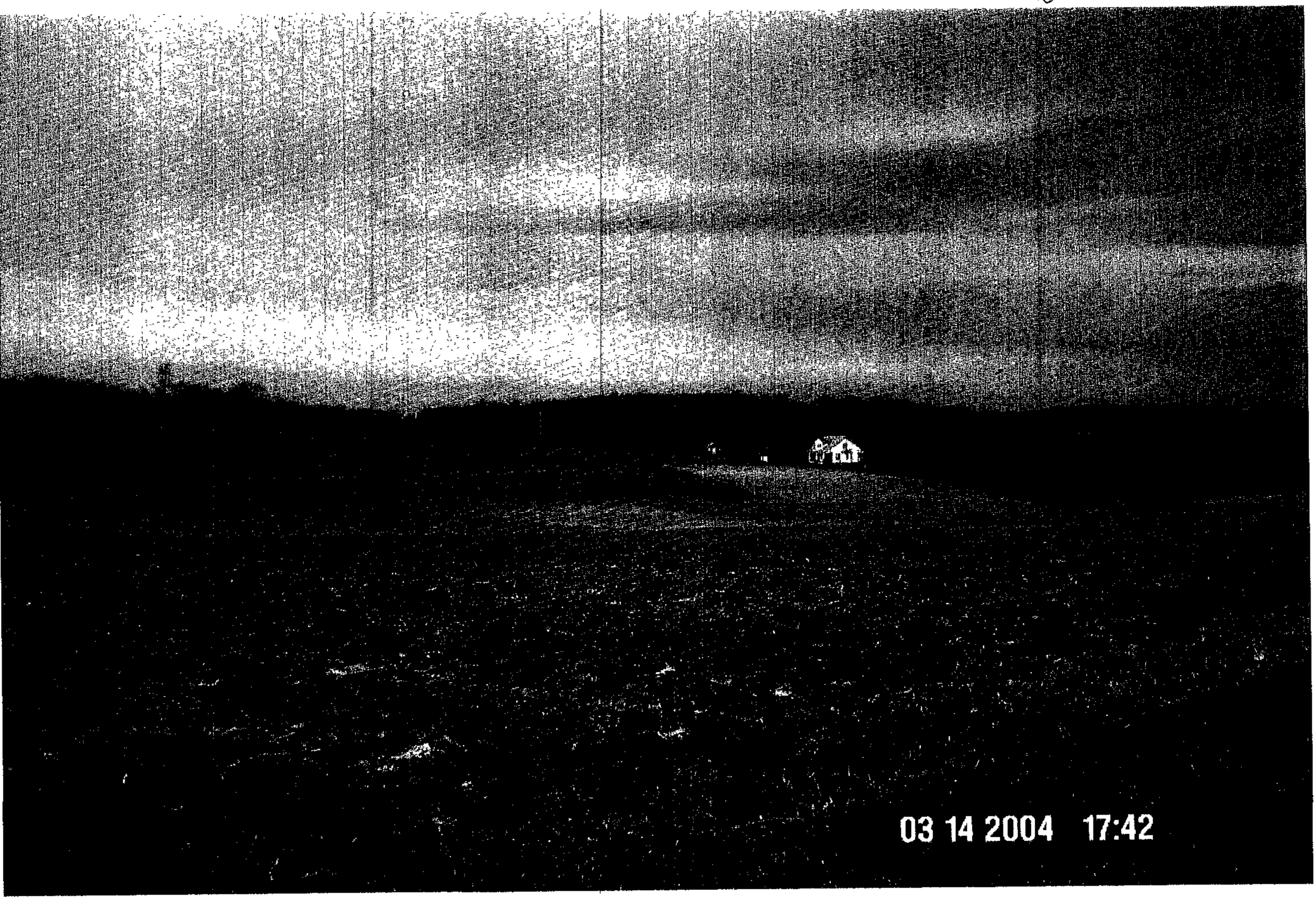

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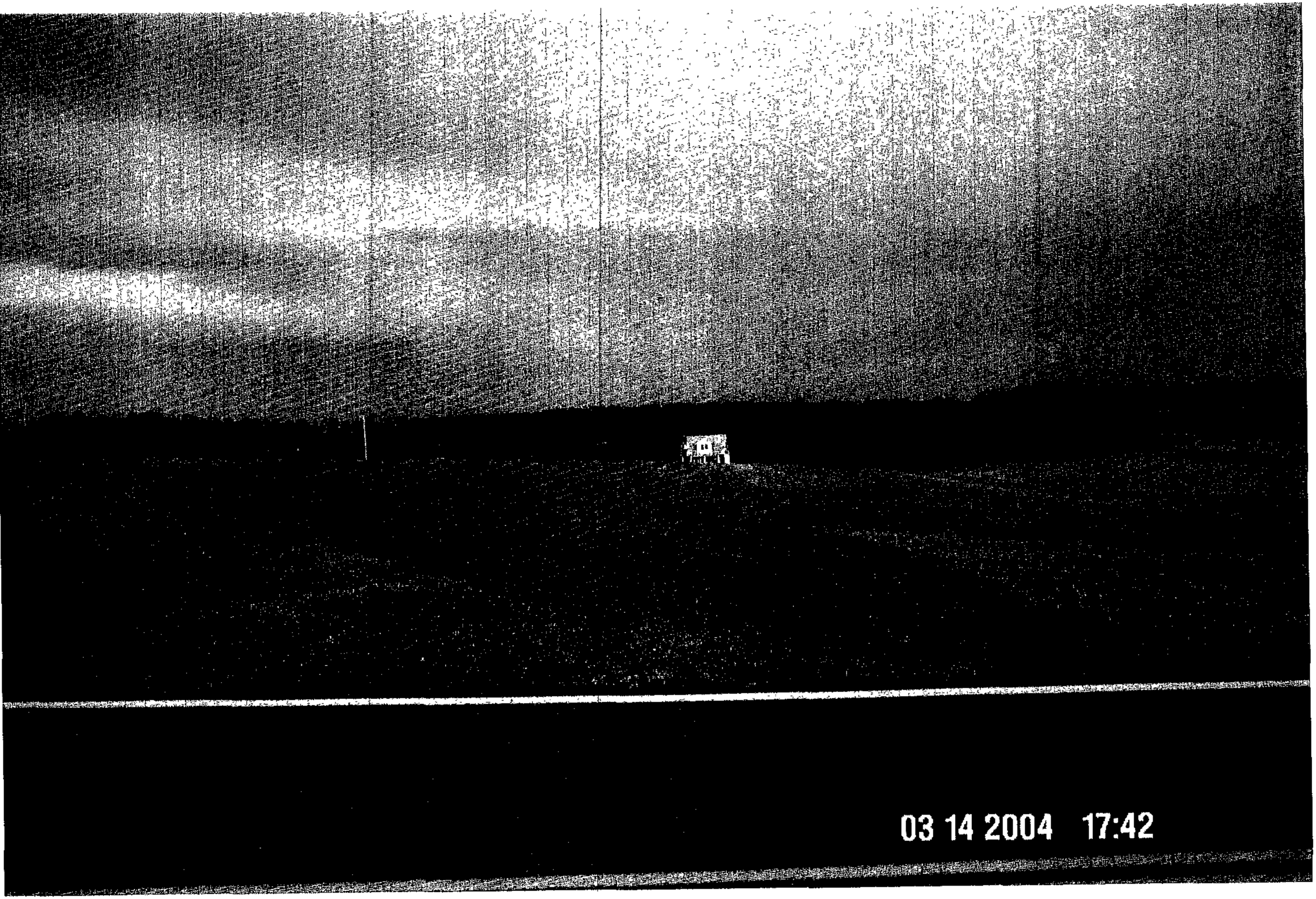

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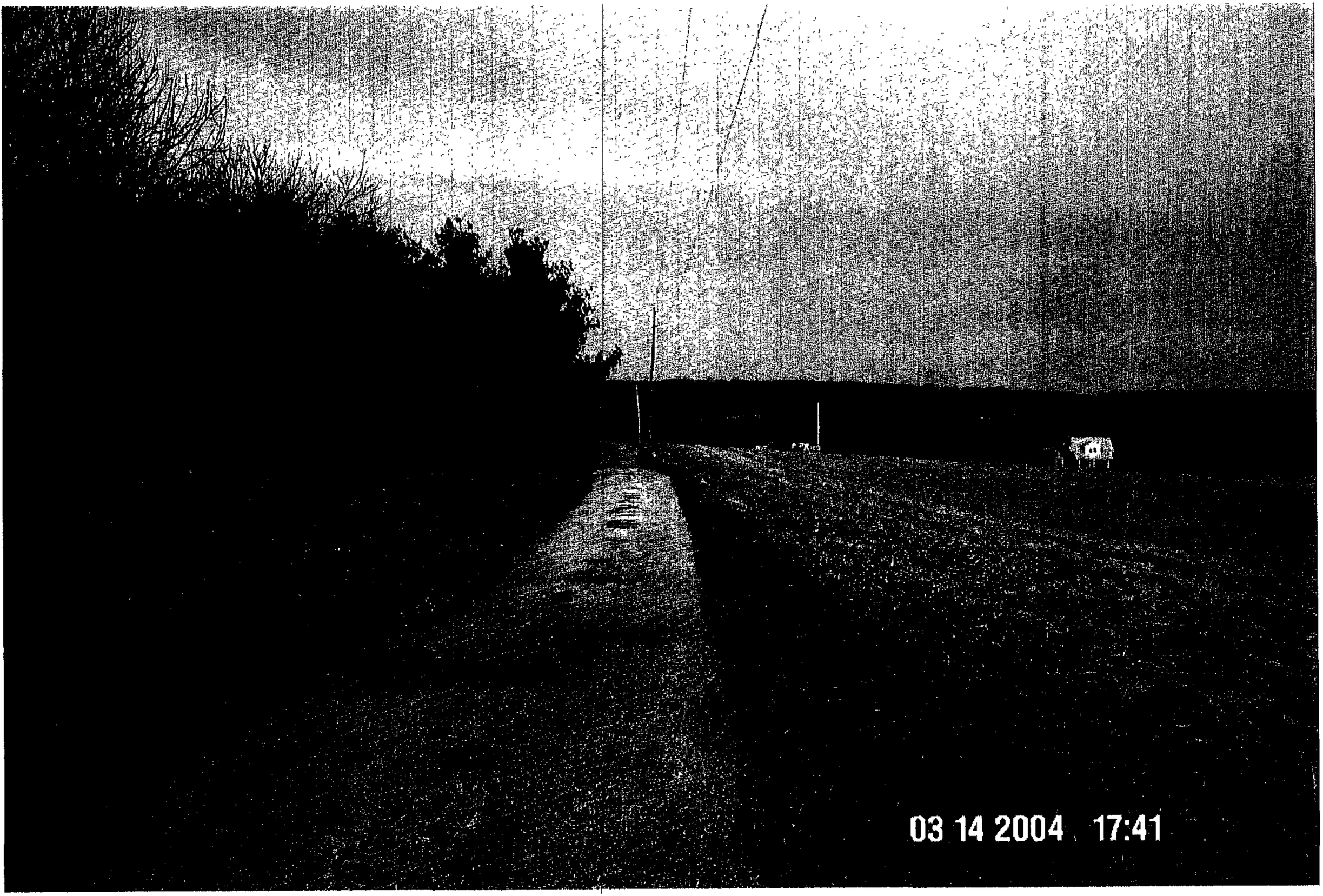

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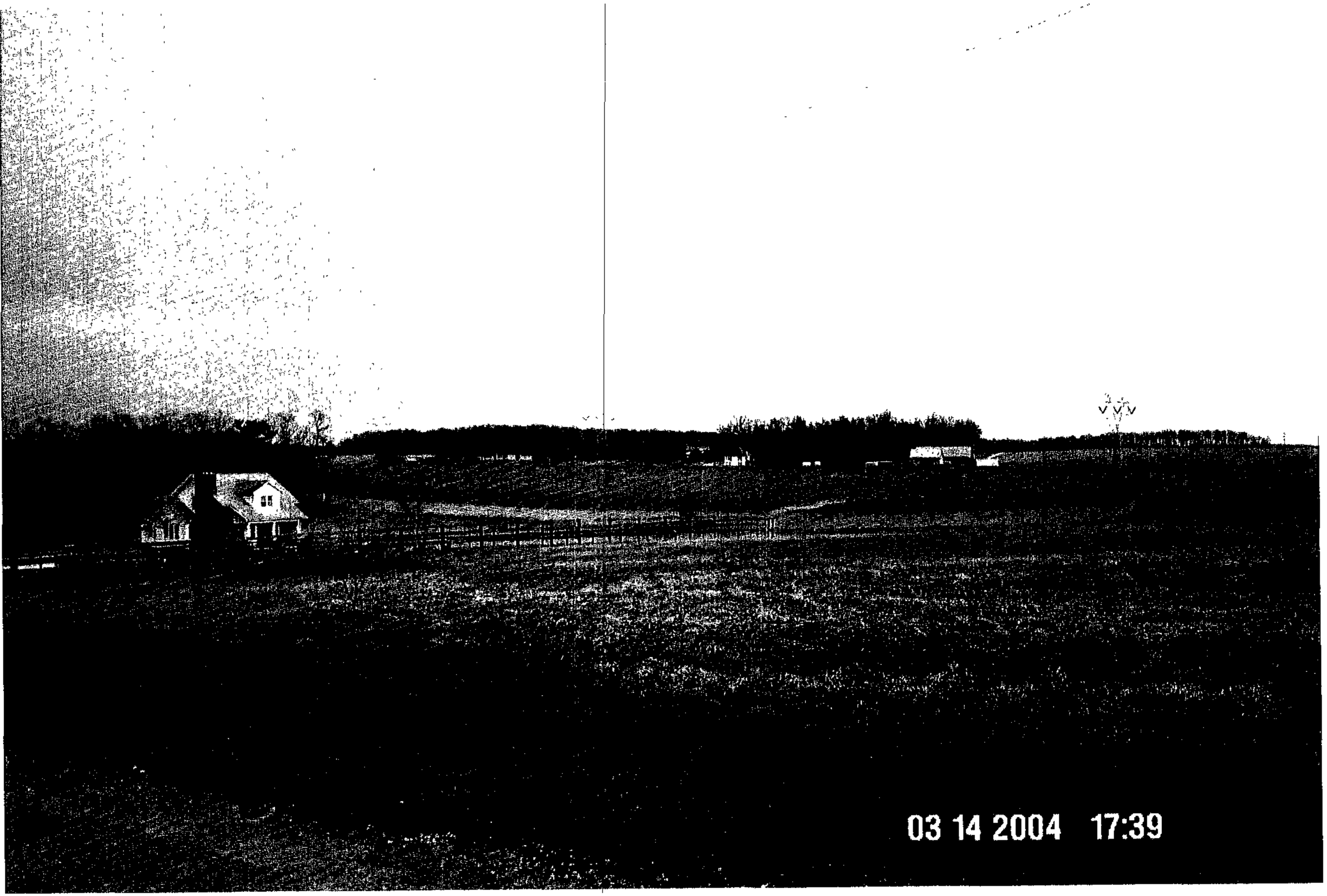

Pl 3F

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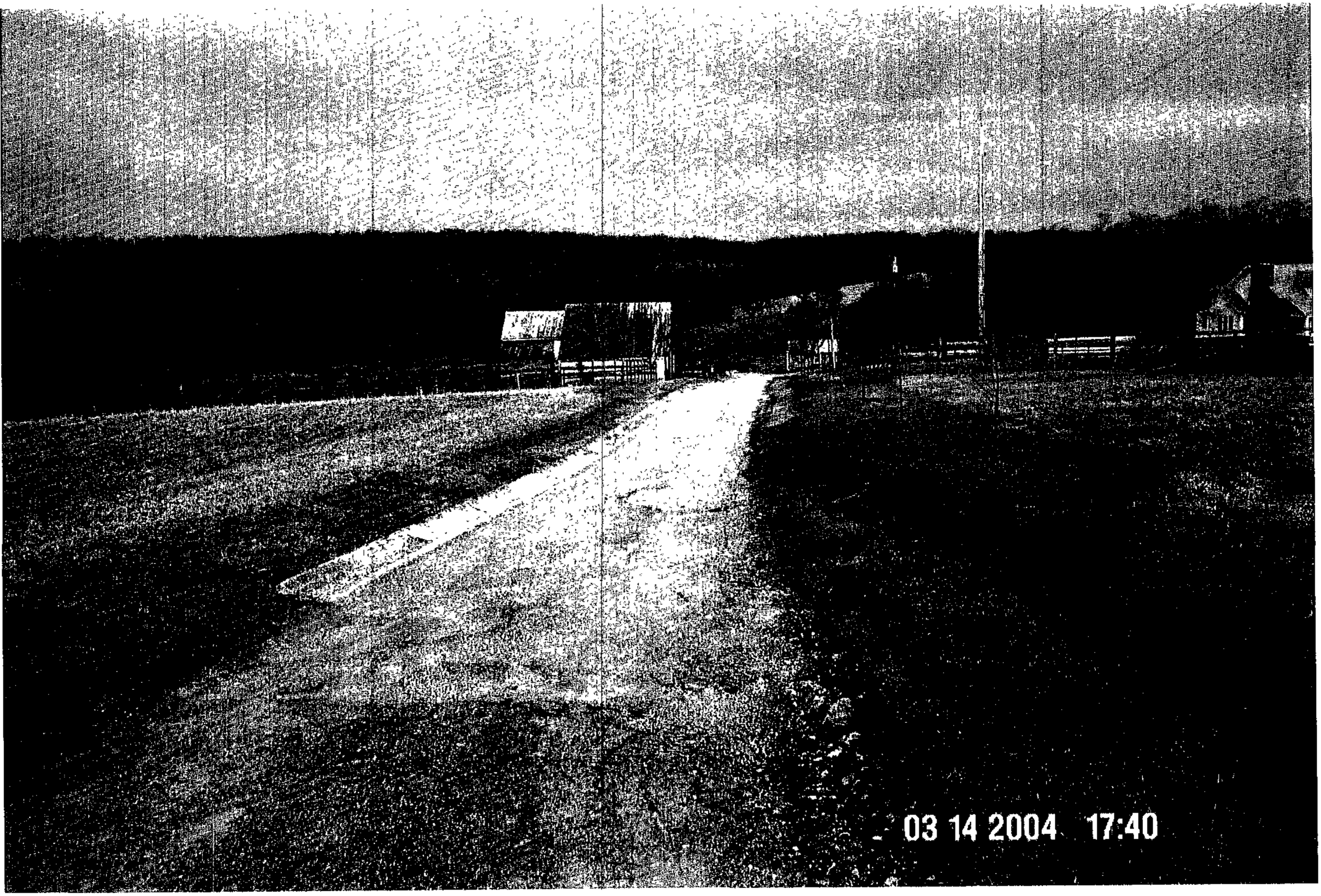

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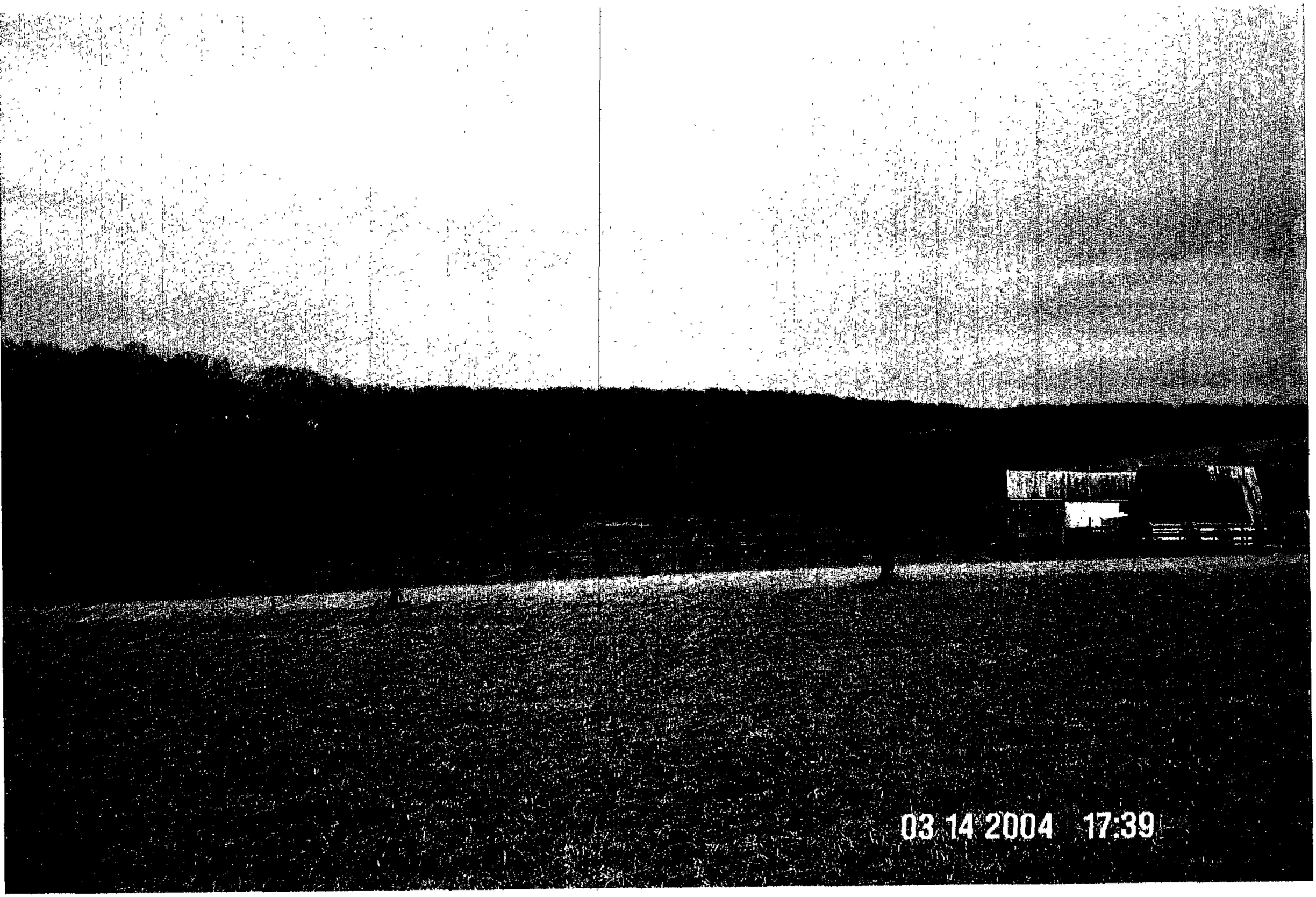

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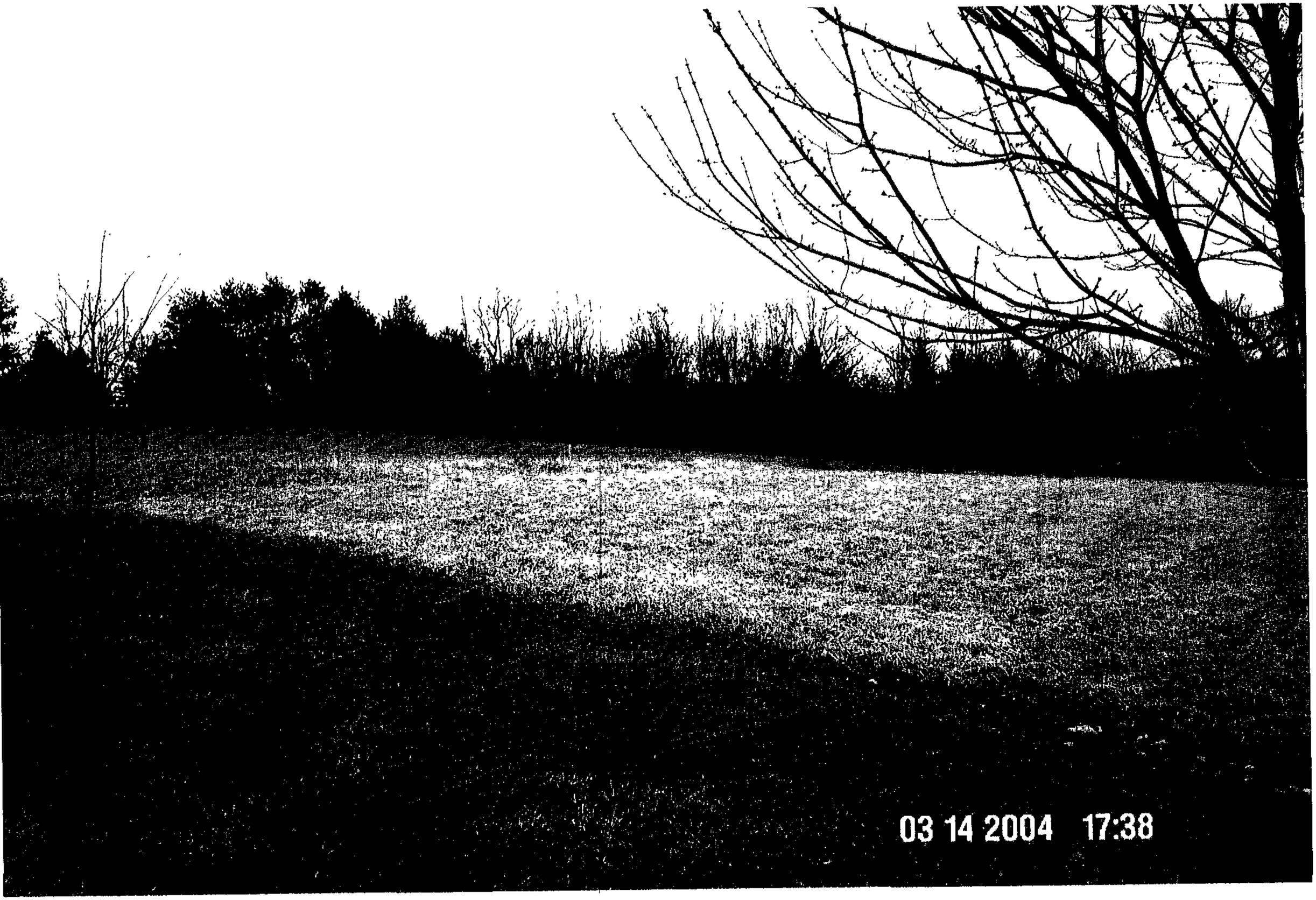

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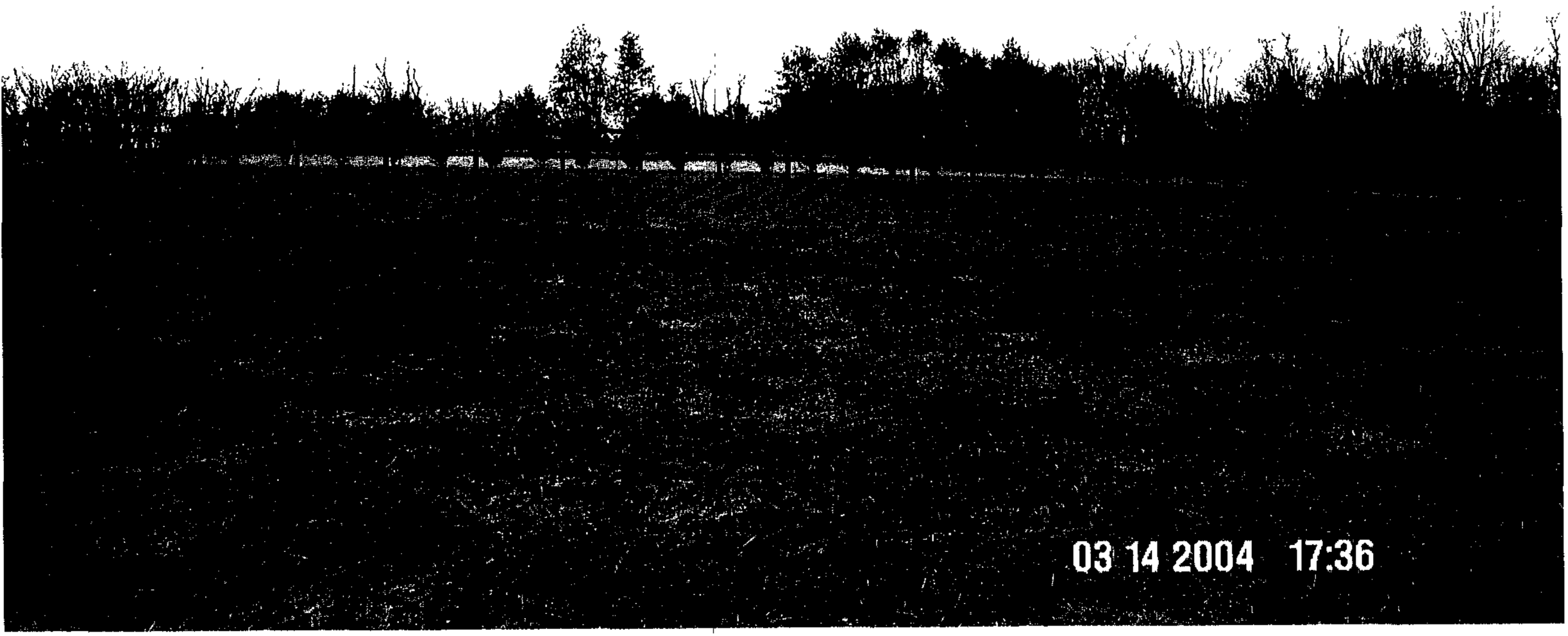

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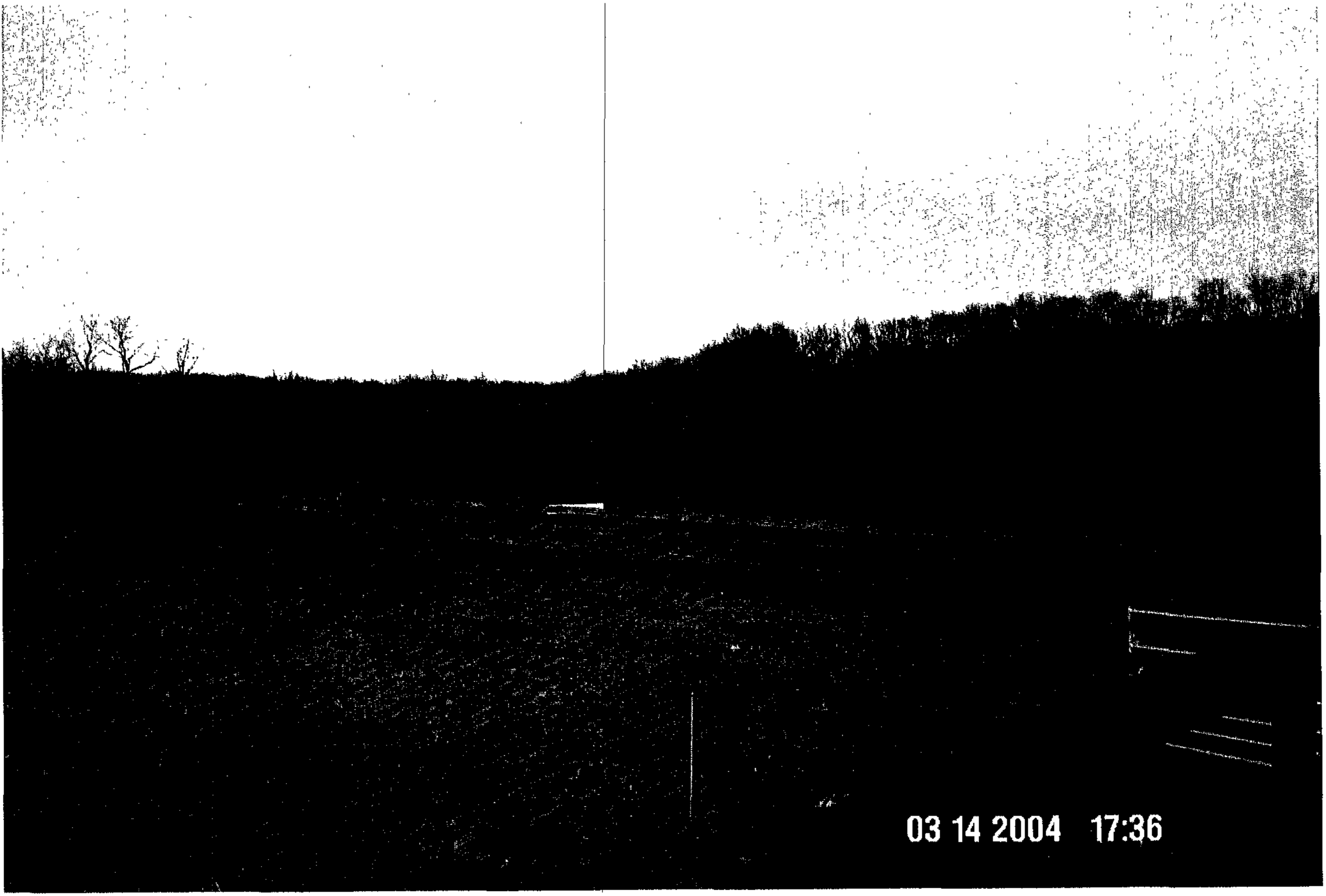

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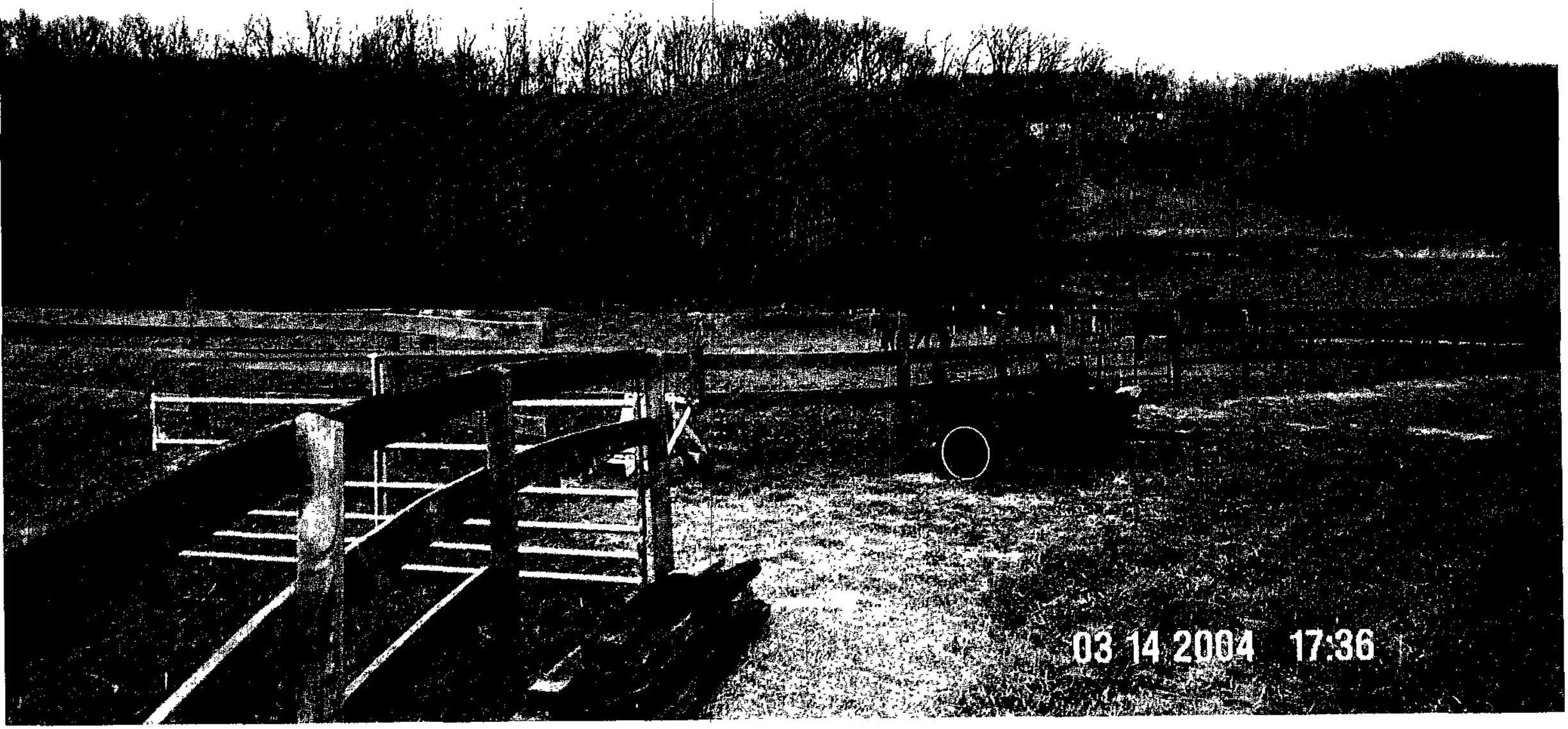

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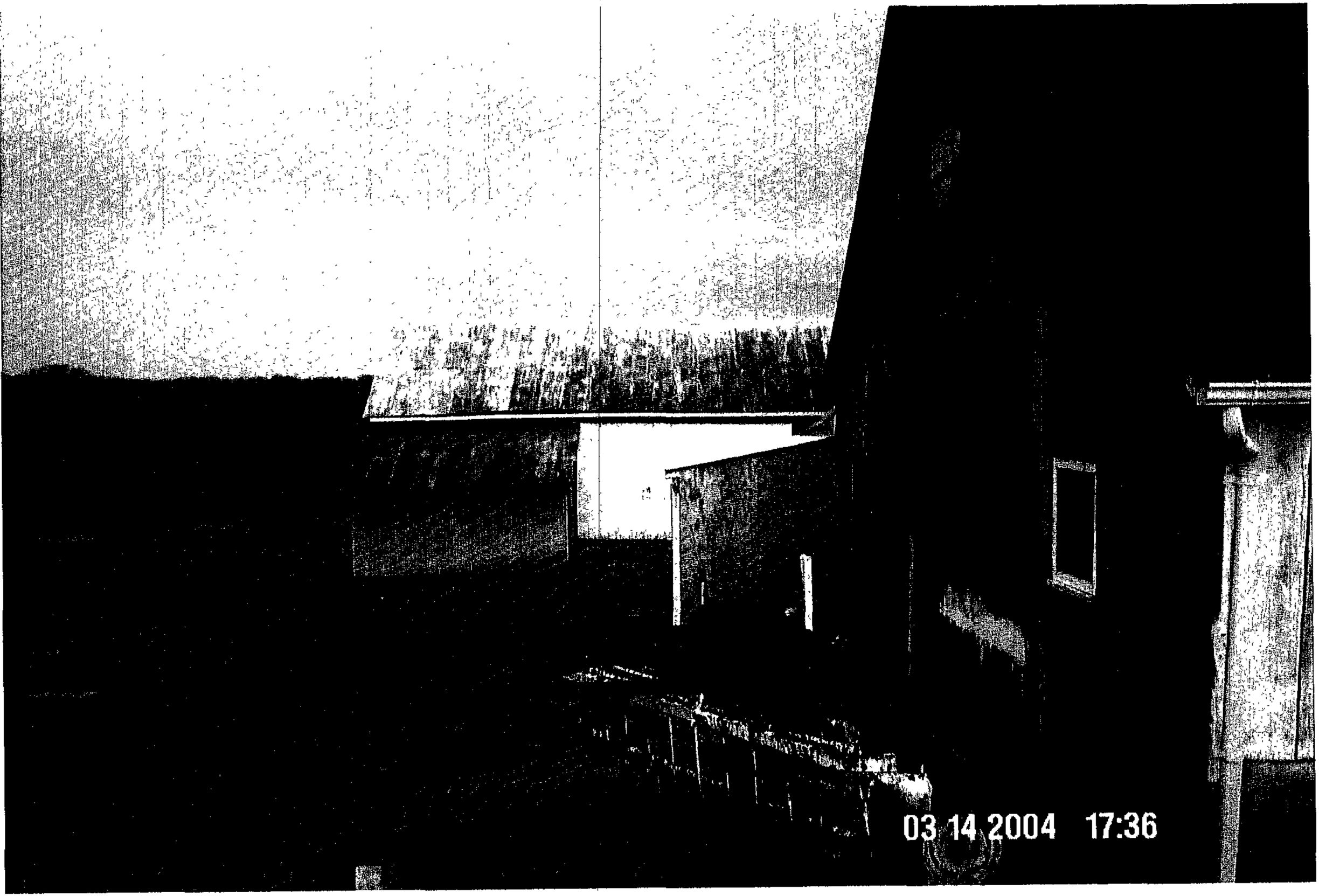

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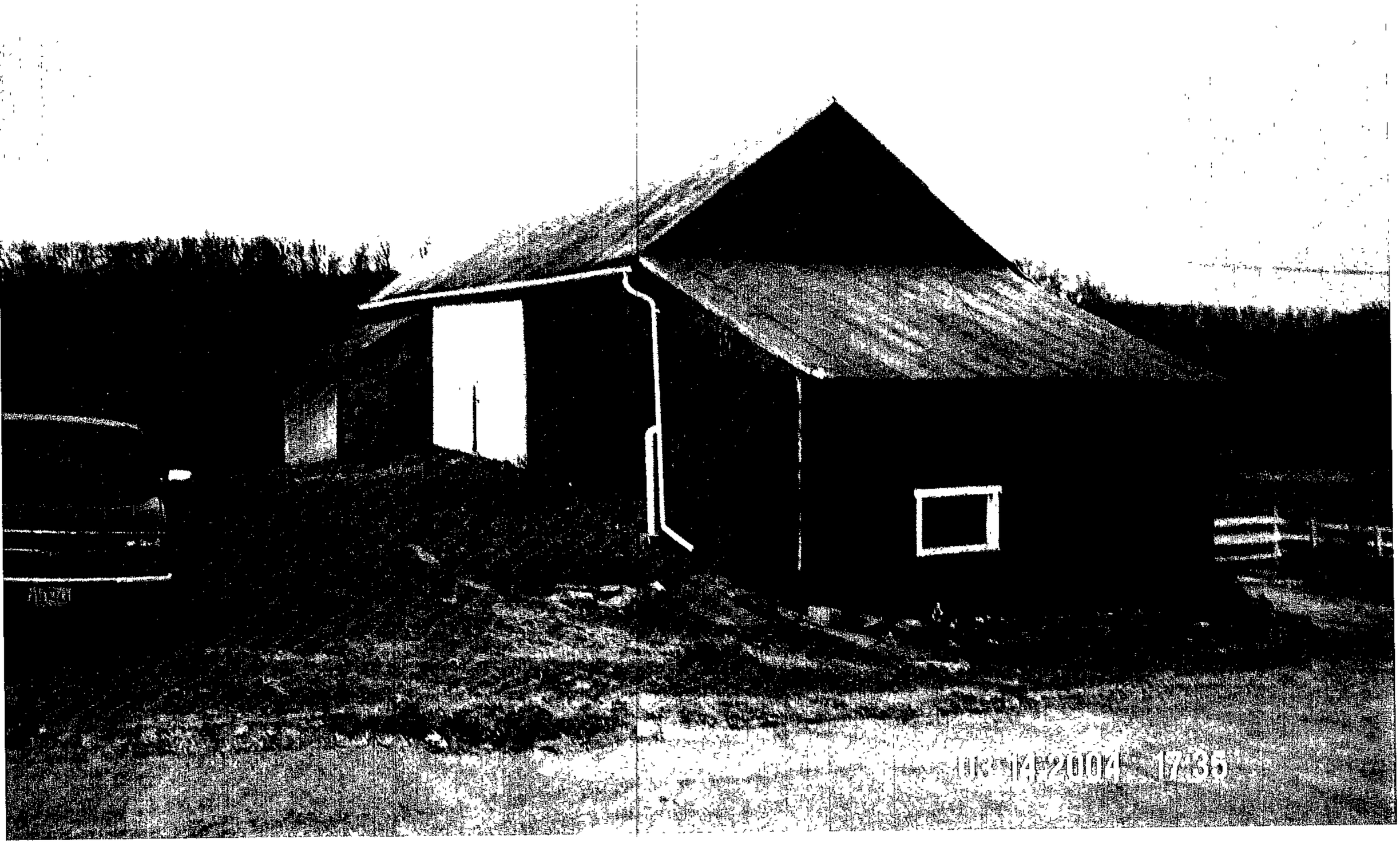

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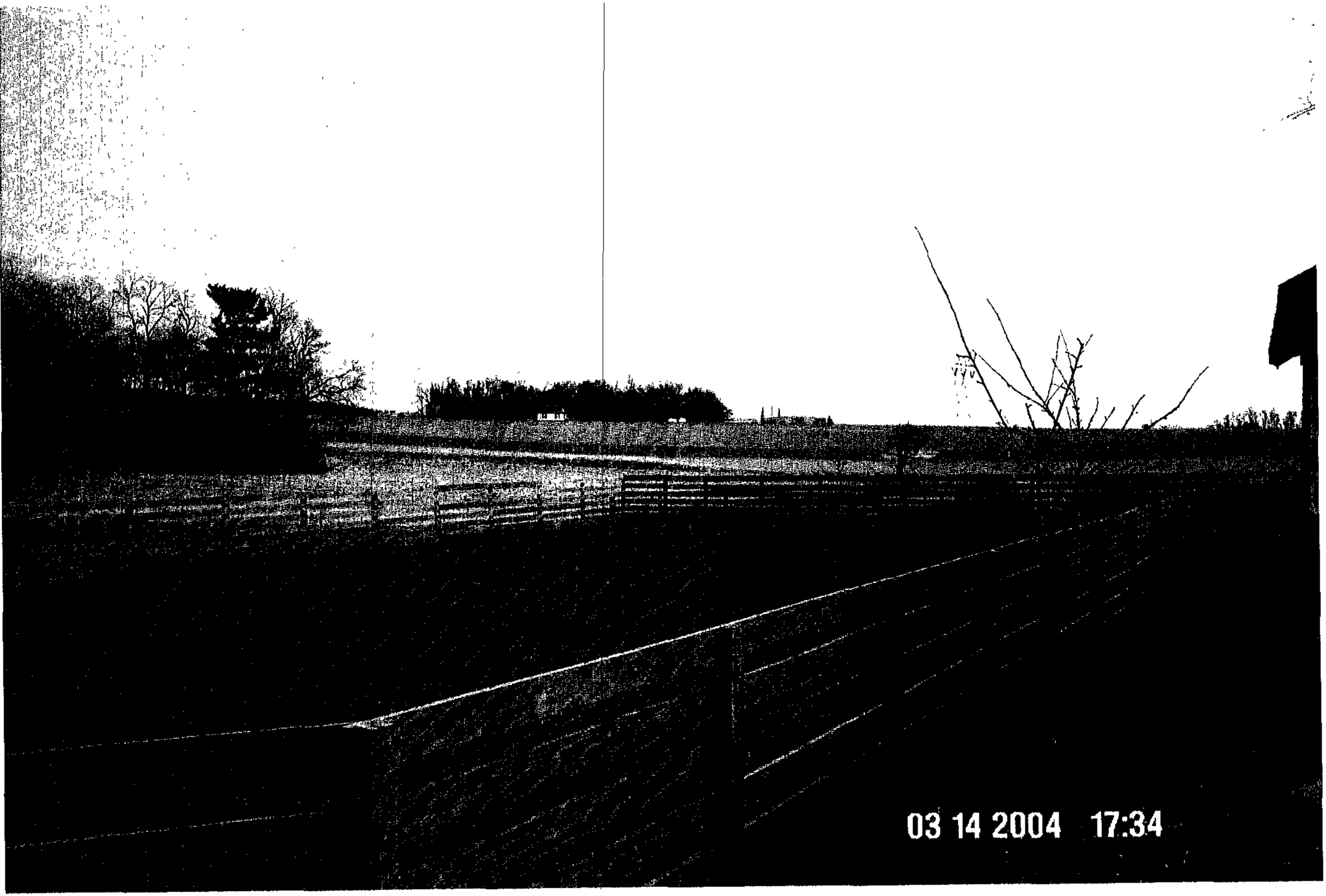

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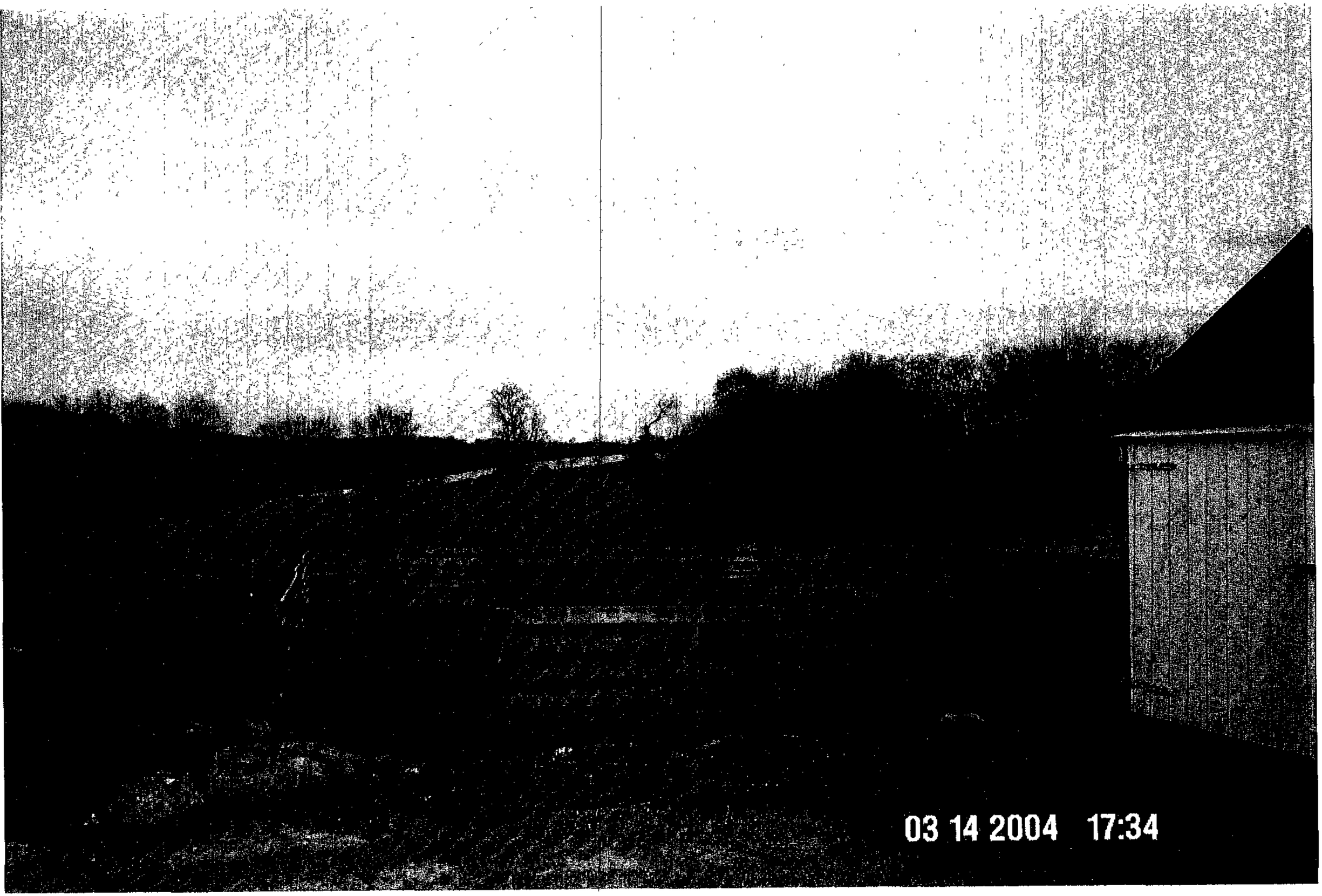

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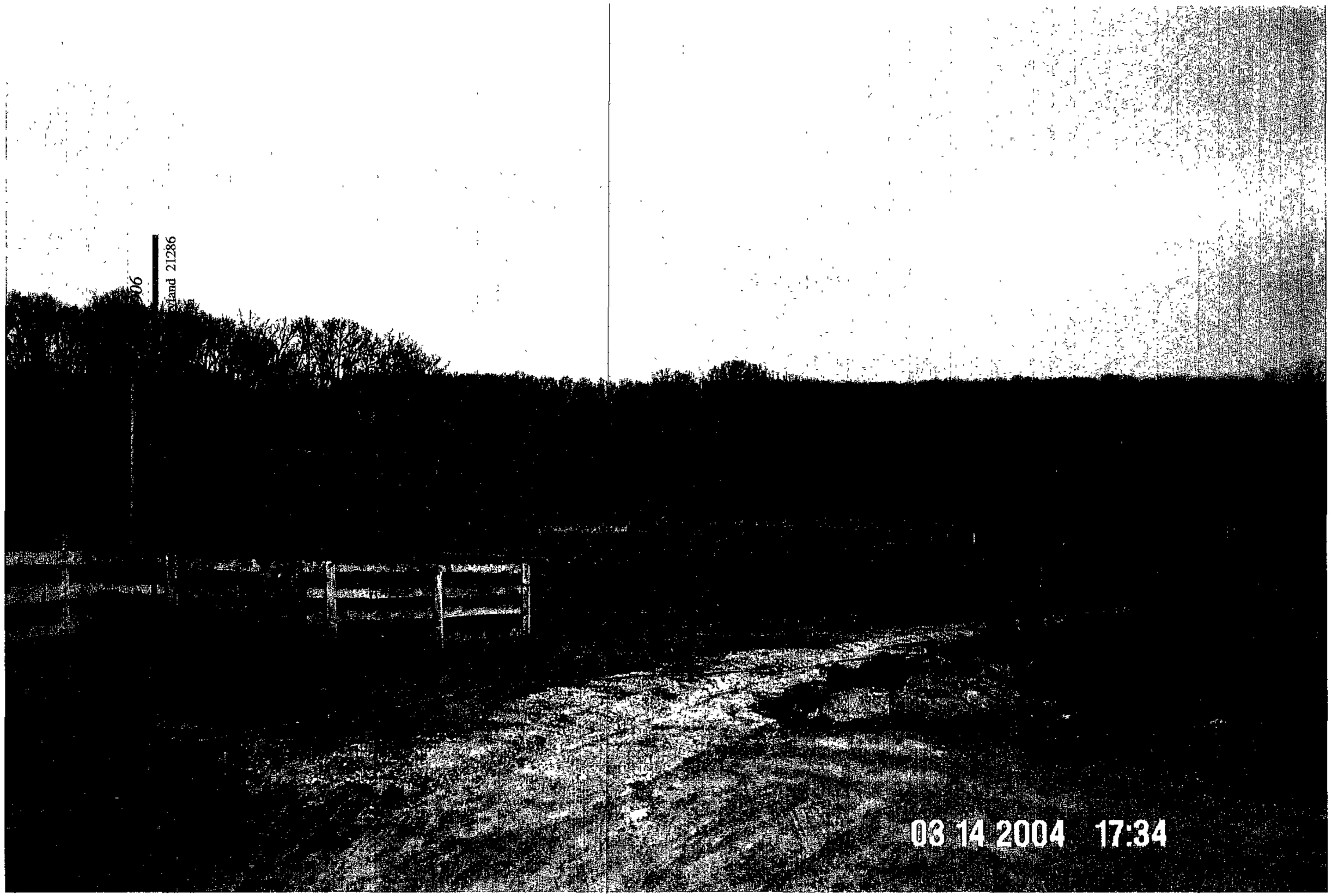

Department of Permits an
Development Management

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

Baltimore County

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

March 9, 2004

Mr. Trevor Wells
Mrs. Kelly Wells
21225 Middletown Road
Freeland, Maryland 21053

Dear Mr. and Mrs. Wells:

RE: Case Number:04-343-X, 21225 Middletown Road

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on January 29, 2004.

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.

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR: clb

Enclosures

c: People's Counsel
Bruce E. Doak Gerhold Cross & Etzel 320 E. Towsontown Blvd. Towson 21286

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

State Highway Administration
Driven to Excel
MARYLAND DEPARTMENT OF TRANSPORTATION

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

Date: 2·6·04

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

RE: Baltimore County
Item No. 343 DT

Dear. Ms. Hart:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not affected by any State Highway Administration 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,

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

Fire Department

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

Baltimore County

James T Smith, Jr., County Executive
John J. Hohman, Chief

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

February 10, 2004

ATTENTION: Rebecca Hart

Distribution Meeting of: February 9, 2004

Item No.: 343

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.

4. The site shall be made to comply with all applicable parts of the Baltimore County Fire Prevention Code prior to occupancy or beginning of operation.

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

cc: File

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

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

DATE: February 24, 2004

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

SUBJECT: Zoning Advisory Committee Meeting
For February 16, 2004
Item Nos. 342, 343, 344, 345, 346, 347,
348, 350, 352, and 353

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

RWB:CEN:jrb

cc: File

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

TO: Tim Kotroco

FROM: R. Bruce Seeley

DATE: May 24, 2004

SUBJECT: SPH # 04-343x
Address 21225 Middletown Road
Wells Property

The Department of Environmental Protection and Resource Management offers the following comments on the above-referenced zoning item:

AGRICULTURE PRESRVATION

Please see attached memo.

Reviewer: Wally Lippincott, Jr. Date: May 20, 2004
Attachment

L:\SHARED\DESHARED\Devcoord\ZAC04-343 doc

BALTIMORE COUNTY, MARYLAND

ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

Inter-Office Correspondence

TO: Development Coordination DATE: May 20, 2004

FROM: Wally Lippincott, Jr. WL

SUBJECT: Wells Property – Sph 04-343x

The Department supports the position taken by the Baltimore County Agricultural Land Preservation Advisory Board to recommend approval of the request for the relocation of the access road and for approval of limited amount of riding lessons as provided for in the Conservation Easement (enclosed).

The Department does not support a condition of approval that will specify the number of horses permitted on the farm. The number should be based on management, nutrient management best practices, and land constraints and not an arbitrary number. An alternative would be to require that the farm have a nutrient management plan and be in compliance within one year.

If I can be any further assistance, please contact me at 410-887-3776

BALTIMORE COUNTY, MARYLAND

ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

Inter-Office Correspondence

TO: Development Coordination DATE: May 20, 2004

FROM: Baltimore County Agricultural Land Preservation Advisory Board
Wally Lippincott, Jr, County staff to the Board

SUBJECT: Wells Property – Sph 04-343x

The Baltimore County Agricultural Land Preservation Advisory Board discussed the Wells proposed plans for the construction of a Riding Arena and the relocation of the access Road at the regularly scheduled meeting on May 6, 2004. The Advisory Board voted to recommend that the proposed riding lessons as indicated on the attached materials represented a "limited use" of the easement and should be permitted. The Board also found that relocating the driveway towards the middle of the driveway to meet safety issues as determined by the appropriate traffic agency was not in conflict with the easement.

For information purposes, I wish to advise that there were several neighbors in attendance. The Advisory Board indicated to the neighbors that the Board was not conducting the zoning hearing, but that the Board discussions were restricted to whether the proposed uses complied with the Agricultural easement.

If I can be any further assistance, please contact me at 410-887-3776

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

TO: Tim Kotroco

FROM: R. Bruce Seeley

DATE: March 10, 2004

SUBJECT: Zoning Item # 04-343
Address 21225 Middletown Road
Wells Property

Zoning Advisory Committee Meeting of February 9, 2004

The Department of Environmental Protection and Resource Management offers the following comments on the above-referenced zoning item:

ENVIRONMENTAL IMPACT REVIEW

__X__ Prior to approval of a Building Permit, 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).

Reviewer: Dave Lykens Date: February 12, 2004

GROUNDWATER MANAGEMENT

Soil evaluation tests are required to determine the septic reseve area. Useage data must be submitted. A new well may be required.

Reviewer: Sue Farinetti Date: February 9, 2004

AGRICULTURE PRESRVATION

See attached memorandum from Wally Lippincott dated February 13, 2004.

Attachment

L:\SHARED\DESHARED\Devcoord\ZAC04-343.doc

BALTIMORE COUNTY, MARYLAND

ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

Inter-Office Correspondence

TO: Development Coordination DATE: February 13, 2004

FROM: Wally Lippincott, Jr. WJL

SUBJECT: Trevor Wells Sph 04-343x

This property is subject to a Baltimore County Agricultural Easement. The easement provides for the use of the property for agricultural purposes including breeding and training of horses. This agricultural activity is an important part of Baltimore County's agricultural economy. The construction of farm buildings on the property are not limited so long as other County approvals are obtained and they do not exceed 10% impervious cover for the property. This request if granted will not exceed 10%.

The approval of this request is recommended.

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: February 23, 2004

RECEIVED

FEB 23 2004

ZONING COMMISSIONER

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

SUBJECT: Zoning Advisory Petition(s): **Case 4-343 and 04-344**

The Office of Planning has reviewed the above referenced case(s) and has no comments to offer. For further questions or additional information concerning the matters stated herein, please contact Mark A. Cunningham in the Office of Planning at 410-887-3480.

Prepared By: _____

Section Chief: _____

AFK/LL

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

December 1, 2004

Trevor Wells
Kelly Wells
21225 Middletown Road
Freeland, MD 21053

Dear Mr. and Mrs. Wells:

RE: Case: 04-343-X, 21225 Middletown Road

Please be advised that in addition to an appeal filed in this office on October 12, 2004 by People's Counsel of Baltimore County, J. Carroll Holzer also filed a separate appeal on October 20, 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

Timothy Kotroco
Director

TK:klm

c: Lawrence E. Schmidt, Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel
Bruce Doak, Gerhold, Cross & Etzel, 320 E. Towsontown Blvd., Towson 21286
J. Carroll Holzer, 508 Fairmount Avenue, Towson 21286
Mr. & Mrs. Fran Galczynski, 2922 Berwick Avenue, Baltimore 21234
Mr. & Mrs. Donald Waynick, 21303 Middletown Road, Freeland 21053
Ms. Anita Gerwig, 21305 Middletown Rd., Freeland 21053

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APPEAL

Petition for Special Exception
21225 Middletown Road
NE/S Middletown Road, 2570 NW' of Ruhl Road
6th Election District – 3rd Councilmanic District
Trevor Wells - Petitioner

Case No.: 04-343-X

Petition for Special Exception (January 29, 2004)

Zoning Description of Property

Notice of Zoning Hearing (February 10, 2004)

Hearing Held (September 21, 2004)

Certification of Publication (February 26, 2004)

Certificate of Posting (February 27, 2004) by Bruce Doak

Entry of Appearance by People's Counsel (February 10, 2004)

Petitioner(s) Sign-In Sheet – One Sheet

Protestant(s) Sign-In Sheet – None

Citizen(s) Sign-In Sheet – Two Sheets

Zoning Advisory Committee Comments

Petitioners' Exhibit

1. Plan to accompany Petition for Special Exception
2. Plan to accompany Photographs
3. Photographs 3A thru 3T
4. Official Zoning Map
5. Hours of Operation Proposal Sheet
5. North County News Paper
6A. Findings of Fact and Conclusions of Law for Case 01-530-X
6B. Final Opinion and Order issued by County Board of Appeals
7. Plan to Accompany Petition for Special Exception of the Wells Property
8. Plan to Accompany Petition
9. Baltimore County Agriculture Advisory Board Meeting Minutes
10A. Findings of Fact and Conclusions of Law for Case 02-452-X
10B. Findings of Fact and Conclusions of Law for Case 93-88-X
11. Building Inspections CaseRec
12. Building Permit

Protestants' Exhibits:

1. Opposition Letter
2. Photos 2A thru 2J

Miscellaneous (Not Marked as Exhibit)

1. Letter and Attachments dated August 23 from Zoning Commissioner
2. Petition Opposing Special Exemption
3. Note to File for 04-343-X
4. Real Property Search – Individual Report
5. Letter dated March 17, 2004 from Zoning Commissioner

Zoning Commissioner's Order (GRANTED - September 30, 2004)

Notice of Appeal received on October 12, 2004 by People's Counsel

c: People's Counsel of Baltimore County, MS #2010
Zoning Commissioner
Timothy Kotroco, Director of PDM
Bruce Doak
Mr. & Mrs. Galczynski
Mr. & Mrs. Waynick
Ms. Anita Gerwig
date sent November 5, 2004, klm

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

July 15, 2004

Mr. Bruce E. Doak
Gerhold, Cross & Etzel
320 E. Towsontown Boulevard
Towson, Md. 21286

RE: PETITION FOR SPECIAL EXCEPTION
(21225 Middletown Road)
Trevor Wells, et ux - Petitioners
Case No. 04-343-X

Dear Mr. Doak:

This letter is to confirm that the above-captioned matter, which was scheduled for further proceedings on Wednesday, July 28, 2004, has been postponed at your request and by agreement of all parties, has been rescheduled for Tuesday, September 21, 2004. The hearing will commence at 9:00 AM in Room 407 of the Circuit Courts Building. Please arrange to have the property posted with a sign giving public notice of the continued hearing date, time and location. Further, if you have not already done so, please be sure to forward a copy of the amended site plan to all parties prior to the hearing.

In the meantime, should anyone have any questions on the subject, please do not hesitate to call me.

Very truly yours,

Lawrence E. Schmidt

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Dr. & Mrs. Trevor Wells
21225 Middletown Road, Freeland, Md. 21053
Mr. & Mrs. Fran Galczynski, 2922 Berwick Avenue, Baltimore, Md. 21234-7621
J. Carroll Holzer, Esquire, 508 Fairmount Avenue, Towson, Md. 21286
Mr. & Mrs. Donald Waynick, 21303 Middletown Road, Freeland, Md. 21053
Ms. Anita Gerwig, 21305 Middletown Road, Freeland, Md. 21053
Wallace Lippincott, DEPRM; Rahee Famili, Development Plans Review, DPDM
People's Counsel; Case File

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Bette Schuhmann - RE: Wells Property

From: "bdoak" <bdoak@gcelimited.com>
To: "Bette Schuhmann" <bschuhmann@co.ba.md.us>
Date: 7/15/2004 9:38 AM
Subject: RE: Wells Property

Bette,

Thank you for your help in the rescheduling of this hearing. We would like to have it set back in for Tues. September 21, 2004. Please call me if there are any problems. I will repost the property once I receive the notice of hearing.

-----Original Message-----
From: *Bette Schuhmann [mailto:bschuhmann@co.ba.md.us]*
Sent: Wednesday, July 14, 2004 1:11 PM
To: bdoak@gcelimited.com
Subject: Wells Property

Bruce - The following dates are good for Carroll Holzer: Thursday, 9/16; Monday, 9/20 and Tuesday, 9/21. All days the time would be 9AM in Room 407. Please let me know which of these dates you would prefer and I'll do a letter confirming same today.

Bette Schuhmann
bschuhmann@co.ba.md.us
410-887-3868

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

April 23, 2004

Ms. Kelly Wells
21225 Middletown Road
Freeland, Maryland 21053

RE: PETITION FOR SPECIAL EXCEPTION
(21225 Middletown Road)
Trevor Wells, et ux - Petitioners
Case No. 04-343-X

Dear Ms. Wells:

In response to your letter of April 19, 2004 and to follow-up our recent telephone conversation concerning the above-captioned matter, the following comments are offered.

As you know, your case was continued in open hearing on March 15, 2004 so that a more detailed site plan could be prepared. Of specific concern was the proposed means of access. In this regard, it was suggested that you contact Wallace Lippincott in the Agricultural Preservation Division of the Department of Environmental Protection and Resource Management and Robert Bowling or Rahee Famili in the Development Plans Review Division of the Department of Permits and Development Management for input. Subsequent to the hearing, Mr. Lippincott advised that your plans might impact an agricultural easement on your property that is owned by the County and that your proposal need be reviewed by the County's Agricultural Advisory Board. He further recommended that you withdraw your Petition for Special Exception, pending a decision on your proposal by that Board, which is scheduled to meet on May 6, 2004. It is my understanding that a revised site plan that will address all of the concerns raised at the hearing is forthcoming.

Based upon these considerations, I have agreed to hold the case open for a period of ninety (90) days from this date at which time you will advise me whether you wish to pursue the Petition for Special Exception or withdraw your request. If you wish to pursue the matter, then the hearing will be reconvened for further proceedings and consideration of a revised site plan. In the meantime, please do not hesitate to contact me should you have any further questions on the subject.

Very truly yours,

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Mr. Bruce E. Doak
Gerhold, Cross & Etzel, 320 E. Towsontown Boulevard, Towson, Md. 21286
Mr. & Mrs. Fran Galczynski, 2922 Berwick Avenue, Baltimore, Md. 21234-7621
J. Carroll Holzer, Esquire, 508 Fairmount Avenue, Towson, Md. 21286
Mr. & Mrs. Donald Waynick, 21303 Middletown Road, Freeland, Md. 21053
Ms. Anita Gerwig, 21305 Middletown Road, Freeland, Md. 21053
Wallace Lippincott, DEPRM; Robert Bowling & Rahee Famili, Development Plans Review, DPDM
People's Counsel; Case File

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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 2, 2004

Mr. Bruce E. Doak
Gerhold, Cross & Etzel
320 E. Towsontown Boulevard
Towson, Md. 21286

RE: PETITION FOR SPECIAL EXCEPTION
(21225 Middletown Road)
Trevor Wells, et ux - Petitioners
Case No. 04-343-X

Dear Mr. Doak:

In response to your letter of May 28, 2004 concerning the above-captioned matter, please be advised that I have scheduled the matter for further proceedings on Wednesday, July 28, 2004 at 10:00 AM in Room 407 of the Circuit Courts Building. Although it will not be necessary to advertise the hearing, please arrange to have the property posted with a sign giving public notice of the continued hearing date, time and location. In addition, please forward a copy of the amended site plan to all parties to the case prior to the hearing.

Thank you for your cooperation in this matter and should you have any questions on the subject, please do not hesitate to call me.

Very truly yours,

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Dr. & Mrs. Trevor Wells
21225 Middletown Road, Freeland, Md. 21053
Mr. & Mrs. Fran Galczynski, 2922 Berwick Avenue, Baltimore, Md. 21234-7621
J. Carroll Holzer, Esquire, 508 Fairmount Avenue, Towson, Md. 21286
Mr. & Mrs. Donald Waynick, 21303 Middletown Road, Freeland, Md. 21053
Ms. Anita Gerwig, 21305 Middletown Road, Freeland, Md. 21053
Wallace Lippincott, DEPRM; Rahee Famili, Development Plans Review, DPDM
People's Counsel; Case File

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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

RECEIVED
APR - 8 2004
ZONING COMMISSIONER

April 7, 2004
#7471

Lawrence E. Schmidt, Esquire
Baltimore County
Zoning Commissioner
Suite 405
County Courts Building
401 Bosley Avenue
Towson, Maryland 21204

RE: Petition for Special Exception for a Riding Stable at
21225 Middletown Road
Petition of Trevor Wells
Case No.: 04-343X

Dear Mr. Schmidt:

Please be advised that I have been retained by Josephine Galczynski to represent her in the above-captioned case.

I would appreciate being advised of when the hearing for this case is scheduled.

Very truly yours,

J. Carroll Holzer

JCH:mlg

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

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JUL - 9 2004

ZONING COMMISSIONER

July 9, 2004

Lawrence E. Schmidt
Zoning Commissioner for Baltimore County
Suite 405, County Courts Building
401 Bosley Avenue
Towson, MD 21204

Re: Case # 04-343-X (Wells Property)

Dear Sir:

I would like to postpone the continuance of the hearing from July 28, 2004 to a date on or after August 16, 2004. We are asking for this postponement because of a scheduling issue and to gain additional information to present at the upcoming hearing. Thank you very much for your consideration of this request.

Very truly yours,

Bruce E. Doak
Principal

Z:\Business\Letters\Wells zoning letter postpone.doc

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

RECEIVED
JUN - 1 2004
ZONING COMMISSIONER

May 28, 2004

Lawrence E. Schmidt, Zoning Commissioner
Suite 405 County Courts Building
401 Bosley Avenue
Towson, MD 21204

Re: Petition for Special Exception
21225 Middletown Road
Wells Property

Dear Mr. Schmidt:

With this letter my clients would like to request that a date be set to reconvene the hearing to pursue the petition for special exception. We have met with the Agricultural Board and they have given their support to the proposed driveway relocation and to having an indoor riding arena for the teaching and playing of polo. We have also been given approval by Rahee Familli for the location of the proposed driveway. A copy each of these and the amended plan will follow within the next two weeks so that it may be made available to any interested parties. Please feel free to call me with any questions you may have. Thank you for consideration in this matter.

Sincerely,

Bruce E. Doak
Principal

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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

RECEIVED
JUN 22 2004
ZONING COMMISSIONER

June 22, 2004

Lawrence E. Schmidt
Zoning Commissioner for Baltimore County
Suite 405, County Courts Building
401 Bosley Avenue
Towson, MD 21204

Re: Petition for Special Exception
21225 Middletown Road
Trevor Wells Property
Case # 04-343-X

Dear Sir:

As you know, this case is pending waiting on an additional hearing date to address the issue of the driveway, the placement of the arena and the use of that arena for the training of polo horses. The continuance of the hearing is scheduled for July 28, 2004. I have enclosed your last letter on this matter.

I am also enclosing the opinion by the Board of Appeals on the Meittinis case. If I read it correctly, the board may have rendered an opinion that may make it not necessary for the Wells to continue the hearing because their proposed use would be a matter of right. Please review this information and call me with your opinion. What ever you decide we will want to contact the other interested parties.

Thank you for your attention to this matter.

Bruce E. Doak

Z:\Business\Letters\Wells zoning letter.doc

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

DATE: January 11, 2008

TO: Timothy Kotroco, Director
Permits & Development Management

FROM: Linda B. Fliegel
Board of Appeals

SUBJECT: **CLOSED APPEAL CASE FILES/CASES DISMISSED**

NAME	*CASE NUMBER*	*DATE OF ORDER OF DISMISSAL*
2004		
ERIC DOTT PROPERTY/PDM XI-964	04-027-M	MAY 29, 2007
2006		
GEMCRAFT HOMES	CBA-06-022	SEPT. 26, 2007
2200 ROLLING ROAD	CBA-06-029	OCT. 31, 2007
TERRY WILLIAMS	CBA-06-012	OCT. 11, 2006
TERRY WILLIAMS	CBA-06-036	OCT. 11, 2006
TREAVOR & KELLY WELLS	04-343-X *and* 06-073-X	SEPT. 27, 2007
JAMES REILMAN	06-029-SPH	OCT. 18, 2007
JAMES REILMAN	06-660-SPH	OCT. 18, 2007
BENHOFF BUILDERS, INC.	06-257-A	MAY 31, 2007
FRANCIS & PHYLLIS COPPERSMITH	06-676-SPH	NOV. 7, 2007
2007		
CHARLESTOWN – DRC	CBA-07-106	SEPT. 7, 2007
RUN CROSSING	CBA-07-121	JULY 27, 2007
FULLERTON FEDERAL SAVINGS	CBA-07-127	OCT. 2, 2007
ANGELA L. SIDBURY	07-111-SPHA	SEPT. 26, 2007
WINDSOR CONDOMINIUM-PERRY HALL	07-113-SPH	AUG. 31, 2007

Bette -

This case can be set for another hearing. It should be set at least a month down the road since Doah indicates in his letter that he is submitting an amended plan in two weeks. Send a letter to Doah w/ new date.

Send a cc to all of those on my letter of 4/23/04 along w/ a copy of Doah's letter of 5/26/04 since it does not look like he copied them.

Tell Doah to submit

a copy of his amended plan to me & copy everyone on my letter.

Property should be re-posted. Need not be re-advertised.

JES

BALTIMORE COUNTY, MARYLAND
ZONING CASE NO. 04343X

PETITION OPPOSING SPECIAL EXEMPTION

We, the undersigned, do hereby declare our OPPOSITION to any act or decision by the Baltimore County Zoning Commission that would grant TREVOR & KELLY WELLS a Special Exemption to permit the building of a riding stable or any other facility for commercial purposes on the property located at 21225 Middletown Road, Baltimore County, Maryland.

Name	Signature	Address & Phone Number
JoAnne O'Brien	JoAnne O'Brien	21300 Middletown Rd. Freeland Md. 21053 410-357-9935
Fred Nawrot	Fred Nawrot	21300 Middletown Rd. Freeland Md. 21053
Jenn Hofstetter	Jenn Hofstetter	21220 Middletown Road Freeland MD 21053
JOHN HOFSTETTER	John Hofstetter	SAME
Robert A Bollinger	Robert A. Bollinger	21200 Middletown Rd Freeland, Md 21053 410-357-4668
Gretchen Bollinger	Gretchen Bollinger	21200 Middletown Rd. Freeland Md 21053-410-357-4668
Stephanie L. Bollinger	Stephanie L. Bollinger	21200 Middletown Rd. Freeland, Md. 21053 (410) 357-4668
CARL E MILLER	Carl E. Miller	2736 West Ruhl Rd. Freeland Md. 21053
BETTY J. MILLER	Betty J. Miller	2736 W. Ruhl Rd Freeland, Md. 21053

To whom it may concern:

I hereby oppose the special exception to permit a riding stable at 21225 Middletown Rd.

Karen W. Babcock

Karen Babcock
21307 Middletown Rd.
Freeland, Md. 21053

PLEASE PRINT CLEARLY

CASE NAME_____
CASE NUMBER_____
DATE_____

PETITIONER'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
Bruce E. Doak	320 E. Towsontown Blvd	Towson Md 21286	
Greenold Cross & Etzel			
Trevor & Kelly Wells	21225 Middletown Rd.	Freeland, md. 21053	Kellyandtrevor@aol.com

PLEASE PRINT CLEARLY

CASE NAME_____
CASE NUMBER_____
DATE_____

CITIZEN'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
JOSEPHINE GALCZYNSKI	2922 BERWICK AVE	BALTO, MD 21234	
FRANCIS GALCZYNSKI SR	"	"	
Stacey Waynick	21303 Middletown Rd	Freeland, MD 21053	
Donald Waynick	21303 Middletown Rd	Freeland, MD 21053	
Debbie Price	2315 Traceys Rd	Sparks, Md 21152	

PLEASE PRINT CLEARLY

CASE NAME_____
CASE NUMBER_____
DATE_____

CITIZEN'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
JOSEPHINE GALCZYNSKI	2922 BERWICK AVE	BALTO., MD 21234-7621	
Donald Waynick	21303 MIDDLETOWN RD.	FREELAND MD 21053	
Stacey Waynick	21303 Middletown Rd	Freeland, MD 21053	
FRAN GALCZYNSKI	2922 BERWICKA AVE	BALTO. MD. 21234	
Anita Gerwig	21305 Middletown Rd.	Freeland MD 21053	

RE:	PETITION FOR SPECIAL EXCEPTION 21225 Middletown Road; N/side Middletown Rd, 2,570' NW of Ruhl Rd 6th Election & 3rd Councilmanic Districts Legal Owner(s): Trevor & Kelly Wells	* * *	BEFORE THE ZONING COMMISSIONER FOR
	Petitioner(s)	*	BALTIMORE COUNTY
		*	04-343-X

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

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 sent and documentation filed in the case.

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

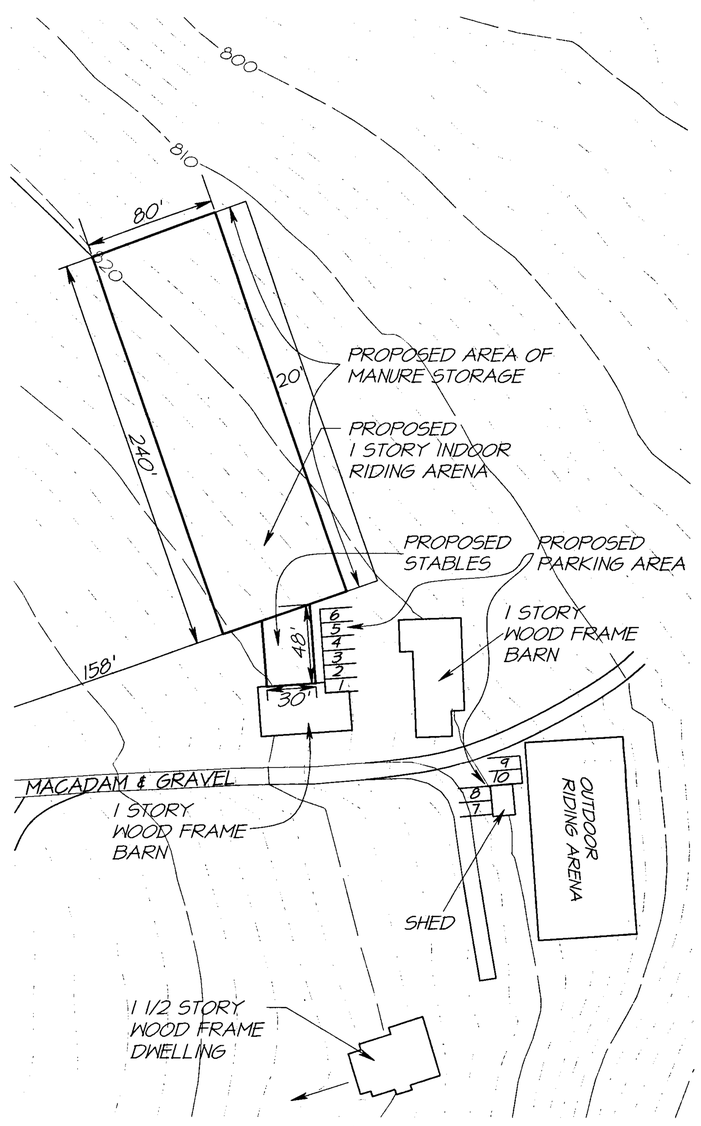
Carole S. Demilio
CAROLE S. DEMILIO
Deputy People's Counsel
Old Courthouse, Room 47
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of February, 2004, a copy of the foregoing Entry of Appearance was mailed to Bruce Doak, Gerhold, Cross & Etzel, 320 E. Towsontowne Blvd, Towson, MD 21286, Representative for Petitioner(s).

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

RECEIVED
FEB 10 2004
Per.....



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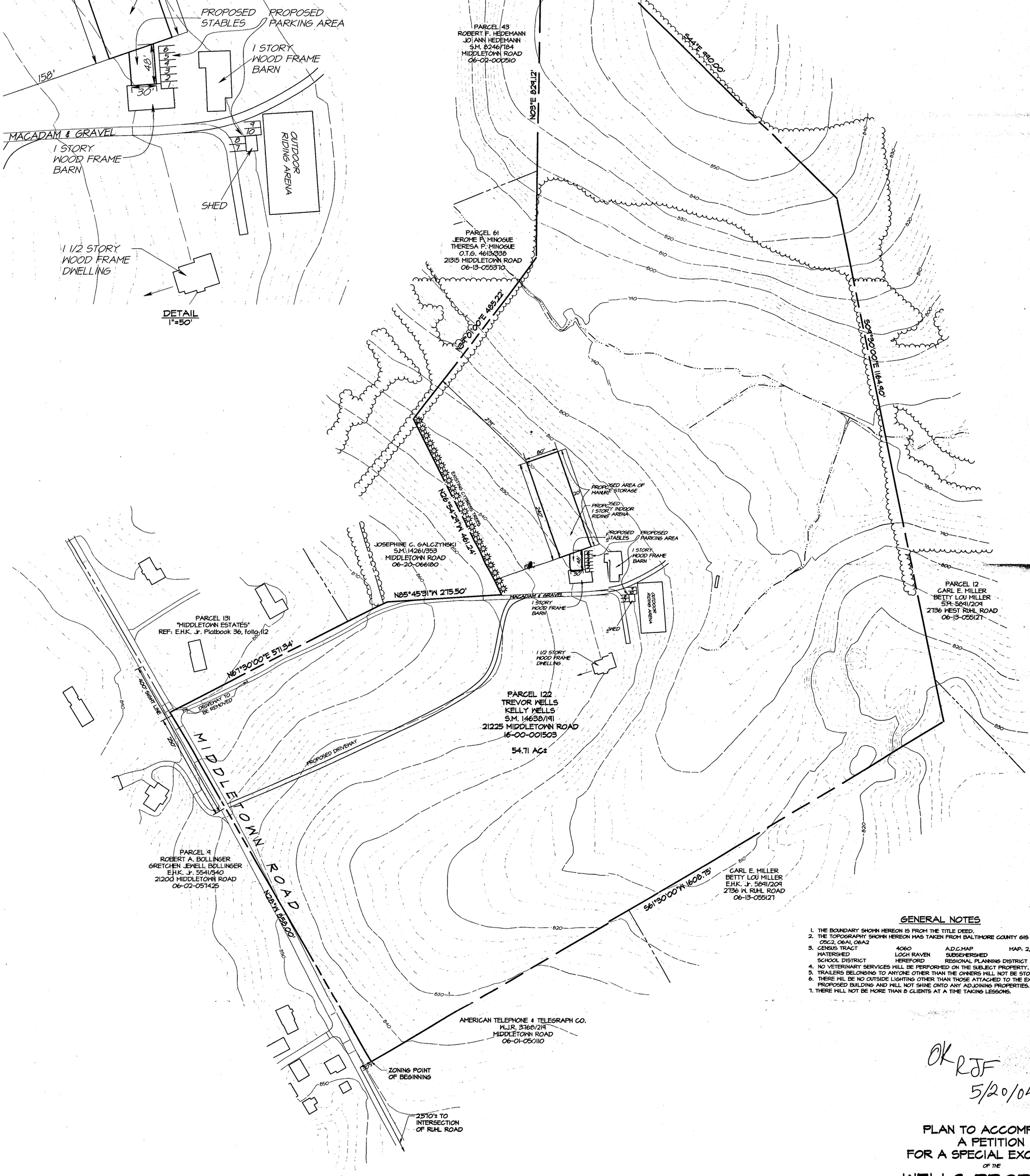


GENERAL NOTES

1. THE BOUNDARY SHOWN HEREON IS FROM THE TITLE DEED.
2. THE TOPOGRAPHY SHOWN HEREON WAS TAKEN FROM BALTIMORE COUNTY GIS TILES 01C3, 05C1, 05C2, 06A1, 06A2
3. CENSUS TRACT 4060 A.D.C. MAP MAP: 2, GRID: B3
   WATERSHED LOCH RAVEN SUBSEWERSHED NONE
   SCHOOL DISTRICT HEREFORD REGIONAL PLANNING DISTRICT 301
4. NO VETERINARY SERVICES WILL BE PERFORMED ON THE SUBJECT PROPERTY.
5. TRAILERS BELONGING TO ANYONE OTHER THAN THE OWNERS WILL NOT BE STORED ON THE PROPERTY.
6. THERE WILL BE NO OUTSIDE LIGHTING OTHER THAN THOSE ATTACHED TO THE EXISTING AND PROPOSED BUILDING AND WILL NOT SHINE ONTO ANY ADJOINING PROPERTIES.
7. THERE WILL NOT BE MORE THAN 8 CLIENTS AT A TIME TAKING LESSONS.

OK RJF 5/20/04

HOURS OF OPERATION

POLO LESSONS

MONDAY: 4:00-5:00 PM
5:30-6:30 PM

TUESDAY: 5:30-6:30 PM
7:30-8:00 PM

RIDING LESSONS

WEDNESDAY: 4:00-4:30 PM
4:30-5:00 PM
5:00-5:30 PM

SATURDAY: 10:00-10:30 AM
10:30-11:00AM
11:00-11:30 AM

MAKE-UP DAYS: FRIDAY & SUNDAY

LEGEND

PROPOSED BUILDINGS
EXISTING DWELLING
WOODS LINE
EXISTING PAVING
PROPOSED PAVING
ZONING LINE
PROPERTY LINE
CONTOURS

OWNER\DEVELOPER

TREVOR & KELLY WELLS
21224 MIDDLETOWN ROAD
FREELAND, MARYLAND 21053

PETITION

SPECIAL EXCEPTION IN ACCORDANCE WITH BALTIMORE COUNTY ZONING REGULATIONS SECTION 1A01.2.C.21 FOR A RIDING STABLE.

REVISION	DATE
PROPOSED DRIVEWAY SHOWN	5/18/04
ADDED NOTE 7 & REVISED PROPOSED DRIVEWAY	5/3/04
REMOVED AREA OF OUTSIDE LESSONS	4/28/04
ADDED SIGHT LINE & PROPOSED DRIVEWAY	3/22/04
REVISED PARKING AREA(S)	1/16/04
ADDED PROPOSED RIDING ARENA & PARKING	1/12/04

PLAN TO ACCOMPANY A PETITION FOR A SPECIAL EXCEPTION

OF THE

WELLS PROPERTY

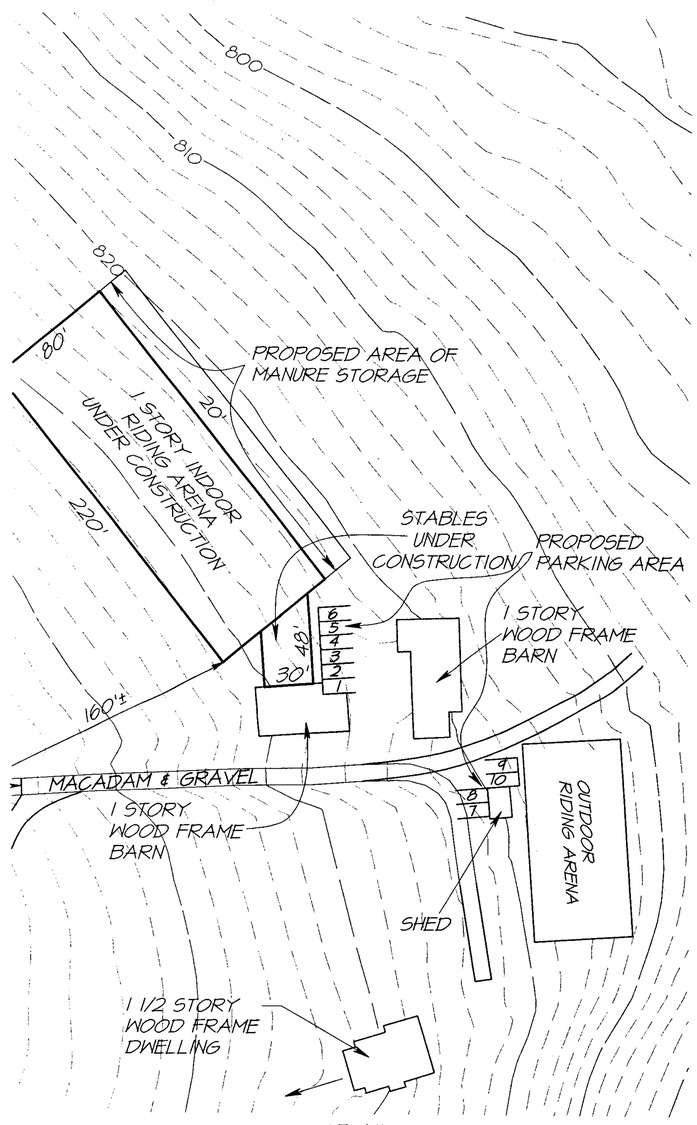
21225 MIDDLETOWN ROAD
Deed Ref: S.M. No. 14638 folio 191
Tax Account No.: 16-00-001503
Zoned R.C.-2; Map: NW-38G
Tax Map 05; Grid 06; Parcel 122
6th ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND

Scale: 1"=100' Date: DECEMBER 15, 2003

GERHOLD, CROSS & ETZEL, LTD.
REGISTERED PROFESSIONAL LAND SURVEYORS
Suite 100
320 East Towsontown Boulevard
Towson, Maryland 21286
(410) 823-4470

COMPUTED: DRAWN: G.W.S. CHECKED: B.E.D. FILE: X:\Wells\zoningsur2.prg

May 18, 2004



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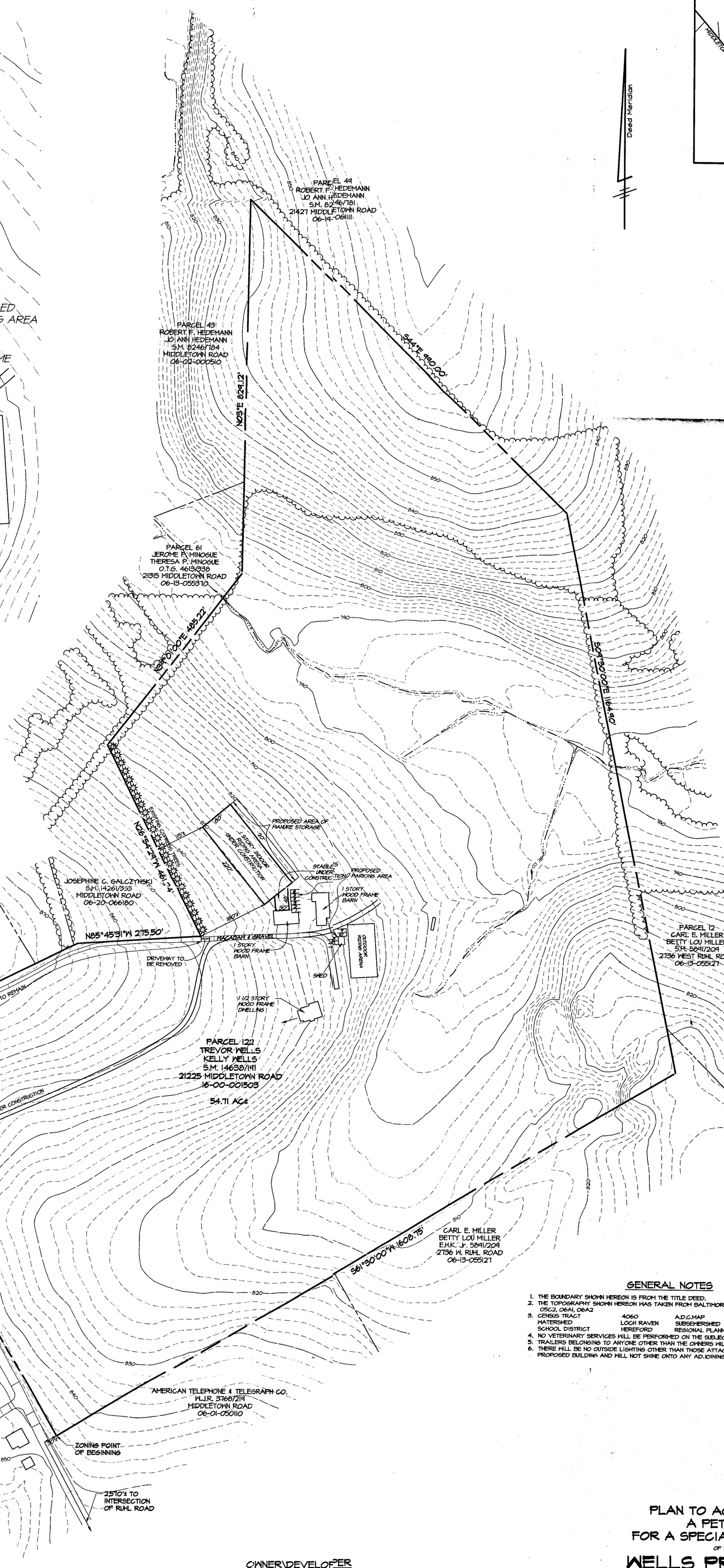
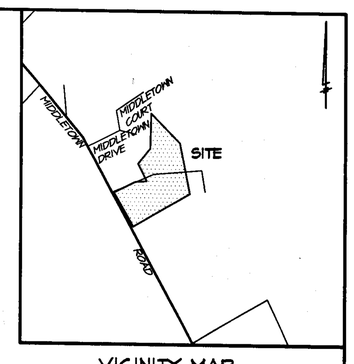
1"=50'





VICINITY MAP
1" = 2000'

Deed Meridian

GENERAL NOTES

1. THE BOUNDARY SHOWN HEREON IS FROM THE TITLE DEED.
2. THE TOPOGRAPHY SHOWN HEREON WAS TAKEN FROM BALTIMORE COUNTY GIS TILES 01C3, 05C1, 05C2, 06A1, 06A2
3. CENSUS TRACT 4060 A.D.C. MAP MAP: 2, GRID: B3
   WATERSHED LOCH RAVEN SUBSENERSHED NONE
   SCHOOL DISTRICT HEREFORD REGIONAL PLANNING DISTRICT 301
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Pet No 7

OWNER\DEVELOPER

TREVOR & KELLY WELLS
21224 MIDDLETOWN ROAD
FREELAND, MARYLAND 21053

PETITION

SPECIAL EXCEPTION IN ACCORDANCE WITH BALTIMORE COUNTY ZONING REGULATIONS SECTION 1A01.2.C.21 FOR A RIDING STABLE.

LEGEND

PROPOSED BUILDINGS
EXISTING BUILDINGS
WOODS LINE
EXISTING PAVING
PROPOSED PAVING
ZONING LINE
PROPERTY LINE
CONTOURS

PLAN TO ACCOMPANY A PETITION FOR A SPECIAL EXCEPTION

OF THE

WELLS PROPERTY

21225 MIDDLETOWN ROAD
Deed Ref: S.M. No. 14638 folio 191
Tax Account No.: 16-00-001503
Zoned R.C.-2; Map: NW-38G
Tax Map 05; Grid 06; Parcel 122
6th ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND

Scale: 1"=100' Date: DECEMBER 15, 2003

REVISION	DATE
LABELING ON ARENA AND DRIVEWAY NOTES POSITIONING OF PROPOSED ARENA REVISED	9/7/04
REVISED DIMENSION LINES FOR PROP. RIDING ARENA	7/08/04
PROPOSED DRIVEWAY SHOWN	5/18/04
ADDED NOTE 7 & REVISED PROPOSED DRIVEWAY	5/3/04
REMOVED AREA OF OUTSIDE LESSONS	4/28/04
ADDED SIGHT LINE & PROPOSED DRIVEWAY	3/22/04
REVISED PARKING AREA(S)	1/16/04
ADDED PROPOSED RIDING ARENA & PARKING	1/12/04

GERHOLD, CROSS & ETZEL, LTD.
REGISTERED PROFESSIONAL LAND SURVEYORS
Suite 100
320 East Towsontown Boulevard
Towson, Maryland 21286
(410) 823-4470

COMPUTED: DRAWN: C.J.S. CHECKED: B.E.D. FILE: X:\Wells\zoningsur2.pro

Sep 8, 2004

00-SE
00-NE

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,

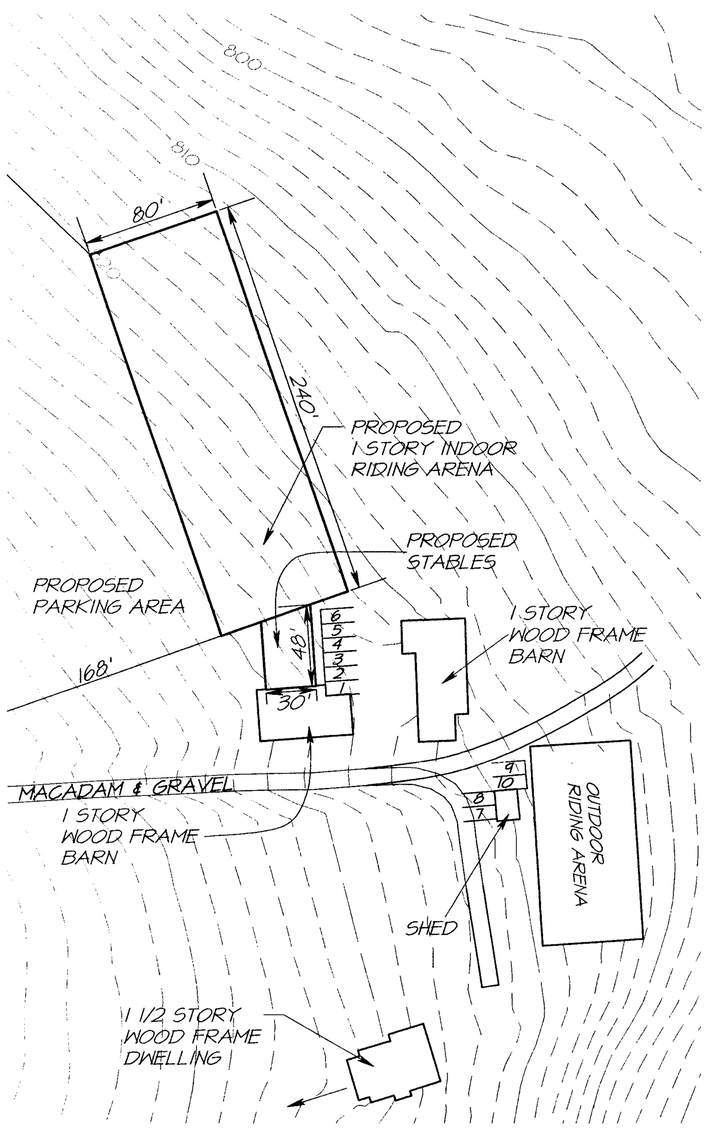
Joseph Bartenfelder
Chairman, County Council

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
OFFICIAL ZONING MAP

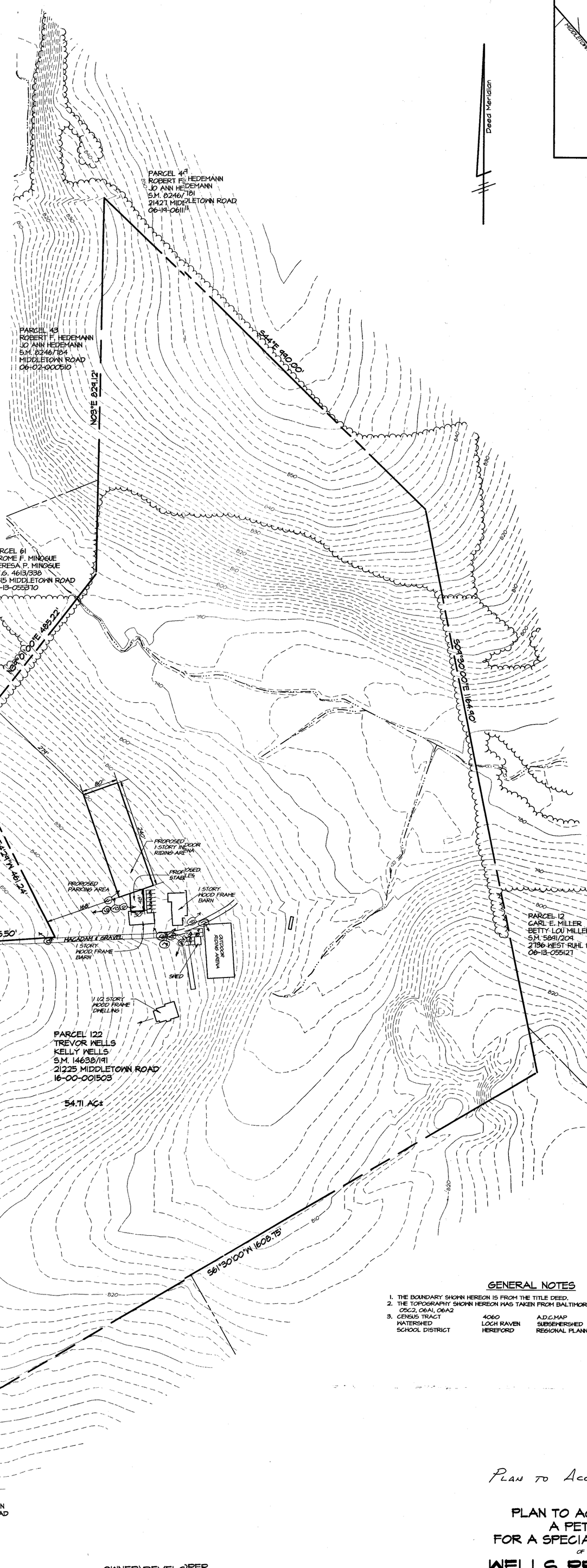
SCALE	LOCATION	SHEET
1" = 200'±	WEST OF RUHL	N.W. 38-G
DATE OF PHOTOGRAPHY JANUARY 1986		

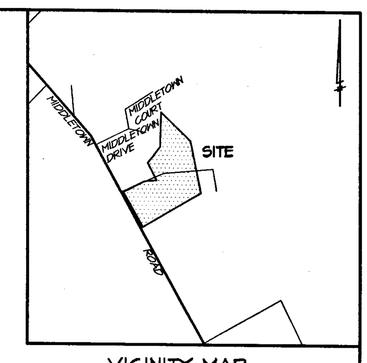
Ref 2014 #4

NW 38 G



DETAIL
1"=50'





VICINITY MAP
1" = 2000'

Deed Meridian

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3. CENSUS TRACT 4060 A.D.C. MAP MAP: 2, GRID: B3
   WATERSHED LOCH RAVEN SUBSEWERSHED NONE
   SCHOOL DISTRICT HEREFORD REGIONAL PLANNING DISTRICT 301

LEGEND

- PROPOSED BUILDINGS
- EXISTING DWELLING
- WOODS LINE
- EXISTING PAVING
- PROPOSED PAVING
- ZONING LINE
- PROPERTY LINE
- CONTOURS

OWNER\DEVELOPER

TREVOR & KELLY WELLS
21224 MIDDLETOWN ROAD
FREELAND, MARYLAND 21053

PETITION

SPECIAL EXCEPTION IN ACCORDANCE WITH BALTIMORE COUNTY ZONING REGULATIONS SECTION 1A01.2.C.21 FOR A RIDING STABLE.

Pet No2

STATE OF MARYLAND BRUCE EDWIN DONE REG. 531 REGISTERED PROPERTY LINE SURVEYOR 1/23/04

REVISION	DATE
REVISED PARKING AREA(S)	1/16/04
ADDED PROPOSED RIDING ARENA & PARKING	1/12/04

Plan to Accompany Photographs

PLAN TO ACCOMPANY A PETITION FOR A SPECIAL EXCEPTION

OF THE

WELLS PROPERTY

21225 MIDDLETOWN ROAD
Deed Ref: S.M. No. 14638 folio 191
Tax Account No.: 16-00-001503
Zoned R.C.-2; Map: NW-38G
Tax Map 05; Grid 06; Parcel 122
6th ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND

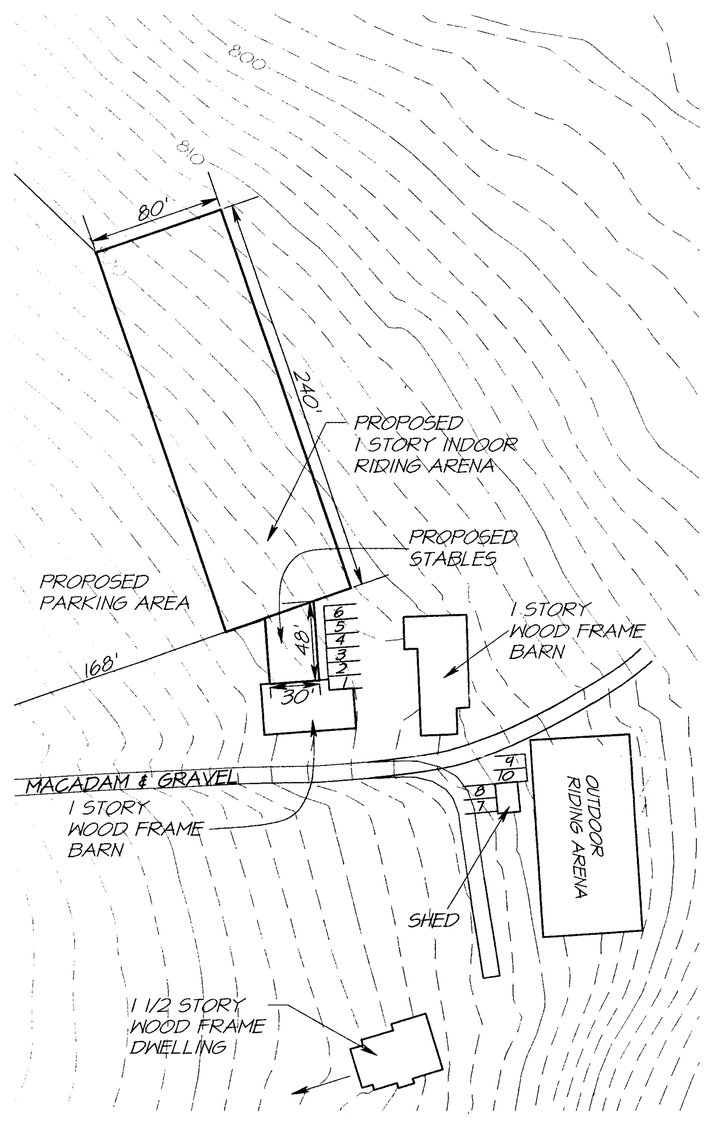
Pet #2

Scale: 1"=100' Date: DECEMBER 15, 2003

GERHOLD, CROSS & ETZEL, LTD.
REGISTERED PROFESSIONAL LAND SURVEYORS
Suite 100
320 East Towsontown Boulevard
Towson, Maryland 21286
(410) 823-4470

COMPUTED: DRAWN: C.J.S. CHECKED: B.E.D. FILE: X:\Wells\zoningsur2.pro

Jan 29, 2004



DETAIL
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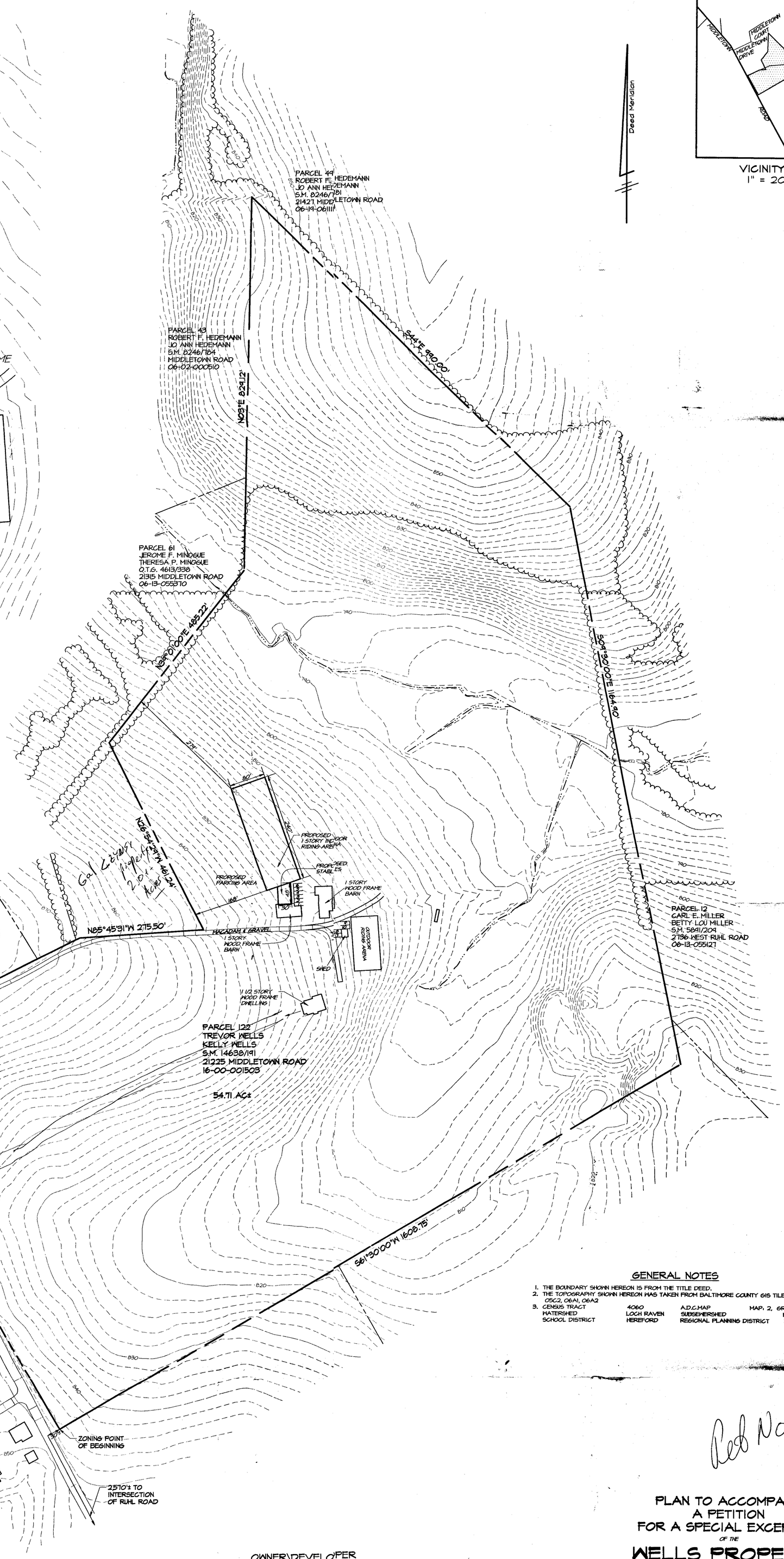

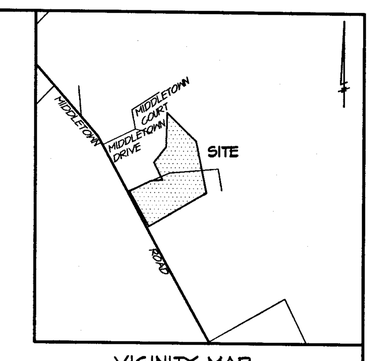

VICINITY MAP
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   SCHOOL DISTRICT HEREFORD REGIONAL PLANNING DISTRICT 301

Ref No 1

LEGEND

- PROPOSED BUILDINGS
- EXISTING DWELLING
- WOODS LINE
- EXISTING PAVING
- PROPOSED PAVING
- ZONING LINE
- PROPERTY LINE
- CONTOURS

OWNER\DEVELOPER
TREVOR & KELLY WELLS
21224 MIDDLETOWN ROAD
FREELAND, MARYLAND 21053

PETITION
SPECIAL EXCEPTION IN ACCORDANCE WITH BALTIMORE COUNTY ZONING REGULATIONS SECTION 1A01.2.C.21 FOR A RIDING STABLE.

STATE OF MARYLAND — BRUCE EDWIN DORF — No. 531 — REGISTERED PROPERTY LINE SURVEYOR — 1/23/04

REVISION	DATE
REVISED PARKING AREA(S)	1/16/04
ADDED PROPOSED RIDING ARENA & PARKING	1/12/04

PLAN TO ACCOMPANY A PETITION FOR A SPECIAL EXCEPTION OF THE WELLS PROPERTY

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Deed Ref: S.M. No. 14638 folio 191
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Zoned R.C.-2; Map: NW-38G
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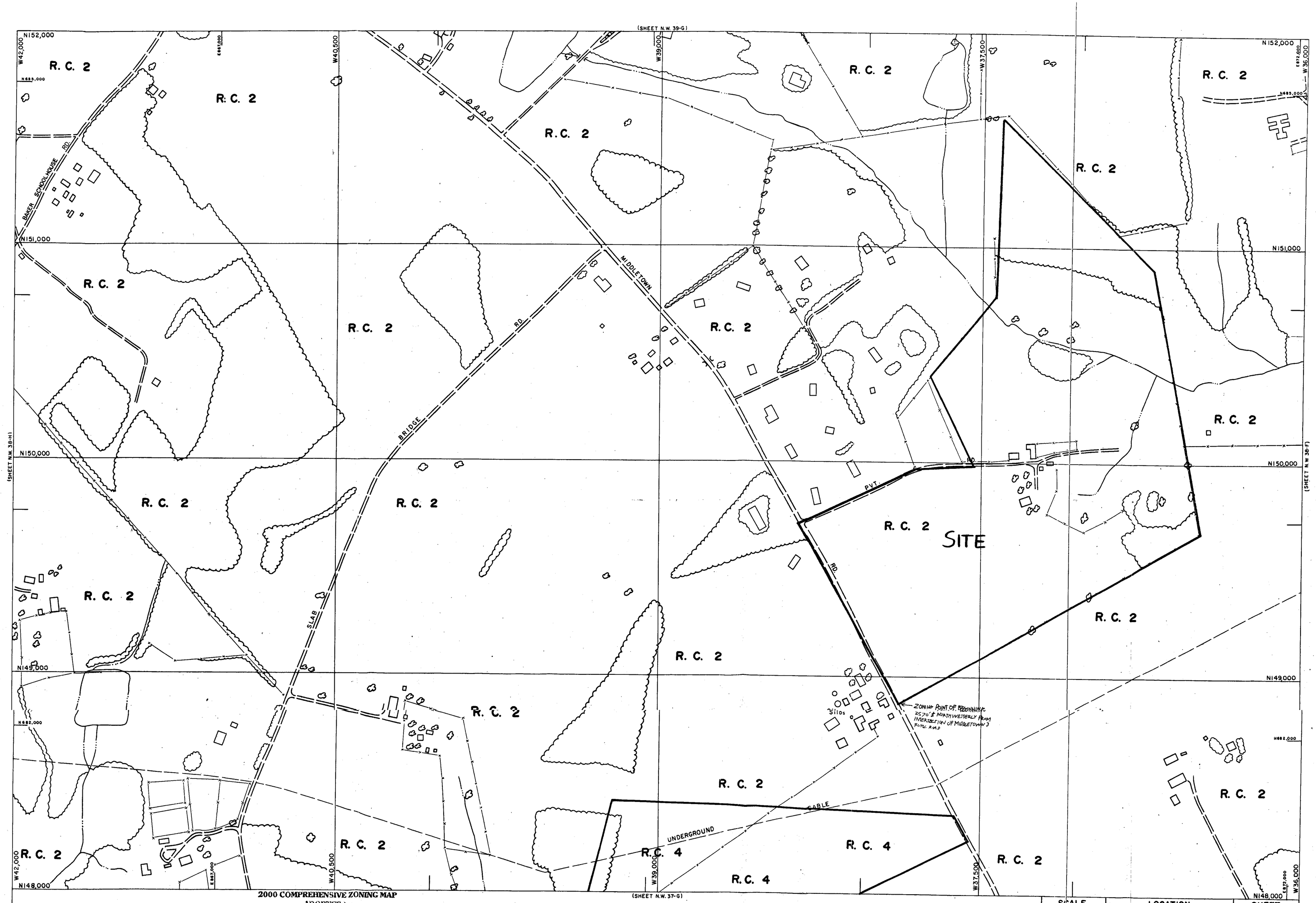
COMPUTED: DRAWN: C.J.S. CHECKED: B.E.D. FILE: X:\Wells\zoningsur2.pro

Jan 29, 2004

04-343-X



00-SE
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BY BUCHART-HORN, INC. BALTIMORE, MD. 21210

2000 COMPREHENSIVE ZONING MAP
ADOPTED by
THE BALTIMORE COUNTY COUNCIL
OCTOBER 19, 2000
Bills Nos. 87-00, 88-00, 89-00, 90-00, 91-00, 92-00, 93-00,

Joseph Bartenfelder
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BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
OFFICIAL ZONING MAP

SCALE	LOCATION	SHEET
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DATE OF PHOTOGRAPHY JANUARY 1986		

NW 38 G

04-343-X