6/23/04

IN RE: PETITION FOR SPECIAL HEARING NE/S Elder Road, E of Bart Allen Lane 800' N of the c/l Hydes Road **(5020 Elder Road)** 11th Election District 3rd Council District Mark J. Daneker, et ux Petitioners	* * * * * *	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY Case No. 04-368-SPH

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Hearing filed by the owners of the subject property, Mark J. Daneker and his wife, Susan B. Daneker. The Petitioners request a special hearing to approve a non-density transfer of 10.1 acres from Parcel 1 to Parcel 2 of the subject property; to approve the annexation of the 10.1-acre Parcel into future Plat Three of the Dulaney Valley Estates subdivision; and, to approve an amendment to the 3rd Amended Final Development Plan of Dulaney Valley Estates II to incorporate the 10-acre Parcel and to reduce and reconfigure the number of proposed lots therein from 15 to 13. The subject property and requested relief are more particularly described on the two-page site plan entitled 4th Amended Final Development Plan for Dulaney Valley Estates II, which was accepted into evidence and marked as Petitioner's Exhibits 3A and 3B.

Appearing at the requisite public hearing in support of the request were Mark J. Daneker, property owner, and Geoffrey C. Schultz, who appeared on behalf of McKee and Associates, Inc., the consultants who prepared the site plan for this property. Mr. Daneker ignored the old adage regarding an attorney who represents himself and appeared without counsel. Appearing as Protestants were Charlotte W. Pine and Carol Shaw, who appeared on behalf of the Long Green Valley Association, Inc., which were represented by Michael P. Tanczyn, Esquire. Also appearing at the hearing was Wallace Lippincott, who appeared on behalf of the County's Department of Environmental Protection and Resource Management (DEPRM). Mr. Lippincott also serves as Secretary of Baltimore County's Agricultural Advisory (AG) Board.

ORDER RECEIVED FOR FILING
Date 6/23/04
By

As is often the case with contested hearings before the Zoning Commissioner, many of the underlying facts relative to this matter are not in dispute. Mr. & Mrs. Daneker at one time owned two adjacent parcels located along Elder Road near Hydes Road in the Long Green Valley are of northern Baltimore County. They initially acquired Parcel 1 in 1969. Parcel 1 contains approximately 111.88 acres in area zoned R.C.2 and is improved with a two-story dwelling, known as 5020 Elder Road, in which the Petitioners reside. Parcel 1 has frontage on Elder Road and an existing macadam driveway leads from Elder Road to the interior of the property and the Petitioners' residence. In addition to the dwelling, there are a series of outbuildings that are used for agricultural purposes. In fact, Mr. Daneker testified that much of the property has been used for agricultural purposes over the years.

It is also to be noted that a stream bisects Parcel 1 and a related floodplain and wooded area are located adjacent to both sides of the stream. Mr. Daneker indicated that this stream effectively divides the property into two usable portions from an agricultural standpoint. That is, the front portion of the site, which includes the home and outbuildings, and the rear portion of the property located on the other side of the stream, which contains approximately 10.1 acres in area. These two distinct areas, as well as the stream, floodplain and woods are more particularly shown on Petitioner's Exhibit 3A.

Mr. & Mrs. Daneker acquired Parcel 2 in 1974. Parcel 2 contains approximately 19.31 acres in area and is split zoned R.C.2 and R.C.5. Parcel 2 abuts the rear property of Parcel 1, specifically the 10.1-acre area in Parcel 1. In addition to the split zoning of Parcel 2, a remarkable feature is the existence of a 103-foot wide BGE transmission line right-of-way that bisects this parcel.

Subsequent to their acquisition of Parcel 2, the Petitioners proposed the residential development of same. Ultimately, a CRG plan was submitted and approved in 1992. That plan (Petitioner's Exhibit 8) depicted a proposed subdivision of Parcel 2 into 15 single-family dwelling lots. Lots 1 through 11 were shown to be located in that portion of the property west of the BGE transmission line right-of-way, zoned R.C.5. Vehicular access to those lots was by way of an

ORDER RECEIVED FOR FILING
Date 6/23/04
By

extension of Bart Allen Lane and the construction of a new road, known as Milbert Ridge Drive, into the interior of the property. Ultimately, these 11 lots were memorialized as part of a record plat and 10 of the lots have been built out; several of which are now owned and occupied by members of Mr. Daneker's family. The 4 lots to the east of the transmission line were never developed. As originally proposed, two of these lots (Lots 12 and 13) were within the R.C.5 zoned portion of the property and the other two (Lots 14 and 15) were in the R.C.2 zone.

As noted above, Parcel 1 is divided into two usable agricultural areas by the stream that bisects the property. Mr. Daneker testified that it is difficult to bring agricultural equipment into the 10.1-acre portion of Parcel 1, given the existence of that stream. Indeed, it is this site constraint which he testified drives the current request. Under the Petition for Special Hearing, Mr. Daneker proposes the non-density transfer of that 10.1-acre area of Parcel 1 to Parcel 2. As a result, Parcel 1 would be reduced in area from 111.8 acres to 101.7 acres. Under its R.C.2 zoning classification, Parcel 1 would continue to enjoy one right of subdivision in that no density will be conveyed as part of the transfer of the 10.1 acres. Correspondingly, Parcel 2 will be increased in area from 19.31 acres to 29.41 acres. Additionally, Mr. & Mrs. Daneker propose a substantial revision to the previously approved development plan for that land on the east side of the transmission line right-of-way. Rather than the 4 lots as originally proposed and described above (Lots 12 through 15), the Petitioners propose to reconfigure the new Parcel 2 to create two lots, to be known as Lots 12 and 13 (see Petitioner's Exhibit 3B). Lot 12 will occupy the northern most portion of that tract and contain 12.7 acres in area; Lot 13 will occupy the southern portion of the tract and contain 16.3 acres in area.

It is abundantly clear that the acreage of the property and the applicable density and area regulations support the Petitioners' plan. Indeed, the undersigned Zoning Commissioner specifically raised this issue at the hearing and the Protestants conceded the point. That is, when one considers both the overall acreage of the Petitioners' holdings (Parcels 1 and 2 combined) as well as an examination of the two parcels separately, there is more than sufficient density to permit the desired transfer and the two new lots. In this regard, the Petitioners actually propose a project

ORDER RECEIVED FOR FILING
Date 11/23/04
By

which is under the allowable density. As noted above, Parcel 2 was originally proposed for four single-family dwelling lots on those lands located east of the transmission line right-of-way. Under the revised proposal, only two lots are proposed. Additionally, Mr. Lippincott testified in favor of the proposal as being consistent with the agricultural preservation provisions of the R.C.2 zoning regulations. In this regard, Mr. Daneker indicated that new Lot 13 would be occupied by his daughter who proposes a relatively small-scale agricultural operation on that property.

Although on its face, the proposal appears to be a "slam dunk," the Protestants raise several issues. First, the Protestants note the terms and conditions of a Deed of Conservancy Easement entered into by and between Mr. Daneker and the Long Green Valley Conservancy, Inc. on December 29, 1998. That agreement bound the undeveloped 19.02-acres in Parcel 2. The Protestants essentially aver that Mr. Daneker forfeited certain development rights on the subject property under that agreement. They also note the Petitioner's tax and other financial benefits associated with the conservancy deed. Mr. & Mrs. Daneker vehemently disagree with this assertion and it appears that their position has merit. As noted by the undersigned in open hearing, the authority of the Office of the Zoning Commissioner flows from County Charter, the Baltimore County Code, and the Baltimore County Zoning Regulations (B.C.Z.R.). That authority is essentially to interpret and apply the B.C.Z.R. and the development regulations codified in Title 26 of the Baltimore County Code. In my judgment, the Zoning Commissioner does not possess the requisite authority to render a final, legal interpretation of deeds, contracts, and other written agreements between private parties. Although the Protestants may or may not be correct in their allegation that Mr. Daneker gave away his rights to develop the property as proposed, I cannot render a final judgment on this issue. I do not find that the language of the conservancy deed unequivocally states that this property cannot be developed as proposed and therefore, decline to adopt the Protestants' position.

Secondly, the Protestants also take issue with the proceedings before Baltimore County's Agricultural Advisory Board. Mr. Daneker appeared before that Board in the fall of 2002 to present his plans. As fully set out during arguments in open hearing and within their

ORDER RECEIVED FOR FILING
Date 6/23/04
By

memoranda, the Protestants take issue regarding the process and procedure of this matter before that entity.

Again, however, I view this argument as an issue beyond the jurisdiction of my authority. I find no precedent or authority that the Zoning Commissioner can direct or mandate proceedings before the Agricultural Advisory Board. Moreover, any appeal of a decision by that Board certainly does not lie before the Office of the Zoning Commissioner and at this point in time, is no doubt untimely. Thus, I decline to utilize that issue to support a denial of the Petition.

The third issue raised by the Protestants is of more merit. Although the Petitioners' revised plan does indeed show the new proposed property line and acreage of new Lots 12 and 13, it is lacking in significant detail. The location of proposed building envelopes, wells and septic fields is not specifically shown, although Mr. Schultz opined at the hearing that the lots are large enough to easily support a single family dwelling and the required infrastructure on each parcel. In response to this issue, Mr. Daneker advanced a chicken versus egg theory as it relates to this process. Specifically, he argued that the relief requested within the instant Petition should be obtained before an amended development plan depicting the specifics of the proposal is submitted to Baltimore County (i.e., the Development Review Committee, "DRC") for review. Although appreciative of his argument, the third prong of the relief requested is broad enough to potentially be construed to include County approval of a plan without specific detail.

In conclusion, based upon the testimony and evidence offered, I am easily persuaded to grant the relief requested under Items 1 and 2 of the Petition for Special Hearing. I easily find that the proposal is consistent with the spirit and intent of the B.C.Z.R. That the overall development is "under density," will preserve and protect agricultural uses, and enjoys the support of Mr. Lippincott, etc., are all compelling factors. It is to be noted in passing that the opposition of the Long Green Valley Association is difficult to fathom. Other than the technical interpretation of the conservation deed, the proposed development of the subject property is certainly consistent with that Association's efforts to preserve the rural and agricultural character of the valley.

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Date 6/23/14
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I will also approve an amendment to the Third Amended Final Development Plan for Dulaney Valley Estates II to incorporate the 10.1 acre parcel from Parcel 1 to Parcel 2 and to reduce and reconfigure the number of proposed lots therein from 15 to 13. However, by this approval, I am not exempting the Fourth Amended Final Development Plan from further County review and am not rendering final approval of the plan. That is, the amended Final Development Plan submitted as Petitioner's Exhibit 3A and 3B is not specific enough at this time for final approval. Item 3 is only asking for the incorporation of the 10.1 acre parcel and the reduction and reconfiguration of the lots. Therefore, as a condition to the relief granted, the Fourth Amended Final Development Plan must proceed through the County's review process for approval of the lot locations, wells, septic areas, etc.

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 23rd day of June 2004 that the Petition for Special Hearing to approve a non-density transfer of 10.1 acres from Parcel 1 to Parcel 2 of the subject property; to approve the annexation of the 10.1-acre Parcel into future Plat Three of the Dulaney Valley Estates subdivision; and, to approve an amendment to the 3rd Amended Final Development Plan of Dulaney Valley Estates II to incorporate the 10.1-acre Parcel into Parcel 2 and to reduce and reconfigure the number of proposed lots therein from 15 to 13, in accordance with Petitioner's Exhibits 3A and 3B, be and is hereby GRANTED, and,

IT IS FURTHER ORDERED that the Fourth Amended Final Development Plan (Petitioner's Exhibits 3A and 3B) is not exempt from further County review, given the lack of specificity thereof.

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

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

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IN THE CIRCUIT COURT FOR BALTIMORE COUNTY	*	
	*	
IN THE MATTER OF: MARK J. DANEKER	*	CIVIL ACTION
		Case no: 03-C-03-006661 5
PETITION OF: LONG GREEN VALLEY ASSOCIATION, INC.	*	
	*	
FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY	*	
	*	
BOARD OF APPEALS OF BALTIMORE COUNTY Old Courthouse 400 Washington Avenue Towson, MD 21204	*	
	*	
	*	

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

04-368-SPH ?

OPINION AND ORDER

This case comes to the Circuit Court for Baltimore County as an administrative appeal from the ruling of the Board of Appeals of Baltimore County.

On June 23, 2004, Mr. Mark J. Daneker and Mrs. Susan B. Daneker filed a Petition for a Special Hearing, with the Department of Permits and Development Management, under Section 500.7 of the Zoning Regulations of Baltimore County . On June 23, 2004 the Zoning Commissioner for Baltimore County granted the Petition for a Special Hearing to approve:

1) A non-density transfer of 10.1 acres from Parcel 1 to Parcel 2 of the subject property;

2) The annexation of a 10.1-acre Parcel into future Plat III of the Dulaney Valley Estates Subdivision; and

3) An amendment of the 3rd Amended Final Development Plan of Dulaney Valley Estates II to incorporate the 10.1 acre Parcel into the area of the subdivision and to reduce and reconfigure the number of proposed lots from 15 to 13, in accordance with the Fourth Amended Final Development Plan.

And the Zoning Commissioner further ordered that the Fourth Amended Final Development Plan is not exempt from further County review.

Long Green Valley Association, represented by Michael P. Tanczyn, Esquire, appealed the Zoning Commissioners order to the County Board of Appeals of Baltimore County (hereinafter Board). On February 17, 2005, the Board held a de novo hearing and on April 19, 2005, the Board held its public deliberation. On May 16, 2005, the County Board of Appeals affirmed the decision of the Zoning Commissioner to grant the Petition for Special Hearing.

On June 15, 2005, Long Green Valley Association, represented by Michael P. Tanczyn, Esquire filed a timely appeal of the Board's decision to the Circuit Court for Baltimore County.

Facts

In 1969, Mr. and Mrs. Daneker purchased a parcel of land (hereafter Parcel 1) located along Elder Road near Hydes Road in the Long Green Valley area of North Baltimore County. Parcel 1 contains approximately 111.8 acres and is zoned R.C. 2. It is improved with a two-story dwelling known as 5020 Elder Road in which the Petitioners reside. In addition, a stream bisects Parcel 1, and a related flood plain and a wooded area are located adjacent to both sides of the stream. And according to Mr. Daneker, the stream dividing the property makes it difficult to farm both pieces of the property.

In 1974, the Danekers purchased an adjacent parcel (hereafter Parcel 2), which contains 19.31 acres, has a 103-foot wide BGE transmission line right-of way bisecting it, and is split-zoned R.C. 2 and R.C. 5. Parcel 2 abuts the rear of Parcel 1, specifically the 10.1 acres in Parcel 1, which is the subject of this case.

Subsequent to the acquisition of Parcel 2, the Petitioners proposed the residential development of that parcel. In 1992, a CRG Plan, which depicted a proposed subdivision of Parcel 2 into 15 single-family dwelling lots with 11 lots on the west side of the power line and 4 lots on the east side of the power line, was submitted and approved. The four lots to the east of the power line were never developed. As originally proposed, two of these lots, lots 12 and 13, were within the R.C. 5-zoned portion of the property, and the other two lots, lots 14 and 15, were in the R.C. 2 zone.

As previously noted, Mr. Daneker, testified that it was difficult to bring agriculture equipment into the 10.1-acre portion of Parcel 1 because of the stream. It was this site constraint that drove the request for the non-density transfer. Mr. and Mrs. Daneker propose the non-density transfer of the 10.1 acre area of Parcel 1 to Parcel 2. As a result, Parcel 1 would be reduced in area from 111.8 acres to 101.7 acres. Under the R.C. 2 zoning classification, Parcel 1 would continue to enjoy one right of subdivision in that no density would be conveyed as part of the transfer of the 10.1 acres. Parcel 2 will be increased in area from 19.31 acres to 29.41 acres.

In addition, Mr. and Mrs. Daneker propose a substantial revision to the previously approved development plan for that land on the east side of the transmission line right-of-way. Rather than the four lots as originally proposed and described above (lots 12 through 15), Mr. and Mrs. Daneker propose to reconfigure the new Parcel 2 to create two

lots, to be known as lots 12 and 13. Lot 12 will occupy the northernmost portion of the tract and contain 12.7 acres in area, and Lot 13 will occupy the southern portion of the tract and contain 16.3 acres in area.

ISSUE

This Court will consider the following issues for review:

1. **Did the Board of Appeals err in their findings of fact and conclusions of law, that the proposed annexation was a non-density transfer under applicable county code and zoning regulations and case law?**
2. **Did the Board act in an arbitrary or capricious manner in failing to consider the effect and the legal weight of the Danekers' donation of three development rights to the Long Green Conservancy, pursuant to the written easement and for which the Danekers' claimed, in the same tax year, a charitable contribution?**

STANDARD OF REVIEW

The Court of Special Appeals of Maryland, in Maryland Department of Education v. Shoop, explains that the standard of review of the Court of Special Appeals for decisions of administrative panels is precisely that of the circuit court. 119 Md. App. 181, 196, 704 A.2d 499 (citing Dep't of Human Res. v. Thompson, 103 Md. App. 175, 188, 652 A.2d 1183 (1995)), cert. denied, 349 Md. 495, 709 A.2d 140 (1998). The appellate court reviews appeals from such panels under a two-tiered scheme. Dep't of Health & Mental Hygiene v. Reeders Mem'l Home, Inc., 86 Md. App. 447, 452, 586 A.2d 1295 (1991).

The appellate court examines the panel's findings of fact under the substantial evidence test. Id. The appellate court cannot, however, substitute its judgment for that of the administrative panel. Zeitschel v. Bd. of Educ., 274 Md. 69, 82, 332 A.2d 906 (1975). As for the appellate court's review of the findings of law, when no such deference is appropriate, it may substitute its judgment for that of the administrative panel. Shanty Town Assoc. v. Dep't of the Env't, 92 Md. App. 103, 116, 607 A.2d 66 (1992); see Younkers v. Prince George's County, 333 Md. 14, 19, 633 A.2d 861 (1993) (citing People's Counsel v. Md. Marine Mfg. Co., 316 Md. 491, 496-97, 560 A.2d 32 (1989)).

Furthermore, for a reviewing court to uphold an administrative hearing board's order, the order must be sustainable on its findings of fact and for the reasons stated by the agency. See Regan v. Bd. of Chiropractic Exam'rs, 120 Md. App. 494, 508-09, 707 A.2d 891 (1998). Indeed, on appeal the court asks whether a reasoning mind reasonably could have reached the factual conclusion that the agency reached. Eberle v. Balt. County, 103 Md. App. 160, 166, 652 A.2d 1175 (1995) (quoting Hill v. Balt. County, 86 Md. App. 642, 659, 587 A.2d 1155 (1991)).

The reviewing court, however, must not go beyond the findings of fact of the administrative hearing. See Supervisor of Assessments v. Ely, 272 Md. 77, 321 A.2d 166 (1974). The Court of Appeals held that judicial review of the act of the administrative agency "need not and must not be either judicial fact-finding or a substitution of judicial judgment for agency judgment." Id. Furthermore, it is not only within the province of the agency to resolve conflicting evidence, but to also draw the ruling inference. See

Bulluck v. Pelham Wood Apts., 283 Md. 505 (1978). As such, the reviewing court is bound to the record of the administrative hearing. Id.

DECISION

1. **Did the Board of Appeals err in their findings of fact and conclusions of law, that the proposed annexation was a non-density transfer under applicable county code and zoning regulations and case law?**

Petitioner argues that the applicable calculations for computing density where land is split zoned, which is the subject of a non-density transfer, were not followed nor given proper weight by the Board of Appeals.

Petitioner raises several questions with respect to the non-density transfer. First, the Petitioner note the terms and conditions of the Deed of Conservancy Easement, which was entered into on December 29, 1998, by and between Mr. Daneker and the Long Green Valley Conservancy, Inc. Under that agreement, the undeveloped 19.02 acres in Parcel 2 were bound. The Petitioner alleges that the 19.02 acre parcel claimed five development rights under current *Baltimore County Zoning Regulations* (BCZR) in 1998. At the time that the Conservancy Easement was created, BCZR Sec1A04.3.B.1 required maximum gross residential density of RC 5 lot of record to be .667 dwellings per acre. The Petitioner claims that the RC 5 zoned lots did not meet the density criteria for the lots to be lots of record under that standard, which would eliminate at least two lots from the subdivision as approved. The Petitioner felt that the lots would be enhanced by the annexation of the 10.1 acres from Parcel 1 and thereby creating a density transfer and not a non-density transfer.

This Court finds that the transfer of the 10.1 acres from Parcel 1 to parcel 2 is a non-density transfer. Under the original development plan, there were a total of 14.8 lots permitted on the RC 5 portion of the property and 2 lots permitted on the RC 2 portion of the property. On the RC 5 portion of the property, 11 of the 14.8 lots have been developed. As a result, 3 density rights for the RC 5 and 2 density rights for the RC 2 portion of the property remain. The original development plan was to utilize these remaining 5 density rights for 4 lots. Two of these lots (12 and 13), were within RC 5

zoned portion of the property, and the other two lots (14 and 15), were within the RC 2 zoned portion of the property.

Under the new development plan, the four lots will be reconfigured and reduced to two lots, to be known as lots 12 and 13. Old Lot 12, will be encompassed with in the new Lot 12, and new Lot 12 will occupy the northernmost portion of the tract and contain 12.7 acres in area. And after the transfer of 10.1 acres, old Lot 13 will be incorporated into new Lot 13, which will encompass 16.3 acres and occupy the southern portion of the tract. Each of the new lots, 12 and 13, will have one density unit, which the old lots, 14 and 15, each had. Therefore, the transfer of 10.1 acres is a non-density transfer.

Petitioner also claims that Sec 1A00.5 of the BCZR applies to this situation. Petitioner states that: "when portions of the tract lie within R.C. zones of different classifications...the total number of dwellings or density units permitted shall apply to each tract individually, and for the purposes of these regulations, shall be considered as separate parcels." (See 8000, Appellant's Memorandum) The Petitioner claims that the two RC 5 lots to the east of the power lines are undersized and that the 10.1 acre parcel proposed to be annexed is improperly being utilized to increase the size of the RC 5 lots, in order to satisfy the zoning density requirements of Baltimore County. (See 8000, Appellant's Memorandum) This is improper because the 10.1 acres to be annexed are not RC 5, as Sec 1A00.5 of the BCZR requires and thus cannot be utilized properly to calculate density for the undersized RC 5 lots. (See 8000, Appellant's Memorandum).

This Court finds that the annexation of the 10.1 acres is not being utilized to increase the size of the two RC 5 lots in order to satisfy the zoning density requirements. First of all, as stated above, the two RC 5 lots are being incorporated into new lots 12 and 13. Since lots 12 and 13, each had a density unit allocated to them previously, there is no attempt to increase the density on the old RC 5 lots. Secondly, the 10.1 acres that are being annexed are zoned as RC 2 and are not being annexed solely to the RC 5 lots, but RC 2 lots as well. The RC 2 lots did not need any additional area to be eligible for

creation of two lots because any RC 2 parcel between 2 acres and 100 acres in size may be divided into two lots under BCZR 1A01.3.1. And there is no restriction on increasing the size of these lots in the RC 2 area. Finally, the proposed annexation of the 10.1 acres is being utilized to enhance and make possible the use of the rest of this RC 2 area for ongoing agricultural purposes. (See Tr. 42, Petitioner's Exhibit 9).

2. **Did the Board act in an arbitrary or capricious manner in failing to consider the effect and the legal weight of the Danekers' donation of three development rights to the Long Green Conservancy, pursuant to the written easement and for which the Danekers' claimed, in the same tax year, a charitable contribution?**

Petitioner contends that Mark Daneker admitted to the Board that following the execution of "Deed of Conservation Easement" (hereinafter Conservation Easement), he had claimed on the succeeding year's tax return, a donation of three of the development rights, and a tax deduction occurred. The Petitioner contends that Mr. Daneker's seeking of approval for the annexation as a non density transfer, where he has taken a tax credit for donating three, must fail because as a result of this donation, Mr. Daneker does not have the remaining two viable development rights.

The Board considers this an issue that "concerns the enforcement of the Conservation Easement... The Board considers that any issue with respect to the enforcement of the Easement and the development rights there under should be handled through the enforcement procedures of the Conservation Easement document, and not by this Board." (See p4 of Board's opinion) And the Board further states that it has no authority to enforce covenant easements.

This Court finds that this is an issue regarding the enforcement of the Conservation Easement. This Court deems that any issue with respect to the enforcement of the Conservation Easement and the development rights there under should be handled through the enforcement procedures of the Conservation Easement, such as Article III, and not by this Court. Thus, this Court, under the current appeal, and the Board, (as well as, the Zoning Commissioner) do not possess the requisite authority to enforce the Easement.

Regardless of whether this Court, under the current appeal, and the Board (as well as the Zoning Commissioner) has the power to enforce the Conservation Easement, the express language of the Conservation Easement confirms that Mr. Daneker has two viable development rights. The Easement specifically states that:

> The Property has five development rights under current Baltimore Zoning Regulations. Grantor hereby grants to Grantee **all development rights except two**, which are specifically reserved hereby together with any hereafter allocated to, implied, or inherent in the Property, and the parties agree that said three granted rights will not be exercised by the Grantor and may not be used or transferred to any portion of the Property as it now or hereafter may be bounded or described, or to any other property adjacent or otherwise, nor used for the purpose of calculating permissible lots of Property. All such granted development rights which might now or hereafter become or represent a transferable density right attributable exclusively to the Property, **except the two specifically retained**, are hereby assigned and transferred to Long Green Valley Conservancy, Inc...." (Exhibit 4 of Appellant's Memorandum, The Deed of Conservation Easement, Para J)

Furthermore, the Conservation Easement specifically reserves the right to Mr. Daneker to build two residential structures on this property and to choose the location for these residential structures. According to the Conservation Easement "No more than two residential dwellings and no other buildings, facility, or other structure shall be constructed on the Property after the date of this Conservation Easement,...(6)...The original location of the two residential structures shall be at the sole option of Grantor." (See "The Deed of Conservation Easement", Para G) Therefore, Mr. Daneker has two viable development rights.

Overall, this Court holds that there was substantial evidence for the Board of Appeals' to approve a non-density transfer of 10.1 acres from Parcel 1 to Parcel 2 of the subject property; to approve the annexation of the 10.1 acre parcel into future Plat III of the Dulaney Valley Estates Subdivision; and to approve an amendment to the Third

Amended Final Development Plan of Dulaney Valley Estates II to incorporate the 10.1 acre parcel into Parcel 2 and to reduce and reconfigure the number of proposed lots therein from 15 to 13. Therefore, after careful review of all of the evidence, submitted memoranda, oral arguments, and all applicable law, it is **ORDERED** this 31st day of January 2006, that the decision of the Board of Appeals is hereby **AFFIRMED**.

John O. Hennegan, Judge
Circuit Court for Baltimore County

Cc: Mark Daneker
Susan Daneker
Michael P. Tanczyn
Baltimore County Board of Appeals

10/6/05

IN THE MATTER OF	*	IN THE CIRCUIT COURT FOR
THE APPLICATION OF MARK J. DANEKER - PETITIONER	*	FOR BALTIMORE COUNTY
	*	
FOR JUDICIAL REVIEW OF THE DECISION OF THE BOARD OF APPEALS OF BALTIMORE COUNTY	*	
	*	
FOR SPECIAL HEARING ON PROPERTY LOCATED ON THE NE/S ELDER ROAD, E OF BART ALLEN LN, 800' N OF C/L HYDES ROAD	* *	
	*	
11TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	* *	
Case No.: 04-368-SPH	*	Case No.: 03-C-05-006661

* * * * * *

APPELLANT'S MEMORANDUM

Now comes Long Green Valley Association, Inc., Appellant, Protestant below, by its attorney, Michael P. Tanczyn, and pursuant to Md. Rule 7-207, submits this Memorandum to the Court, to assist the Court in reaching a decision in this appeal.

STATEMENT OF THE CASE

Petitioners, Mark J. Daneker, Esquire and his wife, Susan B. Daneker filed a petition with the Zoning Commissioner for Baltimore County, for a Special Hearing seeking the following zoning relief:

1. Approval of a non-density transfer of 10.1 acres from parcel 2 to parcel 1 of the subject property;

2. Annexation of a 10.1 acre parcel into future plat 3 of Dulaney Valley Estates

subdivision;

3. Approve an amendment to the 4th amended final development plan of Dulaney Valley Estates II, to incorporate the 10 acre parcel and reduce and reconfigure the number of proposed lots thereon from 15 to 13.

This matter was heard before the Zoning Commissioner, who subsequently by Opinion and Order, June 23, 2004, approved the non-density transfer of 10.1 acres from parcel 1 to parcel 2 and approve the annexation of the 10.1 acre parcel into future plat 3 of Dulaney Valley Estates addition, but did not approve the 4th amended final development plan for Dulaney Valley Estates II. A timely appeal was taken from the Order, and the matter was then heard before the Board of Appeals for Baltimore County on February 17, 2005, de novo. By subsequent Opinion and Order, May 16, 2005, the County Board of Appeals of Baltimore County approved a non-density transfer of 10.1 acres from parcel 1 to parcel 2 and the annexation of the 10.1 acre parcel into future plat 3 of the Dulaney Valley Estates subdivision, but did not approve the 4th amended final development plan. A timely Petition For Judicial Review was filed on June 15, 2005, with the Circuit Court.

STATEMENT OF FACTS

Mark Daneker and Susan Daneker purchased a farm on Elder Road in Baltimore County in 1969, containing 111.88 acres prior to the adoption of the RC zones in 1975 (T16). At that time, the entire area was zoned for 1 acre lots (T16). Subsequently, the Danekers purchased an adjacent piece of property of approximately 40 acres in 1974 (T16). The parcels were shown on Petitioners' Exhibit 1, as farm parcel 1, and parcel 2, 40 acres (T17). As shown on the plat containing 19 acres, a power line divides the northern parcel in half (T18), and the lots to the left side of the power line had been previously developed (T18). The subject property was the property on the east side of the

power line, of 19.3 acres (T18), and the parcel of 10.1 acres found on the plat from parcel 1, proposed to be annexed to the upper tract. Mr. Daneker testified that since the upper parcel was purchased in 1974, he farmed it for a number of years (T19). He then introduced Petitioners' Exhibit 2, showing the topography of the 10.1 acre tract (T19). He also rented the same property to several local farmers until the government came out with a program which paid farmers not to grow crops, which he signed up for. He testified the RC zoning came in the mid-seventies in Baltimore County, and that the properties were downzoned (T21). He first claimed the upper 40 acre parcel had been approved by the CRG in 1990, and was grandfathered. He claimed they were not undersized lots, under the present regulations (T22). He stated that he was not proposing to use the RC 5 properties as lots anyway. In 1991, with legislation pending, which would have further restricted the development of parcel 2, Mr. Daneker first began the subdivision process with the County Review Group in Baltimore County, and got approval for development of parcel 2, which became the final development plan for Dulaney Valley Estates II (T23). He testified the original approval was for 11 residential lots on the left side of the power line (T23-24), and 4 lots of the east side of the power line, in the RC 2 area (T24). His original plan was only to develop the west side of parcel 2 (T24). He claimed the RC 5 property on the east side of the power line was laid out for 2 lots (T25), and the RC 2 part of the property on the same side of the power line was laid out for two lots, one of 4 acres and the other, 12.7 acres, with a total of 4 lots on that side of the tower (T25).

He told the Board of Appeals he now proposed not to do 4 lots already approved, but to reduce that to 2 lots, as drawn on the current plat (T25), yielding 2 lots, one of which would be a lot of 4.9 acres, which he proposed adding a non-density transfer of approximately 10 acres, to give a total of 16.3 acres for one lot and 12.7 acres for the other lot (T26). He acknowledged executing and

recording a land preservation conservation easement to the Long Green Valley Conservancy, when he was a member of its Board (T26), which was introduced as Protestants' Exhibit 4 (T5). Mr. Daneker testified he was appointed to the Board of the Baltimore County Agricultural Land Advisory Committee in 1987 (T27), and served as Chairman from 1990 until 2000 (T27). During that time he put 100 acres of parcel 1 into an agricultural district, excluding only the area presently proposed for annexation from that agricultural district (T28). He testified he created the easement to get a charitable contribution on his income taxes (T13) and his development expenses would be less, because he would put in less road (T31). He claimed, because the original approval for the residential development by the CRG had been obtained in 1992 and because the first 11 lots had been developed, that the plan was grandfathered, and not subject to the current regulations (T33). He then produced Petitioners' Exhibit 4, plat of the 8/1/00 recorded development, Petitioners' Exhibit 5, record plat 73-4 of the same development (T34). According to that plat claimed at the time under the RC 5 zoning on both sides of the power line, he was entitled to 14.8 lots and 2 lots in the RC 2, for a total of 16 (T35). He then claimed he had left 5 development rights, based on the original plat 3 in the RC 5 and 2 in the RC 2 (T35).

He read from the Conservancy Easement, Protestants' Exhibit 4, and excerpt claiming the property had 5 development rights, under current Baltimore County zoning regulation, and that he granted all development rights, except 2 rights (T36). Significantly, the Chairman of the Board of Appeals at that point intervened to tell Protestants' counsel, "If you're talking about enforcing this covenant, that's not our job. We are not going to question that." (T37). He then introduced Petitioners' Exhibit 6, plat of the CRG plan, dated 5/14/95 (T38), prepared by his engineer as an amendment to the final development plan (T38), which he characterized as "turning the 4 lots

approved into 2 lots approved." (T39). He then testified that he had requested Baltimore County Agricultural Board approval in September, 2002, by letter to the administrator (T39). The letter of request was then admitted as Petitioners' Exhibit 7 (T40), and the follow-up letter to the Agricultural Preservation Board on November 19, 2002, introduced as Petitioners' Exhibit 8 (T41). When he went to the Agricultural Preservation Board that night, without the documents, the Chairman of the Agricultural Preservation Board decided it would table the request, because it wanted to see the documents (T41), and claimed subsequently that the Agricultural Preservation Board approved the annexation in December of 2002, which approval was introduced as Petitioners' Exhibit 9 (T42). Mr. Daneker said he understood, based on the Zoning Commissioners's prior decision in this case, that he had to take this plan back and submit to all county departments and get approvals for the 4th amended development plan (T44). He produced a letter signed by the adjacent property owners, stating they did not oppose his proposed annexation as Petitioners' Exhibit 11 (T46).

On cross examination after some questioning concerning the third request for relief, the Chairman of the Board intervened, stating that Mr. Daneker had agreed to go back to the DRC for that prong of relief (T49). On cross, he confirmed he was not proposing to build anything on the RC 5 part of the property, which was part of parcel 2 (T50). He further acknowledged that from the time he began the development process in 1991 to the present, that the part of the request that is zoned RC 2 had remained RC 2 zoned land (T50). He stated further that the zoning line of division onsite hasn't been changed to the present from what it was in 1991 (T50). He believed that the forest buffer and flood plain easements and wetlands consumed 6 to 7 of the 19 acres. He testified owners of lots proposed east of the power lines would have access by a panhandle shown on the plat, from Bart Allen Lane (T52), and further, that he did not intend to build in the RC 5, but rather in the RC 2

(T53). He acknowledged that the RC 2 land from the original farm, which he proposed to annex, was all prime and productive soils (T54). He acknowledged that the priority in RC 2 zoned land is to foster, promote, and protect RC 2 land for agricultural use (T54). When asked about the subpoenaed records to document the charitable contribution taken on his tax returns for the donated development rights (T56), the Chairman interrupted, saying, "He's taken a tax credit for it. What's the relevance as to how much it is?" (T56). The Chairman said "I'll sustain his objection." (T57). Mr. Daneker acknowledged he took the charitable deduction in 1998, filed in April of 1999 (T57). Mr. Daneker, then, on redirect, submitted his request, originally submitted to the Agriculture Board, and admitted as Petitioners' Exhibit 12 (T57-58). His engineer Geoffrey Schultz next testified that he was a professional registered land surveyor for McKee & Associates, Inc. (T58-59).

He had informed Mr. Daneker, that a Special Hearing would be required to approve the non-density transfer of the 10 acres because it was zoned RC 2 (T60). The request subsequently filed with the County Review Group for a refinement of the final development plan was tabled, pending outcome of the zoning hearing (T60). On cross-examination, when shown the Petition for Special Hearing pending, submitted by the Danekers, he acknowledged there was no request thereon for the Zoning Commissioner to approve the development plan without the signatures of the adjacent property owners (T64). He acknowledged, when shown Protestants' Exhibit 6, that it showed from the SDAT records, the names of the owners of the lots in the adjacent subdivision. Dulaney Valley II Estates (T66), dated 5/27/04. That concluded the Petitioners' case.

In Protestants' case, Carol Shaw testified, on behalf of the Long Green Valley Association (T67), that she was on the Board of Directors, and she authenticated the Board of Appeals Rule 8 papers, accepted as Protestant's Exhibit 7, authorizing her to speak on behalf of the association

(T68), and stating the position of the association in opposition to this request (T68). She authenticated Protestant's Exhibit 8, which was a drawing showing the geographic boundaries of the Long Green Valley Association, as presently constituted (T69), which she noted coincided with the boundaries of the Long Green Valley Conservancy (T69). She identified as Protestant's Exhibit 10A, the minutes of the Long Green Valley Association for April 13, 2004, and as Protestant's Exhibit 10B, the minutes of the association for July 20, 2004, at which this project was discussed, for which she was present (T70). She further described the minutes as accurately reflecting the transactions of each evening as recorded, and as far as correctly stating the position of the association (T70-71). The Chairman interrupted Mr. Daneker's voir dire of the witness, as to her authorization to testify, saying, "I'm going to accept it Mr. Daneker, we're going to accept it. It says she's authorized to take action on all zoning matters." (T73). She confirmed that the Board had written up the Resolution attached to the Rule 8 papers (T75).

Wallace Lippencott was then called as the Protestant's next witness (T78). He testified that he was with the Baltimore County Department of Environmental Protection and Resource Management in the capacity of a Natural Resource Specialist Manager. He testified he administered the Baltimore County Land Preservation Program and did development review on RC zoned issues (T78). He acknowledged he served as Secretary to the Baltimore County Agricultural Preservation Board (T79) for the past fifteen years to the present (T79). He testified that the matter of this annexation had to be considered by the Agricultural Advisory Board for the purpose of obtaining a recommendation of whether it is agricultural in nature or not (T80-81). He testified that the Agricultural Board would look at the conditions, to see if the proposed change of the acreage from one property annexed to another property would enhance the agricultural operations on the property

that would be receiving the acreage, and have no significant detrimental impact on the party from which it was formerly connected, from a farming perspective principally (T81). He did not know whether the properties proposed to be annexed were prime and productive soils (T81-82).

When asked what the Agricultural Board received by way of documentation from Mr. Daneker, with his request, he stated that was a subject of some confusion, so that the Agricultural Preservation Board did not have the full set of all the materials, including plats and the easement document and all that they needed (T82). He confirmed that the easement document he referred to was the conservation easement placed in evidence in the instant case (T82), which was the one presented to the Agricultural Board, and which was considered by the Board (T82-83). He understood Mr. Daneker's request to be that the annexed land was for agricultural use, and the family could have some animals on the property that would be large enough to graze (T84).

He described the annexed area as an open area which could be either cultivated for crop or could be pasture (T85). His recollection, in terms of visiting the site, was that the Agricultural Board went out to the end of the farm road up towards the fenced area of the annexed parcel, but did not come around from the Dulaney Valley subdivision side (T86). He testified from his review of the minutes of the November 19, 2002 Agricultural Preservation Board meeting, the Board tabled this request for submittal of detailed information on the plan and for the agricultural use of the property (T87). He stated that the Board's practice was that they preferred to have everybody involved in the operation at the Agricultural Board meeting (T87). He confirmed that when Mr. Daneker returned that evening the Board would not reopen the issue (T88). He stated that according to his notes, the Board approved the annexation December 20, 2002 (T89), by individual calls he made to each of the Board members, in polling the Board (T89). He testified that at the time the Agricultural Board

schedule would have called for them to meet every three or four months (T90). He confirmed that after their November 19, 2002 meeting, their next regularly scheduled meeting would have occurred in February or March of 2003.

QUESTIONS PRESENTED

1. **WHAT IS THE SCOPE OF REVIEW OF THE BOARD OF APPEALS' DECISION TO APPROVE THE SPECIAL HEARING RELIEF REQUESTS 1 AND 2?**

2. **DID THE BOARD OF APPEALS ERR IN THEIR FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT THE PROPOSED ANNEXATION WAS A NON-DENSITY TRANSFER UNDER APPLICABLE COUNTY CODE AND ZONING REGULATIONS AND CASE LAW OR DID THE BOARD ACT IN AN ARBITRARY, CAPRICIOUS OR ILLEGAL MANNER IN RENDERING ITS DECISION?**

WHAT IS THE SCOPE OF REVIEW OF THE BOARD OF APPEALS' DECISION TO APPROVE THE SPECIAL HEARING RELIEF REQUESTS 1 AND 2?

In reviewing of Board of Appeals' decision to approve a special hearing request to find a non-density transfer and to annex acreage from parcel 1 and parcel 2, the Circuit Court's role in reviewing the decision of the Board of Appeals is limited to determining if there is substantial evidence in the record as a whole to support the agency's findings and conclusions and to determine if the administrative decision is premised upon an erroneous conclusion of law. When reviewing a zoning board's legal conclusions, the court must determine whether the board interpreted and applied the correct principles of law governing the case and no deference is given to a decision based solely on an error of law. If the court finds no substantial or sufficient evidence to support the factual findings of a zoning board, the board's decision will be reversed because it was arbitrary and illegal. A reviewing court may not uphold a decision of the zoning board unless it is sustainable on the board's findings and for the reasons stated by the board. Eastern Outdoor Advertising Company

v. Mayor and City Council of Baltimore, 128 Md.App. 494, 739 A.2d 854 (1999). The reviewing court may not uphold the agency's decision without well reasoned and articulated administrative findings. The agency's decision must be precise and clear enough to allow for meaningful appellate review; if the agency fails to meet this basic requirement, the decision is considered arbitrary and the case must be remanded for purposes of correcting the deficiency. A reviewing court may not uphold the agency order unless it is sustainable on the agency's findings and for reasons stated by the agency. The judicial review of administrative decisions is generally limited to whether substantial evidence on the record supports the agency's decision; however in limited circumstances, the Circuit Court may consider material beyond the actual record. Colao v. County Council of Prince George's County, 109 Md.App. 431, 675 A.2d 148 (1996).

Stated another way, the Circuit Court and the Court of Special Appeals standard of review of administrative decision is limited to whether that decision is in accordance with the law or whether it is arbitrary, illegal, and capricious; the test is whether the question before the agency was fairly debatable, i.e., whether the agency's decision is supported by substantial evidence on the record taken as a whole. Moseman v. County Council of Prince George's County, 99 Md.App. 258, 636 A.2d 499 (1994). There are two general standards of review of the decision of the zoning board: In regard to findings of fact, the trial court cannot substitute its judgment for that of the agency and must accept the agency's conclusions if they are based upon substantial evidence and if reasoning minds could reach the same conclusion based on the record; however, when the court reviews findings of law, no such deference is given agency's conclusion. Hayfields, Inc. v. Valleys Planning Council, Inc., 122 Md.App. 616, 716 A.2d 311 (1998).

A court reviewing decision of a county board of appeals to grant a use and occupancy certificate shall not give any deference to the board's conclusions of law beyond the weight merited by the persuasive force of the reasoning employed. Cowles v. Montgomery County, 123 Md.App. 426, 718 A.2d 678 (1998). Generally, a decision of an administrative agency, including a local zoning board, is owed no deference when its conclusions are based upon an error of law. Alviani v. Dixon, 365 Md. 95, 775 A.2d 1234 (2001). Belvoir Farm Home Owners Association, Inc. v. North, 335 Md. 259, 734 A.2d 227 (1999). If the reviewing court must determine whether the agency interpreted and applied the correct principles of law governing the case, no deference is given to a decision based solely on an error of the law, and the court may substitute its own judgment. County Council of Prince George's County v. Curtis Regency Service Corp., 121 Md.App. 123, 708 A.2d 1058 (1998) cert denied, 351 Md. 5, 715 A.2d 964.

On pure questions of law, review court extends no deference to the zoning board beyond the weight merited by the persuasive force of the reasoning employed. Friends of the Ridge v. Baltimore Gas and Electric Company, 120 Md.App. 444, 707 A.2d 866 (1998) cert granted, 350 Md. 488, 713 A.2d 980, vacated 352 Md. 645, 724 A.2d 34. The function or right of the court is only to determine whether the board of zoning appeals has properly applied the governing law to the facts. Erdman v. Board of Zoning Appeals of Baltimore County, 212 Md. 288, 129 A.2d 124 (1957). On appeal from the Board of Zoning Appeals, the court will reverse only where there are no grounds for reasonable debate or where there are no supporting facts in the record to justify the legislative action of the board. Eckes v. Board of Zoning Appeals of Baltimore County, 209 Md. 432, 121 A.2d 249 (1956).

To determine whether the decision of the County Board of Appeals is arbitrary, illegal or capricious, and thus capable of being set aside by the reviewing court as not in accordance with the law, reviewing court must decide whether the question before the agency was fairly debatable. Anne Arundel County v. 2020C West Street, Inc., 104 Md.App. 320, 656 A.2d 341 (1995), cert denied, 339 Md. 166, 661 A.2d 700. The court may not substitute its judgement for that of a legislative body or zoning authority, if question of re-zoning is fairly debatable; however, if it is clear that the question was not debatable or that there are no facts to justify the authority to re-zone, then its action would be arbitrary in law, and it would be the duty of the court, under such circumstances, to reverse the zoning authority. Board of Zoning Appeals of Baltimore County v. Bailey, 216 Md. 536, 141 A.2d 502 (1958).

DID THE BOARD OF APPEALS ERR IN THEIR FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT THE PROPOSED ANNEXATION WAS A NON-DENSITY TRANSFER UNDER APPLICABLE COUNTY CODE AND ZONING REGULATIONS AND CASE LAW OR DID THE BOARD ACT IN AN ARBITRARY, CAPRICIOUS OR ILLEGAL MANNER IN RENDERING ITS DECISION?

The Board's decision is not consistent with the evidence before the Board. Further, the Board did not properly apply the subdivision law and zoning regulations applicable to consideration of whether this constitutes a density or non-density transfer, and the Board acted in an arbitrary or capricious manner in failing to consider the effect and the legal weight of the Danekers' donation of three development rights to the Long Green Conservancy, pursuant to the written easement and for which they claimed, in the same tax year, a charitable contribution. These points will be described within.

The applicable calculations for computing density where land is split zoned, which is the subject of a non-density transfer, were not followed nor given proper weight by the Board of Appeals.

Long Green Valley Association, Inc., Appellant, adduced evidence in the hearing before the Board of Appeals to show that this proposed transfer would not qualify as a non-density transfer for the following reasons.

1. First, after Dulaney Valley Estates II subdivision was approved. a Deed of Conservation Easement was made by Mark Daneker, in favor of the Long Green Valley Conservancy, and recorded among the Land Records of Baltimore County, in Liber 13409/319, dated December 29, 1998. The nineteen acre parcel subject to the conservation easement claimed five development rights under current Baltimore County zoning regulations (emphasis supplied) in 1998. At the time that the Conservancy Easement was created, BCZR §1A04.3.B.1 required maximum gross residential density of an RC 5 lot of record is 0.667 dwellings per acre, per Bill No. 98, 1975; No. 178, 1979. The RC 5 zoned lots did not meet the density criteria for the lots to be lots of record under that standard which would eliminate at least two lots from the subdivision as approved; those lots would be enhanced or supersized by the annexation of the 10 acres from the 5020 Elder Road farm property, thereby creating a density transfer and not a non-density transfer.

Second, because the area proposed to be annexed was zoned RC 2. and the land it was proposed to be annexed to was also RC 2, the RC 2 zoning regulations calculating density are applicable. BCZR §1A01.3.B.1 provides that RC 2 lots of record between 2 and 100 acres may not be subdivided into more than 2 lots...This section further grandfathers previously approved lots of record approved by the County between November 27, 1979 and October 1, 1990, which does not apply to this Daneker subdivision, which was created thereafter. BCZR §1.A01.4, entitled Maryland Agricultural Land Preservation Program sets forth the use or development of land in an agricultural district established in accordance with RP 2-509 of the Annotated Code shall be governed by the

Agricultural Land Preservation provisions enacted by the County Council, pursuant to RP 2-513 of that Article, in the case of any conflict between those provisions and these regulations. The BCZR §1A04.3.B.1.B does provide a savings clause for pre-existing lots, which could provide a potential avenue for the Petitioners herein to apply for a special hearing to alter the minimum lot size requirement. However, Petitioners never made such a request to this time. The same section, in mandatory language, states that the performance standard set forth in BCZR 1A04.4 may not be varied (emphasis supplied). The last section of the BCZR necessary to consider Petitioners' request is BCZR 1A005, Application to Tract Divided by Zone Boundary. That section provides in RC zones, when portions of the tract lie within R.C. zones of different classifications, as is the case here with RC2 and RC5 zoned land, the total number of dwellings or density units permitted shall apply to each tract individually, and for the purposes of these regulations, shall be considered as separate parcels.

When applying all of these zoning rules to the testimony and documentary evidence before the Board of Appeals, if the annexation for the 11 acres would not create density, it may otherwise qualify as a non-density transfer. However, in this case, because of the two undersized substandard RC 5 lots to the east of the power lines, which are part of the Petitioners' subject parcel for the request, they only become standard conforming lots with the Sections previously cited for density per acre of .667 per acre in a RC 5 zone, with the annexation of the 11 acres. However, because the 11 acres to be annexed are not RC 5, they cannot be utilized properly to calculate density for the undersized RC 5 lots. In considering the RC2 land on its own, and disregarding the density calculations of RC5, the spirt and intent of BCZR 1.A01.3.B is further spelled out in that same section, that where single ownership is crossed by existing or proposed roads, right of ways or

easements (emphasis supplied), the portions of land on either side of the road, right of way or easement shall not be considered separate parcels for the purposes of calculating the number of lots of record except for site plans, subdivision plans, or record plats filed with and approved by the County between November 20, 1979 and October 1, 1990. While those would be grandfathered and would be considered valid, the subdivision of Dulaney Valley Estates II was not even sought until well after the end of the grandfather period.

In viewing the Zoning Board's Legal Conclusions, the Circuit Court must determine whether the Board applied the correct principles of law governing the case. Eastern Outdoor Advertising Company v. Mayor and City Council of Baltimore, 128 Md. App. 494, 514 (1999). An agency decision that is not supported by substantial evidence will be given no deference, because such a finding is arbitrary, illegal, and capricious. Id. See also Moseman v. County Council of Prince George's County, 99 Md. App. 258, 262 (1994); Mortimer v. Howard Research, 83 Md. App. 432, 441, cert denied, 321 Md. 164 (1990).

The Board was arbitrary and capricious in failing to consider the effect of the dedication of the development rights by the conservation easement by the Petitioners Daneker, for which they claimed and received a tax credit on their 1998 income tax returns.

The Board of Appeals erred in concluding that Petitioners proposed reducing the number of lots from 4 to 2 and therefore, did not represent a density transfer (Board Opinion, page 4). "Since lots 12 and 13 each had a density unit allocated to them previously, there is no attempt to increase the density on the old RC5 lots (Board Opinion, page 4). After noting in its Findings of Fact, that Mr. Daneker admitted, following execution of the conservation easement, he had claimed on the succeeding year's tax return, a donation of 3 development rights and a tax deduction occurred, the Board of Appeals oddly resolves that issue by saying, "The Board considers that this is an issue

which concerns the enforcement of the conservation easement." (Board Opinion, page 4). The Board takes no cognizance of the dedication of 3 of the 4 lots mentioned on the Agricultural Board submission, in Mr. Daneker's own letter (Petitioners' Exhibit 12), originally sent the September 27, 2002 and resubmitted December 13, 2002, in which he tells the Agricultural Preservation Board that he donated 3 of the 5 development rights, which were part of the 19 acre parcel involved in the request. He also acknowledged in the testimony that the 19 acres involved in the request was the same 19 acres included in the conservancy, but not including the land proposed to be annexed. He notes in that same letter that the parcel has 4 approved building sites. Because he acknowledges donating 3 rights away, that was considered by the Agricultural Board in approving this as an agricultural transfer. The Board erred as a matter of law in giving no weight to the Daneker's action in donating three development rights. If those 3 development rights are subtracted. he only had one remaining development right. Therefore, the only way they pick up another development right, under the aforesaid zoning regulations, is by annexing another parcel, which is what they proposed to do in this request. By definition, if the annexation of the parcel creates another development right, it does not meet the test of a non-density transfer. As was the Board of Appeals. the Court is also asked to review the definition section of the Baltimore County Zoning Regulations, §101, Conservancy area, defined as, "The portion of a rural cluster development which contains significant natural or historic features and which has been dedicated through deed restriction and easements for continued farming, forestry or open space use in order to remain largely undisturbed." [Bill No. 113-1992].

The Danekers' action in donating 3 development rights and claiming a tax credit for them before they asked for this non-density transfer amounts to double-dipping, or having their cake and

eating it too. The Court of Appeals has found that a conservation easement is a legal requirement between a landowner and MET that restricts the potential uses of the land at issue in order to prevent it from being developed for commercial or industrial uses or for housing developments, §2-118 of the Real Property Article. In exchange for creating a conservation easement, a landowner qualifies for certain property, income, and estate tax benefits. Maryland Environment Trust v.Gaynor, 370 Md. 89, 803 A.2d 512 (2002). It is significant that the Board of Appeals' Opinion lacks citation to any case law to support its Findings of Fact or Conclusions of Law.

General provisions in the Baltimore County Zoning Regulations for all RC classifications find that development in rural areas of Baltimore County has been taking place at an increasing rate, without the framework of a land use plan or other planning components and that this development has formed very undesirable land use patterns generally described by the BCZR as "urban sprawl development." BCZR 1A00.1.A-E.

Further, agriculture is deemed to be king, under the provisions for RC 2 zoned land, under BCZR 1A01.1 & 2. Land proposed to be annexed in this case is testified to by all parties to be prime and productive soils, while the land it is being annexed to, according to Mr. Wally Lippencott, was not studied to see if it did contain prime and productive soils. Mr. Daneker, as noted earlier, considered both to be prime and productive, except for the designated wetlands. The conservation easement entered into by the Danekers was described, on page 2, as perpetual. Because they gave away 3 development rights and claimed and received a tax benefit for donating 3 development rights and did not have 2 more to give, the annexation of the 11 acres can only serve the purpose of creating a density transfer, rather than a non-density transfer, and the Board of Appeals should have denied the request. It is ironic that the Baltimore County Board of Appeals refused to consider the

conservancy agreement or the 3 development right grant, after the Baltimore County Agriculture Advisory Board reviewed the conservancy agreement as part of the Danekers' request, and considered the provisions under which 3 development rights were donated to the conservancy, in considering Mr. Daneker's request for this non-density transfer. Certainly the Board of Appeals should be consistent with the Baltimore County Agricultural Advisory Board in giving weight to the 3 density units donated. The Board erred as a matter of law in considering this a non-density transfer for the reasons stated, and in its conclusion that the non-density transfer is consistent with the spirt and intent of the BCZR. (Board Opinion, page 5). The Board, in applying the law, is supposed to give weight and effect to the regulations giving those statutes their natural and sensible meaning, assigning words of the statute that are ordinarily and commonly understood meanings absent evidence that the legislature intended different meanings. Baltimore County v. Wesley Chapel Blue Mount Association, 110 Md. App. 585, 678 A.2d 100 (1996). In that case, the Court of Special Appeals concluded that the review of a subdivision development plan constitutes a zoning matter within the meaning of the act for the open meetings law. Id @ 599. The Court, in its opinion, quoted further therein:

> "The Court of Appeals has recognized that the term "zoning" describes the process of setting aside disconnected tracts of land varying in shape and dimensions and dedicated them to particular uses designed in some degree to serve the interests of the whole territory affected by the plan. Quoting Applestein v. Mayor and City Council of Baltimore, 156 Md. 40, 51, 143 A666 (1926)."

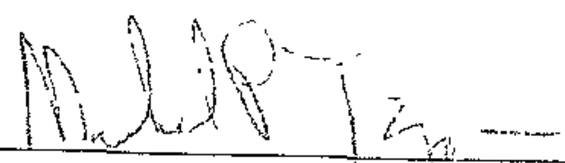
The Court of Appeals reversed the decision of the Circuit Court in the case of West Montgomery County Citizens Association v. Maryland National Capital Park and Planning Commission, 309 Md. 183, 522 A.2d 1328. The County failed to follow its own procedures, when

it sought to create density for residential development through the planning process, rather than through the zoning process, as mandated by State law.

The Board of Appeals' failure to give weight to the donation by the Danekers of 3 density rights, under the conservation agreement, for which they received a credit, led to its other erroneous conclusions of law after it concluded that this was a non-density transfer.

CONCLUSION

Because the Board of Appeals erred as a matter of law, and their decision is not supported by the evidence before the Board, which clearly indicates the donation of 3 density rights and that the annexation of 11 acres must be seen as creating a second development right, the Board erred as a matter of law and its decision was therefore arbitrary, illegal, or capricious, Protestants/Appellants request that the Court reverse the Board of Appeals and remand the case for further proceedings, in accordance with its decision, or in the alternative, reverse the Board and deny the Petition For Special Hearing, for the reasons cited.



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410-296-8823
Attorney for Long Green Valley Association, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY this 6th day of October, 2005, a copy of the foregoing Appellant's Memorandum of Long Green Valley Association, Inc. was mailed by first class mail, postage prepaid, to Petitioners Mark Daneker and Susan Daneker, 5020 Elder Road, Hydes, MD

21082, Kathy Bianco, Executive Administrator, Board of Appeals, Old Courthouse, Room 49, 400 Washington Avenue, Towson, Maryland 21204.

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October 6, 2005

Clerk
Civil Division
County Courts Building
401 Bosley Avenue
Towson, MD 21204

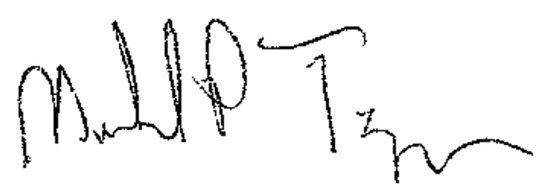
Re: In the Matter of 5020 Elder Road
Case No.: 03-C-05-006661

Dear Madam Clerk:

Enclosed please find Appellant's Memorandum regarding the above captioned matter.

Thank you for your assistance in this matter. Please feel free to contact me should you have any questions.

Very truly yours,



Michael P. Tanczyn, Esquire

MPT/cbl
Enclosure(s)
cc: Long Green Valley Association
Peter Max Zimmerman, Esquire
Board of Appeals
Mark and Susan Daneker

RECEIVED
OCT 07 2005
BALTIMORE COUNTY
BOARD OF APPEALS

1/2/05

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY
*

PETITION OF:
LONG GREEN VALLEY *
ASSOCIATION, INC.
Ms. Charlotte Pine, President *
P.O. Box 91
Baldwin, MD 21012 * CIVIL ACTION
NO. **03-C-05-6661**

FOR JUDICIAL REVIEW OF THE OPINION *
OF THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY *
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE *
TOWSON, MARYLAND 21204
*

IN THE MATTER OF THE APPLICATION
MARK & SUSAN DANEKER *
5020 ELDER ROAD
HYDES, MD 21082 *

11th ELECTION DISTRICT *
3rd COUNCILMANIC DISTRICT
*

CASE NO.: 04-368-SPH

RECEIVED AND FILED
05 SEP -2 PM 2:55
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

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

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

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now comes the County Board of Appeals of Baltimore County and, in answer to the Petition for Judicial Review directed against it in this case, herewith transmits the record of proceedings in the above-entitled matter, consisting of the original papers on file in the Department of Permits and Development Management and the Board of Appeals of Baltimore County:

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

CASE NO.: 04-368-SPH

February 9, 2004	Petition for Special Hearing: 1) To approve a non-density transfer of approximately 11 acres from Parcel 1 to Parcel 2. 2) To approve the annexation of the 10-acre Parcel into future Plat Three of the Dulaney Valley Estates Subdivision. 3) To approve the amendment of the 3rd Amended Final Development Plan of Dulaney Valley Estates Ii to incorporate the 10-acre Parcel into the area of the subdivision and to reduce and reconfigure the number of proposed lots from 15 to 13.
March 4	Entry of Appearance by People's Counsel.
May 5	Notice of Zoning Hearing
May 11	Certificate of Posting
May 11	Certificate of Publication
May 25	ZAC Comments
May 28	Hearing held before the Zoning Commissioner
June 4	Protestants Memorandum filed by Michael P. Tanczyn, Esq.
June 23	Findings of Fact and Conclusion of Law by the Zoning Commissioner – that the Petition for Special Hearing to approve a non-density transfer of 10.1 acres from Parcel 1 to Parcel 2 of the subject property; to approve the annexation of the 10.1 acre Parcel into future Plat Three of the Dulaney Valley Estates subdivision; and, to approve an amendment to the 3rd Amended Final Development Plan of Dulaney Valley Estates II to incorporate the 10.0 acre Parcel into Parcel 2 and to reduce and reconfigure the number of proposed loste therein from 15 to 13, in accordance with Petitioner's Exhibit 3A and 3B, was *GRANTED*.
July 21	Notice of Appeal filed by Michael P. Tanczyn, Esq. on behalf oc Long Green Valley Association.

Feb. 17, 2005 Hearing before the Board

Petitioner's Exhibits

1. Was (3-A) Plat of 111 Ave – Parcel #1 + 19 acre Parcel east side of fence line.
2. Photo – Field #1 and #7
3. Topography of area
4. Plat of 8/1/00 Development Plan
5. Plat of Development Plan 73-4 shows density Dulaney Valley Estate
6. P. 1 & 2 5-14-95
7. 3 Pages – Letter – 9/27/02 – Material to Board
8. Letter dated 11/19/02
9. Latter dated 12/20/02
10. Plat 8/1/00 with Amended Plan
11. Letter of community approval
12. AG subdivision

Protestant's Exhibits

1. Affidavit of Evasion
2. Affidavit of Service
3. Letter of February 15, 2005 – Michael Millemann, VP Long Green Valley Conservancy
4. Deed of connection of easement
5. A & B – Appeal cases
6. Estate records – 5/24/04
7. Resolution of association
8. Long Green Valley Association Boundary Map
9. Description of boundary

10.a Minutes of association meeting of 4/13/04
10.b Minutes of association meeting of 7/20/04

March 4, 2005 Memorandum of Long Green Valley Association, Inc. filed by Michael P. Tanczyn, Esq.

March 4 Memorandum in Support of Petitioners filed by Mark J. Daneker, Petitioner

April 19 Board convened for deliberation

May 16	Opinion and Order issued by the Board – Petition for Special Hearing *GRANTED.*
June 15	Petition for Judicial Review filed by Michael P. Tanczyn, Esq. on behalf of Long Green Valley Association
July 20	Certificate of Notice to interested parties.
Sept. 1	Transcript
Sept. 2	Record of Proceedings filed in the Circuit Court for Baltimore County for Civil Action Case No.: C-05-6661

Record of Proceedings pursuant to which said Order was entered and upon which said Board acted are hereby forwarded to the Court, together with exhibits entered into evidence before the Board.

Linda B. Fliegel

Linda B. Fliegel, Legal Secretary
County Board of Appeals
Old Courthouse – Room 49
400 Washington Avenue
Towson, MD 21204
(410)887-3180

c: Michael P. Tanczyn, Esq.
Mark and Susan Daneker
Peter M. Zimmerman, Esq.
People's Counsel

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY
*

PETITION OF:
LONG GREEN VALLEY *
ASSOCIATION, INC.
Ms. Charlotte Pine, President *
P.O. Box 91
Baldwin, MD 21012 * CIVIL ACTION
NO. **03-C-05-6661**

FOR JUDICIAL REVIEW OF THE OPINION *
OF THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY *
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE *
TOWSON, MARYLAND 21204
*

IN THE MATTER OF THE APPLICATION
MARK & SUSAN DANEKER *
5020 ELDER ROAD
HYDES, MD 21082 *

11th ELECTION DISTRICT *
3rd COUNCILMANIC DISTRICT
*

CASE NO.: 04-368-SPH
* * * * * * * * * * * *

CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the Provisions of Rule 7-202(d) of the *Maryland Rules*, the County Board of Appeals of Baltimore County has given notice by mail of the filing of the Petition for Judicial Review to the representative of every party to the proceeding before it; namely:

Michael P. Tanczyn, Esq.
606 Baltimore Avenue – Suite 106
Towson, MD 21204

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

Long Green Valley Association, Inc.
Charlotte Pine, President
P.O. Box 91
Baldwin, MD 21012

Mark and Susan Daneker
5020 Elder Road
Hydes, MD 21082

Geoffrey Schultz
Mckee & Associates
5 Shawan Road – Suite 1
Cockeysville, MD 21030

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

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

I HEREBY CERTIFY that on this 20th day of July, 2005, a copy of the foregoing Certificate of Notice has been mailed to Michael P. Tanczyn, Esq., 606 Baltimore Avenue, Suite 106, Towson, MD21204, Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County, Old Courthouse, Room 47, 400 Washington Avenue, Towson, Maryland 21204, Long Green Valley Association, Inc., c/o Charlotte Pine, President, P.O. Box 91, Baldwin, MD 21012, Mark and Susan Daneker, 5020 Elder Road, Hydes, MD 21082, Geoffrey Schultz, Mckee & Associates, 5 Shawan Road – Suite 1, Cockeysville, MD 21030.

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

County Board of Appeals of Baltimore County

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

July 20, 2005

Mr. & Mrs. Mark Daneker
5020 Elder Road
Hydes, MD 21082

RE: Circuit Court Civil Action No. 03-C-05-6661
Petition for Judicial Review
Long Green Valley Assn., Inc.
Board of Appeals Case No.: 04-368-SPH

Dear Mr. & Mrs. Daneker:

Notice is hereby given, in accordance with the Maryland Rules, that a Petition for Judicial Review was filed on June 15, 2005, in the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter. A copy of this Petition was *retrieved* from the Circuit Court by this office on July 14, 2005. Any party wishing to oppose the petition must file a response within 30 days after the date of this letter, pursuant to the Maryland Rules.

Please note that any documents filed in this matter, including, but not limited to, any other Petition for Judicial Review, **must be filed under Civil Action No. 03-C-05-6661.**

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Linda B. Fliegel
Legal Secretary

/lbf
Enclosure

c: Peter M. Zimmerman, Esq.
People's Counsel for Baltimore County
Long Green Valley Assn., Inc.
c/o Charlotte Pine, Pres.
Geoffrey Schultz – McKee & Assoc.
William J. Wiseman/Zoning Commissioner
Timothy M. Kotroco/Director PDM
Pat Keller/Planning Director

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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

July 20, 2005

Michael P. Tanczyn, Esq.
606 Baltimore Avenue – Suite 106
Towson, MD 21204

RE: Circuit Court Civil Action No. 03-C-05-6661
Petition for Judicial Review
Long Green Valley Association, Inc.
Board of Appeals Case No.: 04-368-SPH

Dear Mr. Tanczyn:

In accordance with the Maryland Rules, the County Board of Appeals is required to submit the record of proceedings of the Petition for Judicial Review, which you have taken to the Circuit Court for Baltimore County in the above-entitled matter within sixty days. The cost of the transcript of the record must be paid by you and must be paid in time to transmit the same to the Circuit Court within the sixty day timeframe, as stated in the Maryland Rules.

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

CAROLYN PEATT
TELEPHONE: 410- 486-8209
HEARING DATE: February 17, 2005

This office has also notified Ms. Peatt that a transcript on the above captioned matter is due by September 6, 2005, for filing in the Circuit Court. A copy of your Petition, which includes your telephone number, has been provided to the Court Reporter, which enables her to contact you for payment provisions.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Linda B. Fliegel
Legal Secretary

/lbf
Enclosure

c: Carolyn Peatt, Court Reporter
Long Green Valley Assoc.
c/o Charlotte Pine, Pres.

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6/1/05

IN THE MATTER OF	*	IN THE CIRCUIT COURT FOR
THE APPLICATION OF MARK J. DANEKER - PETITIONER	*	FOR BALTIMORE COUNTY
	*	
FOR JUDICIAL REVIEW OF THE DECISION OF THE BOARD OF APPEALS OF BALTIMORE COUNTY	*	
	*	
FOR SPECIAL HEARING ON PROPERTY LOCATED ON THE NE/S ELDER ROAD, E OF BART ALLEN LN, 800' N OF C/L HYDES ROAD	*	
	*	
11TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	C-05-6661
Case No.: 04-368-SPH	*	Case No.:

* * * * * *

05 JUN 15 AM 10:42

PETITION FOR JUDICIAL REVIEW

Now comes Long Green Valley Association, Inc., Petitioner, by their attorney, Michael P. Tanczyn, and files this Petition For Judicial Review of the decision of the Board of Appeals of Baltimore County, dated May 16, 2005. The Petitioner participated below in the proceedings, and intends to participate in this appeal.

MICHAEL P. TANCZYN, Esquire
606 Baltimore Avenue, Suite 106
Towson, Maryland 21204
(410) 296-8823
Attorney for the Petitioner
Long Green Valley Association, Inc.

cc. Tanczyn

RECEIVED
JUL 14 2005
BALTIMORE COUNTY
BOARD OF APPEALS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY this 15th day of June, 2005, a copy of the foregoing Petition For Judicial Review was mailed to Mark Daneker, Esquire and Susan Daneker, 5020 Elder Road, Hydes, MD 21082, Respondents/Petitioners below, Peter Max Zimmerman, Esquire, Peoples' Counsel for Baltimore County, Room 47, 400 Washington Avenue, Towson, Maryland 21204, and to the Board of Appeals of Baltimore County, Attn: Kathy Bianco, Executive Secretary, Old Courthouse, Room 49, 400 Washington Avenue, Towson, Maryland 21204.

MICHAEL P. TANCZYN, Esquire
606 Baltimore Avenue, Suite 106
Towson, Maryland 21204
(410) 296-8823
Attorney for the Petitioners
Long Green Valley Association, Inc.

Circuit Ct.
C-05-6661

LAW OFFICES
MICHAEL P. TANCZYN, P.A.
Suite 106 • 606 Baltimore Avenue
Towson, Maryland 21204
Phone: (410) 296-8823 • (410) 296-8824 • Fax: (410) 296-8827

June 15, 2005

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

Re: Case No.: 4-368-SPH
Application of Mark and Susan Daneker
5020 Elder Road

Dear Kathy:

Enclosed herewith please find a Petition For Judicial Review, which was filed with Baltimore County Circuit Court on June 15, 2005, for your records. We have already written to Carol Peatt to order the transcript, but if you could advise her of this filing, I would appreciate it.

Thank you for your assistance in this regard.

Very truly yours,

Michael P. Tanczyn, Esquire

MPT/cbl
Encl.

cc: Long Green Valley Association
Mark and Susan Daneker
Peter Max Zimmerman, Esquire

RECEIVED
JUN 15 2005
BALTIMORE COUNTY
BOARD OF APPEALS

5/16/05

IN THE MATTER[redacted]	* BE[redacted] THE
THE APPLICATION OF	
MARK J. DANEKER – PETITIONER	* COUNTY BOARD OF APPEALS
FOR SPECIAL HEARING ON PROPERTY	
LOCATED ON THE NE/S ELDER RD, E OF	* OF
BART ALLEN LN, 800' N OF C/L HYDES RD	
	* BALTIMORE COUNTY
11TH ELECTION DISTRICT	
3RD COUNCILMANIC DISTRICT	* CASE NO. 04-368-SPH

* * * * * * * * *

OPINION

This matter comes before the Board on an appeal from a decision of the Zoning Commissioner by which special hearing relief was granted in part. The Petitioners requested a special hearing to approve a non-density transfer of 10.1 acres from Parcel 2 to Parcel 1 of the subject property. In addition, they requested the approval of the annexation of the 10.1-acre parcel into future Plat III of the Dulaney Valley Estates subdivision and also to approve an amendment to the Fourth Amendment Final Development Plan of Dulaney Valley Estates II to incorporate the 10-acre parcel and to reduce and reconfigure the number of proposed lots therein from 15 to 13.

The Protestants herein, Long Green Valley Association, were represented by Michael P. Tanczyn, Esquire. Mark J. Daneker, Esquire, represented himself at the hearing. Briefs were submitted to the Board on March 4, 2005, and a public deliberation was held on April 19, 2005.

Background

Mr. and Mrs. Daneker acquired two adjacent parcels of land located along Elder Road near Hydes Road in the Long Green Valley area of North Baltimore County. Initially they acquired Parcel 1 in 1969. Parcel 1 contains approximately 111.8 acres and is zoned R.C. 2. It is improved with a two-story dwelling known as 5020 Elder Road in which the Petitioners reside. A stream bisects Parcel 1, and a related flood plain and a wooded area are located adjacent to both sides of the stream. Mr. Daneker testified that the stream dividing the property makes it difficult to farm both pieces of the property.

In 1974, Mr. and Mrs. Daneker acquired Parcel 2 which contains now approximately 19.31 acres and is split-zoned R.C. 2 and R.C. 5. Parcel 2 abuts the rear of Parcel 1 and specifically the 10.1-acre area in Parcel 1 which is the subject of this hearing. In addition to the split zoning of Parcel 2, there is a 103-foot wide BGE transmission line right-of-way bisecting this parcel.

Subsequent to the acquisition of Parcel 2, the Petitioners proposed the residential development of that parcel. Ultimately a CRG Plan was submitted and approved in 1992. That plan depicted a proposed subdivision of Parcel 2 into 15 single-family dwelling lots with 11 lots on the west side of the power line and 4 lots on the east side of the power line.

The four lots to the east of the power line were never developed. As originally proposed, two of these lots, lots 12 and 13, were within the R.C. 5-zoned portion of the property, and the other two lots (14 and 15) were in the R.C. 2 zone. As stated previously, Mr. Daneker testified that it was difficult to bring agriculture equipment into the 10.1-acre portion of Parcel 1 because of the stream, and it was this problem that was the impetus for the request for the non-density transfer. Mr. Daneker proposes the non-density transfer of the 10.1-acre area of Parcel 1 to Parcel 2. As the result, Parcel 1 would be reduced in area from 111.8 acres to 101.7 acres. Under the R.C. 2 zoning classification, Parcel 1 would continue to enjoy one right of subdivision in that no density would be conveyed as part of the transfer of the 10.1 acres. Parcel 2 will be increased in area from 19.31 acres to 29.41 acres. Mr. and Mrs. Daneker also propose a substantial revision to the previously approved development plan for that land on the east side of the transmission line right-of-way. Rather than the four lots as originally proposed and described above (lots 12 through 15), the Petitioners propose to reconfigure the new parcel to create two lots to be known as lots 12 and 13. Lot 12 will occupy the northernmost portion of the tract and contain 12.7 acres in area, and Lot 13 will occupy the southern portion of the tract and contain 16.3 acres in area.

Issues

The Protestants raised several questions with respect to the non-density transfer. First, they note the terms and conditions of the Deed Of Conservancy Easement entered into by and between Mr. Daneker and the Long Green Valley Conservancy, Inc., on December 29, 1998. That agreement bound the undeveloped 19.02 acres in Parcel 2. They contend that the 19-acre parcel claimed five development rights under the current *Baltimore County Zoning Regulations* (BCZR) in 1998. At the time that the conservancy easement was created, BCZR 1A04.3.B.1 provided maximum gross residential density of a lot of record as 0.667 dwellings per acre. They claim the R.C. 5 zoned lots did not meet the density criteria for the lots to be lots of record under that standard, which would eliminate at least two lots from the subdivision as approved. They felt that the lots would be enhanced by the annexation of the 10 acres from Parcel 1 and thereby creating a density transfer and not a non-density transfer.

The Board has reviewed this position and finds that it has no merit. Under the new development plan, after the transfer of the 10.1 acres, old Lot 13 will be incorporated into new Lot 13 which will encompass 16.3 acres. Old Lot 12, which is R.C. 5, will be encompassed within the new Lot 12, which is 12.7 acres. Each of the new lots, 12 and 13, will have one density unit which the old lots, 14 and 15, each had. Therefore, there will be no density units utilized on the R.C. 5 portion of the property.

Protestants also contend that § 1A00.5 of the BCZR applies in this situation. They state: "That section provides in R.C. zones, when portions of the tract lie within R.C. zones of different classifications, the total number of dwellings or density units permitted shall apply to each tract individually and for the purpose of these regulations shall be considered as separate parcels. As applied to the testimony and documentary evidence before the Board, if the annexation of the 11 acres would not create density it may otherwise qualify as a non-density transfer. However, in this case because of the two undersized substandard R.C. 5 lots to the east of the power lines,

which are part of the Petitioners' subject parcel for the request, they only become standard conforming lots with the sections previously cited for density of .667 per acre in R.C. 5 with the annexation of the 11 acres. However, because the 11 acres to be annexed are not R.C. 2, they cannot be utilized to calculate density for the undersized R.C. 5 lots."

The Board disagrees with this proposition. First, the 11 acres that are being annexed are zoned R.C. 2. They are not being annexed solely to the R.C. 5 lots, but the R.C. 5 lots, as previously stated, are being encompassed in the new lots 12 and 13. Since lots 12 and 13 each had a density unit allocated to them previously, there is no attempt to increase the density on the old R.C. 5 lots.

Protestants also contend, "The Petitioner, Mark Daneker, candidly admitted to the Board that following the execution of the Conservation Easement, he had on a succeeding year's tax return, claimed a donation of three development rights for the purpose of a tax deduction. His action in the instant petition seeking approval for the annexation as a non-density transfer, where he has taken a tax credit for donating three, must fail because he does not have the remaining two viable development rights."

The Board considers that this is an issue which concerns the enforcement of the Conservation Easement. Article III of that Easement is entitled, "Enforcement and Remedies." The Board considers that any issue with respect to the enforcement of the Easement and the development rights thereunder should be handled through the enforcement procedures of the Conservation Easement document, and not by this Board. This Board has no authority to enforce covenant easements.

Finally, the Protestants contend that the transfer is contrary to BCZR 1A01.4 and BCZR 1A01.1 and .2. They contend that the land, as it is proposed to be annexed, is prime and productive soils while the land to which it is being annexed, according to Mr. Wally Lippincott, was not studied to see if it contained prime and productive soils. In addition, Protestants contend

that the request runs contrary to the spirit and intent of the R.C. 2 agricultural zone.

The Board finds this argument to be without merit. The two parcels of land are R.C. 2 land and are adjacent to each other. While the 10.1-acre portion is prime and productive land, there is no reason to believe that the rest of the acreage to which it will be attached is anything less than prime and productive land. Mr. Daneker has indicated that it is the intent of his daughter, who intends to build a home on Lot 13, to engage in agricultural pursuits on most of the land which will encompass Lot 13. Therefore, the land will certainly remain in agricultural production as sought by the Long Green Valley Association.

The Board finds that the proposal to make the non-density transfer is consistent with the spirit and intent of the BCZR. The overall development is under density and will preserve and protect agricultural uses.

Therefore, the Board will approve the non-density transfer of approximately 10.1 acres from Parcel 1 to Parcel 2. It will also approve an amendment to the Third Amended Final Development Plan for Dulaney Valley Estates II to incorporate the 10.1-acre parcel from Parcel 1 to Parcel 2, and reconfigure the number of proposed lots therein from 15 to 13.

However, like the Zoning Commissioner, the Board feels that the Fourth Amended Final Development Plan must endure further County review, and there is no final approval of the Plan. The amended Final Development Plan submitted is not specific enough at this time for final approval, and is only asking for the incorporation of the 10.1-acre parcel and the reduction and reconfiguration of the lots. Therefore, as a condition to the relief granted, the Fourth Amended Final Development Plan must proceed through the County's review process for approval of the lot locations, wells, septic areas, etc.

ORDER

THEREFORE, IT IS THIS 16th day of May, 2005 by the County Board of Appeals of Baltimore County

ORDERED that the Petition for Special Hearing to approve a non-density transfer of 10.1 acres from Parcel 1 to Parcel 2 of the subject property; to approve the annexation of the 10.1-acre parcel into future Plat III of the Dulaney Valley Estates Subdivision; and to approve an amendment to the Third Amended Final Development Plan of Dulaney Valley Estates II to incorporate the 10.1-acre parcel into Parcel 2 and to reduce and reconfigure the number of proposed lots therein from 15 to 13 be and is hereby **GRANTED**; and it is further

ORDERED that the Fourth Amended Final Development Plan is not exempt from further County review, given the lack of specificity thereof.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence S. Wescott, Panel Chairman.

Michael O. Ramsey

John P. Quinn

County Board of Appeals of Baltimore County

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

May 16, 2005

Michael Tanczyn, Esquire
606 Baltimore Avenue
Suite 106
Towson, MD 21204

RE: *In the Matter of: Mark J. Daneker* – Legal Owner / Petitioner / Case No. 04-368-SPH

Dear Mr. Tanczyn:

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

Kathleen C. Bianco
Administrator

Enclosure

c: Long Green Valley Association
attn: Charlotte Pine, President
Mark and Susan Daneker
Geoffrey Schultz /McKee & Associates
Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

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on Recycled Paper

2/4/05

IN RE: PETITION OF	*	BEFORE THE ZONING
Mark Daneker and Susan Daneker	*	COMMISSIONER
	*	OF
5020 Elder Avenue N/east side of Elder Avenue 800 feet n/west of centerline of Hydes Road 11th Election District 3rd Councilmanic District	*	BALTIMORE COUNTY
	*	
	*	
Legal Owners: Mark & Susan Daneker	*	ZONING CASE NO.: 04-368 SPH

RECEIVED
MAR - 4 2005
BALTIMORE COUNTY
BOARD OF APPEALS

* * * * * * *

MEMORANDUM OF LONG GREEN VALLEY ASSOCIATION, INC.

Pursuant to instructions from the Chairman of the Board of Appeals panel at the De Novo Hearing held on Thursday, February 17, 2005, this Memorandum is submitted by Long Green Valley Association to assist the Board in its consideration of this case.

The Petition for Special Hearing filed by the property owners requested three elements of zoning relief. The third element of relief to seek approval of the amendment to the Fourth Amended Final Development Plan of Dulaney Valley Estates II, to incorporate the 10 acre parcel into the area of the subdivision and to reduce and configure the number of proposed lots from 15 to 13 must be denied, since the Petitioners and their expert witness both admitted at the hearing that the plat did not comply with Baltimore County requirements, to show required roads, setbacks, wells, septic and location of structures, etc.

The remainder of the zoning relief sought to annex approximately 11 acres from a working farm at 5020 Elder Road, with productive soils to the south of a portion of Dulaney Valley Estates II, east of the power lines, from an 111 acre parcel, to the Dulaney Valley Estates II subdivision. All

of the property on the Elder Road farm is zoned RC 2, and all of the portion to which it would be annexed was zoned RC 2, except for a small sliver zoned RC 5.

Whether the zoning relief can be granted depends first on whether this annexation will represent a non-density transfer from parcel 1 to parcel 2. Long Green Valley Association Inc. adduced evidence to show that it would not qualify as a non-density transfer, for the following reasons stated in executive summary:

1. After Dulaney Valley Estates II subdivision was approved, a Deed of Conservation Easement was made by Mark Daneker, in favor of the Long Green Valley Conservancy, and recorded among the Land Records of Baltimore County, in Liber 13409/319, dated December 29, 1998. The nineteen acre parcel subject to the conservation easement claimed five development rights under current Baltimore County zoning regulations (emphasis supplied) in 1998. At the time that the Conservancy Easement was created, BCZR 1A04.3.B.1 provided maximum gross residential density of a lot of record is 0.667 dwellings per acre, per Bill No. 98, 1975; No. 178, 1979. The RC 5 zoned lots did not meet the density criteria for the lots to be lots of record under that standard which would eliminate at least two lots from the subdivision as approved; those lots would be enhanced or supersized by the annexation of the 10 acres from the 5020 Elder Road farm property, thereby creating a density transfer and not a non-density transfer.

2. Because the Petitioners' request is being considered in 2005, de novo, the current regulations BCZR 1A04.3.B.1, which retains the same standard for maximum gross residential density of the lot of record at .667 dwellings per acre, now requires a minimum lot size of 1 ½ acres. Because BCZR 1A04.3.B.1(b) provides a savings clause for preexisting lots, it provides a potential avenue for the Petitioners herein to apply for a Special Hearing to alter the minimum lot size requirement. However, the Petitioners have not done so to this time. The same section, in

mandatory language states that the performance standards set forth in BCZR 1A04.4 may not be varied. An independent basis to deny the approvals sought in the remainder of the special hearing relief is found in BCZR 1A00.5, Application to tract divided by zone boundary. That section provides in RC zones, when portions of the tract lie within R.C. zones of different classifications, the total number of dwellings or density units permitted shall apply to each tract individually and, for the purpose of these regulations, shall be considered as separate parcels. As applied to the testimony and documentary evidence before the Board, if the annexation of the 11 acres would not create density, it may otherwise qualify as a non-density transfer. However, in this case, because of the two undersized substandard RC 5 lots to the east of the power lines, which are part of the Petitioners' subject parcel for the request, they only become standard conforming lots with the Sections previously cited for density per acre of .667 per acre in RC 5, with the annexation of the 11 acres. However, because the 11 acres to be annexed are not RC 2, they cannot be utilized to calculate density for the undersized RC 5 lots.

3. If the two RC 5 lots are substandard as undersized, they do not represent viable development lots. The Petitioner, Mark Daneker candidly admitted to the Board that following the execution of the Conservation Easement, he had on his succeeding year's tax return, claimed a donation of three development rights for the purposes of a tax deduction. His actions in the instant petition seeking approval for the annexation as a non-density transfer, where he has taken the tax credit for donating three, must fail, because he does not have remaining two viable development rights.

The provisions applicable to RC 2 zones, BCZR §1A01.3.B provide that no lot of record lying within the RC 2 zone, and having a gross area between 2 and 100 acres may be subdivided into more than two lots. The spirit and intent of that regulation is further spelled out in that same section

that where single ownership is crossed by existing or proposed roads, right of ways or easements, the portions of land on either side of the road, right of way or easement shall not be considered separate parcels for the purposes of calculating the number of lots of record except for site plans, subdivision plans, or record plats filed with and approved by the County between November 20, 1979 and October 1, 1990 shall not be so effected and shall be considered valid. By the Petitioners' own testimony, the subdivision of Dulaney Valley Estates II was not even sought until well after October 1, 1990.

4. BCZR 1A01.4, is applicable to RC 2 zoned lands in which agriculture is deemed to be king, under BCZR 1A01.1 and.2. The land proposed to be annexed is testified by all parties to be prime and productive soils, while the land it is being annexed to, according to Mr. Wally Lippincott, was not studied to see if it contained prime and productive soils. He did not visit the site.

5. The Petitioners' request runs contrary to the spirit and intent of the RC 2 agricultural zone. It further runs contrary to the definitions section of the BCZR §101 for conservancy area which states, "The portion of a rural cluster development which contains significant natural or historic features and which has been dedicated through deed restriction and easements for continued farming, forestry or open space use in order to remain largely undisturbed. [Bill No. 113-1992]. In the recorded Conservation Easement, the parties acknowledged on page 1, "the open space conservation value of the Property as a natural and rural area that has not been subject to development, and have identified significant conservation features in Exhibit B attached hereto:" Additionally, both parties adopted the common purposes, a stated in the next "Whereas", and stated the purposes for which the easement was entered into on the bottom of page 1. On page 2, the easement was stated to be perpetual.

Because the Danekers claimed and received a tax benefit for donating three development rights and did not have two more to give, the annexation of the 11 acres only serves the purpose of creating a density transfer, rather than a non-density transfer, and the special hearing request should be denied.

6. Mr. and Mrs. Daneker should not be allowed to double dip, having received the tax benefit for claiming three development rights donated to the Conservancy, and now receive two development rights, by the annexation of the 11 acres of RC 2 land, to land which is split-zoned RC 5 and RC 2.

7. The Baltimore County Agricultural Advisory Board reviewed the Conservancy Agreement submitted by the Danekers and considered the provisions by which three development rights were donated to the Conservancy, in considering Mr. Daneker's request for this non-density transfer. The normal and regular procedure for approval by the Agricultural Advisory Board was not followed in this case. Mr. Lippincott attested to the fact that the Agricultural Board had requested Mr. Daneker's daughter, Emily appear before the Agricultural Advisory Board and tell them what she proposed to do on the annexed land to support its agricultural use, which she never did. The request to approve the annexation and the future plat 3 of the Dulaney Valley Estates II subdivision should be denied as a density transfer, since it would not qualify as a non-density transfer.

8. Finally, the Long Green Valley Conservancy registered its unequivocal opposition to any dilution of the three development rights conveyed to the Conservancy, under the easement and therefore opposed the Petitioners' Special Hearing request. Mr. Daneker, again admitted that he and his wife had claimed the benefit of a three development right transfer to the Conservancy on his taxes and received the tax benefit. For Mr. Daneker now to appear before the Board of Appeals and

claim he may have donated less than three after he has received the tax benefit of donating three would be inequitable, unfair, and unjust, if not a matter for IRS reconsideration.

Respectfully Submitted:

MICHAEL P. TANCZYN, Esquire
606 Baltimore Avenue, Suite 106
Towson, Maryland 21204
410-296-8823
Attorney for Long Green Valley Association, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY this 4th day of March, 2005, a copy of the foregoing Memorandum of Long Green Valley Association, Inc. was mailed by first class mail, postage prepaid, to Petitioners Mark Daneker and Susan Daneker, 5020 Elder Road, Hydes, MD 21082, Peter Max Zimmerman, Esquire, Peoples' Counsel for Baltimore County, Room 47, 400 Washington Avenue, Towson, Maryland 21204, and to Michael Millemann, Vice-President, the Long Green Valley Conservancy, P.O. Box 133, Long Green, MD 21092.

MICHAEL P. TANCZYN, Esquire
606 Baltimore Avenue, Suite 106
Towson, Maryland 21204
410-296-8823
Attorney for Long Green Valley Association, Inc.

1/4/05

IN THE MATTER OF	*	BOARD OF APPEALS
Mark Daneker Susan Daneker	*	OF
5020 Elder Road N/east side of Elder Road 800 feet n/west of center line of Hydes Road 11th Election District	*	BALTIMORE COUNTY
Third Councilmanic District	*	ZONING CASE NO.: 04-368 SPH

RECEIVED
MAR - 4 2005
BALTIMORE COUNTY
BOARD OF APPEALS

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

MEMORANDUM IN SUPPORT OF PETITIONERS

This matter comes before this Board as an appeal of the decision of the Zoning Commissioner which granted the requested approval of a non-density transfer of 10.1 acres from Parcel 1 to Parcel 2 of the subject property; approved the annexation of the 10.1 acre parcel into future Plat Three of the Dulaney Valley Estates subdivision; and approved an amendment to the third Amended File Development Plan of Dulaney Valley Estates II to incorporate the 10.1 acre Parcel into Parcel 2and reconfigure the number of proposed lots therein from 15 to13, subject to further County review of the Fourth Amended Final Development Plan. No appeal was taken by Petitioners, the Zoning Commissioner's decision being wholly acceptable to Petitioners.

There was very little evidence produced by the Protestant, Long Green Valley Association, Inc.(hereinafter "Association") Their attorney, Michael Tanczyn, presented the testimony of Wally Lippincott, Secretary of the Baltimore County Agricultural Preservation Advisory Board, and director of that County program, to the effect that the Advisory Board had considered this request for a non-density transfer and determined that it was for an agricultural purpose and approved it for an agricultural subdivision. He testified that the Board had determined that the parcel being transferred would be difficult to farm as part of the existing Parcel 1 Daneker farm because of the topographical features lying between it and the rest of Parcel 1 and that the proposed transfer to Parcel 2 will allow it and the other portions of Parcel 2 to be used for agricultural purposes.

Protestant also presented the testimony of Carol Shaw , a member of its board of directors, but not an officer. She presented minutes of two meetings of that Association held on April 13, 2004 and July 20, 2004 at which the board first voted to oppose the Petitioners' request and then voted to appeal the Zoning Commissioner's decision. Neither set of minutes listed any reasons or rationale for its opposition. Nevertheless, Ms. Shaw presented a Resolution that she stated had been signed by the President, Charlotte Pine, and the Secretary purporting to state the position of the Association on this matter. On cross-examination, she admitted that she had written this Resolution herself, the day before the hearing in this matter (indeed it is dated Feb. 16, 2005, the day before the hearing) and that the statements in the Resolution did not appear in

any minutes of the Association and had not been reviewed by the Association board. Nothing she presented purports to authorize her to testify on behalf of the Association. Indeed, the signature of Charlotte Pine on all three documents submitted by her does not appear to be a genuine signature of Charlotte Pine when compared to two signatures of Charlotte Pine appearing on an earlier letter sent by the Association to the Zoning Commissioner and a deed executed by her and recorded an the Baltimore County Land Records, both attached hereto as exhibits.

Nevertheless, even if her testimony is accepted as stating the position of the Association, it is difficult to fathom the opposition of the Association to the Petitioners' request. The evidence presented by Petitioners shows clearly that there is sufficient density for zoning purposes to allow the development of Parcel 2 into as many as five lots (see calculation of density on recorded Plat of Section 2) and that the development has been previously approved in a configuration of four lots. The Petition requests reduction of the approved configuration of 4 lots into 2 lots and an increase in size of one of the two lots by approval of the non-density transfer of 10.1 acres to allow for agricultural use of the property. Agricultural use is allowed in all RC zones as a matter of right and this particular transfer request has been approved by the Agricultural Advisory Board as being for an agricultural purpose. The plans and Plats presented by the Petitioner in evidence show that the proposed development is not dependent upon the RC5 portion of Parcel 2 for support of wells or septic systems. The Association's purported resolution speaks of its historical opposition to "using RC2 land for enhancement and/or support of any RC 5 development parcel" The Petitioner's evidence shows that the proposed well, septic and residence on each lot are completely located on the RC 2 property, which can be divided into two lots as a matter of right. There is no proposed development of the RC5 portion of the Parcel 2.

The "enhancement" that would occur as a result of approval of Petitioners' request is one the Association should not be opposing -- an enhancement of the rural and agricultural character of the area. Petitioners presented, as Exhibits, twenty -one letters signed by residents of the existing development and surrounding parcels of ground who had reviewed the proposed Plat changes and who supported Petitioners' requests. No one has opposed the request except for the Association.

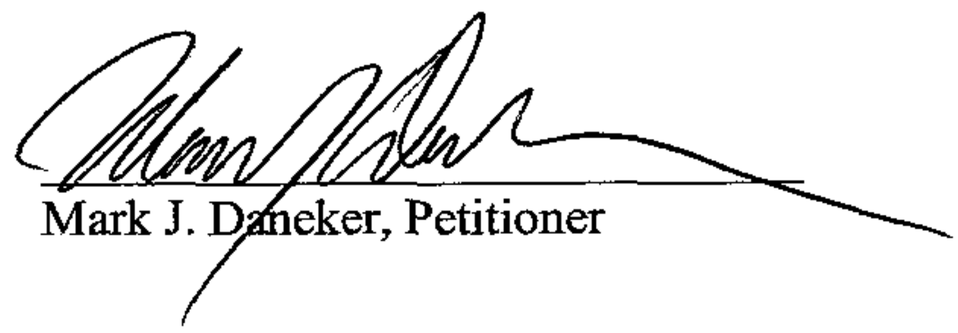
Petitioners' proposal is consistent with the spirit and intent of the BCZR. The overall development is "under density", will preserve and protect agricultural uses, will reduce the number of lots and residences in the development by two, and will diminish the amount of land utilized for roads. Petitioners' request should be granted.

Respectfully submitted,

Mark J. Daneker, Petitioner
410 - 649 – 4753

I hereby certify that on this 4th day of March, 2005, a copy of the foregoing Memorandum in Support of Petitioners was mailed, postage paid to the attorney for Long Green Valley Association, Inc.:

Michael P. Tanczyn, Esq.
606 Baltimore Avenue, Suite 106
Towson, Maryland 21204 – 4098



Mark J. Daneker, Petitioner

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 23, 2004

Mr. & Mrs. Mark J. Daneker
5020 Elder Road
Hydes, Maryland 21082

RE: PETITION FOR SPECIAL HEARING
NE/S Elder Road, E of Bart Allen Lane, 800' N of the c/l Hydes Road
(5020 Elder Road)
11th Election District – 3rd Council District
Mark J. Daneker, et ux - Petitioners
Case No. 04-368-SPH

Dear Mr. Daneker:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Special Hearing has been granted, in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Department of Permits and Development Management office at 887-3391.

Very truly yours,

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Mr. Geoffrey Schultz, McKee & Assoc., Inc.
5 Shawan Road, Hunt Valley, Md. 21030
Michael P. Tanczyn, Esquire, 606 Baltimore Avenue, #106, Towson, Md. 21204
Ms. Charlotte W. Pine, 607 Baltimore Avenue, Towson, Md. 21204
Ms. Carol Shaw, 7 Country Hill Court, Fork, Md. 21051
Mr. Wally Lippincott, DEPRM; People's Counsel; Case File

Printed on Recycled Paper

IN RE: PETITION OF	*	BEFORE THE ZONING
Mark Daneker and Susan Daneker	* *	COMMISSIONER OF
5020 Elder Avenue N/east side of Elder Avenue 800 feet n/west of centerline of Hydes Road 11th Election District 3rd Councilmanic District Legal Owners: Mark & Susan Daneker	* * * *	BALTIMORE COUNTY ZONING CASE NO.: 04-368 SPH

* * * * * * *

PROTESTANT'S MEMORANDUM

Now comes Long Green Valley Association, Inc., Protestant, by its attorney, Michael P. Tanczyn, and submits the within Memorandum to assist the Zoning Commissioner in deciding this case.

LEGAL OWNERS' REQUEST

Legal owners sought, by a Petition for Special Hearing, the following three elements of zoning relief:

1. To approve non-density transfer of approximately eleven acres from parcel 1 to parcel 2;

2. To approve the annexation of the 10 acre parcel into future plat 3 of Dulaney Valley Estate subdivision; and

3. To approve the fourth amended final development plan of Dulaney Valley Estates II, to incorporate the 10 acre parcel into the area of the subdivision, and to reduce and reconfigure the number of proposed lots from 15 to 13.

This matter was heard on May 28, 2004 before the Honorable Lawrence E. Schmidt, Zoning Commissioner. Witnesses for the Petitioner included one of the legal owners, Mark J. Daneker, Esquire, and his engineer, Geoffrey C. Schultz of McKee & Associates, Inc.. Mark Daneker testified he and his wife had owned 20 Elder Road since 1969, which he described as an 111 acre, plus, farm. He testified that he had purchased an additional adjacent parcel in 1974, of approximately 39 acres, which became Dulaney Valley Estates II. Mr. Daneker testified that there was a steep ravine between the front and back portion of the farm, and the back portion of the 111 acre farm was adjacent to the 39 acre Dulaney Valley Estates parcel. He introduced, as Petitioner's Exhibit 1, 2002 Conservation Plan Map, and identified his residence as the area marked "HQ" on the plan, and the area proposed to be annexed of 10.1 acres as "open field 3" on the plan, which was introduced as Petitioner's Exhibit 2, topographic map. Petitioner's site plan was introduced as Exhibit 3A, sheet 1 of 2 by McKee & Associates, dated February 6, 2004, and Petitioner's Exhibit 3B was the proposed Fourth Amended Final Development Plan for Dulaney Valley Estates II, marked sheet 2 of 2. Petitioner's Exhibit 4 collectively were letters from 21 neighbors, expressing support for the Petition for Special Hearing. Petitioner's Exhibit 5 was a letter decision from the Baltimore County Agricultural Advisory Board, dated December 20, 2002, expressing approval for the annexation of the 11 acres. Petitioner's Exhibit 6 was the plat recorded in plat book SM73, folio 4, on or about August 14, 2000, entitled Plat 2, Dulaney Valley Estates II.

Mr. Daneker testified that the property was first down-zoned to RC2, which would allow 2 building lots on the 111 acres, known as 5020 Elder Road. The other parcel acquired in 1974 by him was subsequently down-zoned to split-zoning of RC5 and RC2, after those zones were created. Sometime in approximately 1990, he began the process to subdivide the 1974 parcel and submitted

a development plan under the CRG regulations, which was approved in 1992. That plan approved 15 building lots on 16 claimed density rights for the split-zoned parcel, then zoned RC2 and RC5. Mr. Daneker testified that the zoning on that parcel has not changed from the time of the CRG approval through the present. He further testified that building lots 6 and 7, as shown on that parcel were made larger lots by him, because he used an area which could have comprised 3 lots to have 2 larger lots.

He testified that the perk tests and the well tests had been completed for those lots proposed in that subdivision and that the road was laid out. He testified that he had difficulty farming the rear portion of his 111 acre lot, and he decided to place the land in a Conservancy, and entered into an agreement, which was described by him as a Deed of Conservation Easement, which he had prepared between himself and Long Green Valley Conservancy, Inc., which was executed December 29, 1998, and recorded by him the next day in Land Records of Baltimore County, in Liber SM13409, folio 319 *et. seq*. He acknowledged that the Deed in subsection J proposed and claimed 5 development rights on the land described as included under the conservation easement, which represented all of the property to the east of the power transmission lines, except for the part labeled, "part of future lot 8", as well as a triangular parcel to the west of the transmission lines, labeled 1.037 acres and part of lot 15, for the total property described in the easement of 19.02 acres. The conservation easement was admitted as a Protestant's Exhibit 1 and Protestant's Exhibit 2 collectively was identified as the lot owners of Dulaney Valley Estates II, along with the SDAT information on their Deeds of record and their lot numbers.

He testified that the only lot not sold west of the power lines was Lot 1. He acknowledged that the development plan of the area east of the transmission lines, approximately a 6 to 7 acre

parcel, which was taken up with a 100 year floodplain, or designated as buffer easements, as well as a stream easement. On cross-examination, he could not identify where he claimed 5 density rights were located on the Conservancy area. As to the land proposed for annexation, he testified that that had been tilled for corn silage crop, beginning in 1975, and then as corn grain crop, beginning in 1976, until approximately 1990, either by himself or by tenant farmers. In 1990, he testified, that he qualified for a federal government program to receive a set aside of $350.00 per year, for not growing corn. He also testified to the tax benefits of the conservancy easement, but declined to answer questions as to the amount of the tax write-off he had obtained by donating 3 density rights to the Conservancy.

He acknowledged that the Petitioner's Exhibit 3B showed an extension of Bart Ellen Lane, which he did not presently propose to build, as well as multiple residences on the proposed 2 remaining lots, one of which, on proposed Lot 12, was bisected by the proposed lot line. He further testified that the actual building envelopes were not set forth nor were the final proposed well and septic areas, and he was unable to state how long ago the well and septic tests had been performed, and whether they were still in effect. He further acknowledged that the proposed southernmost panhandle went over a proposed well area, as shown on his plan.

The Petitioner then called Geoffrey Schultz as a witness, and introduced, through him, over objection, as Petitioner's Exhibit 7, potential alternatives for the building envelopes and well and septic for the houses, which had not been determined by the property owner to be the actual proposed residence locations, as of the time of the hearing. On cross-examination, Mr. Schultz of McKee & Associates produced an earlier plat, which had been submitted to the DRC, (2 pages), for the proposed lot line adjustment, which showed two of the proposed residences crossed out as not being

intended for development in the DRC plan. Mr. Daneker testified that DRC had declined to approve the lot line adjustment, suggesting to him that he needed to file the instant Petition for Special Hearing, and to obtain approval of the Baltimore County Agricultural Advisory Board for the transfer of productive farm land to the subdivision.

Mr. Daneker testified that he sought to do so, and produced the following document submissions he claimed he had made to the Baltimore County Agricultural Advisory Board. Protestant's Exhibit 3, which was a faxed transmittal from him to Wally Lippincott, dated November 20, 2002. Protestant's Exhibit 4 was a letter dated November 19, 2002 to the Baltimore County Agricultural Preservation Board, and Protestant's Exhibit 5 was a further submission to the Baltimore County Agricultural Preservation Board, through Wally Lippincott. Mr. Daneker testified that to the best of his recollection, he had attempted to get on the agenda for the November 19, 2002 meeting, but the documentation had not been sent out to the Board members in time and the Board took no action on his request in tabling it. He then testified that he believed he had appeared and presented before the Board at its next meeting, which he believed occurred in December, 2002, at which time he testified the plan was approved.

When Wally Lippincott testified, pursuant to a Subpoena, as the Secretary of the Baltimore County Agricultural Advisory Board, Mr. Lippincott testified that the September 27, 2002 request from Mr. Daneker had been tabled by the Baltimore County Agricultural Preservation Board at its quarterly meeting, November 19, 2002. Mr. Lippincott testified further that the Board requested that Mr. Daneker's daughter, who was the intended Grantee of the proposed lot to which the annexed farm land would be attached, come to the Agricultural Board and testify to them, concerning her proposed agricultural use for the lot. Mr. Lippincott further testified that that never occurred, but

that the Board subsequently approved the Daneker request, by phone and not through a scheduled Board meeting, in December, 2002. Mr. Lippincott testified that the Agricultural Preservation Board generally met quarterly, and was not due to meet in December of 2002, after its November, 2002 meeting concluded. Mr. Lippincott, when shown Protestant's Exhibits 3, 4, and 5, testified that he had never received those items and that they were not in the file of the Baltimore County Agricultural Preservation Board for this issue. Mr. Lippincott further testified that the Agricultural Advisory Board for Baltimore County is authorized, under Md. Code Agricultural Article, §2-504.1. He stated that the purposes, duties, and responsibilities of the Agricultural Advisory Board were to protect prime and productive farm land and to examine any requests to take prime or productive land out of agricultural use. He further testified that the Board, with regard to this issue, never considered the prime and productive farm land included within the Dulaney Valley Estates subdivision for the land east of the power lines, to which the annexed land was proposed to be joined. He further testified that the land proposed to be annexed, to the best of his knowledge was prime and productive soils and acknowledged that under the RC2 zoning applicable to that property, that agriculture is deemed to be the preferable use of such land in the zone. Mr. Lippincott further testified that the Agricultural Advisory Board had knowledge of the Conservancy Agreement, (Protestant's Exhibit 1), prior to considering Mr. Daneker's request.

ARGUMENT

The Petitioner's prayer for relief, for approval of the fourth amended final development plan is premature in that the plan, as presented to the Zoning Commissioner lacks the necessary requirements of any development plan, and in fact shows a patent irregularities, if not apparent violations of the subdivision regulations in the following regards:

A. There are multiple residences shown on proposed Lot 12 and proposed Lot 13.

B. There are no dimensions showing orientation of the proposed houses on the lots and, in fact, shows multiple residences on each of those lots, in violation of the Baltimore County Development Regulations.

C. That the well and septic areas shown on the plats extend over across the proposed lines of division in apparent violation of the Baltimore County Regulations.

D. That the proposed plan still includes an extension of Bart Allen Lane, which the Petitioner expressly claimed he did not intend to build under the final development plan amendment.

E. That the Petitioner acknowledged that the southernmost proposed panhandle proposes driving over what is described as a well area, in apparent violation of Baltimore County Regulations.

F. Because the well and septic areas proposed are not delineated on the plan, it is impossible for Baltimore County agencies to have reviewed and approved this plan, to see if it conformed with the requirements as to separation of well and septic and roads, and distance from residences to lot lines, to see if variances would be required for setbacks.

G. Under the current panhandle regulations, orientation of the homes is required, in addition to other panhandle requirements, which are not shown or designated on this plan; and therefore have not been reviewed or approved by the necessary Baltimore County agencies.

CONCLUSION

The prayer for relief, approval of the fourth amended final development plan is premature, as no plan has been submitted through the conclusion of the hearing, which would meet the requirements of 26-209 of the Baltimore County Code and should be denied. As the Petitioner and his engineer

acknowledge the plan as not in proper form for approval for that aspect of the relief claimed and should be denied.

ARGUMENT II

The claim of Petitioner that seeks a non-density of 10.1 acres from parcel 1 to parcel 2 was not proven on the evidence before the Zoning Commissioner to be, in fact, a non-density transfer. If the assumption is made that the 111 acres, which constituted parcel 1, would yield 2 density units, under the zoning regulations for RC2, as more particularly described in BCZR 1A01.3B1, then the transfer of 11 acres to parcel 2, would still yield the same density for the remainder, as Petitioner enjoyed before, namely 2 lots. That same section, in consideration of the 19.072 acres, which is the subject of the Conservancy, would have yielded, for the RC2 portion of the land, as zoned, 2 lots. Therefore, on paper, the net density rights appears not to produce a density transfer. However, the conservancy easement executed by the lot owner, which claimed 5 density rights for the 19.072 acres, generally on the east side of the transmission lines, is not supported by oral testimony or the review of either Petitioner's Exhibit 3A or 3B.

In fact, while the Petitioner claimed in the Conservancy Agreement, that that same area held 5 density units, it is clear that the RC2 portion of it would only yield 2 units. It is further clear that the remaining acreage, zoned RC5, was insufficient to yield 3 additional density rights. Therefore, a question arises, by looking at the area proposed for non-density transfers to determine that if the Petitioner gave away 3 development rights for that tract, and he only had 4 to start with on that tract, by virtue of the conservation easement dedication to the Conservancy, then he would only have 1 lot remaining on the RC2 portion, which is part of Dulaney Valley Estates II, because of his prior

conveyance of density rights to the Conservancy. Therefore, by annexing the additional 11 acres, he then claims to have adequate density, under the RC2 portion, to claim 2 additional building lots.

As the burden was on the Petitioner to show, through his evidence, that the remaining unused density would yield enough lots to ensure that this acreage transfer would qualify as a non-density transfer, the Petitioner failed to put on evidence showing the claimed lots within the RC5 portion, which would meet the requirements, by size, to yield the number of lots which Petitioner claimed to have. Lot 13 fell short under the RC5 regulations, because it claims to be 1.291 acres. Petitioner further, and particularly through his engineer, acknowledged that Baltimore County considers split-zoned lots differently for density purposes in calculating allowable density, based on the underlying lot, including setbacks proposed, as if each lot were confined to the proposed zone, unless that matter has been considered by the Zoning Commissioner, as permitted, under a separate special hearing, as a zoning anomaly. Such a request was not included in the Petitioner's instant case. In fact, the Petitioner did not even designate which residence, as shown on the plan, he intended the Zoning Commissioner to consider, for purposes of approving a final development plan. In an RC5 zone, BCZR §1A04.3B1 requires a maximum gross residential density of a lot of record as .667 dwellings per acre. Therefore, proposed Lot 13, for the RC5 portion, is an undersized lot, because it is not large enough for acreage to support 1 dwelling unit. It is also apparent that the residence shown in the RC5 land on both Lot 12 and Lot 13 do not meet the stated building setbacks, under BCZR 1A04.3B2.

There was testimony from Mr. Lippincott that the land proposed to be annexed was part of a agricultural district. BCZR 1A01.4, entitled Maryland Agricultural Land Preservation Program, prescribes that the use or development of land in an agricultural district, which is established in

accordance in with 2-509 of the Agricultural Article, shall be governed by agricultural land preservation provisions enacted by the County Council, pursuant to §2-513 of the Agricultural Article in the case of any conflict between those provisions and these regulations. Both Mr. Lippincott's testimony and Mr. Daneker's testimony concerning the apparent irregularity before the Baltimore County Agricultural Advisory Board in the failure of Mr. Daneker's daughter to appear and testify to them to satisfy their concern about what agricultural use she proposed to make for this land, has never been addressed. Further, the Conservancy Agreement specifically refers, in Article VI(E), that it is construed, in accordance with §2-118 of the Real Property Article of the Annotated Code of Maryland, as well as the conservation purposes set forth in Internal Revenue Code §179(h)4(a). There was absolutely no testimony by the Petitioner to satisfy the Zoning Commissioner, that the proposed use is in keeping with the dedication, under the conservation easement created under Real Property Article §2-118, or IRC §179(h)4(a). Since the recitals of the conservation easement claim as a purpose, conserving the "dominant scenic, cultural, rural, agricultural, woodland and wetland character of the property, and accept as hereinafter provided, limiting the use or development of the property for any purpose or in any manner that would conflict with the maintenance of the property and its open space condition", and because the easement, under Article I claims to be perpetual, and as limited in Article 2(A), to "farming, silvaculture and horticulture", as activities allowed, the failure of the Petitioner to present evidence on that point, given the zoning of the dominant portion of the property as RC2, leaves the Zoning Commissioner without a factual basis to conclude that this proposed non-density transfer is in keeping with the RC2 zoning of the property, as well as the Conservancy Agreement submitted by the Petitioner to the Baltimore County Agricultural Advisory Board, and included by it in its consideration of his request.

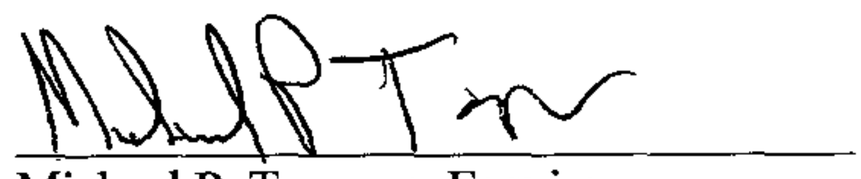
While the Zoning Commissioner made clear at the time of the hearing, that he believed enforcement of the conservation easement was outside the scope of his direct authority, Protestants urge that he consider the conservation easement as part of the case, because the Baltimore County Agricultural Advisory Board was presented that very easement by the Petitioner, as part of Mr. Daneker's submission, to urge them to find that his proposed annexation would be for an agricultural purpose. Therefore, the restrictions on the use for which the Petitioner received a tax credit or benefit, regarding his taxes, should not be discarded, since it was intrinsic to and part of the Petitioner's submission to the Baltimore County Agricultural Advisory Board, when it considered his request.

CONCLUSION

Protestants believe that the record of these proceedings does not illustrate or provide a factual basis on which the Zoning Commissioner can logically conclude that the proposed annexation of productive prime farmlands is proper under the RC2 regulations, because the requirements set forth by the Baltimore County Agricultural Advisory Board, that the Petitioner's daughter appear and tell them what agricultural use she proposed for the property were not met. Further, what the Petitioner stated he had submitted to Mr. Lippincott was not received, so far as Mr. Lippincott was concerned, and was not part of the Baltimore Agricultural Advisory Board file, according to Mr. Lippincott's testimony at the time of hearing. As the Long Green Valley Association, Inc. has, for a considerable period of time, consistently thought to preserve productive prime agricultural land for farming, and has sought to conserve natural environmental beauty and features within the district, the request of the Petitioner to approve a non-density transfer should be subjected to a vigorous scrutiny to see if all of the necessary elements have been proven to the satisfaction of the Zoning Commissioner before

a non-density transfer is approved. On the record before the Zoning Commissioner, Protestants believe that not only are the plans premature and inadequate, but they do not prove the necessary elements to illustrate a non-density transfer, if the conservation easement is considered by the Zoning Commissioner as it was by the Baltimore County Agricultural Advisory Board. For the aforegoing reasons, Protestants respectfully request that the Zoning Commissioner deny the requested relief.

Respectfully Submitted,



Michael P. Tanczyn, Esquire
606 Baltimore Avenue, Suite 106
Towson, Maryland 21204
410-296-8823
Attorney for the Protestant, Long Green Valley Association, Inc.

Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 5020 Elder Road

which is presently zoned RC-2/RC-5

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 Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

1) To approve a non-density transfer of approximately 11 acres from Parcel 1 to Parcel 2.

2) To approve the annexation of the 10-acre Parcel into future Plat Three of the Dulaney Valley Estates Subdivision.

3) To approve the amendment of the 2nd Amended Final Development Plan of Dulaney Valley Estates II to incorporate the 10-acre Parcel into the area of the subdivision and to reduce and reconfigure the number of proposed lots from 15 to 13.

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

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

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):

Mark J. Daneker
Name - Type or Print

Signature

Susan B. Daneker
Name - Type or Print

Signature

5020 Elder Road (410) 649-4753
Address Telephone No.

Hydes, MD 21082
City State Zip Code

Representative to be Contacted:

Geoffrey C. Schultz
McKee and Associates, Inc.
Name

5 Shawan Road, Suite 1 (410) 527-1555
Address Telephone No.

Cockeysville, MD 21030
City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING 2 hrs

UNAVAILABLE FOR HEARING

Reviewed By Date 2-09-04

ORDER RECEIVED FOR FILING
Date 6/23/04
By

Case No. 04-368 SPH

REVISED 5/15/98

McKEE & ASSOCIATES, INC.
Engineering • Surveying • Environmental Planning
Real Estate Development

February 9, 2004

ZONING DESCRIPTION
5020 ELDER ROAD
DANEKER PROPERTY
11TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MD

STATE OF MARYLAND
GEOFFREY CRAIG
No. 21134
PROFESSIONAL LAND SURVEYOR

PARCEL ONE

BEGINNING at a point in the center of Elder Road, said point being 800 feet northwest of the center of Hydes Road; thence running North 54 degrees 39 minutes 54 seconds West, 194.23 feet, North 53 degrees 14 minutes 44 seconds West, 112.12 feet,
North 29 degrees 51 minutes 31 seconds East, 855.48 feet,
North 47 degrees 53 minutes 14 seconds West, 60.00 feet,
North 48 degrees 20 minutes 46 seconds East, 918.47 feet,
North 19 degrees 24 minutes 54 seconds West, 101.15 feet,
South 48 degrees 20 minutes 46 seconds West, 100.00 feet,
North 19 degrees 24 minutes 54 seconds West, 806.28 feet,
North 54 degrees 22 minutes 29 seconds West, 583.15 feet,
North 29 degrees 20 minutes 24 seconds West, 476.33 feet,
North 14 degrees 29 minutes 14 seconds West, 814.42 feet,
North 86 degrees 56 minutes 14 seconds West, 686.07 feet,
North 86 degrees 56 minutes 14 seconds West, 25.69 feet,
North 86 degrees 56 minutes 14 seconds West, 170.29 feet,
South 08 degrees 30 minutes 41 seconds West, 1,426.02 feet,
South 12 degrees 30 minutes 10 seconds East, 209.55 feet,
South 23 degrees 09 minutes 14 seconds East, 406.37 feet,
South 22 degrees 24 minutes 14 seconds East, 400.00 feet,
South 18 degrees 54 minutes 14 seconds East, 426.00 feet,
South 08 degrees 51 minutes 14 seconds East, 166.50 feet,
South 12 degrees 07 minutes 14 seconds East, 76.75 feet,
South 25 degrees 12 minutes 14 seconds East, 120.67 feet,
South 39 degrees 46 minutes 14 seconds East, 117.58 feet,
South 48 degrees 07 minutes 14 seconds East, 345.08 feet,
South 50 degrees 02 minutes 14 seconds East, 217.50 feet,
South 43 degrees 38 minutes 14 seconds East, 308.58 feet,
South 52 degrees 19 minutes 14 seconds East, 155.00 feet,
South 63 degrees 01 minutes 14 seconds East, 148.83 feet, and
North 35 degrees 17 minutes 16 seconds East, 7.28 feet to the place of beginning.

368

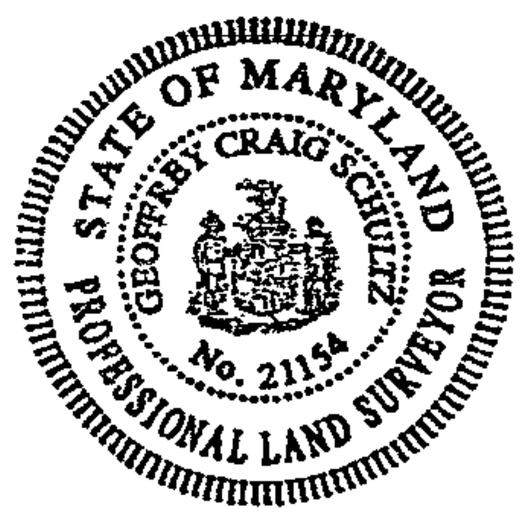
CONTAINING 111.80 acres of land as recorded in Deed Liber 5761, folio 673, net of a BGE Right-of-Way recorded in Deed Liber 367, folio 149.

Shawan Place • Suite 1 • 5 Shawan Road • Cockeysville, MD 21030
Tel: 410-527-1555 • Fax: 410-527-1563 • E-Mail: @mckeeinc.com

PARCEL TWO

BEGINNING at a point at the intersection of the south side of Bart Allen Lane (50-foot wide right-of-way) and the east side of Striminic Court (50-foot wide right-of-way); thence running
North 00 degrees 16 minutes 04 seconds West, 50.00 feet,
North 89 degrees 43 minutes 56 seconds East, 246.83 feet,
North 89 degrees 43 minutes 56 seconds East, 103.90 feet,
North 15 degrees 28 minutes 16 seconds East, 409.98 feet,
South 79 degrees 10 minutes 00 seconds East, 134.54 feet,
North 00 degrees 15 minutes 00 seconds East, 510.77 feet,
North 00 degrees 15 minutes 00 seconds East, 170.16 feet,
North 48 degrees 41 minutes 59 seconds West, 424.72 feet,
South 82 degrees 10 minutes 15 seconds East, 385.72 feet,
South 82 degrees 10 minutes 15 seconds East, 100.90 feet,
South 82 degrees 10 minutes 15 seconds East, 13.52 feet,
South 19 degrees 51 minutes 14 seconds East, 1,708 feet,
North 86 degrees 56 minutes 14 seconds West, 948.40 feet,
North 87 degrees 38 minutes 37 seconds West, 77.04 feet,
North 15 degrees 28 minutes 16 seconds East, 207.04 feet,
South 89 degrees 43 minutes 56 seconds West, 103.90 feet, and
South 89 degrees 43 minutes 56 seconds West, 232.74 feet to the place of beginning.

CONTAINING 19.31 acres of land as recorded in Deed Liber 6297, folio 345 and Liber 7835, folio 15, net of a BGE Right-of-Way recorded in Deed Liber 367, folio 149.



BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

Case 04-385-A

No. 28107

DATE 2-09-04 ACCOUNT R-001-006-6150

AMOUNT $ 130.00

RECEIVED FROM: Mr & Mrs. Mark Donker

FOR: Reclassification of Zoning Case 2 Dwellings on Lot 25 Resub

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

CASHIER'S VALIDATION

PAID RECEIPT

BUSINESS	ACTUAL	TIME	DRW
2/10/2004	2/09/2004	14:11:29	5

REG AG05 WALKIN LSCO LES
>> RECEIPT H 351887 2/09/2004 DFLN
Dept 6 529 ZONING VERIFICATION
CR NO. 028107
Recpt Tot $130.00
$130.00 CK $.00 CA
Baltimore County, Maryland

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 39350

DATE 7/21/04 ACCOUNT 001-006-6150

AMOUNT $ 225.00

RECEIVED FROM: Michael Tanczyn

FOR: Appeal -04-368SPH -5020 Elder Road

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT

BUSINESS	ACTUAL	TIME	DRW
7/22/2004	7/21/2004	13:44:51	2

REG WS04 WALKIN DOUL DAD
>>RECEIPT # 272549 7/21/2004 OFLN
Dept 5 528 ZONING VERIFICATION
CR NO. 039350
Recpt Tot $225.00
$225.00 CK $.00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 37500

DATE 7/22/04 ACCOUNT 001-006-6150

AMOUNT $ 75.00

RECEIVED FROM: Michael P. Tanczyn

FOR: Appeal 04-368 SPH

5020 Dalmer Rd

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT

BUSINESS	ACTUAL	TIME	DRW
7/27/2004	7/27/2004	09:08:19	5

REG WS05 WALKIN MHEL MAH
>>RECEIPT # 363197 7/27/2004 OFLN
Dept 5 528 ZONING VERIFICATION
CR NO. 037933
Recpt Tot $75.00
$75.00 CK $.00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing in Towson, Maryland on the property identified herein as follows:

Case: #04-368-SPH
5020 Elder Avenue
N/east side of Elder Road, 800 feet n/west of centerline of Hydes Road
11th Election District - 3rd Councilmanic District
Legal Owner(s): Mark and Susan Daneker

Special Hearing: to approve a non-density transfer of approximately 11 acres from Parcel 1 to Parcel 2, to approve the annexation of the acre parcel into future Plat 3 of the Dulaney Valley Estates Subdivision, and to approve the second Amended Final Development Plan of Dulaney Valley Estates II to incorporate the 10 acre parcel into the subdivision and to reduce and reconfigure the number of proposed lots from 15 to 13.

Hearing: Wednesday, April 28, 2004 at 9:00 a.m. in Room 186, County Office Building, 111 W. Chesapeake Avenue.

LAWRENCE E. SCHMIDT
Zoning Commissioner for Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Contact the Zoning Commissioner's Office at (410) 887-4386.

(2) For information concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391.

JT/4/674 Apr. 13 C659474

CERTIFICATE OF PUBLICATION

4/13/, 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 4/13/, 2004.

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

S. Wilkinson

LEGAL ADVERTISING

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: #04-368-SPH
5020 Elder Avenue
N/east side of Elder Avenue, 800 feet n/west of centerline of Hydes Road
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Special Hearing: to approve a non-density transfer of approximately 11 acres from Parcel 1 to Parcel 2, to approve the annexation of the acre parcel into future Plat 3 of the Dulaney Valley Estates Subdivision, and to approve the second Amended Final Development Plan of Dulaney Valley Estates II to incorporate the 10 acre parcel into the subdivision and to reduce and reconfigure the number of proposed lots from 15 to 13.

Hearing: Friday, May 28, 2004 at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue.

LAWRENCE E. SCHMIDT
Zoning Commissioner for Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Contact the Zoning Commissioner's Office at (410) 887-4386.
(2) For information concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391.

JT 5/668 May 11 4437

CERTIFICATE OF PUBLICATION

5/14/, 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 5/11/, 2004.

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

S. Wilkinson

LEGAL ADVERTISING

CERTIFICATE OF POSTING

Date: 5/11/04

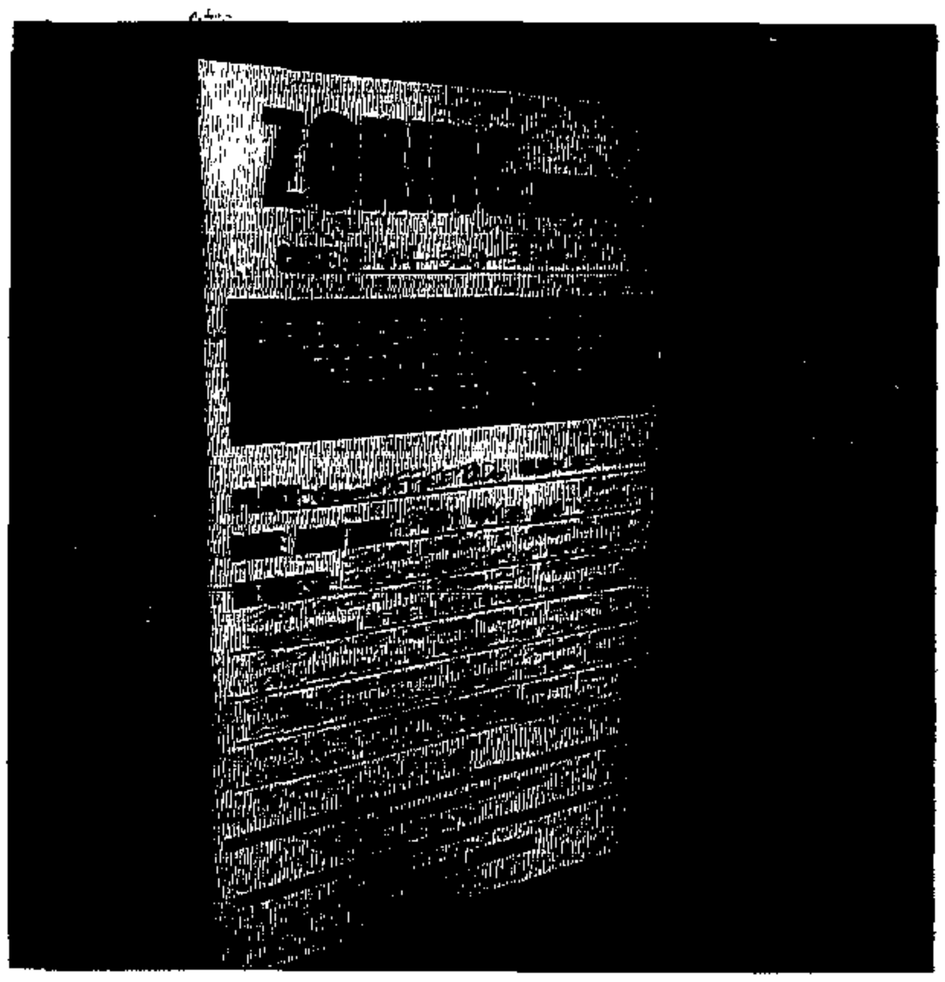
RE: Case Number 04 368 SPH

Petitioner/Developer: Mark and Susan Daneker

Date of Hearing/Closing: May 28, 2004 9AM

This is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at 5020 Elder Road and at the end of Bart Allen Court

The sign(s) were posted on 5/11/04
(Month, Day, Year)



J. Lawrence Pilson
(Signature of Sign Poster)

J. Lawrence Pilson
McKee and Associates, Inc.
(Printed Name of Sign Poster)

5 Shawan Road, Suite 1
(Street Address of Sign Poster)

Cockeysville, MD 21030
(City, State, Zip Code of Sign Poster)

(410) 527-1555
(Telephone Number of Sign Poster)

Revised 3/1/01 - SCJ

CERTIFICATE OF POSTING

Date: 04/13/04

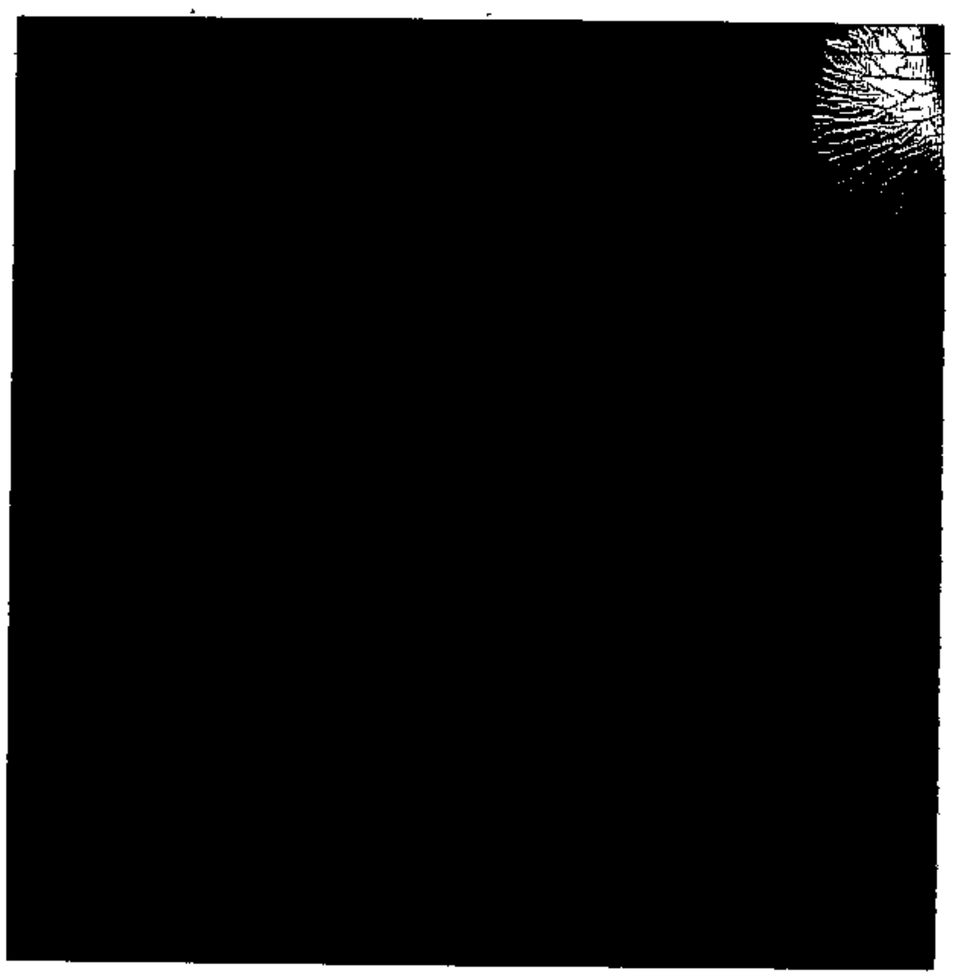
RE: Case Number 04 368 SPH

Petitioner/Developer: Mark and Susan Daneker

Date of Hearing/Closing: Wednesday, April 28, 2004

This is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at 5020 Elder Avenue and at the end of Bart Allen Lane

The sign(s) were posted on 04/12/04
(Month, Day, Year)



J. Lawrence Pilson
(Signature of Sign Poster)

J. Lawrence Pilson
McKee and Associates, Inc.
(Printed Name of Sign Poster)

5 Shawan Road, Suite 1
(Street Address of Sign Poster)

Cockeysville, MD 21030
(City, State, Zip Code of Sign Poster)

(410) 527-1555
(Telephone Number of Sign Poster)

Revised 3/1/01 - SCJ

FARM
NING APPEAL
C HEARING
FOR INFORMATION CALL
410-887-3180
DO NOT REMOVE
UNDER PENALTY OF LAW

APPEAL SIGN POSTING REQUEST

CASE NO.: 04-368-SPH

MARK J. DANEKER– LEGAL OWNER

5020 ELDER ROAD, HYDES

11TH ELECTION DISTRICT APPEALED: 7/21/2004

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.: 04-368-SPH

Petitioner/Developer:

MARK J. DANEKER. – LEGAL OWNER

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

5020 ELDER ROAD, HYDES

The sign was posted on 8 Nov 1, 2004

By: _____
(Signature of Sign Poster)

Chen, Jerry
(Printed Name)

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: 04-368-SPH

Petitioner: MARK DANEKER

Address or Location: 5020 ELDER ROAD

PLEASE FORWARD ADVERTISING BILL TO:

Name: MARK DANEKER

Address: 5020 ELDER ROAD
HYDES MD. 21082

Telephone Number: (410) 649-4753

Revised 2/20/98 - SCJ

TO: PATUXENT PUBLISHING COMPANY
Thursday, March 25, 2004 Issue - Jeffersonian

Please forward billing to:
Mark Daneker
5020 Elder Road
Hydes, MD 21082

410-649-4753

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: 04-368-SPH
5020 Elder Avenue
N/east side of Elder Road, 800 feet n/west of centerline of Hydes Road
11th Election District – 3rd Councilmanic District
Legal Owners: Mark and Susan Daneker

Special Hearing to approve a non-density transfer of approximately 11 acres from Parcel 1 to Parcel 2, to approve the annexation of the 10-acre Parcel into future Plat 3 of the Dulaney Valley Estates Subdivision, and to approve the second Amended Final Development Plan of Dulaney Valley Esates II to incorporate the 10-acre Parcel into the subdivision and to reduce and reconfigure the number of proposed lots from 15 to 13.

Hearing: Monday, April 12, 2004, at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue

LAWRENCE E. SCHMIDT
ZONING COMMISSIONER FOR BALTIMORE COUNTY

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

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

March 1, 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: 04-368-SPH
5020 Elder Avenue
N/east side of Elder Road, 800 feet n/west of centerline of Hydes Road
11th Election District – 3rd Councilmanic District
Legal Owners: Mark and Susan Daneker

Special Hearing to approve a non-density transfer of approximately 11 acres from Parcel 1 to Parcel 2, to approve the annexation of the 10-acre Parcel into future Plat 3 of the Dulaney Valley Estates Subdivision, and to approve the second Amended Final Development Plan of Dulaney Valley Esates II to incorporate the 10-acre Parcel into the subdivision and to reduce and reconfigure the number of proposed lots from 15 to 13.

Hearing: Monday, April 12, 2004, at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue

Timothy Kotroco
Director

TK:klm

C: Mark and Susan Daneker, 5020 Elder Avenue, Hydes 21082
Geoffrey Schultz, McKee & Associates, 5 Shawan Rd., Ste. 1, Cockeysville 21030

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY SATURDAY, MARCH 27, 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

TO: PATUXENT PUBLISHING COMPANY
Tuesday, April 13, 2004 Issue - Jeffersonian

Please forward billing to:
Mark Daneker
5020 Elder Road
Hydes, MD 21082

410-649-4753

CORRECTED 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: 04-368-SPH
5020 Elder Avenue
N/east side of Elder Road, 800 feet n/west of centerline of Hydes Road
11th Election District – 3rd Councilmanic District
Legal Owners: Mark and Susan Daneker

Special Hearing to approve a non-density transfer of approximately 11 acres from Parcel 1 to Parcel 2, to approve the annexation of the acre parcel into future Plat 3 of the Dulaney Valley Estates Subdivision, and to approve the second Amended Final Development Plan of Dulaney Valley Estates II to incorporate the 10 acre parcel into the subdivision and to reduce and reconfigure the number of proposed lots from 15 to 13.

Hearing: Wednesday, April 28, 2004, at 9:00 a.m. in Room 106, County Office Building, 111 W. Chesapeake 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

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

March 10, 2004

CORRECTED 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: 04-368-SPH
5020 Elder Avenue
N/east side of Elder Road, 800 feet n/west of centerline of Hydes Road
11th Election District – 3rd Councilmanic District
Legal Owners: Mark and Susan Daneker

Special Hearing to approve a non-density transfer of approximately 11 acres from Parcel 1 to Parcel 2, to approve the annexation of the acre parcel into future Plat 3 of the Dulaney Valley Estates Subdivision, and to approve the second Amended Final Development Plan of Dulaney Valley Estates II to incorporate the 10 acre parcel into the subdivision and to reduce and reconfigure the number of proposed lots from 15 to 13.

Hearing: Wednesday, April 28, 2004, at 9:00 a.m. in Room 106, County Office Building, 111 W. Chesapeake Avenue

Timothy Kotroco
Director

TK:klm

C: Mark and Susan Daneker, 5020 Elder Road, Hydes 21082
Geoffrey Schultz, 5 Shawan Rd., Ste. 1, Cockeysville 21030

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY TUESDAY, APRIL 13, 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

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

May 5, 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: 04-368-SPH
5020 Elder Avenue
N/east side of Elder Avenue, 800 feet n/west of centerline of Hydes Road
11th Election District – 3rd Councilmanic District
Legal Owners: Mark & Susan Daneker

Special Hearing to approve a non-density transfer of approximately 11 acres from Parcel 1 to Parcel 2, to approve the annexation of the acre parcel into future Plat 3 of the Dulaney Valley Estates Subdivision, and to approve the second Amended Final Development Plan of Dulaney Valley Estates II to incorporate the 10 acre parcel into the subdivision and to reduce and reconfigure the number of proposed lots from 15 to 13.

Hearing: Friday, May 28, 2004, at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue

Timothy Kotroco
Director

TK:klm

C: Mark & Susan Daneker, 5020 Elder Road, Hydes 21082
Geoffrey Schultz, 5 Shawan Road, Ste. 1, Cockeysville 21030

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY THURSDAY, MAY 13, 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

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

December 3, 2004

NOTICE OF ASSIGNMENT

CASE #: 04-368-SPH **IN THE MATTER OF: MARK J. DANEKER -Petitioner**
5020 Elder Road
11th Election District; 3rd Councilmanic District

6/23/04 - Z.C.'s Order in which requested special hearing relief was GRANTED in part.

ASSIGNED FOR: **THURSDAY, FEBRUARY 17, 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: Counsel for Appellant/Protestant : Michael P. Tanczyn, Esquire
Appellant /Protestant : Long Green Valley Association
attn: Charlotte Pine, President

Petitioners /Legal Owners : Mark and Susan Daneker
Geoffrey Schultz /McKee & Associates

Office of People's Counsel
William J. Wiseman III /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

February 17, 2005

NOTICE OF DELIBERATION

IN THE MATTER OF:

MARK J. DANEKER – Legal Owner /Petitioner
Case No. 04-368-SPH

Having heard this matter on 2/17/05, public deliberation has been scheduled for the following date /time:

DATE AND TIME : TUESDAY, APRIL 19, 2005 at 9:00 a.m.

LOCATION : Hearing Room 48, Basement, Old Courthouse

NOTE: Closing briefs are due on Friday, March 4, 2005
(Original and three [3] copies)

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

Kathleen C. Bianco
Administrator

---

c: Counsel for Appellant/Protestant : Michael P. Tanczyn, Esquire
Appellant /Protestant : Long Green Valley Association
attn: Charlotte Pine, President

Petitioners /Legal Owners : Mark and Susan Daneker
Geoffrey Schultz /McKee & Associates

Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

Kristen,
Absolutely Set this hearing for June 11th. There will be no other postponements. Prepare a letter to this lawyer + Copy Mike Tanczyn + Charlotte Pine. Make it for my signature. Thanks,
Set hearing for 1st week in June or late May.

FYI: 3-4-6

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Department of Permits a
Development Manageme

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

Baltimore County

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

May 17, 2004

Mark L. and Susan B. Daneker
5020 Elder Road
Hydes, Maryland 21082

Dear Mr. and Mrs. Daneker:

RE: Case Number:04-368-SPH, 5020 Elder Road

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on February 9, 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.
Supervisor, Zoning Review

WCR: clb

Enclosures

c: People's Counsel
Geoffrey C. Schultz McKee & Associates 5 Shawan Road, Ste.1 Cockeysville 21030

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE
Amended Comments

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

DATE: May 25, 2004

RECEIVED
MAY 26 2004
ZONING COMMISSIONER

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

SUBJECT: 5020 Elder Road

INFORMATION:

Item Number: 04-368

Petitioner: McKee and Associates, Inc.

Zoning: RC 2 & RC 5

Requested Action: Special Hearing

SUMMARY OF RECOMMENDATIONS:

The Office of Planning recommends approval of the special hearing subject to the following:

The existing house on Parcel 1 is listed on the Maryland Historic Trust Inventory as BA 1868, known as "Dimmitt's Delight. " The plan should label the structure with MHT BA 1868.

Section 26-278 of the BCC requires that sites listed on the MHT Inventory "must be preserved." The Office of Planning requests that a note be placed on the plan to protect the historic building.

The note on the plan should read as follows:

As a condition of approval of the special hearing, for the purpose of compliance with County Code, 1988, Sec. 26-278, all future proposals to alter the exterior of the existing historic dwelling labeled as MHT BA # 1868 are subject to review and approval by the Director of the Office of Planning. The requirement to obtain approval pertains to changes from the existing materials and/or design, including but not limited to window and door replacements, exterior wall covering materials, roof replacements, demolitions or partial demolitions, and additions. In reviewing proposals, the Director shall be guided by The Secretary of the Interior's Standards.

Division Chief:
AFK/LL

\\NCH_NW\VOL3\WORKGRPS\DEVREV\ZAC\04-368 amended.doc

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

TO: Tim Kotroco

FROM: R. Bruce Seeley RBS

DATE: March 22, 2004

SUBJECT: Zoning Items # See List Below

Zoning Advisory Committee Meeting of February 23, 2004

__X__ The Department of Environmental Protection and Resource Management has no comments on the following zoning items:

04-365
04-367
04-368
04-370
04-371
04-372
05-375

Reviewers: Sue Farinetti, Dave Lykens

S:\Devcoord\ZAC SHELL 11-20-03.doc

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: March 23, 2004

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

SUBJECT: Zoning Advisory Petition(s): **Case 4-368**

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

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

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

DATE: March 15, 2004

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

SUBJECT: Zoning Advisory Committee Meeting
For March 1, 2004
Item Nos. 365, 367, 368, 370, 371,
372, 373, and 375

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

RWB:CEN:jrb

cc: File

ZAC-03-01-2004-NO COMMENT ITEMS 365-375-03152004

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

State Highway Administration
Driven to Excel

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

MARYLAND DEPARTMENT OF TRANSPORTATION

Date: 2.24.04

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

RE: Baltimore County
Item No. 368 JJS

Dear. Ms.Matthews:

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 24, 2004

ATTENTION: Rebecca Hart

Distribution Meeting ~~of:~~ February 23, 2004

Item No.: 367-~~375~~ 374

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

RE:	PETITION FOR SPECIAL HEARING 5020 Elder Road; NE/side of Elder Rd, 800' NW c/line Hydes Road 11th Election & 3rd Councilmanic Districts Legal Owner(s): Mark & Susan Deneker Petitioner(s)	* * * * * *	BEFORE THE ZONING COMMISSIONER FOR BALTIMORE COUNTY 04-368-A

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

ENTRY OF APPEARANCE

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

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

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

RECEIVED
MAR 0 4 2004
Per.....

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of March, 2004, a copy of the foregoing Entry of Appearance was mailed to Geoffrey C. Schultz, McKee & Associates, Inc, 5 Shawan Road, Suite 1, Cockeysville, MD 21030, Representative for Petitioner(s).

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

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

August 11, 2004

Mark Daneker
Susan Daneker
5020 Elder Road
Hydes, MD 21082

RECEIVED
AUG 1 1 2004
BALTIMORE COUNTY
BOARD OF APPEALS

Dear Mr. and Mrs. Danker:

RE: Case: 04-368-SPH, 5020 Elder Road

Please be advised that an appeal of the above-referenced case was filed in this office on July 21, 2004 by Michael Tanczyn on behalf of the Long Green Valley Association. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

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

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

Sincerely,

Timothy Kotroco
Director

TK:klm

c: Lawrence E. Schmidt, Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel
Geoffrey Schultz, McKee & Associates, 5 Shawan Rd., Ste. 1, Cockeysville 21030
Michael Tanczyn, 606 Baltimore Avenue, Ste. 106, Towson 21204

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APPEAL

Petition for Special Hearing
5020 Elder Road
NE/s Elder Rd., E/of Bart Allen Ln., 800' N/of C/l Hydes Rd.
11th Election District – 3rd Councilmanic District
Mark J. Daneker – Petitioners

Case No.: 04-368-SPH

✓ Petition for Special Hearing (February 9, 2004)

✓ Zoning Description of Property

✓ Notice of Zoning Hearing (May 5, 2004)

✓ Certification of Publication (The Jeffersonian – May 11, 2004)

✓ Certificate of Posting (May 11, 2004) by J. Lawrence Pilson

✓ Entry of Appearance by People's Counsel (March 4, 2004)

✓ Petitioner(s) Sign-In Sheet
One Sheet

✓ Protestant(s) Sign-In Sheet
None

✓ Citizen(s) Sign-In Sheet
One Sheet

RECEIVED
AUG 11 2004
BALTIMORE COUNTY
BOARD OF APPEALS

✓ Zoning Advisory Committee Comments (5-17-04)

Petitioners' Exhibit
✓ 1. Conservation Plan Map
✓ 2. Topo Map
✓ 3A. Plat to accompany Special Hearing Request
✓ 3B. 4th Amended Final Development Plan
✓ 4. Petitions of Support
✓ 5. Inter-Office Correspondence to Carl Richards from Wally Lippincott (12-20-02)
✓ 6. Plat Two Dulaney Valley Estates II
✓ 7. 4th Amended Final Development Plan
✓ 8. Plan to accompany DRC Request

✓ Protestants' Exhibits:
✓ 1. Deed of Conservation Easement
✓ 3. [redacted] Fax to Wally Lippincott from Mark Daneker dated November 20, 2002
✓ 4 [redacted] Letter dated November 19, 2002 to Wally Lippincott from Mark Daneker
✓ 5 [redacted] Proposed Small Farm Use of AG Subdivision Parcel of Danaker Farm
~~5. Not in File~~
~~6. Not in File~~
~~7. Not in File~~
✓ ~~8. Not in File~~
2 [redacted] Maryland Dept. of Assessments and Taxation Real Property Data Search

Miscellaneous (Not Marked as Exhibit)
✓ 1. Letter dated May 27, 2004 from Michael Tanczyn
✓ 2. Subpoena Duces Tecum to Mark Daneker
✓ 3. Letter dated May 27, 2004 from Michael Tanczyn
✓ 4. Subpoena Duces Tecum to Wally Lippincott
✓ 5. Letter dated June 4, 2004 from Mark Daneker
✓ 6. Letter dated June 4, 2004 from Michael Tanczyn

✓ Zoning Commissioner's Order (June 23, 2004 - GRANTED)

✓ Notice of Appeal received on July 21, 2004 from Michael Tanczyn on behalf of LGVA.

c: People's Counsel of Baltimore County, MS #2010
Zoning Commissioner/Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
Mark & Susan Danker, 5020 Elder Rd., Hydes 21082
Geoffrey Schultz, 5 Shawan Rd., Hunt Valley 21030
Michael Tanczyn, 606 Baltimore Ave., Ste. 106, Towson 21204
Charlotte Pine, 607 Baltimore Ave., Towson 21204
Carol Shaw, 7 Country Hill Ct., Fork 21051
Wally Lippincott, DEPRM

date sent August 11, 2004 klm

MARK DANEKER
SUSAN DANEKER
5020 ELDER ROAD
HYDES, MD 21082
PETITIONERS

GEOFFREY SCHULTZ
MCKEE & ASSOCIATES
5 SHAWAN ROAD, STE 1
COCKEYSVILLE, MD 21030

MICHAEL TANCZYN, ESQUIRE
606 BALTIMORE AVENUE
STE 106
TOWSON MD 21204
ATTORNEY FOR APPELLANT

MS. CHARLOTTE PINE, PRESIDENT
LONG GREEN VALLEY ASSOCIATIONS
PO BOX 91
BALDWIN MD 21012
APPELLANT

Case No. 04-368-SPH

In the Matter of: Mark J. Daneker – Petitioner
5020 Elder Road 11th E; 3rd C

SPH – To approve non-density transfer of 10.1 acres from Parcel 1 to Parcel 2; to approve annexation of 10.1 acre parcel into future Plat Three of Dulaney Valley Estates subdivision; and to approve an amendment to the 3rd Amended FDP to incorporate the 10-acre Parcel and to reduce and reconfigure the number of proposed lots therein from 15 to 13.

6/23/04 - Z.C.'s Order in which requested special hearing relief was GRANTED in part as to items 1 and 2; but not as to item 3 (the 4th Amended Plan is not exempt from further County review and is not approved as final).

12/03/04 -Notice of Assignment sent to following; assigned for hearing on Thursday, February 17, 2005 at 10 a.m.:

Michael P. Tanczyn, Esquire
Long Green Valley Association
attn: Charlotte Pine, President
Mark and Susan Daneker
Geoffrey Schultz /McKee & Associates
Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

2/17/05 – Board convened for hearing (3-4-6); concluded hearing this date; closing briefs due on 3/04/05; Notice of Deliberation sent this date; assigned for Tuesday, April 19, 2005 at 9:00 a.m. FYI copy to 3-4-6.

3/04/05 – Memorandum of Long Green Valley Association, Inc., filed by Michael P. Tanczyn, Esquire, on behalf of Appellants /Protestants.
-- Memorandum in Support of Petitioners filed by Mark J. Daneker, Petitioner.

3/10/05 – Copies of above memos sent to panel members (Wescott, Ramsey, Quinn) this date for review prior to 4/19/05 deliberation.

4/19/05 – Board convened for deliberation (3-4-6); unanimous decision to grant Petitioners' requested relief; written opinion to be issued; appellate period to run from date of written Order. (3)

BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF: Mark J. Daneker – Legal Owner/Petitioner

DATE : April 19, 2005

BOARD/PANEL : Larry S. Wescott
Michael O. Ramsey
John P. Quinn

RECORDED BY: Linda B. Fliegel/Legal Secretary

PURPOSE: To deliberate a non-density transfer of approximately 11 acres, the annexation of acreage and to reduce and reconfigure the number of proposed lots.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

- Proposal to give daughter lot to raise goats/calves.
- Unsure if Board can take any action regarding the easement.
- According to Art. 3 there are procedures to be followed and it is not the purview of the Board.
- Questioned if a RC2 can be attached to a RC5?
- The area of land to be conjoined is not going to be used and/or be built on, therefore, it does not present a density issue.
- If approved, for agriculture use, it will have less of an effected on the area.
- Preserves the nature and spirit of what the property/area was initially intended.
- Initially, as the plans stands now, two houses could have been built.This proposal reduces number of houses to be built from two to one.

DECISION BY BOARD MEMBERS:

FINAL DECISION: After a through review of the matter at hand the Board voted unanimously to grant the Petitioner's request.

NOTE: These minutes, which will become part of the case file, are intended to indicate for the record that a public deliberation took place that date regarding this matter. The Board's final decision and the facts and findings thereto will be set out in the written Opinion and Order to be issued by the Board.

Respectfully Submitted

Linda B. Fliegel

Linda B. Fliegel
County Board of Appeals

LAW OFFICES
MICHAEL P. TANCZYN, P.A.
Suite 106 • 606 Baltimore Avenue
Towson, Maryland 21204
Phone: (410) 296-8823 • (410) 296-8824 • Fax: (410) 296-8827

March 4, 2005

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

Re: 5020 Elder Road
Case No.: 4-368-SPH

Dear Ms. Bianco:

Pursuant to instructions from the Chairman of the Panel of the Board of Appeals, we enclose three (3) originals and one file copy of the Memorandum of the Protestants, to assist the Board in its deliberations in this matter.

Thank you for your attention to this matter. Please feel free to contact me should you have any questions.

Very truly yours,

Michael P. Tanczyn, Esquire

MPT/cbl
Encl.

cc: Long Green Valley Association
Mark and Susan Daneker
Michael Milliman, Esquire
Peter Max Zimmerman, Esquire

RECEIVED
MAR - 4 2005
BALTIMORE COUNTY
BOARD OF APPEALS

BOARD OF APPEALS OF BALTIMORE COUNTY
POST-HEARING BRIEFS
IN THE MATTER OF: MARK AND SUSAN DANEKER

DATE: March 10, 2005

TO: L. Wescott
M. Ramsey
J. Quinn

FROM: Kathi

SUBJECT: Case No. 03-368-SPH / *In the Matter of: Mark and Susan Daneker*

Attached are the following documents filed on March 4th in the subject matter:

- Memorandum of Long Green Valley Association, Inc., filed by Michael P. Tanczyn, Esquire, on behalf of Appellants /Protestants.

- Memorandum in Support of Petitioners filed by Mark J. Daneker, Petitioner.

Public deliberation is scheduled in this matter on Tuesday, April 19, 2005 at 9 a.m. Notice of that deliberation was sent out on 2/17/05; hearing held on 2/17/05.

Any questions, please call me.

kathi

Attachments (2)

BOARD OF APPEALS OF BALTIMORE COUNTY
POST-HEARING BRIEFS
IN THE MATTER OF: MARK AND SUSAN DANEKER

DATE: March 10, 2005

4/19

TO: L. Wescott
M. Ramsey
J. Quinn

FROM: Kathi

SUBJECT: Case No. 03-368-SPH / *In the Matter of: Mark and Susan Daneker*

Attached are the following documents filed on March 4th in the subject matter:

- Memorandum of Long Green Valley Association, Inc., filed by Michael P. Tanczyn, Esquire, on behalf of Appellants /Protestants.
- Memorandum in Support of Petitioners filed by Mark J. Daneker, Petitioner.

Public deliberation is scheduled in this matter on Tuesday, April 19, 2005 at 9 a.m. Notice of that deliberation was sent out on 2/17/05; hearing held on 2/17/05.

Any questions, please call me.

kathi

Kathi

Attachments (2)

Department of Permits a
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

May 5, 2004

Mark Daneker
5020 Elder Road
Hydes, MD 21082

Dear Mr. Daneker:

Re: 5020 Elder Road, Case No. 04-368-SPH

This letter is to inform you that your case referenced above, will be set for May 28, 2004 at 9:00 a.m., and a further postponement will not be permitted. Attached is the Notice of Zoning Hearing with all necessary information required to have a timely posting and publishing done. If you have any further questions, please contact the Zoning Office at 410-887-3391.

Sincerely,

Timothy Kotroco

Timothy Kotroco
Director

TK:klm

Enclosure

C: Geoffrey Schultz, 5 Shawan Rd., Ste. 1, Cockeysville 21030
Michael Tanczyn, 606 Baltimore Avenue, Ste. 106, Towson 21204
Charlotte Pine, Long Green Valley Assoc., P.O. Box 91, Baldwin 21013

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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

March 10, 2004

Mark & Susan Daneker
5020 Elder Road
Hydes, MD 21082

Dear Mr. and Mrs. Daneker:

RE: Case Number: 04-368-SPH

The above matter, previously scheduled for Monday, April 12, 2004, has been postponed. Attached is the corrected hearing notice with the new hearing date information.

Please be advised that the responsibility of the appropriate posting of the property is with the Petitioners. The petitioner or his/her agent may not personally post or change a zoning sign. One of the currently approved vendors/posters must be contacted to do so. If the property has been posted with the notice of the original hearing date, as quickly as possible after you have been notified, the new hearing date should be affixed to the sign(s).

Very truly yours,

Timothy Kotroco

Timothy Kotroco
Director

TK:klm

C: Geoffrey Schultz, 5 Shawan Rd., Ste. 1, Cockeysville 21030

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

02/07/06

Case Number: 03-C-05-006661 AE OTH
Date Filed: 06/15/2005
Status: Closed/Active
Judge Assigned: To Be Assigned,
Location :
CTS Start : 06/15/05 Target : 12/12/06

In The Matter Of: Mark J Daneker

C A S E H I S T O R Y

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FEB 08 2006
BALTIMORE COUNTY
BOARD OF APPEALS

OTHER REFERENCE NUMBERS

Description	Number
Administrative Agency	04-368-SPH
Case Folder ID	C05006661V01

INVOLVED PARTIES

Type	Num	Name(Last,First,Mid,Title)	Addr Str/End	Pty. Disp / Addr Update	Entered
PET	001	Long Green Valley Assn Inc	Party ID 0767439	BT DO 02/03/06	06/16/05
		Capacity · Petitioner			
		Attorney· 0012544 Tanczyn, Michael P Michael P. Tanczyn, P.A. 606 Baltimore Avenue Suite 106 Baltimore, MD 21204 (410)296-8823	Appear: 06/15/2005		06/16/05
RES	001	Daneker, Mark J	Party ID: 0767945	BT DO 02/03/06	06/17/05
		Mail 5020 Elder Road	09/06/05	09/06/05 AL	09/06/05 AL

Type	Num	Name(Last,First,Mid,Title)	Addr Str/End	Pty. Disp. Addr Update	Entered
		Hydes, MD 21082			
ITP	001	Board Of Appeals Of Baltimore County The	Party ID 0767441	BT DO 02/03/06	06/16/05
	Mail:	Old Courthouse Room 49 400 Washington Ave Baltimore, MD 21204	07/13/05	07/13/05 CMS	07/13/05 CMS

CALENDAR EVENTS

Date	Time	Dur	Event Description	Text SA	Jdg Day	Of Notice	User ID
Result			ResultDt By Result Judge	Rec			
12/16/05	09:30A	02Q	Civil Non-Jury Trial	Y	JOH	01 /01	LLH RG
Held/Concluded			12/16/05 E J.Hennegan	Y			

Stenographer(s): Nonna Baksa

DISPOSITION HISTORY

Disp Date	Disp Code	Description	Stage Code	Description	User	Activity Date
02/03/06	DO	Decree or Order	BT	BEFORE TRIAL/HEARING	PH	02/03/06

JUDGE HISTORY

JUDGE ASSIGNED	Type	Assign Date	Removal RSN
TBA To Be Assigned.	J	06/16/05	

DOCUMENT TRACKING

Num/Seq	Description	Filed	Entered	Party	Jdg	Ruling	Closed	User ID
0001000	Petition for Judicial Review	06/15/05	06/16/05	PET001	TBA		02/03/06	LMC PH
0001001	Answer in Proper Person	07/08/05	07/13/05	RES001	TBA		02/03/06	PH PH
0002000	Notice of Service of Discovery*	07/20/05	07/21/05	000	TBA		02/03/06	TRY PH
0003000	*Transcript of Record from Adm Agency	09/02/05	09/06/05	000	TBA		02/03/06	PH PH

Num/Seq	Description	Filed	Entered	Party	Jdg	Ruling	Closed	User ID
0004000	Notice of Transcript of Record Sent	09/06/05	09/06/05	ITP001	TBA		09/06/05	PH PH
0005000	Notice of Transcript of Record Sent	09/06/05	09/06/05	PET001	TBA		09/06/05	PH PH
0006000	Notice of Transcript of Record Sent	09/06/05	09/06/05	RES001	TBA		09/06/05	PH PH
0007000	Scheduling Order	10/12/05	10/12/05	000	TBA		10/12/05	KLS KLS
0008000	Appellant's Memorandum	10/06/05	10/13/05	PET001	TBA		10/13/05	NF NF
0008001	Reply to Memorandum of Appellee, Mark J Daneker	10/21/05	10/26/05	RES001	TBA		02/03/06	AL PH
0009000	Open Court Proceeding December 16, 2005. Hon John O. hennegan Hearing had re. Admin. Appeal Opinion and Order to be filed.	12/16/05	12/16/05	000	JOH		02/03/06	RG PH
0010000	Opinion and Order affirming decision	02/03/06	02/03/06	000	JOH	Granted	01/31/06	PH
0011000	DOcket entries sent to the Boared of Appeals	02/07/06	02/07/06	000	TBA			CM

TICKLE

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type	Num	Seq
1ANS	1st Answer Tickle	CLOSED	07/08/05	0	no	no	DAPP	D	001	001
1ANS	1st Answer Tickle	CLOSED	10/21/05	0	no	no	DANS	D	008	001
1YRT	One Year Tickle (Jud	CLOSED	06/15/06	365	no	no	DAAA	D	001	000
EXPU	Exhibit Pickup Notic	CLOSED	04/04/06	30	no	no			000	000
SLTR	Set List For Trial	Done	07/08/05	0	yes	yes	1ANS	T	001	001
SLTR	Set List For Trial	CANCEL	10/21/05	0	yes	no	1ANS	T	008	001
SLTR	Set List For Trial	CANCEL	12/15/05	0	yes	no	CIVI	S	000	000

EXHIBITS

Line #	Marked	Code	Description	SpH	Sloc	NoticeDt	Disp Dt	Dis By
Offered By	ITP 001	Board Of Appeals Of Baltimore						
000		B	BOX 468/CBA TRANSC		B			

DIFFERENTIATED CASE MANAGEMENT

TRACKS AND MILESTONES

Track . R1 Description. EXPEDITED APPEAL TRACK Custom: Yes
Assign Date. 10/12/05 Order Date · 10/12/05
Start Date . 10/12/05 Remove Date

Milestone	Scheduled	Target	Actual	Status
Motions to Dismiss under MD Rule 2-322(		10/27/05	02/03/06	CLOSED
All Motions (excluding Motions in Limine		11/06/05	02/03/06	CLOSED
TRIAL DATE is	12/16/05	01/10/06	12/16/05	REACHED

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

Case Number: 03-C-05-006661

RECEIVED
FEB 06 2006
BALTIMORE COUNTY
BOARD OF APPEALS

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

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

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

Case Number: 03-C-05-006661 AE
Administrative Agency : 04-368-SPH
C I V I L

In The Matter Of: Mark J Daneker

Notice

Pursuant to Maryland Rule 7-206(e), you are advised that the Record of Proceedings was filed on the 6th day of September, 2005.

Suzanne Mensh
Clerk of the Circuit Court, per

Date issued: 09/06/05

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

RECEIVED
SEP 14 2005
BALTIMORE COUNTY
BOARD OF APPEALS

NOTICE OF CIVIL TRACK ASSIGNMENT AND SCHEDULING ORDER

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

Board Of Appeals Of Baltimore County The
Old Courthouse Room 49
400 Washington Ave
Baltimore MD 21204

Assignment Date: 10/12/05

Case Title: In The Matter Of: Mark J Daneker
Case No: 03-C-05-006661 AE

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

SCHEDULING ORDER

1. Motions to Dismiss under MD. Rule 2-322(b) are due by..... 10/27/05
2. All Motions (excluding Motions in Limine) are due by..... 11/06/05
3. TRIAL DATE is..... 12/16/05
   Civil Non-Jury Trial, Start Time 09 30AM, To Be Assigned, 1/2 HOUR ADMINISTRATIVE APPEAL

Honorable John Grason Turnbull II
Judge

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

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

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

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

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

cc: Mark J Daneker

RECEIVED
OCT 13 2005
BALTIMORE COUNTY
BOARD OF APPEALS

cc: Michael P Tanczyn Esq
Issue Date 10/12/05

IN THE MATTER OF	*	BOARD OF APPEALS
Mark Daneker Susan Daneker		
	*	OF
5020 Elder Road N/east side of Elder Road 800 feet n/west of center line of Hydes Road 11th Election District	*	BALTIMORE COUNTY
Third Councilmanic District	*	ZONINGCASE NO.: 04-368 SPH

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

SUBPOENA DUCES TECUM

To: Mr. Wally Lippincott
Baltimore County Dept. of Environmental Protection
County Courts Building
401 Bosley Avenue, Suite 416
Towson, Maryland 21204

You are hereby commanded to appear and bring to the hearing:

1. Copies of all minutes, executive committee or other committee notes of the Agricultural Advisory Board and correspondence to or from you, concerning any part of the property which is the subject of the pending Petition of Mark J. Daneker.

2. Copies of all District Agreements concerning any part of the property which is the subject of the pending Petition of Mark J. Daneker.

3. Copies of all requests and documents concerning a non-density transfer concerning any part of the property which is the subject of the pending Petition of Mark J. Daneker.

On: Thursday, February 17, 2005 at 10: 00 a.m.

At: County Board of Appeals of Baltimore County
Old Courthouse, Room 48
400 Washington Avenue
Towson, MD 21204

This subpoena was requested by Mark J. Daneker, 5020 Elder Road, Hydes, MD 21082 and any questions should be directed to him at 410-649-4753

Theresa R. Shelton
Board of Appeals

Date

RECEIVED
JAN 26 2005
BALTIMORE COUNTY
BOARD OF APPEALS

IN THE MATTER OF	*	BOARD OF APPEALS
Mark Daneker Susan Daneker		
	*	OF
5020 Elder Road N/east side of Elder Road 800 feet n/west of center line of Hydes Road 11th Election District Third Councilmanic District	*	BALTIMORE COUNTY
	*	ZONINGCASE NO.: 04-368 SPH

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

SUBPOENA DUCES TECUM

To: Charlotte W. Pine
607 Baltimore Avenue
Towson, Maryland 21204-4010

You are hereby commanded to appear and bring to the hearing:

1. Copies of all deeds of dedications or easement to the Long Green Valley Conservancy, Inc. for any property you personally own or owned on which you donated an easement.

2. Copies of your federal tax return, including any amended federal tax return, by which you personally claimed any charitable contribution for the donation of an easement to Long Green Valley Conservancy, Inc.

3. Copies of all minutes, correspondence, executive committee or other committee notes of Long Green Valley Association, Inc. concerning any part of the property which is the subject of the pending Petition.

4. Copies of all annual and monthly financial statements prepared for Long Green Valley Association, Inc. since December 31, 2003.

5. Copies of all correspondence sent by or on behalf of Long Green Valley Association, Inc. to any person or organization pertaining to the property which is the subject of attending Petition.

6. A copy of minutes of the last annual meeting of members of Long Green Valley Association, Inc.

7. A list of names and addresses of all members of the Board of Directors of Long Green Valley Association, Inc. with date of expiration of their term.

8. A list the names and addresses of all members of Long Green Valley Association, Inc.

9. A copy of the current By-laws of Long Green Valley Association, Inc.

10. A list of the amount and source of all donations, membership dues, grants or other funding mechanisms received by Long Green Valley Association, Inc. since January 1, 2004.

11. All correspondence or other documents received by or sent by Long Green Valley Association, Inc. to or from the Baltimore County Historical Society since January 1, 2004.

12. All correspondence or other documents received by or sent by Long Green Valley Association, Inc. to or from Catherine G. Ebert since January 1, 2004.

On: Thursday, February 17, 2005 at 10: 00 a.m.

At: County Board of Appeals of Baltimore County
Old Courthouse, Room 48
400 Washington Avenue
Towson, MD 21204

This subpoena was requested by Mark J. Daneker, 5020 Elder Road, Hydes, MD 21082 and any questions should be directed to him at 410-649-4753

1-20-05
Date

Lauren R. Shilton
Board of Appeals

RECEIVED
JAN 20 2005
BALTIMORE COUNTY
BOARD OF APPEALS

IN RE: PETITION OF	*	BEFORE THE ZONING
Mark Daneker and Susan Daneker	* *	COMMISSIONER OF
5020 Elder Avenue N/east side of Elder Avenue 800 feet n/west of centerline of Hydes Road 11th Election District 3rd Councilmanic District Legal Owners: Mark & Susan Daneker	* * * *	BALTIMORE COUNTY ZONING CASE NO.: 04-368 SPH

* * * * * * *

RECEIVED
MAY - 7 2004
ZONING COMMISSIONER

SUBPOENA DUCES TECUM

TO: Mark Daneker
or
Susan Daneker
5020 Elder Avenue
Hydes, MD 21082

You are hereby commanded to appear and bring to the hearing:

1. Copies of all previously approved development plans of Dulaney Valley Estates II.

2. Copies of all dedications to an agricultural preservation easement for any part of the property which is the subject of the pending Petition.

3. Copies of all dedications to the Conservancy of any property which is part of the pending Petition.

4. Copies of their federal or state tax returns, by which they claimed any exemption, tax credit, or allowance, because of the dedication of all or any part of the property which is the subject of the pending Petition.

5. The Deed by which they came into title for any part of property which is the subject of this Petition.

6. Any correspondence between the property owner and the Maryland Agriculture Preservation Board or the Conservancy concerning any part of the property which is the subject of the pending Petition.

on: Friday, May 28, 2004 @ 9:00 a.m.

at: Baltimore County Courts Building
Room 407
401 Bosley Avenue
Towson, MD 21204

This Subpoena was requested by Michael P. Tanczyn, Esquire, 606 Baltimore Avenue, Suite 106, Towson, Maryland, 21204, 410-296-8823, counsel for Long Green Valley Association, Inc., and any questions should be referred to that office.

5/7/04
DATE

John V. Murphy
Lawrence E. Schmidt
Zoning Commissioner

IN THE MATTER OF	*	BOARD OF APPEALS
Mark Daneker and Susan Daneker	* *	OF BALTIMORE COUNTY
5020 Elder Avenue N/east side of Elder Avenue 800 feet n/west of centerline of Hydes Road 11th Election District 3rd Councilmanic District Legal Owners: Mark & Susan Daneker	* * * *	ZONING CASE NO.: 04-368 SPH

* * * * * * *

SUBPOENA DUCES TECUM

SUBPOENA DUCES TECUM

RECEIVED
DEC 16 2004
BALTIMORE COUNTY
BOARD OF APPEALS

TO: Mark Daneker
or
Susan Daneker
5020 Elder Avenue
Hydes, MD 21082

You are hereby commanded to appear and bring to the hearing:

1. Copies of all previously approved development plans of Dulaney Valley Estates II.

2. Copies of all dedications to an agricultural preservation easement for any part of the property which is the subject of the pending Petition.

3. Copies of all dedications to the Conservancy of any property which is part of the pending Petition.

4. Copies of their federal or state tax returns, including amended federal or state tax returns, by which they claimed any exemption, tax credit, or allowance, because of the dedication of all or any part of the property which is the subject of the pending Petition.

5. The Deed by which they came into title for any part of property which is the subject of this Petition.

6. Any correspondence between the property owner and the Maryland Agriculture Preservation Board or the Conservancy concerning any part of the property which is the subject of the pending Petition.

on: Thursday, February 17, 2005 @ 10.00 a.m.

at: County Board of Appeals of Baltimore County
Old Courthouse, Room 48
400 Washington Avenue
Towson, Maryland 21204

This Subpoena was requested by Michael P. Tanczyn, Esquire, 606 Baltimore Avenue, Suite 106, Towson, Maryland, 21204, 410-296-8823, counsel for Long Green Valley Association, Inc., and any questions should be referred to that office.

12/16/04
DATE

Kathleen C. Bianco
Board of Appeals

IN THE MATTER OF	*	BOARD OF APPEALS
Mark Daneker and Susan Daneker	* *	OF BALTIMORE COUNTY
5020 Elder Avenue N/east side of Elder Avenue 800 feet n/west of centerline of Hydes Road 11th Election District 3rd Councilmanic District	* * *	
Legal Owners: Mark & Susan Daneker	*	ZONING CASE NO.: 04-368 SPH

* * * * * * *

SUBPOENA DUCES TECUM

SUBPOENA DUCES TECUM

TO:
Wally Lippincott
Baltimore County Agricultural Preservation board
Baltimore County Courts Building
Third Floor
401 Bosley Avenue
Towson, MD 21204

RECEIVED
DEC 16 2004
BALTIMORE COUNTY
BOARD OF APPEALS

You are hereby commanded to appear and bring to the hearing:

Files of the Baltimore County Agriculture Preservation Board, regarding the Baltimore County Agriculture Preservation Board approvals, and specifically including:

1. Written requests from Mark Daneker or anyone in his family;

2. Copies of all documentation submitted with the request.

3. Copies of the letters which were submitted and reviewed by the Baltimore County Agriculture Preservation Board by Mark Daneker or any of his family members.

4. Copies of any applications to the conservancy which were reviewed by the Baltimore County Agriculture Preservation Board, concerning this property.

on: Thursday, February 17, 2005 @ 10.00 a.m.

at: County Board of Appeals of Baltimore County
Old Courthouse, Room 48
400 Washington Avenue
Towson, Maryland 21204

This Subpoena was requested by Michael P. Tanczyn, Esquire, 606 Baltimore Avenue, Suite 106, Towson, Maryland, 21204, 410-296-8823, counsel for Long Green Valley Association, Inc., and any questions should be referred to that office.

12/16/04
DATE

Kathleen C. Bianco
Board of Appeals

IN RE: PETITION OF	*	BEFORE THE ZONING
Mark Daneker and	*	COMMISSIONER
Susan Daneker	*	OF
5020 Elder Avenue N/east side of Elder Avenue	*	BALTIMORE COUNTY
800 feet n/west of centerline of Hydes Road	*	
11th Election District 3rd Councilmanic District	*	
Legal Owners: Mark & Susan Daneker	*	ZONING CASE NO.: 04-368 SPH
* * *	*	* * *

SUBPOENA DUCES TECUM

TO: Wally Lippincott
Baltimore County Agricultural Preservation Board
Baltimore County Courts Building
Third Floor
401 Bosley Avenue
Towson, MD 21204

You are hereby commanded to appear and bring to the hearing:

Files of the Baltimore County Agriculture Preservation Board, regarding the Baltimore County Agriculture Preservation Board approvals, and specifically including:

1. Written requests from Mark Daneker or anyone in his family;
2. Copies of all documentation submitted with the request.
3. Copies of the letters which were submitted and reviewed by the Baltimore County Agriculture Preservation Board by Mark Daneker or any of his family members.
4. Copies of any applications to the conservancy which were reviewed by the Baltimore County Agriculture Preservation Board, concerning this property.

on: Friday, May 28, 2004 @ 9:00 a.m.

at: Baltimore County Courts Building
Room 407
401 Bosley Avenue
Towson, MD 21204

This Subpoena was requested by Michael P. Tanczyn, Esquire, 606 Baltimore Avenue, Suite 106, Towson, Maryland, 21204, 410-296-8823, counsel for Long Green Valley Association, Inc., and any questions should be referred to that office.

5/19/04
DATE

Lawrence E. Schmidt
Zoning Commissioner

LAW OFFICES
MICHAEL P. TANCZYN, P.A.
Suite 106 • 606 Baltimore Avenue
Towson, Maryland 21204
Phone: (410) 296-8823 • (410) 296-8824 • Fax: (410) 296-8827

RECEIVED
DEPT. OF PERMITS & DEVELOPMENT MGMT.

April 28, 2004

VIA HAND-DELIVERY
The Honorable Timothy Kotroco, Esquire
Director, Permits and Development Management
Attn: Ms. Kitty Popelarski
111 W. Chesapeake Avenue
Towson, MD 21204

Re: 5020 Elder Road
Case No.: 4-368-SPH
Petitioners: Mark and Susan Daneker

Dear Mr. Kotroco and Kitty:

I will be representing Long Green Community Association in opposition to the above request. As you are aware, this matter originally scheduled for April 28, 2004, was postponed at the request of Long Green, so that they could secure legal counsel. The matter was then scheduled for hearing on July 8, 2004, for a full day, beginning at 9:00 a.m. The reasons why it was scheduled for that date include that Mrs. Charlotte Pine, who is an Officer in the Long Green Community Association, had a prepaid trip out of the country, in Germany, June 15 - 30, which is a combination vacation and business, as she manages a property that she owns in Germany. The week prior to her departure is June week, at which time, many school-age children and young people congregate in Ocean City, Maryland. Mrs. Pine owns a condominium in Ocean City and her 16 year old granddaughter, who lives with her, had already scheduled a week at the beach. Mrs. Pine feels it would be prudent for her to be present while her granddaughter and her friends are in the condo, with no other adults, during that week, and does not feel that it would be safe to come back to Baltimore, even for a day, to attempt to have the hearing on June 11, 2004, which was first mentioned to me this morning. I have spoken at length with Mrs. Pine concerning this, and am reporting this back to you, with the request that this matter be retained for its July 8, 2004 hearing date, as was previously scheduled. The later date is less than a month from June 11, 2004.

To schedule the hearing on June 11, 2004 would force Mrs. Pine to have to miss the hearing, because she feels devoted and responsible for her 16 year old granddaughter and her friends, who would otherwise have the run of Mrs. Pine's condominium, unsupervised in Ocean City. In light of her well-known interest and participation in land use cases, on behalf of her community association, we would respectfully request that the matter not be moved up to June 11, 2004, but remain scheduled for July 8, 2004.

Please advise us of the decision of your office concerning this request. Thank you for your assistance in that regard.

Very truly yours,

Michael P. Tanczyn, Esquire

MPT/cbl
cc: Ms. Charlotte Pine
Mark and Susan Daneker

RECEIVED
APR 28 2004
04-1102
DEPT. OF PERMITS AND
DEVELOPMENT MANAGEMENT

LAW OFFICES
MICHAEL P. TANCZYN, P.A.
Suite 106 • 606 Baltimore Avenue
Towson, Maryland 21204
Phone: (410) 296-8823 • (410) 296-8824 • Fax: (410) 296-8827

June 4, 2004

VIA HAND-DELIVERY
The Honorable Lawrence E. Schmidt
Zoning Commissioner
Suite 405
401 Bosley Avenue
Towson, MD 21204

Re: 5020 Elder Road
Case No.: 4-368-SPH
Petitioners: Mark and Susan Daneker

Dear Mr. Schmidt:

Enclosed herewith please find the letter Memo, regarding the above-captioned matter.

Please feel free to contact me should you have any questions.

Very truly yours,

Michael P. Tanczyn, Esquire

MPT/cbl
Encl.
cc: Long Green Valley Association
Ms. Charlotte Pine
Mark and Susan Daneker

RECEIVED
JUN - 4 2004
ZONING COMMISSIONER

LAW OFFICES
MICHAEL P. TANCZYN, P.A.
Suite 106 • 606 Baltimore Avenue
Towson, Maryland 21204
Phone: (410) 296-8823 • (410) 296-8824 • Fax: (410) 296-8827

May 27, 2004

RECEIVED
MAY 28 2004
ZONING COMMISSIONER

VIA HAND-DELIVERY
The Honorable Lawrence E. Schmidt
Zoning Commissioner
Suite 405
401 Bosley Avenue
Towson, MD 21204

Re: 5020 Elder Road
Case No.: 4-368-SPH
Petitioners: Mark and Susan Daneker

Dear Mr. Schmidt:

Enclosed herewith please find Affidavit of Service of the Subpoena, on Wally Lippincott, as previously issued by the Deputy Zoning Commissioner, for inclusion in your file.

Very truly yours,

Michael P. Tanczyn, Esquire

MPT/cbl
Encl.
cc: Long Green Valley Association
Ms. Charlotte Pine
Susan Daneker

IN RE: PETITION OF	*	BEFORE THE ZONING
Mark Daneker and Susan Daneker	* *	COMMISSIONER OF
5020 Elder Avenue N/east side of Elder Avenue 800 feet n/west of centerline of Hydes Road 11th Election District 3rd Councilmanic District Legal Owners: Mark & Susan Daneker	* * * *	BALTIMORE COUNTY ZONING CASE NO.: 04-368 SPH

* * * * * * *

AFFIDAVIT OF SERVICE

I, Michael P. Tanczyn do solemnly swear under the penalties of perjury that the statements made herein are true to the best of my knowledge, information and belief:

1. That I am a competent person over the age of eighteen and not a party to the case.
2. That on May 21, 2004 at approximately 2:30 p.m., I personally served a Subpoena in this matter on Wally Lippincott, Baltimore County Agricultural Preservation Board, Baltimore County, Courts Building, Third Floor, 401 Bosley Avenue, Towson, MD 21204.

AFFIANT

LAW OFFICES
MICHAEL P. TANCZYN, P.A.
Suite 106 • 606 Baltimore Avenue
Towson, Maryland 21204
Phone: (410) 296-8823 • (410) 296-8824 • Fax: (410) 296-8827

RECEIVED
MAY 28 2004
ZONING COMMISSIONER

May 27, 2004

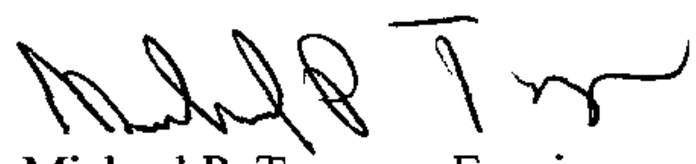
VIA HAND-DELIVERY
The Honorable Lawrence E. Schmidt
Zoning Commissioner
Suite 405
401 Bosley Avenue
Towson, MD 21204

Re: 5020 Elder Road
Case No.: 4-368-SPH
Petitioners: Mark and Susan Daneker

Dear Mr. Schmidt:

Enclosed herewith please find Affidavit of Service of the Subpoena, on Susan Daneker, as previously issued by the Deputy Zoning Commissioner, for inclusion in your file.

Very truly yours,



Michael P. Tanczyn, Esquire

MPT/cbl
Encl.
cc: Long Green Valley Association
Ms. Charlotte Pine
Susan Daneker

IN RE: PETITION OF
MARK DANEKER and SUSAN DANEKER
5020 ELDER AVE N/east side of elder ave 800 feet n/west of centerline of hydes rd 11th election district 3rd councilmanic district Danekers owner

BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY
ZONING CASE NO:04-368-SPH

AFFIDAVIT OF SERVICE

I, David Bond,do solemnly swear under the penalties of perjury that the statements made herein are true to the best of my knowledge, information and belief:

1. I am a competent person over the age of eighteen and not a party to the case.

2. I served a Subpoena, by personal delivery to, Susan Daneker, 5020 Elder Ave., Hydes, Md., 21082

DATE:5-23-04

David Bond
P.O. Box 1196
Hunt Valley, MD 21030
(410)-628-7873
Bond's Sure Serve

DATE	TIME	RACE	M-F	HT	WT	D.O.B.
5-23-04	3:40PM	WHITE	FEMALE	5-6	145	50

LAW OFFICES
MICHAEL P. TANCZYN, P.A.
Suite 106 • 606 Baltimore Avenue
Towson, Maryland 21204
Phone: (410) 296-8823 • (410) 296-8824 • Fax: (410) 296-8827

July 21, 2004

VIA HAND-DELIVERY
The Honorable Timothy Kotroco, Esquire
Director, Permits and Development Management
111 W. Chesapeake Avenue
Towson, MD 21204

Re: 5020 Elder Road
Case No.: 4-368-SPH
Petitioners: Mark and Susan Daneker

Dear Mr. Kotroco:

Please enter an appeal to the Board of Appeals from the decision of the Zoning Commissioner, granting the special hearing relief, dated June 23, 2004. The appeal should be noted on behalf of my client, Long Green Valley Association, and whose address is Long Green Valley Association, Attn: Ms. Charlotte Pine, President, P.O. Box 91, Baldwin, MD 21013.

Enclosed you will find our check for costs. Please advise us of all hearing dates.

Very truly yours,

Michael P. Tanczyn, Esquire

MPT/cbl
Encl.
cc: client
Peter Max Zimmerman, Esquire
Mark and Susan Daneker

RECEIVED
JUL 21 2004
Per CLB

LAW OFFICES
MICHAEL P. TANCZYN, P.A.
Suite 106 • 606 Baltimore Avenue
Towson, Maryland 21204
Phone: (410) 296-8823 • (410) 296-8824 • Fax: (410) 296-8827

July 22, 2004

VIA HAND-DELIVERY
Zoning Office
Attn: Ms. Kristen Matthews
111 W. Chesapeake Avenue
Towson, MD 21204

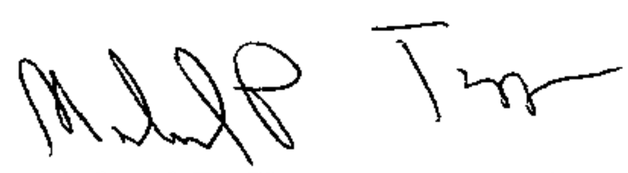
Re: 5020 Elder Road
Case No.: 4-368-SPH
Petitioners: Mark and Susan Daneker

Dear Kristen:

Enclosed please find our check in the amount of $75.00, which represents the posting fee for the above-mentioned appeal.

Thank you for your cooperation in this matter.

Very truly yours,



Michael P. Tanczyn, Esquire

MPT/cbl
Encl.
cc: client

DANEKER, McINTIRE, SCHUMM, PRINCE , GOLDSTEIN, MANNING & WIDMANN, P.C.

Attorneys At Law
Suite 2450, 24th Floor
One North Charles Street
Baltimore, Maryland 21201-3740
(410) 649-4747
Facsimile (410) 649-4758

Mark J. Daneker
Direct Dial (410) 649-4753

Kristen
OK to postpone
please notify all parties
TK

March 8, 2004

Department of Permits and Development Management
Zoning Review Office
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

RE: Mark and Susan Daneker
5020 Elder Road
Case Number: 04 – 36 – SPH

Dear Sir or Madame:

I have received notice of a hearing scheduled in the above matter for Monday, April 12, 2004 9 o'clock AM. Please be advised that I will be out-of-town on that date and respectfully request rescheduling to another available date. I am available on any morning from Wednesday April 26 through Friday April 30. A 9 o'clock hearing would be fine anyone of those days. If none of those are available, please call me to advise what days are possible.

Very truly yours,

Mark J. Daneker

MJD/djc

jc\docs\Daneker\Zoning20040308
cc: Geoffrey Schultz, McKee & Associates

RECEIVED
MAR 9 2004
04-606
DEPT. OF PERMITS AND DEVELOPMENT MANAGEMENT

DANEKER, McINTIRE, SCHUMM, PRINCE , GOLDSTEIN, MANNING & WIDMANN, P.C.

Attorneys At Law
Suite 2450, 24th Floor
One North Charles Street
Baltimore, Maryland 21201-4020
(410) 649-4747
Facsimile (410) 649-4758

Mark J. Daneker
Direct Dial (410) 649-4753

April 30, 2004

BY FAX: 410-887-5708
The Honorable Timothy Kotroco, Esquire
Director, Permits and Development Management
111 W. Chesapeake Avenue
Towson, MD 21214

Reference: 5020 Elder Road
Case No: 4-368-SPH
Petitioners: Mark and Susan Daneker

Dear Mr. Kotroco:

As I believe you may be aware, the above referenced special hearing was scheduled for April 28, 2004. Apparently, on April 6, 2004 Long Green Valley Association requested a postponement of this hearing by letter, cosigned by Michael P. Tanczyn, Esquire, which was not copied to me, on the stated grounds that Mr. Tanczyn had a scheduling conflict. I first learned of their interest in this matter and Mr. Tanczyn's representation on April 23 when I was contacted by your office and advised that my hearing would need to be rescheduled because you intended to grant the postponement. I was told that a date of July 8 had been scheduled because that was available for Mr. Tanczyn and available for Charlotte Pine to testify, since she was planning a two week trip to Germany beginning June 15.

I advised your office that I wished to oppose that postponement on the grounds that I had not been notified of their request or of Mr. Tanczyn's representation, and that we were prepared to go forward with our presentation. Since the letter did not specify what the Long Green Valley Association's issues were or what the nature of Mr. Tanczyn's "scheduling conflict" was, I called his office. He did not return the call. I called Mrs. Pine and she indicated to me that she was not able to identify the issues. I called Mr. Tanczyn again, and in speaking with him he declined to identify any issues and he also declined to identify for me the nature of his "scheduling conflict." He indicated that he could not discuss the issues because he had been too busy to meet with his clients, and would be in touch after he met with them on May 4. I informed him that I was opposing the request for a postponement.

I subsequently wrote to him and requested that he inform me what the nature of his "scheduling conflict" was, and that if he did not have a bona fide conflict with another hearing or

**DANEKER, McINTIRE, SCHUMM, PRINCE,
GOLDSTEIN, MANNING & WIDMANN, P.C.**

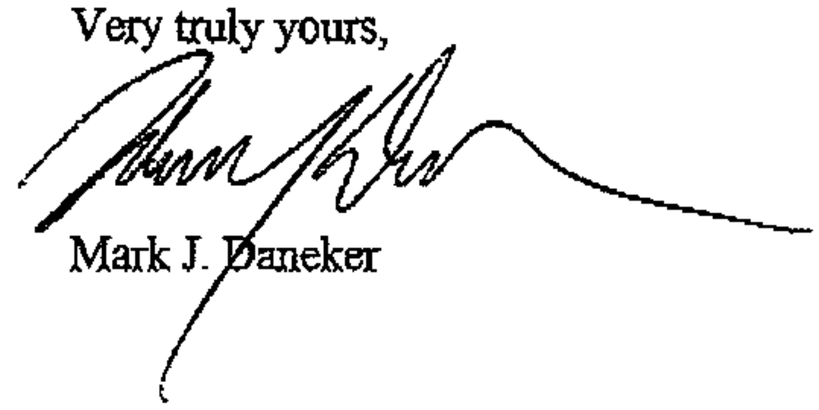
court appearance, that he would withdraw his request for postponement. He did not respond to that request.

Not being sure whether the hearing would be postponed or not, I appeared with my engineer, Geoffrey Schultz of McKee and Company, at 9:00am on April 28 and was informed that the hearing was indeed cancelled. Since Mr. Schultz was available, and Mr. Tanczyn's office was only a few blocks away, Mr. Schultz and I went to Mr. Tanczyn's office with our plats and special hearing information and found that Mr. Tanczyn's "scheduling conflict" was apparently non-existent, as he was sitting in his office in a sport shirt. I believe that you were induced to grant this postponement request on knowingly false information.

Mr. Schultz and I returned to your office and requested to know whether other dates were available sooner than July 8, and we were told that June 11 was available and we requested that the hearing be scheduled for that date. I have now been copied on a letter from Mr. Tanczyn to you requesting that the rescheduled hearing not be set for June 11, because it now appears that Mrs. Pine wishes to take her sixteen year old granddaughter to stay with her in her condominium at Ocean City during that week. I am somewhat puzzled by this as I am advised that the last day of school in Baltimore County is June 15, but regardless of that issue, given the questionable facts relating to their earlier request for postponement, I do not think that it is reasonable to have my hearing not held at the earliest possible date for a reason such as this one. Mrs. Pine is not an expert witness and is appearing only as a representative of the Long Green Valley Association which can certainly send another of its representatives. They are entitled to take whatever position they want on the issues, but I believe that it is an abuse of the process for them to seek to delay proceedings for spurious reasons or because it is not convenient for them to attend in due course.

I request that the hearing be scheduled for June 11.

Very truly yours,



Mark J. Daneker

MJD/djc
cc: Michael P. Tanczyn

DANEKER, McINTIRE, SCHUMM, PRINCE , GOLDSTEIN, MANNING & WIDMANN, P.C.

Attorneys At Law
Suite 2450, 24th Floor
One North Charles Street
Baltimore, Maryland 21201-3740
(410) 649-4747
Facsimile (410) 649-4758

Mark J. Daneker
Direct Dial (410) 649-4753

RECEIVED

JUN - 4 2004

ZONING COMMISSIONER

June 4, 2004

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

RE: Mark and Susan Daneker
5020 Elder Road
Case Number: 04 – 368 SPH

Dear Commissioner Schmidt:

Pursuant to permission given at the conclusion of the Special Hearing in this matter on May 28, 2004, I offer following comments in support of the requested relief.

The relief requested is basically the approval of the reduction of the number of previously approved lots in the remaining section of Dulaney Valley Estates II from four lots to two lots (totals reduced from 15 to 13) and the approval of a non-density transfer to increase the size of the remaining two lots so that they would be appropriate for small-scale agricultural use. The non-density transfer was already the subject of review and approval of Baltimore County Agricultural Land Preservation Advisory Board as is evidenced by the Exhibit of letter from Wally Lippincott dated December 20, 2002.

The issues which Long Green Valley Association seemed to raise were the following:
1. Keeping roads out of the RC 2 area – In fact, the roads will be reduced and no roads other than driveways are planned to be located in the RC 2 area.
2. Protection of woods, waterways and well water – in fact, stream buffers are already in place and the number of wells will be reduced.
3. Proposed lots must comply with County zoning setback requirements – in fact, the development review compliance process will assure this result or require an additional hearing for a variance. The large size of these proposed lots make it very unlikely that any variances will be required.
4. The major thrust of their argument seemed to be reliance on a conservation easement to which they are not party and which they seek to interpret as limiting the entire parcel to one lot. This

argument, which has nothing to do with zoning, is patently absurd since paragraph J. of the Conservancy easement specifically reserved to me the right to create two lots in compliance with the terms of the Conservancy easement and the parcel of ground has more than sufficient density rights under the zoning regulations to do this.

The requested relief and approval will be beneficial for the area because it reduces road surfaces, reduces the number of wells, reduces the number of residences and impervious areas, preserves agricultural land for an agricultural purpose, preserves woodlands and wetlands. You have received, as exhibits, statements from 21 adjacent or nearby property owners in the development supporting this request. I thank you for your attention and consideration.

Very truly yours,

Mark J. Daneker

MJD/djc

jc\docs\Daneker\Zoning2004604
cc: Michael P. Tanczyn, Esq.
606 Baltimore Avenue, Suite 106
Towson, Maryland 21204 – 4098

LONG GREEN VALLEY ASSOCIATION

P.O. Box 91 Baldwin, Maryland 21013

VIA FAX 410-887-3468
Lawrence E. Schmidt, Esquire
Zoning Commissioner for Baltimore County
4th Floor, County Courts Building
401 Bosley Avenue
Towson, Maryland 21204

April 6, 2004

Postponement Granted.

Re: 5020 Elder Road; Case No. 4-368-SPH

Dear Zoning Commissioner Schmidt:

The Long Green Valley Association, Inc. just received notification of a hearing scheduled for April 28, 2004 in the above referenced matter. The LGVA contacted Mr. Carroll Holzer to represent us and he was unable because of a scheduling conflict. Upon learning of Mr. Holzer's unavailability, the LGVA called Michael Tanczyn to see if he could represent the LGVA at the April 28th hearing.

Mr. Tanczyn agreed to represent the LGVA only if the case were to be postponed and rescheduled from the April 28th date because Mr. Tanczyn, too, had a scheduling conflict. Since this is the first request for postponement, the LGVA believes that neither party would be prejudiced by granting the postponement. Mr. Tanczyn is willing to work with your office to reschedule this hearing at a mutually convenient date. If not, the LGVA would have to appear at the hearing without legal representation.

Very truly yours,

Charlotte Pine, President, LGVA, Inc.

Very truly yours,

Michael Tanczyn, Esq.

4/28/04

Let Tim know
Mr. Tanczyn was in his office on postponed date w/ casual clothes on. Why should it have been postponed?

PLEASE PRINT CLEARLY

CASE NAME 5020 ELDER RD
CASE NUMBER 04-368 SPH
DATE May 28, 2004

CITIZEN'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
MICHAEL P TANCZYN	STE 106 406 BALTIMORE AVE	TOWSON MD 21204	MPTLAW@VERIZON.NET
Charlotte W Pine	607 Baltimore Ave	Towson Md 21204	CWP1921@comcast.com
CAROL SHAW	7 Country Hill Ct - PO Box 36	Park Md 21051	carolnshaw@comcast.net

PLEASE PRINT CLEARLY

CASE NAME 5020 ELDER AVE.
CASE NUMBER 04-368 SPH
DATE MAY 28, 2004

PETITIONER'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E-MAIL
GEOFFREY C. SCHULTZ	5 SHAWAN ROAD	HUNT VALLEY MD. 21030	
MARK J MANEKER	5020 Elder Rd	Hydes Md 21082	

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

1A01.1 General provisions.

A. Legislative statement of findings.

1. Declaration of findings. It is found:

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

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

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

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

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

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

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

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

1A01.2 Use regulations.

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

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

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

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

the facility and field; and

e. The facility and field shall be located:

(1) Within proximity to adequate road access; and

(2) On publicly owned land.

1A04.3 Height and area regulations.

A. Height regulation. No structure hereafter erected in an R.C.5 Zone shall exceed a height of 35 feet, except as provided under Section 300.

B. Area regulations.

1. Lot area; density control. **[Bill Nos. 178-1979[13]55-2004[14]]**

a. A lot having an area of less than 1 1/2 acres may not be created in an R.C. 5 Zone. The maximum gross residential density of a lot of record is 0.667 dwelling per acre.

b. The owner of a single lot of record that is not a subdivision and that is in existence prior to September 2, 2003 but does not meet the minimum acreage requirement, or does not meet the setback requirement of Paragraph 2., may apply for a special hearing under Article 5 to alter the minimum lot size requirement. However, the provisions of Section 1A04.4 may not be varied.

2. Building setbacks. **[Bill No. 55-2004]**

a. As used in this section, "collector road" means a street or road that is designed for speeds of at least 35 miles per hour, and is intended for travel, including commuter travel, between residential neighborhoods, but not for travel within neighborhoods, and is not designated as a principal arterial.

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13 Editor's Note: This bill also repealed former Paragraph 2, "Minimum diametral dimension," which followed this paragraph.

14 Editor's Note: This bill also stated that it would not apply to any concept plan or application for limited exemption or waiver accepted for filing prior to June 7, 2004, that it would not apply to the Back River Neck District as defined in Section 4A03.13 of the Baltimore County Zoning Regulations, and any structure, building or use in existence prior to the effective date of this bill that is damaged or destroyed by fire or other casualty after the effective date of this bill would be subject to the provisions of Section 104 of the Baltimore County Zoning Regulations regarding nonconforming uses. The effective date of this bill is 6-11-2004.

2/17/05 Baxter - Petitioner

Mr Tarczyk -
Opening req division of property, in opposition
to density of split
1) agriculture user
2) req of subdivision Sect 1 A 1
3) Not a Rlow density division
4) Power line easement on property
5) Sect 1-A 1.05 split zoning - RC2 + RC5 calculation
1 lot undersize in RC5.
accumulation of land for develop - different RC2 - 1A.005
Deducites right to consumption to development.
Rse density was 3.5 not 5 Forest Buffer.
6) Zoning Commission - the Board not consider

Mr Mark Baxter - Esq & petitioner +
purchased 1969 11.68 Ac zoned 1 Ac lots
later purchase 40 Ac 1974 from group zoned 33 lots
the beef cattle farmer
Now have 2 plots was farmed
1 Ac lots was zone but later down zoned
111 - 1 subdivision - (2-lots)
40 Ac R.C.5 permit 1.5 increased 1990
In current 1 Ac per home.
Proposal 20-20 lot size
1998 underfunk sub process.
Develop on East side of power line for 2 lots
4.9 12.7 RC2 on 2nd development plan
Purpose to reduce density 12.7 #1 + 16.3 #2 earned 16.3 RC2 4.9 RC2 } 22 Cumulative
donated easement to Conservation Area 28 Ac
1987 - appointed to Advisory Committee to Preserve land
100 Ac as Agriculture district for 5 years
Conflict a Chairman
Quarter Conservation Exhibit

Mark

Page #2 Vanneter 4/17/05 not(4)
Conservation Easement Reduced to 2 develop for daughter.
Amended Plan
Record Plat 73-4 ~~ex~~ show density Plat #2
East Side G-1 2 lots
#-2
I- 2 remain opposite.
J- 5 develop right
4 lot to 2 lots. Agriculture Approval 9/02
approved 12/02
No utility or split zone since separate utilities independent of each other.
See Exhibit #10

Cross Exam By
Have amended plan?
Need final approval of plan
Commission approved plan
Part RC 2 remain zone 91 Contech farm land
Access to 12 from Bart Allen lane.
Request of daughter use of land west side of Mr Vanneter.
Tax Credit Claimed 1998

Witness #2 Jeffery Schultz - Land Surveyor
Surveyed plats.
Helped with amended Plan to add property
Accept site to RC5 from RC2
Special Hearing - Development Plan approval - Zoning Hearing
300 feet of change by neighbor approval

2/12/05 case no. 04-368-SPH

MARK J. DANEKER - Petitioner

Appearing for Petitioner
MARK DANEKER Att. for Self

Protestants Long Green Valley
MARK TOWSMAND - for.

Exhibits 1, 2.
subpeonas
3. letter from Mike Millhamm
5. cases cited in letter O.B.
4. Deed of Conservat Easement

NOW Density transfer requested take from land RC 2
cut 11.8 acres and attach to land owned to north then own by Quiney Valley Estate.
RC.2 and RC5 split zone.
RC.5 has been built out

Had to determine if same number of density units.
Pre transfer D-allowed
Post transfer would allow
because from land requesting certain exemption

Why object.
proves lines drawn to
RC-2 RC.5

1 A 00.5- Zoning key
split zone tracks

in calculating Density
Cal in Each Zone.

One Lot Under sized 1.5
Acreas.
No Petition filed to approve
under size Lot

Conservative deed
Save away development rights
3 of 5.

To Approve amendments
not on Appeal.

Petitioner's witness
Oaken.
History of ownership
1969 141.8 acres Sacrm.
before R.C. one Acres Lots
1974 40. Acres. - for Twenty three
Lots.
Raises beef Cattle on Sacrm

Petitioners Exhit 1.-111. Acres parcel 1
3-A - below 40. Parcel 2

property 19.3 on East Side

10 Acres

Exhibit 2 – Area photo map
field of natural area

field of natural area 3

Exhibit 3. Topo map
grew corn (stopped/sold
rights to U.S. to grow

1-20 - 1-50

1 Acre - R.C. 5 - prior to
2004. In Study Area.

1991. begin subdivision process

Exhibit 4. Final Developement
Plan of Delaney Valley Estates
3rd Plan
11 lots Approved on West
Side
4 lots on East Side of Lines
power line is see simple Bldg
had to submitt development
on East Side. to Clear. County
required

4 A. of R.C. 5 on East Side
- Load for 2.

17. Dehues R.C. 2 - (2 lots)

not do 4 square (to 2)
12.7. acres.
2. parks of 16.3 acres. 4.9
and "
do away with four lots
(Tansey) Attorney
1998. donated Conservation
Chair of BOH. Form Conservation
Commission

Exhibit 5. 73-4 8/2000
Density R.C. 5- 14.8
R.C 2- 3 remain
R.C. on East Side
2. in R.C. 2
page 3. of protectant. 1.
no more than two at option
of owner
9. sides 5. Rights given
allway but (2)
We do not Enforce Covenants.

Exhibit 6- CKG Plan
date 5-14-95
2- pages.

Developer's Review Committee
Age board approval

Exhibit 7 - 3 pages letter dtd
Sept 27, 2002 - to Lipencott

Exhibit 9. letter Appraisal
from Sheg. of Land

Exhibit 10 - 4th 8/2002.
Development Plan;

houses would be same as they
would have been if remain
same as if still Sacra acts
houses remain same as before
wells are in place.
to 50 ft. from houses 25 ft
from property line

insted owner of all lots
except one - not in Sacra.
all others agreed to change
Who does the Community
represent
Exhibits 11 letters from neighbors
Lots 13 + 12 were originally
in RC5
being built on RC2. further
Prospects and project behind.
Board wanted to know what
daughter had planned for land.

records
1998

Exhibit 12 Summary to ARG Board

Study Summary for Petitioning
1. Plans assisted in planning
C.R.G. plans to add 10 acres
to C.R.G. plan and requs
changes require either separately
or zoning commission.
C.R.G. will be not mutual
change since its reduction

Petitioners exhibit 6 list of
Lot owners 5-27-2004

Pro Testant
Carol Shaw
Bd. of D. Longgreen ASS.
Exhibit 7. Rule 8. Pagren.
allowing her to speak
boundary of ASS. Are upon similar
Exhibit 8. Boundary map

Exhibit 9. Long Bren Boundaries

Exhibit 10. A&B Minutes April 13, 2004
Only 24, th 2004.
Minutes review of the meeting
witness were present

Lipscott v Preservation
B. C. Arg. B. See.
Arg. Adrian Brand

Nov. 19, 2002
IN Cowlitz wsh

Refer to Vancouver Board to determine if it is Angular in nature or not
See if exchange would enhance change property
looked at transfer only of 11 acres transfer of use to assist in farming. And more advantages of being commercial to prev lot. Was not flow used on old lot because of the location

Board Approved request 12/04

(1)

2/17/05 - Case # 04-362-SPH. In Re Mark Dambes.

Petitioner — Protestants Long Green Valley Assoc.
Mark Dambes Esq. — Michael P. Tanczyn

Pet Ex 1 - Subdivision Zuppoff
Pet Ex 2 - Subdivision Sam Dambes
Pet Ex 3 - Letter for Williams.
Pet Ex 4 - Deed of Conservation Easement.
Ex 5A. 2 cases cited by Mr. Williams.
B-

Opening Statement: Tanczyn
Hons. Z.C. file.
Non density transfer request.
Seek to state land for their farm zoned RC 2
111.8 acres & 5 lots 5A 211.8 acres & attempt
it to another parcel of land which is against
Mr. Dambes Long Valley II estate.

Truth it is adjoining is split zoned RC 2 & a little
RC 5 - RC 5 has been previously developed
& built out. For considering non density
transfer was not determined if non density
transfer will result in more number of
density units.

Have to determine what pre density transfer
was envisioned test & if it would change at
all.

There are requirements for a property.
Firm Dist that doesn't allow prior &
production farm land to be used.
except in certain instances.

RC 2 -
RC 5 - Density calculations

RC 2 - can be developed 1 lot per 50 acres
RC 5 - .667 - 2 units per acre.

His clients felt that this did not qualify under RC 5
Power lines.—
Lots 12 & 13 lie in RC 5 land.
See 1A00.5.07 zoning map: split zoned tracts.
in RC zones. - Say in calculating density based
at each zoned tract in area. & calculate
density according to the density allowed
Lot is undersized
Not petition to approve an undersized lot
Additional land is zoned RC 2 not RC 5.
Recorded easement granted to conservancy by Donahoe's
Had 5 development rights & reduced 2.
Reservation density allowed on north tract
was 5.

Not entitled 7) final development plan was not approved
by Z.C. - Not appealed.
Petitioners. Case.
Mark Donahoe
Donahoe & wife purchased from 111.82 acres in 1959
in Hydes - Md.
Entire area was zoned for 1 acre lots at
that time.
Purchased 40 acres adjacent in 1974. Property
was zoned & had been laid out for development.
He is an atty. & raises beefcattle.

Pet Ex 1: Pet 7) 111. acres - parcel #1 & parcel #2
40 acres to north. (Now labeled 19 acres.
Power lines developed on left side 7)
power line -
19.3 acres on east side 7) power line.
10.1 acres was distributed. on property in
question.

Pet Ex 2 Aerial photo view
Pur. Just Plan. { field 6.1. acres outlined area
3. 78 acres - intro area

When originally bought in 1974. he found it the area
stream & wetlands it the property

Pet Ex 3 - Topographical Map. Shows. slope of
property - Hard to. farm - 2 fields
Good Central field.

Mid 1970's R.C. zone came in Prior from zone to RC2
Now, lot to every 50 acres
On 11.1 acres he could get 2 lots
put of property in R.C. 40 acres in. RC5.
When subdivision was approved lots were 1 acre.
Doesn't have to have a hearing to have the
lots.
Was pre approved - before new regulations which
required 1.5+. acre lots
Proposed to have min lots of 20 acres if the
State court had passed a zoning bill.

1991 - Undertook subdivision process with CRC.
got approval for development of property.

Pet Ex 4 - Final Development Plan for Dulaney Valley
Estates II.
Copy of that amended Development plan

Pet not in yellow was approved by CRC.
11 lots on W/S of power line
4 lots on E/S of power line

County wanted E/S of power line also shown.
Drain line of RC5 runs thru property across
on E/S of property.

4 acres of RC5 property on E/S of parcel line
RC2 part of property was only 7 acres
shown as 2 lots.

Praying now. Not do 4 lots that are
approved. Only make 2 lots 1 - 12.7 acres
2 of 16.3 acres varying of 4.9 acres RC2 &
only one density transfer of 10.1 acres. Subdivision 16.3
acres.

Reason for Non density transfer.
Donated to L.C. Vall. County a portion of the
property.

Deaches was trying to purchase property next to
his farm. He was claiming of Bolt Co Agric. Center
He got 100 acres of farm with Agric & wanted
NP the area to attached. part.

Did not sell property while he was claiming
of the center.

When his children grew up. Became 2 lots to his
children
Lot 13 - 16 acres to be given to his daughter.
and Conservation Easement -
~~Conservation Easement.~~
Had to amend Final Development plan to show 2 lots
instead of 4 lots.

Pet Ex 5 - Revised plat 17-4 recorded 8/2000
Plat 2. Shows RC5 entitled to 14.8 lots
RC2 - 2 lots.
Proposing to use 10 RC5 lots. Will have transfer
with RC2 - left 3 lots.
5 development rights on right side of proposed 3 in
RC5 2 in RC2
Pg 3.7 Covenants Exhibit: G. (6)
H -
I -
J - - Are reserved all development rights

Pet Ex 6 - Plat & RC plan dated 5/14/95.
Page 1 of 2.
Amendment to Final Development Plan showing
1 to 2 lots approved - 10/16 acres. Amt.

Went to CRG. & they said had to have Agpro. Bd approval.
Was spec. hearing:
Donahue sent letter to Ag Bd. &
Went on agenda of Ag Bd in Nov.

Pet Ex 7 - Donahue letter to W. Liggenott 11/20/2002 FAX
Pet Ex 8 - FAX to W. Liggenott.

Donahue went to Ag. Mtg.:
Ag Bd approved in Dec.
Pet Ex 9 - Wm. Liggenott to Carl Rissmeyer
approving subdiv.
Pet Ex 10 - 4th Amended Dev. Plan Dunlay Carl
Estates, solutions, DEP R. 8/4/2000
Understands that this Plan has to be
approved by the County.

Pet Ex 11 - Letter of property owners.

Cross - Tamagno.
He has agreed that Dev. Plan must go back
to PRC due to C.C. ruling.
Not proposing to build on RC5 property
land is RC 2. Law has not changed since 1991
Lots will be sold for Bert & Ellen home
Not going to build on RC5 lot. He is going to
build on RC 2 lot.
11-1 acres are prime & productive land
Pretty much all is prime & productive land.
in Ag Bd.
No one ever asked Donahues to produce his
daughters.

Chantsbel Development closed in 1998.

Pet Ex 12 - Variat pet of Jackson to Ag Bd.

Jeffrey Schultz - Prof Engineer
Prepared plans.
5 letters from
Developer and the city with respect to and CRG plan. To add 10-11 units proposed to build the CRG plan to Dal Val Estates. To reduce density 4 units to 2 units.
Proposed Development that Spec Hwy requires to transfer density. X A and CRG plan respect
Which was detailed jointly attorney of zoning
A and D development plan requires singlefamily
D all units w/in 300 ft of change of
ZC can rule that change is w/in
5 point x intent. Has to
Has to take plan to DRC if get approval
at this level. They will determine if it
is a non-material change.
After CRG is

Chris Tamagno:
Did he say he needed a 5 point x intent letter
No - ZC will approve.
Relying on ZC order re. the appeal of the
Dev. Plan - Sent back.

Pet Ex 6 - Letter of owners of Dunlap Valley Estates on
of May 27-04.

~~Protestants~~
Carol Shaw - 7 County Hill Court.
Long Green Valley Assoc
Pet Ex 7 - Resolution & papers
Pet Ex 8 - Bylaws of LGV Assoc.

Prot Ex 9 - Bombery of LGVA - Worlds Length of Bombers
Prot Ex 10 - A. Minutes of LGVA 4/13/04
B " " " 7/20/04

Von Dreis. -
Resolution does not appear in the minutes. Resolution was written yesterday - Board passed portion of Bd is in resolution

Wally Higginbotham - Belt Co in Bd Co, Portion & Re. Magnet.
No portion with Belt Co. Ag Bd. Seems as something to Bd. Not a member of Board.
Familiar with request for property of Ag. Bd.
Conv. to Bd Co Advising Bd. on 11/19/2002. Before that the Board wanted the property & discussed the issue
Had to be considered by Ag Bd - because it is required by DRC. Ag Bd. not overlay if it is ag. in nature.
Bd will look at all conditions I plan would enhance agric. that is leaving the property for the other property for which it was taken.
11.1 acres. was in production & had production records.
Materials were submitted. Brought to Bd by Mr. Danekes Conservation Easement was considered by the Board
~~What~~ Did not consider Dept Nat Belt II as to pure production only. Only considered the 11.1 acres. Lot was to be transferred to the site so that the new lot would be in agricultural production.

Shown. Pet Ex 2 - The 17.1 acres - open. collinted
as pastures. Not timed.

Member of Board go out to property. He never
go out with Board. He thinks he dealt with this
case.

Mos on agenda of Board for 11/04. Dandrea
made a presentation

Board tabled request at that time.

Board examines my Bd mtg prior the daughter
appears. Dandrea returned to Board. &
provided materials.

Spoke to Dandrea second time after that mtg
12/20/04. Ag Bd. appeal Dandrea by phone.
Lippmann proceed Bd.

Bd. members talked to each other.

Bd meets quarterly or every 4 months

Cross Dandrea -

Dandrea. left document with the Board.
& 11/20/2002 letter to the Board. for Dandrea
which was distributed to the Bd.

Briefs Close of Business 3/4/05

PETITION OF:

LONG GREEN VALLEY, ASSO.

CIVIL ACTION NO.: 3-C-05-6661

MATTER OF: MARK & SUSAN DANEKER

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

CChristensen

CLERK'S OFFICE

DATE:

Petitioner Exhibit

Verified 2-17-05

2/17/05 Loanster - petitioner
Long Canyon Valley - Protestant.

PROTESTANTS.

✓ Exhibit #1 Affidavit of Service
✓ #2 Affidavit of SERVICE
✓ #3 Letter 2/15/05 Michael Willemann, VP LCVC, Inc.
✓ #4 A+B Deed of Conservation Easement.
✓ #5-A+B - Appeal Cases
✓ #6 - Estate Records 5/24/04
✓ #7 - Resolution of Assoc
✓ #8 - Boundary map of LCV Assoc.
✓ #9 - Description of Boundary
✓ #10-A+B Minutes of Assoc. Meeting 4/13 & 7/20

Petitioners Exhibits
✓ Exhibit #1 war(3-A) Plat of 111 Ac Parcel #1
+ 19 Ac. Parcel #
East side of power LINE
✓ Exhibit #2 Photo - field #1 + 7
✓ Exhibit #3 Tape of Area
✓ Exhibit #4 Plat of 8/1/00 development Plan.
✓ Exhibit #5 Plat of development 73-4 show density
Durango Valley Estates #2
✓ Exhibit #6 P.1+2 5-14-95 CRC Plan.
✓ Exhibit #7 3 pages letter 9/27/02 - Mailed to Board
✓ Exhibit #8 Letter date 11/19/02
✓ Exhibit #9 Letter dated 12/20/02
✓ Exhibit #10 Plat 8/1/00 4th Amended Plan
✓ Exhibit #11 Letter of Community approval.
✓ Exhibit #12 HC Subdivision

2/17/05 Wanater - petitioner

Long Green Valley - Protestant.

PROTESTANTS

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✓ #3 Letter 2/15/05 Michael Willemann, VP LGVC, Inc.

✓ #4 ~~#B~~ Deed of Conservation Easement

✓ #5-A+B - Appeal Cases

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Petitioners Exhibits

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+ 19 Ac. Parcel #

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Delaney Valley Earlier #2

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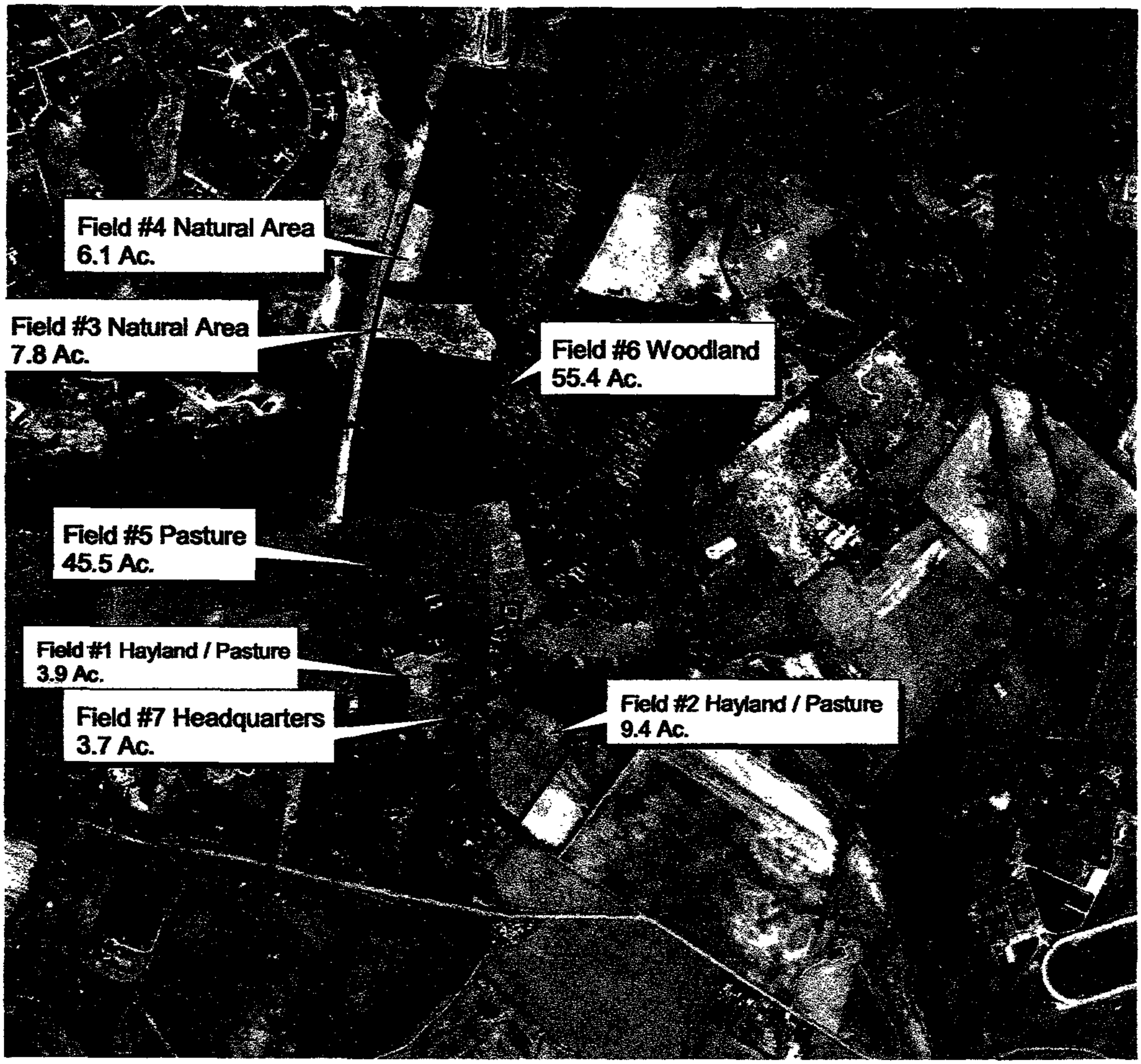
✓ Exhibit #11 Letter of Community approval.

✓ Exhibit #12 AG Subdivision

C nservation Plan Ma

Mark J. Daneker
Tract 1303
Baltimore County Soil Conservation District
131.8 Acres
Date: 09/06/2002

Assisted By: Andrew K. Thomas
410-666-1188 Ext.3



Legend:

Planned Land Units

Scale: 1" = 660'

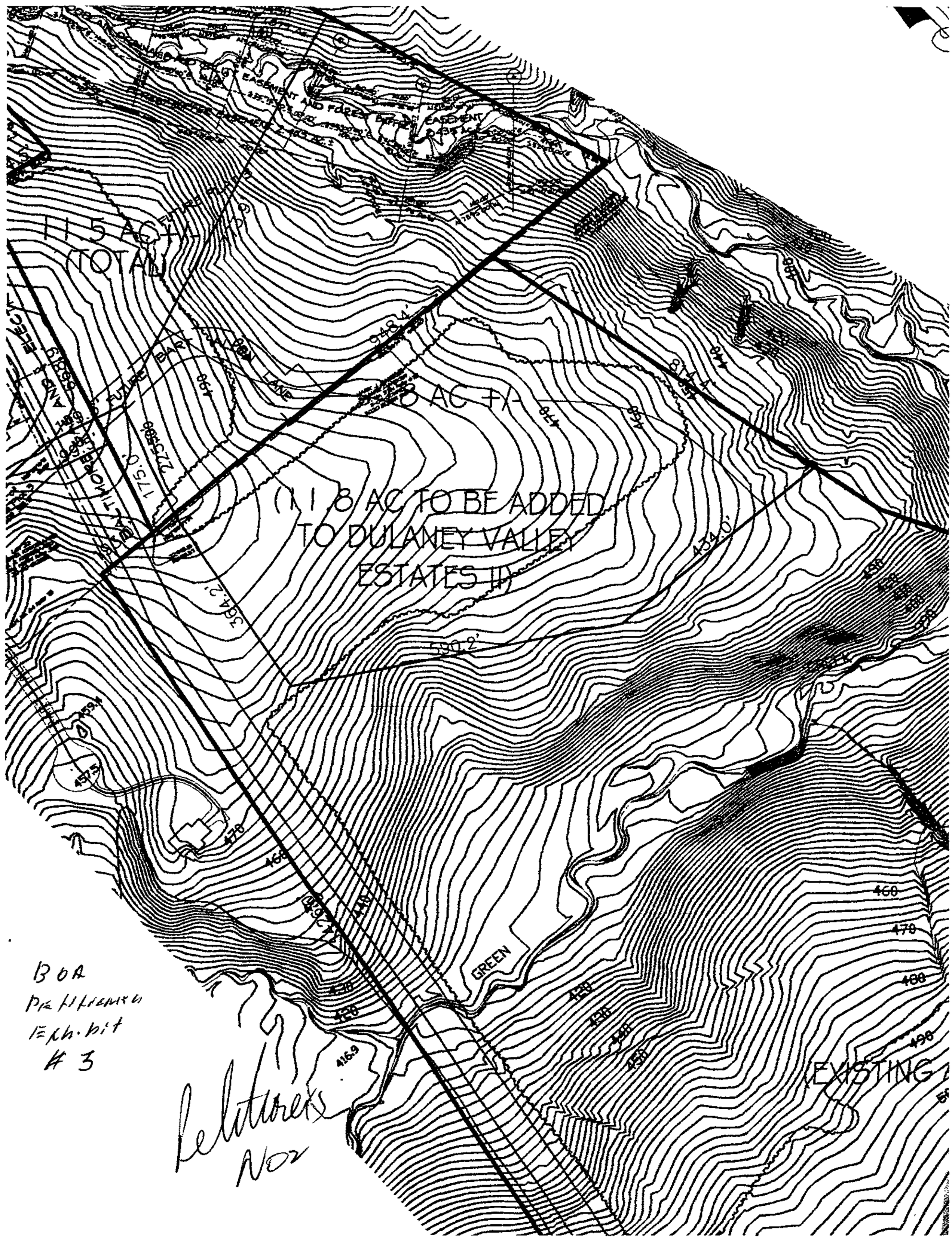
Account I.D. 04111104001990
Liber No. 5761
Folio No. 673

N

BOA petitioner's exhibit #2

Petitioner's No 1

USDA


EASEMENT AND FOREST BUFFER EASEMENT
115 AC +/-
(TOTAL)
FUTURE BAR
LAND
8 AC +/-
(1.1.8 AC TO BE ADDED
TO DULANEY VALLEY
ESTATES II)
FUTURE BAR
175.0'
384.2'
590.2'
434.0'
GREEN
EXISTING
BOA
Petitioners
Exhibit
#3
NOV

The Honorable Timothy Kotroco, Esquire
Director, Permits and Development Management
111 W. Chesapeake Avenue
Towson, MD 21204
BY FAX: 410-887-5708

Reference: 5020 Elder Road
Case No: 4-368-SPH
Petitioners: Mark and Susan Daneker

Dear Mr. Kotroco:

Please be advised that I, the undersigned, am the owner of real property adjacent to the property which is the subject of this Special Hearing. I have reviewed the Plat dated February 6, 2004 and the Fourth Amended Final Development Plan for Dulaney Valley Estates II pertaining to the reduction of the number of lots approved for Dulaney Valley Estates II from 15 lots to13 lots and the increase in the sizes of lots 12 and 13 by the non-density transfer of Parcel A comprising approximately 10.1 acres. I support this Petition and believe that the reduction by two lots and increase in size of the remaining two lots will be beneficial to the area if it is approved.

Beth & Ed Hale
Name

Beth Hale

13701 Milbert Ridge Dr
Address
Baldwin, MD 21013

5/14/04
Date

Ped No 4

13 c A
Exhibit # 11

The Honorable Timothy Kotroco, Esquire
Director, Permits and Development Management
111 W. Chesapeake Avenue
Towson, MD 21204
BY FAX: 410-887-5708

Reference: 5020 Elder Road
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Robert Veltri
Robert Veltri
Name

13705 Milbert Ridge Dr.
Baldwin, MD 21013
Address

5/14/04
Date

The Honorable Timothy Kotroco, Esquire
Director, Permits and Development Management
111 W. Chesapeake Avenue
Towson, MD 21204
BY FAX: 410-887-5708

Reference: 5020 Elder Road
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Salvatore C. Crupi
Name
Gwenn D. Crupi

13700 Milbert Ridge Drive
Address
Baldwin, MD 21013

5/14/03
Date

The Honorable Timothy Kotroco, Esquire
Director, Permits and Development Management
111 W. Chesapeake Avenue
Towson, MD 21204
BY FAX: 410-887-5708

Reference: 5020 Elder Road
Case No: 4-368-SPH
Petitioners: Mark and Susan Daneker

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Name

13704 MUBERT RIDGE DR
Address
BALDWIN, MD 21013

5/15/04
Date

The Honorable Timothy Kotroco, Esquire
Director, Permits and Development Management
111 W. Chesapeake Avenue
Towson, MD 21204
BY FAX: 410-887-5708

Reference: 5020 Elder Road
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ARMSTRONG
Name

13702 MILBERT RIDGE DR
Address
BALDWIN, MD 21013

5/15/04
Date

The Honorable Timothy Kotroco, Esquire
Director, Permits and Development Management
111 W. Chesapeake Avenue
Towson, MD 21204
BY FAX: 410-887-5708

Reference: 5020 Elder Road
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Sheelah Lopez
Name

13707 Milbert Ridge Dr.
Address
Baldwin, MD 21013

5-15-04
Date

The Honorable Timothy Kotroco, Esquire
Director, Permits and Development Management
111 W. Chesapeake Avenue
Towson, MD 21204

Reference: 5020 Elder Road, Hydes 21082
Case No: 4-368-SPH
Petitioners: Mark and Susan Daneker

Dear Mr. Kotroco:

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Jim Entler
J. G. Ritchie
Name

13709 Milbert Ridge Drive
Address
Baldwin MD 21013

5/17/04
Date

The Honorable Timothy Kotroco, Esquire
Director, Permits and Development Management
111 W. Chesapeake Avenue
Towson, MD 21204

Reference: 5020 Elder Road, Hydes 21082
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Petitioners: Mark and Susan Daneker

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Kathleen M. Keyser Charles F. Keyser II
Name

13711 Milbert Ridge Drive
Address

Baldwin, MD 21013

5-17-2004
Date

The Honorable Timothy Kotroco, Esquire
Director, Permits and Development Management
111 W. Chesapeake Avenue
Towson, MD 21204

Reference: 5020 Elder Road, Hydes 21082
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Dear Mr. Kotroco:

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Rosemary Caltabiano
Name

Rosemary Caltabiano

13704 Milbert Ridge Dr.
Address

Baldwin, MD 21013

5/17/04
Date

The Honorable Timothy Kotroco, Esquire
Director, Permits and Development Management
111 W. Chesapeake Avenue
Towson, MD 21204

Reference: 5020 Elder Road, Hydes 21082
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Petitioners: Mark and Susan Daneker

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PAUL J. KIRKEGAARD JR.

Name
Jennifer Kirkegaard

1 Striminic Ct

Address
Baldwin, MD 21013

5/17/04
Date

The Honorable Timothy Kotroco, Esquire
Director, Permits and Development Management
111 W. Chesapeake Avenue
Towson, MD 21204

Reference: 5020 Elder Road, Hydes 21082
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Michael T. Butler
Name

5118 Elder Rd
Address
Hydes Md

5/17/04
Date

The Honorable Timothy Kotroco, Esquire
Director, Permits and Development Management
111 W. Chesapeake Avenue
Towson, MD 21204
BY FAX: 410-887-5708

Reference: 5020 Elder Road
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Martha H Sanger
Name
Martha H. Sanger

5001 Elder Rd
Address
Hydes, MD 21082

5/10/04
Date

The Honorable Timothy Kotroco, Esquire
Director, Permits and Development Management
111 W. Chesapeake Avenue
Towson, MD 21204
BY FAX: 410-887-5708

Reference: 5020 Elder Road
Case No: 4-368-SPH
Petitioners: Mark and Susan Daneker

Dear Mr. Kotroco:

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Charles B Elder, Sr.
Name

Elizabeth R Elder

5112 Elder Rd
Address

Hydes, Md. 21082

5-12-04
Date

The Honorable Timothy Kotroco, Esquire
Director, Permits and Development Management
111 W. Chesapeake Avenue
Towson, MD 21204
BY FAX: 410-887-5708

Reference: 5020 Elder Road
Case No: 4-368-SPH
Petitioners: Mark and Susan Daneker

Dear Mr. Kotroco:

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Sally Anne Rosingin 5-10-04
Name
Lance Rosingin 5/10/04
5124 Elder Road
Address
Hydes, MD. 21082

Date

The Honorable Timothy Kotroco, Esquire
Director, Permits and Development Management
111 W. Chesapeake Avenue
Towson, MD 21204
BY FAX: 410-887-5708

Reference: 5020 Elder Road
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Petitioners: Mark and Susan Daneker

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Thomas Smith Bonnie M. Smith

Name

THOMAS SMITH Bonnie M. Smith

5200 PATTERSON FARM RD.

Address

BALDWIN MD. 21013

5-15-04

Date

The Honorable Timothy Kotroco, Esquire
Director, Permits and Development Management
111 W. Chesapeake Avenue
Towson, MD 21204
BY FAX: 410-887-5708

Reference: 5020 Elder Road
Case No: 4-368-SPH
Petitioners: Mark and Susan Daneker

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George Elder
Name

5120 Elder Rd
Address
Hydes, MD 21082

5.13.04
Date

The Honorable Timothy Kotroco, Esquire
Director, Permits and Development Management
111 W. Chesapeake Avenue
Towson, MD 21204
BY FAX: 410-887-5708

Reference: 5020 Elder Road
Case No: 4-368-SPH
Petitioners: Mark and Susan Daneker

Dear Mr. Kotroco:

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PAUL L. KING
Name

5116 ELDER RD
HYDES, MARYLAND 21082
Address

5/10/04
Date

The Honorable Timothy Kotroco, Esquire
Director, Permits and Development Management
111 W. Chesapeake Avenue
Towson, MD 21204
BY FAX: 410-887-5708

Reference: 5020 Elder Road Hydes 21082
Case No: 4-368-SPH
Petitioners: Mark and Susan Daneker

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Philip Cowles Jr.
Name

5 Strimme Court
Address
Baldwin, MD 21013

5/23/04
Date

The Honorable Timothy Kotroco, Esquire
Director, Permits and Development Management
111 W. Chesapeake Avenue
Towson, MD 21204
BY FAX: 410-887-5708

Reference: 5020 Elder Road
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Peter C. Sugatt
Name

5130 Elder Rd
Hydes, Md 21082
Address

Date

The Honorable Timothy Kotroco, Esquire
Director, Permits and Development Management
111 W. Chesapeake Avenue
Towson, MD 21204

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Edward Dukoy
Name

5013 Elder Road
Hydes, Md. 21082
Address

5/27/2004
Date

The Honorable Timothy Kotroco, Esquire
Director, Permits and Development Management
111 W. Chesapeake Avenue
Towson, MD 21204
BY FAX: 410-887-5708

Reference: 5020 Elder Road Hydes Md. 21082
Case No: 4-368-SPH
Petitioners: Mark and Susan Daneker

Dear Mr. Kotroco:

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Albert Henline
Name

5115 Sweet Air Rd
Address
Baldwin Md 21013

5-25-04
Date

BALTIMORE COUNTY, MARYLAND
ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT
Inter-Office Correspondence
December 20, 2002

TO: Carl Richards

FROM: Wally Lippincott, Jr.

RE: Request for Agricultural Subdivision on Daneker Property

The Baltimore County Agricultural Advisory Board is recommending approval of the request by Mr. Daneker for an agricultural subdivision of his farm located on Elder Road in Hydes. The Board is recommending approval of a transfer of 11 acres from Tax Map 44 Parcel 320 (5761/673) to Tax Map 44 Parcel 117 (aka Dulaney Valley Estates II proposed lot 13.

If you have any questions, please contact me at 410-887-3776.

Post-It® Fax Note 7671	Date	# of pages ▶
To Mark Daneker	From	
Co./Dept	Co.	
Phone #	Phone #	
Fax # 410 649 4758	Fax #	

Pet No 5

BCA
Petitioners
Exhibit
9

Protestants Exhibit

RESOLUTION

LONG GREEN VALLEY ASSOCIATION

RESOLVED: That the position of the Long Green Valley Association as adopted by the Board of Directors on the zoning matter known as:

5020 Elder Road

Case No. 4-368-SPH

is that:

RC-2 land should not be used in conjunction with RC-5 land for the purpose of making the RC-5 land/lots more attractive. The Association has historically opposed using RC-2 land for enhancement and/or support of any RC-5 development parcel and the Board of Directors of the Long Green Valley Association specifically voted to oppose this particular request at the Board meeting of April 13, 2004 and again at the Board meeting of July 20, 2004.

AS WITNESS our hands and seal this 16th day of February, 2005.

ATTEST:

LONG GREEN VALLEY ASSOCIATION

Carol Trela

Carol Trela

SECRETARY

Charlotte Pine

Charlotte Pine

RESIDENT

IN RE: PETITION OF	*	BOARD OF APPEALS
Mark Daneker and Susan Daneker	* *	OF
5020 Elder Avenue N/east side of Elder Avenue 800 feet n/west of centerline of Hydes Road 11th Election District 3rd Councilmanic District	* * *	BALTIMORE COUNTY
Legal Owners: Mark & Susan Daneker	*	ZONING CASE NO.: 04-368 SPH

* * * * * * *

AFFIDAVIT OF SERVICE

I, Michael P. Tanczyn do solemnly swear under the penalties of perjury that the statements made herein are true to the best of my knowledge, information and belief:

1. That I am a competent person over the age of eighteen and not a party to the case.
2. That on February 16, 2004, at approximately 12:30 p.m., I personally served a Subpoena in this matter on Wally Lippincott, Baltimore County Agricultural Preservation Board, Baltimore County, Courts Building, Third Floor, 401 Bosley Avenue, Towson, MD 21204.

AFFIANT

BCA
Protestant Exhibit
#7

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

DATE: January 23, 2008

TO: Timothy Kotroco, Director
Permits & Development Management

FROM: Linda B. Fliegel
Board of Appeals

SUBJECT: **Mark J. & Susan Daneker**
Case Nos.: 04-368-SPH
Circuit Court Case Nos.: 03-C-05-006661

CLOSED UPPER COURT CASE

The Board of Appeal issued an Opinion and Order, under date of May 16, 2005, *GRANTING* the Petition for Special Hearing to approve a non-density transfer of 10.1 acres from Parcel 1 to Parcel 2 of the subject property; to approve the annexation of the 10.1-acre parcel into future Platt III of the Delaney Valley Estates Subdivision; and to approve an amendment to the Third Amended Final Development Plan of Dulaney Valley Estates II to incorporate the 10.1-acre parcel into Parcel 2 and to reduce and reconfigure the number of proposed lots therein from 15 to 13. The Board further Ordered that the Fourth Amended Final Development Plan is not exempt from further County review, given the lack of specificity therein.

On June 15, 2005 an appeal of the Board's decision was filed in the Circuit Court for Baltimore County, and the court, under date of January 31, 2006, *AFFIRMED* the decision of the Board of Appeals.

MICHAEL TANZCYN
606 BALTIMORE AVE
TOWSON, MD 21204

1/11/05

#15382

Enlcosed please find the following names, and code numbers completed by Bond's Sure Serve
****

SUSAN DANEKER
5020 ELDER AVE
HYDES, MD 21082

$40.00

THANK YOU
BOND'S SURE SERVE
PO BOX 1196
COCKEYSVILLE,MD 21030

TOTAL: $40.00

RAYMOND BOND
Raymond Bond

1304
Plaintiff
Exhibit
#2

IN THE MATTER OF OF BOARD OF
MARK DANEKER and SUSAN DANEKER APPEALS
5020 ELDER AVE N/east side of elder ave 800 OF
feet n/west of centerline of hydes rd 11th election BALTIMORE COUNTY
district 3rd councilmanic district Danekers owner ZONING CASE NO:04-368-SPH

AFFIDAVIT OF SERVICE

I, David Bond,do solemnly swear under the penalties of perjury that the statements made herein are true to the best of my knowledge, information and belief:

1. I am a competent person over the age of eighteen and not a party to the case.

2. I served a Subpoena Duces Tecum, by personal delivery to, Susan Daneker, 5020 Elder Ave., Hydes, Md., 21082

DATE:1-11-05

David Bond
P.O. Box 1196
Hunt Valley, MD 21030
(410)-628-7873
Bond's Sure Serve

DATE	TIME	RACE	M-F	HT	WT	D.O.B.
1-11-05	5:40PM	WHITE	FEMALE	5-6	145	50

IN THE MATTER OF OF BOARD OF
MARK DANEKER and SUSAN DANEKER APPEALS
5020 ELDER AVE N/east side of elder ave 800 OF
feet n/west of centerline of hydes rd 11th election BALTIMORE COUNTY
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DATE	TIME	RACE	M-F	HT	WT	D.O.B.
1-11-05	5:40PM	WHITE	FEMALE	5-6	145	50

IN THE MATTER OF	*	BOARD OF APPEALS
Mark Daneker and Susan Daneker	* *	OF BALTIMORE COUNTY
5020 Elder Avenue N/east side of Elder Avenue 800 feet n/west of centerline of Hydes Road 11th Election District 3rd Councilmanic District Legal Owners: Mark & Susan Daneker	* * * *	ZONING CASE NO.: 04-368 SPH

* * * * * * *

SUBPOENA DUCES TECUM

SUBPOENA DUCES TECUM

RECEIVED
DEC 16 20
BALTIMORE COUNTY
BOARD OF APPEALS

TO: Mark Daneker
or
Susan Daneker
5020 Elder Avenue
Hydes, MD 21082

You are hereby commanded to appear and bring to the hearing:

1. Copies of all previously approved development plans of Dulaney Valley Estates II.

2. Copies of all dedications to an agricultural preservation easement for any part of the property which is the subject of the pending Petition.

3. Copies of all dedications to the Conservancy of any property which is part of the pending Petition.

4. Copies of their federal or state tax returns, including amended federal or state tax returns, by which they claimed any exemption, tax credit, or allowance, because of the dedication of all or any part of the property which is the subject of the pending Petition.

5. The Deed by which they came into title for any part of property which is the subject of this Petition.

6. Any correspondence between the property owner and the Maryland Agriculture Preservation Board or the Conservancy concerning any part of the property which is the subject of the pending Petition.

on: Thursday, February 17, 2005 @ 10.00 a.m.

at: County Board of Appeals of Baltimore County
Old Courthouse, Room 48
400 Washington Avenue
Towson, Maryland 21204

This Subpoena was requested by Michael P. Tanczyn, Esquire, 606 Baltimore Avenue, Suite 106, Towson, Maryland, 21204, 410-296-8823, counsel for Long Green Valley Association, Inc., and any questions should be referred to that office.

12/16/04
DATE

Kathleen C. Bianco
Board of Appeals

The Long
Green Valley
Conservancy
P. O. Box 133
Long Green,
MD 21092

1995-2005

February 15, 2005

Chairman Lawrence W. Stahl
The Baltimore County Board of Appeals
County Office Building
Towson, MD. 21204

Directors:

Cathy Ebert,
President
Michael
Millemann,
Vice-President
Scott Corey,
Treasurer
Elaine Christ,
Secretary
John Canoles
Cathy Carter
Anne Deford,
*Director
Emeritus*
Rob Deford
Charlie Gischlar
Charlotte Pine
Bart Regan
John Wikerson

Ann H. Jones
Administrator
410-461-6917

RE: Zoning Case Number 04-368
SPH

Dear Mr. Stahl,

The Long Green Valley Conservancy, Inc. desires to be made a party to these proceedings and be advised of any decision therein. See Baxter V. Montgomery County Board of Appeals 248 Md. 111 (1967); Sugarloaf Citizens Association v Department of Environment 344 Maryland 271 (1996).

Mark Daneker by Deed of Conservation Easement dated December 29, 1998 purported to grant to the Conservancy three (3) of his five (5) development rights for the subject property.

It is the position of the Long Green Valley conservancy that no decision should be made by the County Board of Appeals which would place the three (3) development rights granted to the Conservancy in jeopardy, or cause any diminution to the rights granted to the Conservancy.

I have attached a copy of the Deed of Conservation Easement as an Exhibit for your review.

Respectfully Submitted,

Michael Millemann, Vice-President

BOA
Protestant
Exhibit
#3

Petitioner's Memo Exhibit 1
Pino Signature

LONG GREEN VALLEY ASSOCIATION

P.O. Box 91 Baldwin, Maryland 21013

VIA FAX: 410-887-3468
Lawrence E. Schmidt, Esquire
Zoning Commissioner for Baltimore County
4th Floor, County Courts Building
401 Bosley Avenue
Towson, Maryland 21204

April 6, 2004

Re: 5020 Elder Road; Case No. 4-368-SPH

Dear Zoning Commissioner Schmidt:

The Long Green Valley Association, Inc. just received notification of a hearing scheduled for April 28, 2004 in the above referenced matter. The LGVA contacted Mr. Carroll Holzer to represent us and he was unable because of a scheduling conflict. Upon learning of Mr. Holzer's unavailability, the LGVA called Michael Tanczyn to see if he could represent the LGVA at the April 28th hearing.

Mr. Tanczyn agreed to represent the LGVA only if the case were to be postponed and rescheduled from the April 28th date because Mr. Tanczyn, too, had a scheduling conflict. Since this is the first request for postponement, the LGVA believes that neither party would be prejudiced by granting the postponement. Mr. Tanczyn is willing to work with your office to reschedule this hearing at a mutually convenient date. If not, the LGVA would have to appear at the hearing without legal representation.

Very truly yours,

Charlotte Pine, President, LGVA, Inc.

Very truly yours,

Michael Tanczyn, Esq.

0013132 201

Petitioners Memo Exhibit 2
Pine Signature

NO TITLE EXAMINATION MADE OR REQUESTED

Tax ID No. 11-16-045425
13310 Fork Road

THIS DEED, Made this 17 day of August, 1998, by and between **CHARLOTTE W. PINE,** party of the first part, Grantor, and **CHARLOTTE W. PINE,** party of the second part, Grantee.

WITNESSETH: That for no consideration, the said CHARLOTTE W. PINE does grant and convey unto CHARLOTTE W. PINE, for and during the term of her natural life, with powers of disposition as hereinafter provided, and from and immediately after the death of CHARLOTTE W. PINE, as to so much thereof or any interest therein as may not have been disposed of by CHARLOTTE W. PINE, under the powers hereinafter set forth, unto her granddaughter, LEE ALEXANDRA TISSAW, also known as LEE ALEXANDRA PINE, her personal representatives and assigns, in fee simple, all that lot of ground situate in Baltimore County, State of Maryland, and described as follows:

AS DESCRIBED ON THE ATTACHED SHEET MARKED "DESCRIPTION".

"DESCRIPTION"

BEGINNING FOR THE SAME at the intersection of the centre of the County Road leading from Baldwin to Fork sometimes called Joppa and Manor Road with the centre line of the County Road leading to Treadwell Mill and running thence binding on the centre of the said Joppa Road and Manor Road the two following courses and distances, viz: North 27 degrees 42 minutes West 168.15 feet and North 25 degrees 15 minutes West 313.42 feet to a point in line with the division fence between the land now being described and land now or formerly belonging to Charles J. Snavely and thence to and binding on said division fence the two following courses and distances: South 62 degrees 50 minutes West 493.85 feet and South 63 degrees 59 minutes West 642.85 feet to another fence on the North 41 degrees West 50 perches line of the land described in a Deed from Helen J. Lilly, et al. to Annie Pleasants Troy dated November 19, 1913, recorded among the land Records of Baltimore County in Liber WPC No. 423, folio 48, etc., thence binding on said fence and on said line reversely South 35 degrees 51 minutes East 778.28 feet to the centre of the aforesaid Road leading to Treadwell Mill and to the Manor line, thence with and binding on the centre of said Road and on the said Manor line, the three following courses and distances, viz: North 44 degrees 37 minutes East 147.22 feet North 47 degrees 14 minutes East 500 feet and North 49 degrees 8 minutes East 400 feet to the place of beginning. Containing 15.32 acres more or less.

SAVING AND EXCEPTING from the above property all that portion thereof described in the three following Deeds from Charles A. Snavely and Helen M. Snavely, his wife, the first thereof to Henry C. Fisher, Jr. and wife dated November 5, 1949 and recorded among the Land Records of Baltimore County in Liber TBS No. 1794, folio 403, the second thereof to Oliver Joseph Stifler dated April 11, 1950 and recorded among the Land Records aforesaid in Liber TBS No. 1840, folio 131, and the third thereof to Mabel I. Fischer dated June 25, 1952, and recorded among the Land Records aforesaid in Liber GLB No. 2131, folio 20.

THE IMPROVEMENT BEING KNOWN AS No. 13310 Fork Road.

BEING THE SAME property which by Deed dated June 27, 1952 and recorded among the Land Records of Baltimore County in Liber GLB No. 2134, folio 268 was granted and conveyed by Charles A. Snavely and Helen M. Snavely, his wife, unto James A. Pine and Charlotte W. Pine, his wife.

THE SAID James A. Pine departed this life on January 22, 1998, thereby vesting fee simple title in Charlotte W. Pine, by right of survivorship.

TOGETHER with the buildings thereupon, and the rights, alleys, ways, waters, privileges, appurtenances and advantages thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD the said described lot of ground and premises to the said CHARLOTTE W. PINE, for and during the term of her natural life, with full power, however, to grant, convey, sell, mortgage, lease, or in any other manner dispose of or encumber the whole or any part of or interest in said property in any manner whatsoever (except, however, the power of disposition thereof by Last Will and Testament) without the consent or joinder of the remainderman or anyone else, and the proceeds of any sale or sales thereof, or money borrowed and secured by any mortgage thereof, to take and expend or dispose of in any manner that she may wish, or to consume for her own purposes without obligation on the part of the purchaser, mortgagee, lessee, or assignee or grantee to see to the application of the money so borrowed or any money which may be the proceeds of any sale, mortgage, lease or disposition of any part of or interest in said property, it being the intention hereof that the exercise of any of the powers hereinbefore set forth shall operate not only upon the life estate hereby granted unto CHARLOTTE W. PINE, but also upon the estate in remainder as herein provided, and from and immediately after the death of CHARLOTTE W. PINE, as to so much thereof or any interest therein as may not have been disposed of by CHARLOTTE W. PINE, unto her granddaughter, LEE ALEXANDRA TISSAW, also known as LEE ALEXANDRA PINE, her personal representatives and assigns, in fee simple.

AND the said party of the first part hereby covenants that she has not done or suffered to be done any act, matter or thing whatsoever, to encumber the property hereby conveyed; that she will warrant specially the property hereby granted; and that she will execute such further assurances of the same as may be requisite.

WITNESS the hand and seal of the said Grantor.

TEST:

James G. Klaus
JAMES G. KLAUS

Charlotte W. Pine (SEAL)
CHARLOTTE W. PINE

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY, That on this 17TH day of August, 1998, before me, the subscriber, a Notary Public of the State of Maryland, in and for Baltimore County, personally appeared **CHARLOTTE W. PINE**, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that she executed the same for the purposes therein contained, and in my presence signed and sealed the same.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

ROBERT E. JOY Notary Public

ROBERT E. JOY NOTARY PUBLIC Baltimore Co., Md.

My Commission expires: ROBERT E. JOY, Notary Public State of Maryland ~~My Commission Expires May 1, 2001~~

THIS IS TO CERTIFY THAT THE WITHIN INSTRUMENT WAS PREPARED BY OR UNDER THE SUPERVISION OF THE UNDERSIGNED, AN ATTORNEY DULY ADMITTED TO PRACTICE BEFORE THE COURT OF APPEALS OF MARYLAND.

ROBERT E. JOY, ATTORNEY

MAIL TO: ROBERT E. JOY, ESQUIRE
11 Center Place
Dundalk, MD 21222
410-282-3450

THIS DEED OF CONSERVATION EASEMENT ("Conservation Easement") made this 29 day of December, 1998, by and between MARK J. DANEKER ("Grantor") and the LONG GREEN VALLEY CONSERVANCY, INC., having an address at Post Office Box 133, Long Green, Maryland 21092 ("Grantee").

WITNESSETH

WHEREAS the Long Green Valley Conservancy, Inc., is a not-for-profit, tax-exempt organization established to preserve the farmland, historic landmarks and predominantly rural character of the Long Green Valley National Register Historic District and its environs;

WHEREAS Grantor owns in fee simple 19.02 acres, more or less, of certain real Property ("Property") situate, lying and being in the eleventh election District of Baltimore County, Maryland, and more particularly described in Exhibit A attached hereto, which was conveyed to the Grantor by Mildred Z. Daneker, Personal Representative by Deed dated February 13, 1988 and recorded among the land records of Baltimore County, Maryland in Liber SM No. 7835, folio 15 :

WHEREAS Grantor is willing to grant a perpetual Conservation Easement over the Property, thereby restricting and limiting the use of the land and contiguous water areas of the Property, on the terms and conditions and for the purposes hereinafter set forth, and Grantee is willing to accept such Conservation Easement;

WHEREAS Grantor and Grantee recognize the open-space conservation value of the Property as a natural and rural area that has not been subject to development, and have identified significant conservation features in Exhibit B attached hereto;

WHEREAS Grantor and Grantee have a common purpose in conserving the dominant scenic, cultural, rural, agricultural, woodland and wetland character of the Property, and, except as hereinafter provided, limiting the use or development of the Property for any purpose or in any manner that would conflict with the maintenance of the Property in its open-space condition;

WHEREAS Grantee is authorized by the State of Maryland to accept, hold and administer conservation easements, and possesses the authority to accept and is willing to accept this Conservation Easement under the terms and conditions hereinafter described, and is a "qualified organization" within the meaning of Section 170(h)(3) of the Internal Revenue Code;

NOW THEREFORE, as an absolute gift for no monetary consideration ($0.00) but in consideration of the mutual covenants, terms, conditions and restrictions hereinafter set forth, Grantor unconditionally and irrevocably hereby grants and conveys unto Grantee, its successor and assigns, forever and in perpetuity a Conservation Easement of the nature and character and to the extent hereinafter set forth, with respect to the Property.

The purpose of this Conservation Easement is to preserve and protect the environment of the Property and to maintain permanently the open-space values of the Property and the dominant scenic, historic, cultural, rural, agricultural, woodland and wetland character of the Property.

Bell Protestant Exhibit #4

CR

To achieve these objectives, the following conditions and restrictions are set forth:

ARTICLE I. DURATION OF EASEMENT

The Conservation Easement shall be perpetual. It is an easement in gross and as such is inheritable and assignable in accordance with Article VI and runs with the land as an incorporeal interest in the Property, enforceable with respect to the Property by the Grantee against Grantor and his personal representatives, heirs, successors and assigns.

ARTICLE II. PROHIBITED AND RESTRICTED ACTIVITIES

A. Industrial or commercial activities other than farming, silviculture and horticulture are prohibited on the Property, except for (1) such activities as can be conducted in residential structures (or their replacements) without material effect on the external appearance thereof, and (2) the sale to the public of agricultural or forestry products produced on the Property.

B. Display of billboards, signs or advertisements is prohibited on or over the Property, except (1) to state solely the name and/or address of the Property and/or the owners; (2) to advertise the sale or lease of the Property; (3) to advertise the agricultural, horticultural, silvicultural and naturalistic uses of the Property; (4) to advertise the sale of goods or services produced by permitted uses of the Property; (5) to post the Property against hunting and trespassing; or (6) to commemorate the history of the Property, its recognition under state or federal historical registers, or its protection under this easement or state and local environmental or game laws; provided that no sign or billboard on the Property shall exceed four feet by six feet. Multiple signs shall be limited to a reasonable number, shall not damage living trees, and shall be placed in accordance with applicable local regulations.

C. Dumping of soil, trash, ashes, garbage, waste, abandoned vehicles, appliances, machinery or other materials on the Property is prohibited, except that soil, rock, other earth materials, wood, vegetative matter, manure or compost may be placed (1) as may be reasonably necessary for agriculture and silviculture on the Property or (2) as may be reasonably necessary for the construction or maintenance of structures permitted under this Conservation Easement and means of access.

D. Excavation, dredging, mining and removal of loam, gravel, soil, rock, sand, coal, petroleum and other materials are prohibited, except (1) for the purpose of combatting erosion or flooding, (2) for agriculture or silviculture on the Property, or (3) for the construction and/or maintenance of permitted structures, homesites, means of access and wildlife habitat.

E. Diking, draining, filling or removal of wetlands is prohibited.

F. Management and harvesting of all forests on the Property shall be in accord with the Guide to Forest Harvest Operations and Best Management Practices or comparable provisions of any guidelines or regulations which may replace the Guide in the future or as they may be amended from time to time except that Grantee will not cut timber or trees within 50 feet of any stream on the Property.

G. No more than two residential dwellings and no other buildings, facility, or other structure shall be constructed on the Property after the date of this Conservation Easement, except:

(1) To construct accessory structures designed, constructed and utilized for the purpose of serving the two principal residences permitted (for example, garage, well house, swimming pool);

(2) To construct accessory structures designed, constructed and utilized in connection with the agricultural, horticultural, forestry, and naturalistic uses of the Property (for example, run-in sheds);

(3) To replace all existing structures and other structures permitted under this Conservation Easement with structures of similar purpose;

(4) To improve, repair, restore, alter, expand, remodel, and maintain all existing structures and other structures permitted under this Conservation Easement in this Article;

(5) To construct and maintain reasonable means of access to all permitted uses and structures;

(6) Grantors shall notify Grantee at least forty-five (45) days in advance of any work whether for construction or preparatory to construction regarding the location of any replacement residential structure if different from the original location of the replaced structure, and the location of a new means of access to a residential structure, and any such change shall be subject to the prior written approval of Grantee, not to be unreasonably withheld. The original location of the two residential structures shall be at the sole option of Grantor.

H. The total number of residential structures (including for example, but not limited to, principal residences, guest houses, tenant houses, farm manager houses, condominiums, apartments, fixed mobile homes and seasonal cabins)on the Property shall never exceed two (2).

I. Subdivision of the Property into two separate parcels in accordance with Baltimore County Regulations shall be permitted with all appropriate easements and restrictions, but subdivision into more than two parcels of land, is prohibited except that division to establish and grant a road bed, right of way or easement shall not be prohibited nor require Grantee's consent and shall not be considered Subdivision of the Property for purposes of this paragraph. However, Grantee may approve the division of the Property for other reasons which Grantee determines are sufficiently extraordinary to justify an exception to the prohibition. A division of the Property to effect a trade for other property which is subjected to an easement acceptable to the Grantee is illustrative.

J. The Property has five development rights under current Baltimore County Zoning regulations. Grantor hereby grants to Grantee all development rights except two which are specifically reserved hereby together with any hereafter allocated to, implied, or inherent in the Property, and the parties agree that said three granted rights will not be exercised by the Grantor

and may not be used or transferred to any portion of the Property as it now or hereafter may be bounded or described, or to any other property adjacent or otherwise, nor used for the purpose of calculating permissible lots on the Property. All such granted development rights which might now or hereafter become or represent a transferable density right attributable exclusively to the Property, except the two specifically retained, are hereby assigned and transferred to Long Green Valley Conservancy, Inc. and may be sold by it as a participant in any transferable density rights program for use outside of the Long Green Valley Historic District.

K. All rights reserved by Grantor or activities not prohibited by this Conservation Easement shall be exercised so as to prevent or to minimize damage to water quality, air quality, land/soil stability and productivity, wildlife, scenic and cultural values, and the natural topographic and open-space character of the Property.

L. Except to the extent that prior written approval of Grantee is required by any paragraph of this Article, all rights reserved by Grantors or not prohibited by this Conservation Easement are considered to be consistent with the conservation purpose of this Conservation Easement and require no prior notification or approval, except that, if Grantor believes or reasonably should believe that the exercise of a reserved right may have a significant adverse effect on the conservation interests associated with the Property, Grantor shall notify Grantee in writing before exercising such right.

ARTICLE III. ENFORCEMENT AND REMEDIES

A. Upon any breach of the terms of this Conservation Easement by Grantor, Grantee may, after reasonable notice to Grantor, exercise any or all of the following remedies:

(1) institute suits to enjoin any breach or enforce any covenant by ex parte temporary, and/or permanent injunction either prohibitive or mandatory; and

(2) require that the Property be restored promptly to the condition required by this Conservation Easement.

Grantee's remedies shall be cumulative and shall be in addition to any other rights and remedies available to Grantee at law or equity.

B. No failure on the part of Grantee to enforce any covenant or provision hereof shall discharge or invalidate such covenant or any other covenant, condition, or provision hereof or affect the right of Grantee to enforce the same in the event of a subsequent breach or default.

C. Grantee, its employees and agents and its successors and assigns, have the right, with reasonable notice, to enter the Property at reasonable times for the purpose of inspecting the Property to determine whether the Grantors, their personal representatives, heirs, successors or assigns are complying with the terms, conditions and restrictions of this Conservation Easement. This right of inspection does not include access to the interior of buildings and structures.

D. Nothing herein contained is intended to bestow or grant to any person or

organization other than Grantee any right or interest entitling such person or organization to enforce this agreement or to obtain any remedy. It is intended that the Grantee shall have sole discretion and exclusive rights to enforcement or remedies with regard to this Agreement.

ARTICLE IV. PUBLIC ACCESS

The granting of this Conservation Easement does not convey to the public the right to enter the Property for any purpose whatsoever.

ARTICLE V. EXHIBITS

The following exhibits are hereby made a part of this Conservation Easement:

A. Exhibit A: Boundary Description and Property Reference is attached and made part hereof. Exhibit A consists of two pages.

B. Exhibit B: Summary of Conservation Values is attached and made part hereof. Exhibit B consists of two pages.

These exhibits reflect the existing uses, conservation values and structures on the Property as of the date of this Conservation Easement.

ARTICLE VI. MISCELLANEOUS

A. Grantee may assign, upon prior written notice to Grantor, its rights under this Conservation Easement to any "qualified organization" within the meaning of Section 170(h)(3) of the Internal Revenue Code or the comparable provision in any subsequent revision of the Code and only with assurances that the purposes of this Conservation Easement will be maintained; and, if any such assignee shall be dissolved or shall abandon this Conservation Easement or the rights and duties of enforcement herein set forth, or if the proceedings are instituted for condemnation of this Conservation Easement, the easement and rights of enforcement shall revert to Grantee; and if grantee shall be dissolved and if the terms of the dissolution fail to provide a successor, then Grantors, their personal representatives, heirs, successors or assigns, shall institute a court of competent jurisdiction proceeding to appoint an appropriate successor as Grantee. Any such successor shall be a "qualified organization" within the meaning of Section 170(h)(3) of the Internal Revenue Code or the comparable provision in any subsequent revision of the Code. No assignment may be made by Grantee of its rights under this Conservation Easement unless Grantee, as a condition of such assignment, requires the assignee to carry out the conservation purposes of this Conservation Easement.

B. Grantor agrees for himself, his personal representatives, heirs, successors and assigns, to notify Grantee in writing of the names and addresses of any party to whom the Property, or any part thereof, is to be transferred at or prior to the time said transfer is consummated. Grantor, his personal representatives, heirs, successors and assigns further agrees to make specific reference to this Conservation Easement in a separate paragraph of any subsequent deed or other legal instrument by which any interest in the Property is conveyed.

C. Grantee agrees to hold this Conservation Easement exclusively for conservation purposes, as defined in Section 170(h)(4)(A) of the Internal Revenue Code.

D. The donation of this Conservation Easement gives rise to a property right, immediately vested in Grantee, with a fair market value equal to the proportionate value that the Conservation Easement bears to the value of the Property as a whole.

E. This Conservation Easement shall be construed to promote the purposes of the statutes creating and governing the Maryland Environmental Trust, the purposes of Section 2-118 of the Real Property Article of the Annotated Code of Maryland, and the conservation purposes of this Conservation Easement, including such purposes as are defined in Section 179(h)(4)(A) of the Internal Revenue Code.

F. The provisions of this Conservation Easement do not replace, abrogate or otherwise set aside any local, state or federal laws, requirements or restrictions applicable to the Property.

G. This instrument sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings or agreement relating to the Conservation Easement. If any provision is found to be invalid, the remainder of the provisions of this Conservation Easement, and the application of such provision to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

H. Grantee shall record this instrument in timely fashion in the official records of Baltimore County, Maryland, and may re-record it at any time as may be required to preserve their rights under this Conservation Easement.

I. Grantor and Grantee agree that all mortgages and deeds of trust affecting the property are subordinate to the rights of Grantee under this Conservation Easement.

J. Any notices by Grantor to Grantee pursuant to any provision hereof shall be sent by registered mail, return receipt requested, addressed to the Long Green Valley Conservancy, Inc., Post Office Box 133, Long Green, Maryland 21092 or to such other addresses as Grantee may establish in writing on notification to Grantors.

K. In any case where the terms of this Conservation Easement require the consent of Grantee, such consent shall be requested by notice to Grantee. Such consent shall be deemed to have been given unless within forty-five (45) days after receipt of notice Grantee mails notice to grantor of disapproval and the reason therefore.

L. The terms "Grantor" and "Grantee" shall include their respective successors and assigns.

TO HAVE AND TO HOLD unto THE LONG GREEN VALLEY CONSERVANCY, INC. its successors and assigns forever. The covenants agreed to and the terms, conditions,

restrictions and purposes imposed as aforesaid shall be binding upon Grantors, their survivors, agents, personal representatives, heirs, assigns and all other successors to them in interest, and shall continue as a servitude running in perpetuity with the Property.

IN WITNESS WHEREOF, Grantor and Grantee have hereunto set their hands and seals the day and year above written.

WITNESS:

D. Jean Cross

GRANTOR:

(SEAL)
Mark J. Daneker

STATE OF MARYLAND, COUNTY OF BALTIMORE: TO WIT:

I HEREBY CERTIFY, that on this 29th day of December 1998, before me the subscriber, a Notary Public of the State aforesaid, personally appeared Mark J. Daneker, known to me (or satisfactorily proven) to be the Grantor of the foregoing Deed of Conservation Easement and acknowledged that he executed the same for the purposes therein contained and in my presence signed and sealed the same.

WITNESS my hand and Notarial Seal.

Dorothy Jean Cross
Notary Public

DOROTHY JEAN CROSS NOTARY PUBLIC HARFORD COUNTY, MD.

My Commission Expires: 10/1/02

ACCEPTED BY

THE LONG GREEN VALLEY CONSERVANCY, INC., AS GRANTEE:

Catherine G. Ebert
Catherine G. Ebert, President

I hereby certify that the within instrument was prepared by me or under my supervision, and that I am an attorney duly admitted to practice before the Court of Appeals of the State of Maryland.

Jane D. Pence

GORDON T. LANGDON
EDWARD F. DEIACO-LOHR
BRUCE E. DOAK

GERHOLD, CROSS & ETZEL, LTD.
Registered Professional Land Surveyors
SUITE 100
320 EAST TOWSONTOWN BOULEVARD
TOWSON, MARYLAND 21286-5318
410-823-4470
FAX 410-823-4473

EMERITUS
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OF COUNSEL
JOHN F. ETZEL
WILLIAM G. ULRICH

October 2, 1998

Portion of the Property
of Mark J. Daneker (17.992 Acres parcel)

All that piece of parcel of land situate, lying and being in the Eleventh Election District of Baltimore County, State of Maryland and described as follows to wit:

Beginning for the same at a stone heretofore set at the beginning of a parcel of land which by a deed dated February 13, 1988 and recorded among the Land Records of Baltimore County in Liber S.M. No. 7835 folio 15 was conveyed by Mildred Z. Daneker, Personal Representative of the Estate of Clayton W. Daneker, to Mark J. Daneker and thence running with and binding on the first line and on a part of the second line of said parcel of land and referring the courses of this description to the Baltimore County Grid Meridian, the two following courses and distances, viz: 1) North 86 degrees 56 minutes 14 seconds West 948.40 feet and, 2) North 87 degrees 38 minutes 37 seconds West 77.04 feet to intersect the easternmost outline of a parcel of land 100 feet wide which by a deed dated August 30, 1910 and recorded among the Land Records of Baltimore County in Liber W.P.C. No. 367 folio 149 was conveyed by Thomas T. Boswell and Sarah E. Boswell, his wife to the Susquehanna Transmission Company of Maryland, thence running and binding on a part of the easternmost outline of the said Susquehanna Transmission Company, 3) North 15 degrees 28 minutes 16 seconds East 668.97 feet to the southernmost outline of the parcel of land designated as part of Lot 8 containing 0.775 of an acre of land, more or less, and as shown Plat Two of Dulaney Valley Estates II which Plat is intended to be recorded among the Land Records of Baltimore County, thence leaving the aforesaid easternmost outline of the Susquehanna Transmission Company and binding on the outlines of the said designated part of Lot 8 the two following courses and distances, viz: 4) South 79 degrees 10 minutes 00 seconds East 134.54 feet and, 5) North 00 degrees 15 minutes 00 seconds East 510.77 feet to intersect the aforesaid easternmost outline of the Susquehanna Transmission Company and thence running and binding on a part of the aforesaid easternmost outline of the Susquehanna Transmission Company, 6) North 15 degrees 28 minutes 16 seconds East 440.73 feet to intersect the fourteenth or South 76 degrees 05 minutes 56 seconds East 483.84 foot line of the aforesaid parcel of land which was conveyed by Mildred Z. Daneker, Personal Representative, to Mark J. Daneker, and thence running with and binding on a part of said fourteenth line, 7) South 82 degrees 10 minutes 15 seconds East 13.52 feet to an iron pipe, heretofore set, at the beginning of the last line of the aforesaid parcel which was conveyed by Daneker to Daneker and running thence with and binding on said last line, 8) South 19 degrees 51 minutes 14 seconds East

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1708.51 feet to the place of beginning.

Containing 17.992 Acres of land, more or less.

Being a part of the land which by a deed dated February 13, 1988 and recorded among the Land Records of Baltimore County in Liber S.M. No. 7835 folio 15 was conveyed by Mildred Z. Daneker, Personal Representative of the Estate of Clayton W. Daneker to Mark J. Daneker.

For Title also see a deed dated December 15, 1980 and recorded among the Land Records of Baltimore County in Liber E.H.K. Jr. No. 6297 folio 345.

Being a part of Future Plat 3 as designated on the aforesaid Plat Two Dulaney Valley Estates II which plat Two is intended to be recorded among the Land Records of Baltimore County.

Together with the right and the use thereof in common with others entitled thereto of Bart Allen Lane, Milbert Ridge Drive and East Devonfield Drive as shown on the plats of Dulaney Valley Estates, said plats recorded among the Land Records of Baltimore County in Plat Book O.T.G. No. 32 folio 73 and G.L.B. No. 23 folio 17.

Together with the right to cross and recross the herein referred to property of the Susquehanna Transmission Company of Maryland.

STATE OF MARYLAND
GORDON T. LAWENDOWSKI
No. 172
REGISTERED
PROPERTY LINE SURVEYOR

C \OFFICE\WPWIN\WPDOCS\DESCRIPT\DANEK17A WPD

SUITE 100 • 320 EAST TOWSONTOWN BOULEVARD • TOWSON, MARYLAND 21286 • 410-823-4470 • FAX 410-823-4473

GORDON T. LANGDON
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PHILIP K. CROSS
OF COUNSEL
JOHN F. ETZEL
WILLIAM G. ULRICH

October 2, 1998

Portion of the Property
of Mark J. Daneker (1.037 acres parcel)

All that piece or parcel of land situate, lying and being in the Eleventh Election District of Baltimore County, State of Maryland and described as follows to wit:

Beginning for the same at an iron pipe, heretofore set, in the fourteenth or South 76 degrees 05 minutes 56 seconds East 483.84 foot line of a parcel of land which by a deed dated February 13, 1988 and recorded among the Land Records of Baltimore County in Liber S.M. No. 7835 folio 15 and was conveyed by Mildred Z. Dancker, Personal Representative of the Estate of Clayton W. Daneker to Mark J. Daneker, at the intersection of said line with the westernmost outline of a parcel of land 100 feet wide, which by a deed dated August 30, 1910 and recorded among the Land Records of Baltimore County in Liber W.P.C. No. 367 folio 149 was conveyed by Thomas T. Boswell and Sarah E. Boswell, his wife to the Susquehanna Transmission Company of Maryland, thence leaving the aforesaid fourteenth line and running and binding on aforesaid westernmost outline of the Susquehanna Transmission Company and referring the courses of this description to the Baltimore County Grid Meridian, 1) South 15 degrees 28 minutes 16 seconds West 236.34 feet, thence leaving the said westernmost outline and binding on the northeasternmost outline of plat two Dulaney Valley Estates II which plat is intended to be recorded among the Land Records of Baltimore County, 2) North 48 degrees 41 minutes 59 seconds West 424.73 feet to the beginning of the aforesaid fourteenth line of the parcel of land which was conveyed by Daneker to Daneker and running thence with and binding on a part of said fourteenth line, 3) South 82 degrees 10 minutes 15 seconds East 385.72 feet to the place of beginning.

Containing 1.037 Acres of land, more or less.

Being a part of the parcel of land which by a deed dated February 13, 1988 and recorded among the Land Records of Baltimore County in Liber S.M. No. 7835 folio 15 was conveyed by Mildred Z. Daneker, Personal Representative of the Estate of Clayton W. Daneker to Mark J. Daneker.

For Title also see a deed dated December 15, 1980 and recorded among the Land Records of Baltimore County in Liber E.H.K. Jr. No. 6297 folio 345.

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Being a part of Future Plat 3 as designated on the aforesaid Plat Two Dulaney Valley Estates II which Plat Two is intended to be recorded among the Land Records of Baltimore County.

Together with the right to cross and recross the herein referred to property of the Susquehanna Transmission Company of Maryland.

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DEED OF CONSERVATION EASEMENT

Exhibit B

Summary of Conservation Values
Page One

1. Master Plan: This Conservation Easement is consistent with and supports the land use policy of the Baltimore County Maser Plan, 1989-2000 adopted in 1990 by the Baltimore County Planning Board.

   The Property lies within the Agricultural Preservation Zone. County goals for Agricultural Preservation Zones include:

   (a) Preserving agriculture and other resource conservation areas in Baltimore County is important for present and potential production of food and other crops, economic diversity, maintenance of environmental quality, open space protection, cultural site protection, and general quality of life. The County reaffirms its public policy to support the retention of a viable agricultural industry, and the protection of resource conservation areas.

   (b) It is the policy of Baltimore County to improve the quality of its environment by preserving rare and significant species habitat, anadromous fish habitat, tidal and non-tidal wetland habitat, in-stream and riparian habitat, and upland forest habitat. The property includes approximately 1000 feet of stream.

   (c) It is the policy of Baltimore County to restore and protect the water supply reservoirs.

2. Area of Critical State Concern: The Property lies within Long Green Valley, and the Long Green Run watershed, which were designated as Area of Critical State Concern for Baltimore County in 1977 by the Baltimore County Planning Board. (Source: Designation of Areas of Critical State Concern within Baltimore County, Baltimore County Planning Board, 1977.)

3. Scenic Value: The Property is an integral part of the rural scenic landscape of Baltimore County visible to the public from East Devonfield Road and Bart Allen Road.

4. Agricultural Land and Woodland: The Property includes about 5 acres of agricultural land and 14 acres of woodland which provides an extensive wildlife corridor linking other restricted use and conservation buffer areas.

5. Historic Value: The Property is located in the Long Green Valley National Register Historic District.

6. Long Green Valley Conservancy, Inc.: The conservation values of the Property defined above are pursuant to the conservation policies adopted by the Long Green Valley Conservancy, Inc.

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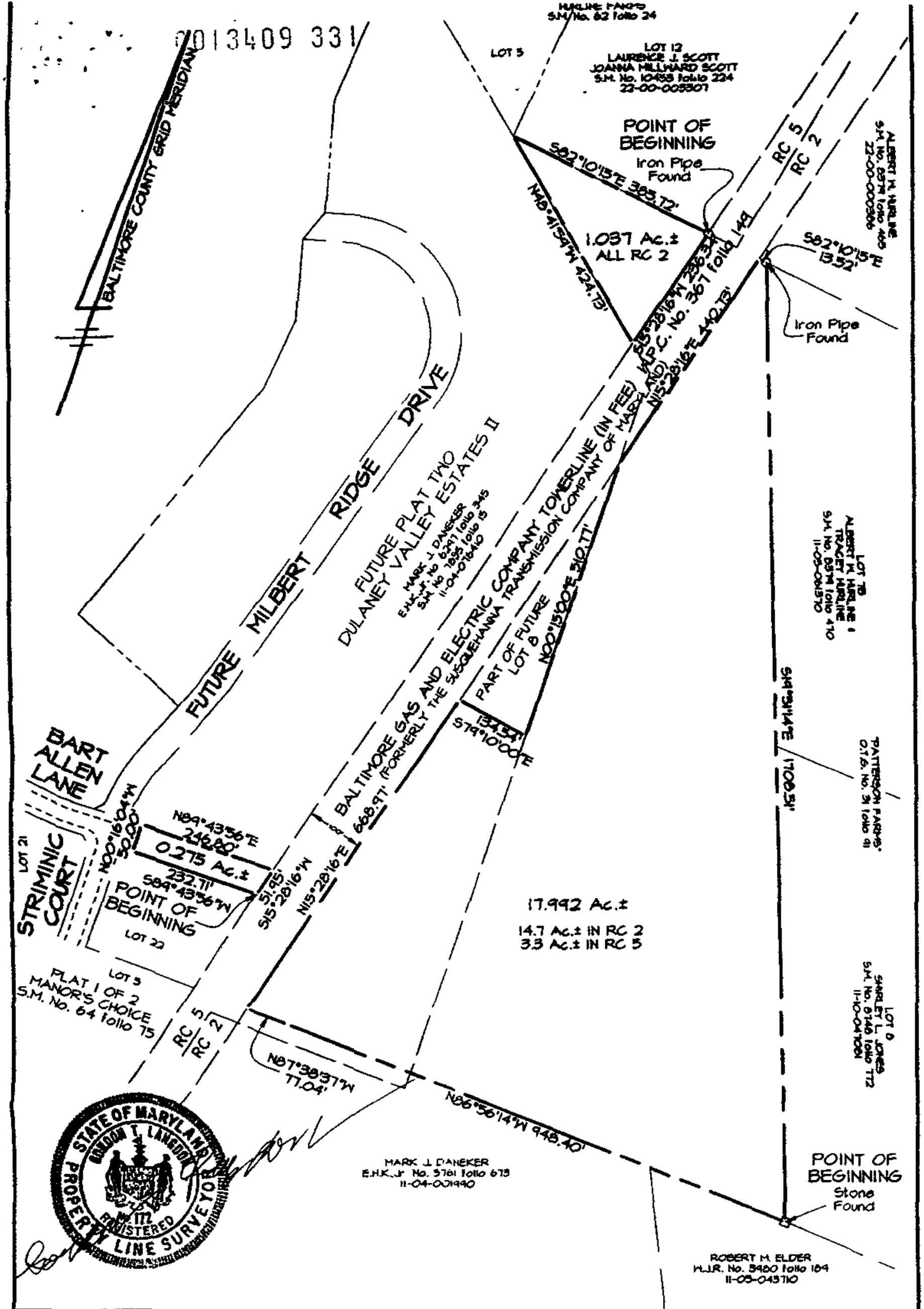

GERHOLD, CROSS & ETZEL, LTD. REGISTERED PROFESSIONAL LAND SURVEYORS Suite 100 320 East Towsontown Boulevard Towson, Maryland 21286 PH: (410)823-4470 FAX: (410)823-4473		PLAT SHOWING A PORTION OF THE PROPERTY OF MARK J. DANEKER DEED REF: E.H.K.,Jr. No. 6297 folio 345 & S.M. No. 7835 folio 15 11th ELECTION DISTRICT BALTIMORE COUNTY, MARYLAND	
FIELD WORK: G.T.L. 1991	DRAWN. S.A.L.	DATE: Oct. 2, 1998	SCALE: 1" = 200'

C

Court of Appeals of Maryland.
George I. BAXTER et al.
v.
MONTGOMERY COUNTY BOARD OF APPEALS et al.
No. 683.

Dec. 4, 1967.

The Circuit Court, Montgomery County, Thomas M. Anderson, J., dismissed an appeal by property owners from county board of appeals' grant of special exception to private educational institutional and property owners appealed. The Court of Appeals held that parties who sign petition in opposition to grant of special exception were 'parties aggrieved' for purpose of appeal from grant of special exception.

Reversed and remanded.

West Headnotes

[1] Zoning and Planning ⚷582.1
414k582.1 Most Cited Cases
(Formerly 414k582)
If county board of appeals received in writing the name of protestant as a protestant, it was sufficient to make him party before board.

[2] Zoning and Planning ⚷571
414k571 Most Cited Cases
Parties who sign petition in opposition to grant of special zoning exception were "parties aggrieved" for purpose of appeal from grant of special exception.

[3] Zoning and Planning ⚷571
414k571 Most Cited Cases
If pleadings on appeal from zoning board to court allege in terms or by reasonably permissible inference that appellants are aggrieved, court may hear evidence to establish that aggrievement.
***112 **536** Peter C. Andresen, Kensington, for appellants.

No brief filed for appellees.

Before HAMMOND, C. J., and HORNEY, MARBURY, BARNES, FINAN and SINGLEY, JJ.

PER CURIAM.

The appeal to this Court is from dismissal of an appeal to the Circuit Court for Montgomery County to protestants against the granting by the County Board of Appeals of a special exception for a private educational institution. Section 2-83, Montgomery County Code, 1965 (formerly s 2-88 in the Code of 1960), provides for an appeal from the Board 'by any person aggrieved by the decision of the board and a party to the proceeding before it * * *.' The petition of appeal in the Circuit Court alleged both that the appellants, Baxter and Pinion, were 'persons aggrieved * * * in that they are owners of property nearby or contiguous (to the subject property) * * * and would be adversely affected by the said decision, in that their property values would decrease and they would be specially damaged by noise and traffic * * *,' and that they were parties to the proceeding before the Board as signers (with appended addresses) of a petition admitted in evidence before the Board ***113** which protested the granting of the special exception and gave reasons for the protest.

Judge Anderson held that the signing of the petition of protest received by the Board was not enough to make Baxter and Pinion parties before the Board and that to be parties aggrieved they must have shown as part of the record before the Board the necessary elements of special interest and damage.

[1][2] The court below applied too strict tests. If the administrative body received in writing the name of the protestant as a protestant, this is sufficient to make him a party before the Board. Brashears v. Lindenbaum, 189 Md. 619, 628, 56 A.2d 844; Dubay v. Crane, 240 Md. 180, 184, 213 A.2d 487, 489 ('While it is not necessary that a ****537** protestant testify * * * it is incumbent on him, if he contemplates appealing an adverse

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Protestant Exhibit #5 - A

decision, to, at least, have the record show that he was a party to the proceeding'); Hertelendy v. Montgomery Co., 245 Md. 554, 567, 226 A.2d 672, 680 ('The filing of the letter * * * by the appellant and its acceptance into evidence by the Board were sufficient to meke Hertelendy a party to the proceeding. It is not required that he personally appear or personally testify at the hearing'); Bryniarski v. Montgomery County, 247 Md. 137, 143, 230 A.2d 289.

[3] It is established that if the pleadings on appeal from the Board to the Circuit Court allege in terms or by reasonably permissible inference that the appellants are aggrieved, the court may hear evidence to establish that aggrievement. Town of Somerset v. Montgomery County Board, 245 Md. 52, 63, 225 A.2d 294, and cases cited; Kennerly v. Mayor and City Council of Baltimore, 247 Md. 601, 233 A.2d 800.

Order dismissing appeal reversed, with costs, and *case remanded for further proceedings.*

248 Md. 111, 235 A.2d 536

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Court of Appeals of Maryland.
SUGARLOAF CITIZENS' ASSOCIATION et al.
v.
DEPARTMENT OF ENVIRONMENT et al.
No. 60 Sept. Term 1995.

Dec. 20, 1996.

Local landowners, environmental organizations and citizens' groups sought judicial review of determination of the Maryland Department of Environment (MDE) allowing construction to proceed for power-generating solid waste incinerator. The Circuit Court, Montgomery County, DeLawrence Beard, J., dismissed petitions for lack of standing, and appeal was taken. The Court of Special Appeals, 103 Md.App. 269, 653 A.2d 506, affirmed. Writ of certiorari was granted. The Court of Appeals, Eldridge, J., held that: (1) owners of farm adjacent to tract which encircled incinerator were adjoining or nearby property owners who were prima facie aggrieved by issuance of permits for incinerator for purposes of standing to bring action for judicial review; (2) evidence that much higher levels of toxic substances would fall on farm than on properties farther away from incinerator showed that effect on farm owners different from that on general public so as to support standing to bring action for judicial review; (3) administrative law judge (ALJ) sufficiently considered evidence that pollution from incinerator would harm wildlife and humans; (4) refuse disposal permit sufficiently indicated disposal sites for nonhazardous and possibly hazardous ash and compliance with county solid waste management plan; (5) air quality standards for ozone nonattainment areas under 1990 Amendments to Clean Air Act (CAA) did not apply to applications for permits submitted before state had incorporated new regulations into its plan; and (6) plaintiffs were not entitled to discovery prior to contested case hearing on issuance of permits for incinerator.

Judgment of the Court of Special Appeals reversed, and case remanded with directions.

West Headnotes

[1] Administrative Law and Procedure ⚷665.1
15Ak665.1 Most Cited Cases
Person may properly be party at agency hearing under relatively lenient standards for administrative standing but not have standing in court to obtain judicial review to challenge adverse agency decision.

[2] Administrative Law and Procedure ⚷668
15Ak668 Most Cited Cases
In order to be "aggrieved" for purposes of standing to bring action for judicial review under Administrative Procedure Act (APA), person ordinarily must have interest such that he or she is personally and specifically affected in way different from public generally. Code, State Government, § 10- 222(a)(1).

[3] Administrative Law and Procedure ⚷450.1
15Ak450.1 Most Cited Cases

[3] Environmental Law ⚷378
149Ek378 Most Cited Cases
(Formerly 199k25.5(9) Health and Environment)
Local landowners, environmental organizations and citizens' groups had standing as parties to participate in administrative hearing on decision of Department of Environment to issue two permits which authorized construction of solid waste incinerator, absent identification of any statute or regulation prescribing more demanding criteria for administrative standing in such case.

[4] Constitutional Law ⚷79
92k79 Most Cited Cases
Under basic principles of administrative law, as well as separation of powers requirement, it is not proper function of administrative official or agency in executive branch of government to decide whether plaintiff or potential plaintiff has standing to maintain action in court for judicial review of agency action; although General Assembly may enact legislation affecting standing to bring type of action in court or prescribing criteria for standing to

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5-
4-B

bring such action, determination of whether person has standing to maintain action in court is exclusively judicial rather than administrative function. Const.Declaration of Rights, Art. 8.

[5] Action ⚷13
13k13 Most Cited Cases
Standing to challenge governmental action, and merits of challenge, are separate and distinct issues.

[6] Environmental Law ⚷656
149Ek656 Most Cited Cases
(Formerly 199k25.15(4.1) Health and Environment)
Whether evidence at administrative hearing indicated likely fallout of toxic substances from incinerator upon landowners' properties would be at level acceptable under government air quality standards was erroneous test for standing of landowners to bring action for judicial review of decision to issue permits for construction of incinerator; test went to merits of case and would preclude standing for judicial review even if landowners suffered legally cognizable harm and administrative law judge (ALJ) had erroneously excluded issues and evidence or misconstrued law.

[7] Zoning and Planning ⚷571
414k571 Most Cited Cases
In actions for judicial review of administrative land use decisions, adjoining, confronting or nearby property owner is deemed, prima facie, to be person aggrieved for standing purposes, and person challenging aggrievement has burden of denying such damage in answer to petition for judicial review and of coming forward with evidence to establish that petitioner is not, in fact, aggrieved.

[8] Environmental Law ⚷656
149Ek656 Most Cited Cases
(Formerly 199k25.15(4.1) Health and Environment)
Owners of farm located 2,000 feet from incinerator and adjacent to tract of land which encircled incinerator and which contained generating stations utilizing energy produced by incinerator were adjoining or nearby property owners and, thus, were prima facie aggrieved by issuance of permits for incinerator for purposes of standing to bring action for judicial review of permit decisions.

[9] Environmental Law ⚷656
149Ek656 Most Cited Cases
(Formerly 199k25.15(4.1) Health and Environment)
Evidence adduced at administrative hearing demonstrating that much higher levels of toxic substances would fall on farm adjacent to parcel containing incinerator than would fall on properties farther away from incinerator site showed that owners of farm would be affected in way different from general public so as to support their standing to bring action for judicial review of issuance of permits for incinerator.

[10] Environmental Law ⚷690
149Ek690 Most Cited Cases
(Formerly 199k25.15(11) Health and Environment)
Administrative law judge's (ALJ) erroneous statements concerning exclusion of evidence relating to initial prevention of significant deterioration (PSD) permit from hearing on subsequent permit for construction of incinerator and refuse disposal permit did not result in prejudicial error absent demonstration that objectors were actually precluded at adjudicatory hearing from raising PSD issues or from presenting evidence pertinent to construction and refuse disposal permits on ground that issues had earlier been resolved at preliminary PSD stage.

[11] Environmental Law ⚷272
149Ek272 Most Cited Cases
(Formerly 199k25.6(5.1) Health and Environment)

[11] Environmental Law ⚷301
149Ek301 Most Cited Cases
(Formerly 199k25.6(5.1) Health and Environment)
Administrative law judge (ALJ) sufficiently considered evidence that pollution from proposed incinerator would harm wildlife and humans, along with conflicting evidence, in making findings and conclusions that overall level of risk to environment from facility was insignificant for purposes of reviewing issuance of permits necessary for construction of incinerator; ALJ specifically considered evidence on arsenic emissions, polychlorinated biphenyls (PCBs), and level of mercury in fish and pond water from incinerator.

[12] Environmental Law ⚷272
149Ek272 Most Cited Cases
(Formerly 199k25.6(5.1) Health and Environment)
Preamble to Federal Register, in which Environmental Protection Agency (EPA) explained

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that toxicity equivalents (TEQs) was one of several methods by which New Source Performance Standards (NSPS) level for dioxide emissions could be measured, supported administrative law judge's (ALJ) decision to use TEQ approximation of dioxide emissions standard to determine whether dioxide level for proposed solid waste incinerator would conform to NSPS. 40 C.F.R. § 60.53a(b).

[13] Environmental Law ⚷272
149Ek272 Most Cited Cases
(Formerly 199k25.5(5.5) Health and Environment)

[13] Environmental Law ⚷433(2)
149Ek433(2) Most Cited Cases
(Formerly 199k25.5(5.5) Health and Environment)
Although administrative law judge (ALJ) erroneously determined that Resource Conservation and Recovery Act (RCRA) was inapplicable to incinerator ash generated from proposed facility, ALJ sufficiently considered issue of RCRA compliance for permits necessary for construction of solid waste incinerator by alternatively finding that applicants for permits had established they would dispose of any ash found to be toxic at particular landfill.

[14] Environmental Law ⚷272
149Ek272 Most Cited Cases
(Formerly 199k25.5(5.5) Health and Environment)

[14] Environmental Law ⚷433(2)
149Ek433(2) Most Cited Cases
(Formerly 199k25.5(5.5) Health and Environment)
Refuse disposal permit for new solid waste incinerator sufficiently indicated necessary disposal sites for nonhazardous and possibly hazardous ash discharged from facility and compliance with county solid waste management plan; application for permit indicated specific landfill as proposed site for ash and alternative specific landfill for any ash found to be hazardous in future, and letter from county and evidence presented at hearing supported finding that facility would be consistent with waste management plan.

[15] Environmental Law ⚷287
149Ek287 Most Cited Cases
(Formerly 199k25.6(5.1) Health and Environment)
More demanding air quality standards for ozone nonattainment areas under 1990 Amendments to Clean Air Act (CAA) did not apply to applications for permits for construction of solid waste incinerator submitted before state had incorporated new regulations pertaining to ozone nonattainment areas into its state implementation plan (SIP). Clean Air Act, §§ 101, 172, 173, 181, as amended, 42 U.S.C.A. §§ 7401, 7502, 7503, 7511,

[16] Environmental Law ⚷272
149Ek272 Most Cited Cases
(Formerly 199k25.6(5.1) Health and Environment)

[16] Environmental Law ⚷301
149Ek301 Most Cited Cases
(Formerly 199k25.6(5.1) Health and Environment)
Administrative law judge (ALJ) sufficiently considered food chain routes of exposure to air toxins released from proposed solid waste incinerator in approving issuance of permits for incinerator, by examining two comprehensive risk assessments which both examined various toxins likely to accumulate in local farm ponds, measured resulting harm from consumption of fish within those ponds, and estimated harm from consumption of milk and beef from livestock raised on local farms and from vegetables grown on those farms. Md.Regs. Code title 26, § 11.15.06.

[17] Constitutional Law ⚷278.1
92k278.1 Most Cited Cases

[17] Environmental Law ⚷378
149Ek378 Most Cited Cases
(Formerly 199k25.5(9) Health and Environment)
Local landowners, environmental organizations and citizens' groups did not have right under due process clause, or other authority, to discovery prior to contested case hearing on issuance of permits for new solid waste incinerator, absent stipulation of parties providing for such discovery, and absent showing of reliance by administrative law judge (ALJ) or by Department of Environment upon any document which was not previously shown to plaintiffs or with regard to which there was no opportunity for rebuttal. U.S.C.A. Const.Amend. 14 ; Md.Regs. Code title 26, § 01.02.21A.
****608 *276** Mick G. Harrison (Richard E. Condit, on brief), Washington, DC, for Petitioner.

Lawrence P. Fletcher-Hill, Assistant Attorney General (Joseph J. Curran, Jr., Attorney General;

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Ann Marie DeBiase, Assistant Attorney General, on brief), Baltimore, for Appellee.

Deborah E. Jennings (Roger D. Redden, Gina M. Zawitoski, Piper & Marbury, L.L.P., on brief), Baltimore, for Respondent.

Charles W. Thompson, Jr., County Attorney (A. Katherine Hart, Senior Assistant County Attorney, Diane Schwartz Jones, Associate County Attorney, on brief) Rockville, for Montgomery County.

Andrea C. Ferster, Laura D. Middleton, Washington, DC, Amicus Curiae for Montgomery Cty.

Argued before MURPHY, C.J., [FN*] and ELDRIDGE, RODOWSKY, CHASANOW, KARWACKI and BELL, JJ.

FN* Murphy, C.J., now retired, participated in the hearing and conference of this case while an active member of this Court; after being recalled pursuant to the Constitution, Article IV, Section 3A, he also participated in the decision and the adoption of this opinion.

*277 ELDRIDGE, Judge.

The dispute in this case concerns the decision of the Maryland Department of the Environment (the Department) to issue two permits which authorized the construction of a solid waste incinerator near Sugarloaf Mountain in Dickerson, Maryland. A group comprised of local landowners, environmental organizations and citizens' groups challenged the Department's decision by filing in the Circuit Court for Montgomery County an action for judicial review under the Maryland Administrative Procedure Act, Maryland Code (1984, 1995 Repl.Vol.), § 10-222 of the State Government Article. [FN1] The circuit court **609 dismissed the action on the ground that none of the plaintiffs had standing to seek review of the Department's decision. The Court of Special Appeals affirmed. *Sugarloaf v. Dept. of Environment,* 103 Md.App. 269, 653 A.2d 506 (1995). We issued a writ of certiorari to determine whether the two courts below correctly interpreted and applied Maryland law regarding standing to maintain actions for judicial review of adjudicatory administrative decisions. Since we shall hold that both courts below erred with respect to standing, we shall also determine whether the administrative decision ***278** should be upheld on the merits in light of the judicial review criteria set forth in the Administrative Procedure Act, § 10-222(h)(3) of the State Government Article.

FN1. The plaintiffs in this action include the following organizations and landowners:
(1) the Audubon Naturalist Society, owner of property approximately 20-25 miles from the incinerator;
(2) the Izaak Walton League, owner of property approximately 4 miles from the incinerator;
(3) the Sugarloaf Citizens' Association, a non-profit organization seeking to protect and preserve the environment;
(4) the Dickerson-Beallsville Coalition, a non-profit organization with 9 of its 44 members owning property close to the incinerator;
(5) the Buchanans, owners of 234 acres of land located adjacent to the tract of land containing the incinerator, and approximately 2,000 feet from the incinerator itself;
(6) Kenneth Cox and Tracey Morgan, owners of 16 acres of land located approximately 1 mile from the incinerator;
(7) Jane Hunter, owner of 55 acres of land located approximately 1 mile from the incinerator;
(8) Gail Morgan, owner of 16 acres of land located approximately 1 mile from the incinerator; and
(9) John Snitzer, owner of 2 1/2 acres of land located approximately 1 1/4 miles from the incinerator.

I.

The Potomac Electric Power Company (PEPCO) owned a tract of land, containing over 1,000 acres, in the Dickerson area of Montgomery County, Maryland. Two generating stations operated by PEPCO and auxiliary structures were on the tract.
In 1987, PEPCO and Montgomery County entered into a transaction whereby the County purchased a

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35-acre portion of the PEPCO tract to build a Resource Recovery Facility which would incinerate solid waste and would produce energy for sale to PEPCO. The facility was to be designed and constructed jointly by Montgomery County and the Northeast Maryland Waste Disposal Authority.

Among the several plaintiffs who opposed the construction of this facility were the Buchanans, owners of approximately 234 acres of land immediately adjacent to the PEPCO tract. About two hundred of the Buchanans' acres are devoted to farming, while the remaining acreage constitute woodland. [FN2] The Buchanans' property is located approximately 2,000 feet from the facility, and is separated from the PEPCO property by a narrow road. [FN3]

FN2. The Buchanans had resided on this property since 1988. Following Mr. Buchanan's recent death, Mrs. Buchanan continues to reside on this property with three of her seven children. The property is also used for boarding and training horses and riders. The Buchanans grow various crops on this property, which is a source of food for both the family and the horses.

FN3. According to testimony at the administrative hearing, the Buchanan property is located only 600 feet from the site of the proposed incinerator. Later at the hearing, however, counsel for the parties stipulated that the property was 2,000 feet from the facility.

In 1988 Montgomery County and the Northeast Maryland Waste Disposal Authority filed an application with the Department for a Prevention of Significant Deterioration (PSD) ***279** permit, the first permit in the PSD permit process required by the federal Clean Air Act, 42 U.S.C. § 7401 *et seq.*, the Maryland Air Quality Control statutes, Code (1982, 1996 Repl.Vol.), Title 2 of the Environment Article, and implemented by the Air Management Administration of the Maryland Department of the Environment. [FN4]

FN4. Hereinafter the County and the Authority will sometimes be referred to collectively as the "applicants."

The present case had its genesis in this Court's opinion in *Sugarloaf v. Waste Disposal,* 323 Md. 641, 594 A.2d 1115 (1991) (*Sugarloaf I*), where some of the present plaintiffs argued that they were entitled to a "contested case" administrative hearing on the application by the County and the Authority for the PSD approval permit. [FN5] In ****610** rejecting this argument, we held that, although a full contested case hearing was available upon an application for a construction permit, it was not available at the PSD approval stage. [FN6] The Court did not, however, determine whether any of the plaintiffs would have standing to seek judicial review of a Department decision ***280** to issue a construction permit. *Sugarloaf I, supra,* 323 Md. at 650-651 n. 6, 594 A.2d at 1119 n. 6.

FN5. A "contested case" is defined in Maryland's Administrative Procedure Act, Code (1984, 1995 Repl.Vol.), § 10-202(d) of the State Government Article, as follows:
"*Contested case.*-- (1) 'Contested case' means a proceeding before an agency to determine:
(i) a right, duty, statutory entitlement, or privilege of a person that is required by statute or constitution to be determined only after an opportunity for an agency hearing; or
(ii) the grant, denial, renewal, revocation, suspension, or amendment of a license that is required by statute or constitution to be determined only after an opportunity for an agency hearing."
As discussed in *Sugarloaf I,* a "contested case" hearing is a hearing at which trial-type procedures are followed. *See* Code (1995 Repl.Vol.), §§ 10-201 through 10-217 of the State Government Article. *See also Sugarloaf I, supra,* 323 Md. at 651, 594 A.2d at 1120.

FN6. We held that, consistent with provisions of COMAR 26.11.02.11M and Code (1982, 1996 Repl.Vol.), § 2-404 of the Environmental Article, only a non-trial type hearing, at which the parties and the public are given an opportunity to

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comment, is required at the PSD approval stage. We categorized the PSD approval stage as being "merely a preliminary or interlocutory requirement." *See Sugarloaf I,* 323 Md. at 653-659, 594 A.2d at 1121-1124.

In light of this Court's decision in *Sugarloaf I,* the Secretary of the Department delegated authority to the Office of Administrative Hearings, under Code (1984, 1995 Repl.Vol.), § 10-207 of the State Government Article, to hold a contested case hearing on the issue of whether a permit to construct should be issued to the applicants. The Secretary later expanded this authority to include consideration of whether a refuse disposal permit should be issued. [FN7] The Secretary also requested that the Administrative Law Judge (ALJ) "entertain ***281** arguments on the issue of standing and make findings." [FN8] Thereafter, Administrative Law Judge Suzanne S. Wagner conducted a 15-day hearing on these issues.

FN7. In addition to the permits required under the federal Clean Air Act and the Maryland Air Quality Control statutes, § 9-204(d) of the Environment Article requires a person to obtain a refuse disposal permit before installing a refuse disposal system. For purposes of § 9-204(d), a "refuse disposal system" includes 1) an incinerator; 2) a transfer station; 3) a landfill station; 4) a landfill; 5) a solid waste processing facility; and 6) any other solid waste acceptance facility. *See* § 9-201(e) of the Environment Article. Section 9-210 of the Environment Article sets out the prerequisites for obtaining a refuse disposal permit as follows:

" **§ 9-210. Same—Prerequisites for issuance of permit.**

(a) *In general.*--The Secretary may not issue a permit to install ... a refuse disposal system regulated under § 9-204(a) of this subtitle until the requirements set forth in this subsection are met in the following sequence:

(1) Except for the opportunity for a public informational meeting, the Department has completed its preliminary phase 1 technical review of the proposed refuse disposal system;

(2) The Department has reported the findings of its preliminary phase 1 technical review, in writing, to the county's chief elected official and planning commission of the county where the proposed refuse disposal system is to be located; and

(3) The county has completed its review of the proposed refuse disposal system, and has provided to the Department a written statement that the refuse disposal system:

(i) Meets all applicable county zoning and land use requirements; and

(ii) Is in conformity with the county solid waste plan."

Although the scope of the Department's delegation letter did not originally encompass the refuse disposal permit, the parties consented to having the two issues consolidated in one hearing after the plaintiffs initially raised issues relating to the refuse disposal permit.

FN8. In his letter delegating the matter to an ALJ, the Secretary referred to "standing to participate in the [administrative] hearing." Nevertheless, in order to avoid a possible remand from the courts, the applicants made no objection to the plaintiffs' standing at the administrative level in this case, and the plaintiffs were in fact accorded standing.

After the conclusion of the hearing, the ALJ submitted an opinion containing extensive findings and conclusions as well as a proposed order. The ALJ concluded: (1) the construction and refuse disposal permit applications conformed to applicable federal and state law, and the permits should be issued; (2) all of the plaintiffs lacked standing either under the Maryland Environmental Standing Act, Code (1974, 1989 Repl.Vol., 1995 Cum.Supp.), §§ 1-501 through 1-508 of the Natural Resources Article, or under Maryland common law principles of standing embodied in the Administrative Procedure Act, § 10-222(a) of the State Government Article, to bring an action challenging the Department's decision to issue the permits. [FN9] ****611** The Department adopted, without modification, ***282** the ALJ's findings,

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conclusions, and proposed decision, and issued the two permits.

FN9. The ALJ began the "standing" portion of her opinion as follows:
"Maryland law recognizes that individuals have standing to challenge administrative decisions when 1) they have been a party to the administrative proceedings, and 2) [they] are aggrieved by the agency decision. *Maryland-National Capital Park Planning Comm. v. Friendship Heights,* 57 Md.App. 69, 77, 468 A.2d 1353, *cert. denied,* 300 Md. 89, 475 A.2d 1200 (1984); *Bryniarski v. Montgomery County Board of Appeals,* 247 Md. 137, 143, 230 A.2d 289 (1967). In order to be aggrieved by an agency decision, an individual must have a specific interest or property right at stake that is different from those interests of the general public. *Bryniarski,* 247 Md. at 144, 230 A.2d 289 ."
After reviewing the plaintiffs' contentions regarding standing, the ALJ concluded:
"The concerns expressed by the individual Plaintiffs are identical to the concerns of the public generally. Everyone is concerned about the loss of rural areas to development. Everyone is concerned about the effects of emissions on the environment. The individual Plaintiffs expressed the concerns of all of us--is it necessary to have the RRF, and is it necessary to have it in my community. Their concerns were aired at various public hearings in this matter, and, after all of those hearings, it was determined by Montgomery County that municipal waste disposal is best addressed by source reduction, recycling, incineration and landfilling, and further, it is necessary to build the RRF, and it should be located in Dickerson, Maryland. In my opinion, the individual Plaintiffs in this case have not made sufficient showing to demonstrate that they are aggrieved in a 'specific interest or property right ... that ... is personally and specifically affected in a way different from that suffered by the public generally.' *Bryniarski v. Montgomery County Bd. of Appeals,* 247 Md. 137, 144, 230 A.2d 289 (1967)."

The plaintiffs then brought the present action in the Circuit Court for Montgomery County, seeking judicial review of the final administrative decision. The circuit court, in a brief order, dismissed the action on the ground that all of the plaintiffs lacked standing to seek judicial review of the administrative decision.

The Court of Special Appeals, agreeing that the plaintiffs lacked standing, affirmed. *Sugarloaf v. Dept. of Environment, supra,* 103 Md.App. 269, 653 A.2d 506. In its opinion, the Court of Special Appeals indicated that the standing issue in the present case concerned the plaintiffs' standing to bring a judicial review action in the circuit court and not their standing to be parties at the administrative hearing. The intermediate appellate court thus stated (103 Md.App. at 277, 653 A.2d at 510):

"To have standing under common law principles to challenge a final order or decision of an administrative agency entered in a contested case, a person must show two things--that he was a party to the administrative proceeding and that he is 'aggrieved' by the agency's order or decision. *Medical Waste v. Maryland Waste, supra,* 327 Md. 596, 612 A.2d 241 (1992); *Bailey v. Dep't. of Public Safety,* 333 Md. 397, 635 A.2d 432 (1994). There is no question here that appellants were parties to the administrative proceeding; with the county's acquiescence, they were permitted to participate in the proceeding, and they did participate by giving evidence and presenting argument. ***283** The only question is whether any of them were 'aggrieved,' in the legal sense."

The Court of Special Appeals also pointed out that, in determining whether the plaintiffs were "aggrieved" by the final administrative decision and thus had standing to bring a judicial review action, a court may look to the evidence adduced at the administrative hearing as well as the pleadings and any evidence submitted to the circuit court. The Court of Special Appeals, however, went further and held that, in determining whether plaintiffs had standing to bring a judicial review action, the findings and conclusions of the ALJ regarding standing could be accepted if supported by

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substantial evidence. The intermediate appellate court stated (103 Md.App. at 279, 653 A.2d at 511):

> "Where ... the issue of standing has been litigated at the administrative level and findings based on substantial evidence have been made, the court need not relitigate that issue *de novo.*"

The Court of Special Appeals reviewed some of the evidence concerning the emission of "toxic and potentially harmful" substances from the facility, and a "study carried out for Montgomery County ... showing that more of these emissions will likely fall on [plaintiffs'] properties than on properties much farther from the site." 103 Md.App. at 280, 653 A.2d at 511. The appellate court next ****612** pointed to the ALJ's findings discounting certain evidence that the emissions " 'may have unacceptable levels of ... arsenic, mercury, dioxins, and PCB's,' " and the ALJ's findings that the emissions would be "insignificant or well within acceptable limits established by national health and environmental agencies." 103 Md.App. at 281, 653 A.2d at 512. The Court of Special Appeals then concluded (*ibid.*):

> "As we have indicated, where the issue of standing has been fully litigated by the agency, parties do not achieve the status of aggrieved persons *gratis,* or based on bare allegations, ***284** or solely on evidence they have produced. A court is entitled to credit the agency's findings if there is substantial evidence in the record as a whole to support them. Here, there was."

The plaintiffs filed a petition for a writ of certiorari challenging the Court of Special Appeals' decision on the standing issue, and we granted the petition. *During oral argument the respondents took the* position that, if this Court were to conclude that the decisions below concerning standing were erroneous, then this Court could decide the merits. [FN10] The petitioners, in their rebuttal argument, stated that they were "ready" to have the case decided on the merits but that they would like to brief the merits first. [FN11] Subsequently, this Court issued an order directing the parties to file supplemental briefs as to whether the Department's decision "should be affirmed, reversed, modified, or the case remanded to the agency for further proceedings, in light of the judicial review ***285** criteria set forth in the Administrative Procedure Act...." [FN12] Both sides have filed extensive supplemental briefs, with additional record extracts, on this issue.

FN10. The following colloquy occurred between the Court and counsel for the applicants:
"THE COURT: Suppose we didn't agree with you on standing, but, after reviewing the record, believe there's substantial evidence to support the findings, can we affirm on that ground?
"APPLICANTS' COUNSEL: I believe you can. Absolutely.
* * *
"APPLICANTS' COUNSEL: I believe you can. Because in this case they chose to use the merits evidence as their evidence of standing. And, there's a very thorough 171-page proposed decision and order from the ALJ where she goes through all the evidence; she makes all the scientific judgments, and she finds no harm. But, frankly, Your Honor, in this case there was no evidence of harm."

FN11. During his rebuttal argument before this Court, counsel for the petitioners stated as follows:
"We're open and ready to decide this case on the merits. I would say just one last thing. If Your Honors are considering disposing this case on the merits, we think there would be a major due process problem with that. We have not briefed the merits in this case. There are several legal issues, violations, bases for permit denials, that are not addressed in our attempts to show aggrievement. So, we would at least ask for notice and a chance to brief those issues on the merits, if we're going to go to the merits, and we're ready to do that as soon as possible."

FN12. The judicial review section of the Administrative Procedure Act, Code (1984, 1995 Repl.Vol.), § 10-222 of the State Government Article, provides in relevant part as follows:
" § 10-222. Judicial review.
"(a) *Review of final decision.*—(1) Except as provided in subsection (b) of this

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section, a party who is aggrieved by the final decision in a contested case is entitled to judicial review of the decision as provided in this section.

* * *

"(h) *Decision.*--In a proceeding under this section, the court may:
(1) remand the case for further proceedings;
(2) affirm the final decision; or
(3) reverse or modify the decision if any substantial right of the petitioner may have been prejudiced because a finding, conclusion, or decision:
(i) is unconstitutional;
(ii) exceeds the statutory authority or jurisdiction of the final decision maker;
(iii) results from an unlawful procedure;
(iv) is affected by any other error of law;
(v) is unsupported by competent, material, and substantial evidence in light of the entire record as submitted; or
(vi) is arbitrary or capricious."

II.

A.

The decisions below appear to reflect some confusion between standing to be a party at the administrative level and standing to maintain a judicial review action in the circuit court, as well as confusion over the appropriate roles of an administrative agency and a ****613** reviewing court with regard to each type of standing.

[1] The cases in this Court, and the language of the Administrative Procedure Act itself, § 10-222(a)(1) of the State Government Article, recognize a distinction between standing to be a party to an administrative proceeding and standing to bring an action in court for judicial review of an administrative decision. Thus, a person may properly be a ***286** party at an agency hearing under Maryland's "relatively lenient standards" for administrative standing but may not have standing in court to challenge an adverse agency decision. *Maryland-Nat'l v. Smith,* 333 Md. 3, 11, 633 A.2d 855, 859 (1993). *See Medical Waste v. Maryland Waste,* 327 Md. 596, 611- 614, 612 A.2d 241, 248-250 (1992) (organization was a party at the administrative proceeding but lacked standing to maintain a judicial review action.)

The requirements for administrative standing under Maryland law are not very strict. Absent a statute or a reasonable regulation specifying criteria for administrative standing, one may become a party to an administrative proceeding rather easily. In holding that a particular individual was properly a party at an administrative hearing, Judge J. Dudley Digges for the Court in *Morris v. Howard Res. & Dev. Corp.,* 278 Md. 417, 423, 365 A.2d 34, 37 (1976), explained as follows:

"He was present at the hearing before the Board, testified as a witness and made statements or arguments as to why the amendments to the zoning regulations should not be approved. This is far greater participation than that previously determined sufficient to establish one as a party before an administrative agency. *See, e.g., Baxter v. Montgomery County,* 248 Md. 111, 113, 235 A.2d 536 (1967) (per curiam) (submitting name in writing as a protestant); *Bryniarski v. Montgomery Co.,* 247 Md. 137, 143, 230 A.2d 289, 293-94 (1967) (testifying before agency); *Hertelendy v. Montgomery Cty.,* 245 Md. 554, 567, 226 A.2d 672, 680 (1967) (submitting into evidence letter of protest); *DuBay v. Crane,* 240 Md. 180, 184, 213 A.2d 487, 489 (1965) (identifying self on agency record as a party to proceedings); *Brashears v. Lindenbaum,* 189 Md. 619, 628, 56 A.2d 844, 849 (1948) (same). Bearing in mind that the format for proceedings before administrative agencies is intentionally designed to be informal so as to encourage citizen participation, we think that absent a reasonable agency or other regulation providing for a more formal method of becoming a party, anyone clearly identifying himself to the agency for the record as having an interest in the outcome of the ***287** matter being considered by that agency, thereby becomes a party to the proceedings."

More recently, Judge McAuliffe for the Court in *Maryland-Nat'l v. Smith, supra,* 333 Md. at 10, 633 A.2d at 859, summarized Maryland law relating to status as a party in administrative proceedings:

"*Morris* and other cases of this Court indicate that the threshold for establishing oneself as a party before an administrative agency is indeed low. Although we have said that one's presence at the hearing and testimony in favor of an asserted position is sufficient, *id.,* we have also said that

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personal appearance and testimony at the hearing are not required. *Hertelendy v. Montgomery Cty.,* 245 Md. 554, 567, 226 A.2d 672 (1967); *Largo Civic Ass'n v. Pr. Geo's Co.,* 21 Md.App. 76, 81, 318 A.2d 834 (1974). In fact, it has been held to be sufficient that the hearing examiner considered the appellant to be a party, *Northampton Corp. v. Pr. George's Co.,* 21 Md.App. 625, 633- 34, 321 A.2d 204, *rev'd on other grounds,* 273 Md. 93, 327 A.2d 774 (1974), or that the appellant's name was submitted to the Board of Appeals as one who would be aggrieved by an adverse decision. *Wright v. McCubbin,* 260 Md. 11, 14, 271 A.2d 365 (1970). *See also Baxter v. Montgomery County,* 248 Md. 111, 113, 235 A.2d 536 (1967) (submitting name in writing as a protestant is sufficient); *Bryniarski v. Montgomery Co.,* 247 Md. 137, 143, 230 A.2d 289 (1967) (testifying before agency is sufficient); *DuBay v. Crane,* 240 Md. 180, 184, 213 A.2d 487 (1965) (identifying self on agency record as a party is sufficient)."

See Medical Waste v. Maryland Waste, supra, 327 Md. at 611-612, 612 A.2d at 248-249.

****614** For a person or entity to maintain an action under the Administrative Procedure Act for judicial review of an administrative decision, the person or entity "must both be a 'party' to the administrative proceedings and be 'aggrieved' by the final decision of the agency." *Medical Waste v. Maryland Waste, supra,* 327 Md. at 611, 612 A.2d at 248. *See* § 10- ***288** 222(a)(1) of the State Government Article; *Bailey v. Dep't. of Public Safety,* 333 Md. 397, 405, 635 A.2d 432, 436 (1994); *Maryland-Nat'l v. Smith, supra,* 333 Md. at 11, 633 A.2d at 859 ("Establishing the [plaintiff's] status as a party to the proceedings before the Board of Appeals completes only half of the required analysis; the [plaintiff] must also be aggrieved by the Board's decision in order to have standing").

[2] While the term "aggrieved" is not defined in the Administrative Procedure Act, we have held that the statutory requirement that a party be " 'aggrieved' mirrors general common law standing principles applicable to judicial review of administrative decisions." *Medical Waste v. Maryland Waste, supra,* 327 Md. at 611 n. 9, 612 A.2d at 248-249 n. 9; *Bryniarski v. Montgomery Co.,* 247 Md. 137, 143-146, 230 A.2d 289, 294-295 (1967). Accordingly, in order to be "aggrieved" for purposes of judicial review, a person ordinarily must have an interest " 'such that he is personally and specifically affected in a way different from ... the public generally.' " *Medical Waste v. Maryland Waste, supra,* 327 Md. at 611 n. 9, 612 A.2d at 248-249 n. 9, quoting *Bryniarski v. Montgomery Co., supra,* 247 Md. at 144, 230 A.2d at 294. *See Maryland-Nat'l v. Smith, supra,* 333 Md. at 11, 633 A.2d at 859; *Abramson v. Montgomery County,* 328 Md. 721, 733, 616 A.2d 894, 900 (1992); *DuBay v. Crane,* 240 Md. 180, 185, 213 A.2d 487, 489-490 (1965) ("the [administrative] decision must not only affect a matter in which the protestant has a specific interest or property right but his interest therein must be such that he is personally and specially affected in a way different from ... the public generally").

[3] In the present case, the letter from the Secretary of the Department delegating authority to an ALJ to hold a hearing requested that the ALJ render findings and conclusions on whether the plaintiffs had standing to participate in the administrative hearing. If there were a statutory provision or a regulation setting forth criteria for administrative standing, the Secretary's request would have been appropriate. Under such circumstances, the ALJ could properly make ***289** findings and conclusions concerning administrative standing. No party in the instant case, however, has called to our attention any statute or regulation prescribing criteria for administrative standing in a case like this, and we are not aware of any such statute or regulation. Consequently, under the decisions of this Court discussed above, the plaintiffs were appropriately accorded standing as parties to the administrative hearing. There was no proper issue of administrative standing to be resolved by the ALJ.

The ALJ, however, did in fact render findings and conclusions with respect to the plaintiffs' standing, holding that the plaintiffs would not be "aggrieved" by the issuance of the permits and that, therefore, they did not "have standing to challenge the administrative decisions." The ALJ purported to apply the case law dealing with standing in court to maintain a judicial review action. If the ALJ's findings and conclusions concerning the plaintiffs' standing were intended to relate to administrative standing, the ALJ clearly applied an erroneous

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standard. Moreover, as pointed out previously, the plaintiffs were in fact properly accorded administrative standing. The plaintiffs' status at the administrative hearing was simply a non-issue.

If, on the other hand, the ALJ was rendering findings and conclusions on the plaintiffs' entitlement to maintain a judicial review action, which appears more likely and which was the Court of Special Appeals' interpretation of the ALJ's opinion, then the ALJ went beyond her proper role. In addition, the Court of Special Appeals erred in according any deference to the ALJ's findings and conclusions concerning judicial standing.

[4] Under basic principles of administrative law, as well as the separation of powers requirement set forth in Article 8 of the ****615** Maryland Declaration of Rights, [FN13] it is not the proper ***290** function of an administrative official or agency in the executive branch of government to decide whether a plaintiff or potential plaintiff has standing to maintain an action in court. The purpose of the "Contested Cases" subtitle of the Administrative Procedure Act is "to resolve disputes in administrative prceedings," Code (1984, 1995 Repl.Vol.), § 10-201(1) of the State Government Article, and *not* to resolve disputes in judicial proceedings.

FN13. Article 8 of the Declaration of Rights states as follows:
"Article 8. Separation of powers.
"That the Legislative, Executive and Judicial powers of Government ought to be forever separate and distinct from each other; and no person exercising the functions of one of said Departments shall assume or discharge the duties of any other."

The General Assembly may, of course, enact legislation affecting a person's standing to bring a type of action in court or prescribing criteria for standing to bring such an action. *See, e.g., State Administrative Bd. v. Election Bd. of Balt.,* 342 Md. 586, 596-597, 679 A.2d 96, 101 (1996); *Medical Waste v. Maryland Waste, supra,* 327 Md. at 614-623, 612 A.2d at 250- 255; *Boulden v. Mayor,* 311 Md. 411, 414, 535 A.2d 477, 479 (1988); *Public Serv. Comm'n v. Md. People's Counsel,* 309 Md. 1, 6-10, 522 A.2d 369, 371-373 (1987); *Dep't. of State Planning v. Mayor and Council of Hagerstown,* 288 Md. 9, 10-16, 415 A.2d 296, 297-300 (1980). Nevertheless, with respect to the allocation of functions between administrative agencies and the judiciary, the determination of whether a person has standing to maintain an action in court is exclusively a judicial function. *See, generally, Attorney General v. Johnson,* 282 Md. 274, 283-290, 385 A.2d 57, 63-67, *appeal dismissed,* 439 U.S. 805, 99 S.Ct. 60, 58 L.Ed.2d 97 (1978); *Shell Oil Co. v. Supervisor,* 276 Md. 36, 44-47, 343 A.2d 521, 526-527 (1975); *Dep't of Nat. Res. v. Linchester Sand and Gravel Corp.,* 274 Md. 211, 220- 223, 334 A.2d 514, 521-522 (1975); *Dal Maso v. County Commrs.,* 182 Md. 200, 205, 34 A.2d 464, 466 (1943); *Mayor and Council of Hagerstown v. Dechert,* 32 Md. 369, 383 (1870); *Wright v. Wright's Lessee,* 2 Md. 429, 452-453 (1852); *Miller v. State,* 8 Gill. 145, 148-150 (1849) ; *Berrett v. Oliver et al.,* 7 G. & J. 191, 206 (1835). *See also* ****291****New England Rehabilitation Hosp. v. CHHC,* 226 Conn. 105, 627 A.2d 1257, 1272 (1993) (administrative agency is not "vested with the authority to decide ... who could challenge an adverse decision of the agency in court"); *Rose v. Freedom of Information Com'n,* 221 Conn. 217, 602 A.2d 1019, 1024 (1992); *Kemp-Golden v. Dept. of Children & Fam.,* 281 Ill.App.3d 869, 217 Ill.Dec. 599, 605-606, 667 N.E.2d 688, 694-695 (1996).

In holding that the issue of standing in court may properly be litigated at the administrative level, and that a reviewing court may appropriately defer to the agency's findings and conclusions regarding judicial standing if those findings and conclusions are supported by substantial evidence, the Court of Special Appeals relied on *Bryniarski v. Montgomery Co., supra,* 247 Md. 137, 230 A.2d 289. The *Bryniarski* opinion pointed out that, when "[a] person whose property is far removed from the subject property" faces a challenge in court to his standing, and therefore attempts to establish in court that he is aggrieved by an administrative zoning decision, he may rely on "evidence" before the agency, as well as evidence before the court, to show "that his personal or property rights are specially and adversely affected by the [administrative] action." 247 Md. at 145, 230 A.2d at 295. The opinion in *Bryniarski* did not suggest

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that it would be appropriate for the administrative agency to render findings and conclusions with regard to standing in court, or that a reviewing court should give any deference to administrative findings and conclusions when deciding whether the plaintiff was entitled to maintain an action for judicial review. Instead, *Bryniarski* clearly viewed the resolution of the standing dispute to be exclusively a judicial function. Thus, the Court in *Bryniarski* referred to the standing issue as having been "determined *by the courts* on a case by case basis," and, in commenting on a prior case, *Bryniarski* referred to findings of the "*trial court* ... on conflicting evidence, that the protestant was a person aggrieved." **616247 Md. at 144-145, 230 A.2d at 294-295, emphasis added.

The other cases in this Court have also treated the question of standing to maintain a judicial review action as a matter to ***292** be resolved exclusively by the courts. Thus, in *Town of Somerset v. Montgomery County Board of Appeals,* 245 Md. 52, 63, 225 A.2d 294, 301 (1966), Judge Oppenheimer for the Court stated:

> "When the issue of the standing of an appellant to [seek judicial review] is raised in the court in which review of the administrative action is asked, we have approved the practice of trial judges in permitting testimony on the point to be taken before them, *see e.g., Chatham Corp. v. Beltram,* 243 Md. 138, 148, 220 A.2d 589 (1966) and *Wilkinson v. Atkinson,* 242 Md. 231, 218 A.2d 503 (1966). The question is not one of taking additional testimony on the merits of the substantive issues decided by the Board [compare *Suburban Properties, Inc. v. Mayor and Council of Rockville,* 241 Md. 1, 5-6, 215 A.2d 200 (1965) and cases therein cited], but of determining whether the appellants have the requisite standing to have those issues reviewed."

See, e.g., Maryland-Nat'l v. Smith, supra, 333 Md. at 11-14, 633 A.2d at 859-861; *Morris v. Howard Res. & Dev. Corp., supra,* 278 Md. at 424- 425, 365 A.2d at 38 (judicial standing issue should be adjudicated by the circuit court "through a motion or other pleading filed by [an adverse party] to dismiss Morris as a party, Morris's answer thereto, and testimony if need be on the point"); *Baxter v. Montgomery County,* 248 Md. 111, 113, 235 A.2d 536, 537 (1967) (it is the trial court's function to decide whether the plaintiffs are aggrieved, and "the court may hear evidence to establish that aggrievement"); *Kennerly v. Mayor & Council of Baltimore,* 247 Md. 601, 606, 233 A.2d 800, 803 (1967); *Hertelendy v. Montgomery Cty.,* 245 Md. 554, 564- 568, 226 A.2d 672, 678-680 (1967); *The Chatham Corp. v. Beltram,* 243 Md. 138, 148-149, 220 A.2d 589, 595 (1966); *Wilkinson v. Atkinson,* 242 Md. 231, 233-235, 218 A.2d 503, 505-506 (1966); *Brashears v. Lindenbaum,* 189 Md. 619, 628-629, 56 A.2d 844, 849 (1948) ("These jurisdictional facts [showing standing to seek judicial review and thereafter to appeal] should appear from the record, and in the event of dispute, should be resolved by the Circuit Court").

***293** The Court of Special Appeals, therefore, erred in holding that any deference could be given to the administrative decision concerning the plaintiffs' standing to maintain an action for judicial review.

B.

The Court of Special Appeals also erred by blurring the distinction between standing to seek judicial review of an administrative decision and the merits of that administrative decision. While recognizing that there was evidence showing that more toxic substances from the incinerator would likely fall on the plaintiffs' properties than on properties much farther from the incinerator, the Court of Special Appeals relied on administrative findings "that the probable emissions from the [incinerator] would be insignificant or well within acceptable limits established by national health and environmental agencies." *Sugarloaf v. Dept. of Environment, supra,* 103 Md.App. at 281, 653 A.2d at 511-512. The Court of Special Appeals pointed out that the ALJ discounted conclusions from the Department of Natural Resources that "unacceptable levels of ... arsenic, mercury, dioxins, and PCBs" may fall on nearby farm ponds. 103 Md.App. at 281, 653 A.2d at 512. Because, in the Court of Special Appeals' view, substantial evidence supported the ALJ's findings that the plaintiffs would not suffer "actual ... harm" and that emissions falling on their properties would be insignificant or "within acceptable limits," 103 Md.App. at 280-281, 653 A.2d at 511-512, the intermediate appellate court concluded that the ALJ's views regarding the plaintiffs' lack of standing should be upheld.

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Presumably, if the ALJ had found that the emissions from the incinerator would have been harmful to nearby property owners, or if the level of emissions were found to have been "unacceptable," the permits would not have been issued. Thus, under the analysis by the Court of Special Appeals, the issue of whether any of the plaintiffs were sufficiently affected to have standing, and the issue of ****617** whether the permits should have been granted, became identical.

***294** Moreover, the applicants and the Department take the same approach before this Court, arguing that, since the level of emissions upon any of the plaintiffs' properties were found to have been "acceptable" under government air quality standards, none of the plaintiffs was sufficiently "harmed" to have standing to challenge in court the issuance of the permits. During oral argument before this Court, counsel for the applicants and the Department frankly acknowledged that, in their view, the standing issue and the merits were the same. [FN14]

> FN14. Thus, when counsel for the applicants was asked by the Court whether there was a distinction between the effect upon the plaintiffs for purposes of standing and the amount of harm to air quality that would require denial of the permits, counsel replied:
> "Frankly your Honor, I think that where you have a full hearing as we had here, almost a month long, I think that distinction blurs."
> The following colloquy occurred between the Court and the attorney for the Department:
> "ATTORNEY: In the context of this case, the merits are very close to the standing issue. That is, the question of whether one of the petitioners will be harmed is the same inquiry as is involved with standing.
> "THE COURT: You say it's very close, what is the difference?
> "ATTORNEY: Your honor, in this case, on that challenge to this permit, it may be indistinguishable."

In cases involving challenges to administrative land use decisions, there is a distinction between standing in court to obtain review of the governmental action and the merits of the challenger's position. Thus, in *Bryniarski v. Montgomery Co., supra,* 247 Md. at 145-146, 230 A.2d at 295, involving the administrative grant of a special exception permitting the construction and operation of an apartment hotel, this Court stated:

> "The status of a person to [obtain judicial review] as a 'person aggrieved' is to be distinguished from the result on the merits of the case itself.... If, on the merits, the board acted properly in approving the application, the protesting property owner is not damaged *in law,* however much he may be damaged *in fact.* His damage is then *damnum absque injuria.* Because the result on the merits might be adverse, however, does not mean that the protestant***295** would not have status to challenge the board's action." (Emphasis in original).

The Court in *Bryniarski* went on to hold that evidence indicating that there would be an increase in traffic in the area because of the apartment hotel was sufficient to give landowners, who were "contiguous or close in proximity" to the proposed hotel, standing to challenge in court the grant of a special exception. Such persons would have standing even if it were ultimately determined that the increase in traffic was not so great as to require denial of the special exception.

[5] Similarly, with respect to a facility discharging toxins into the air pursuant to a permit, a nearby property owner may be subject to greater emissions than the public generally but, nevertheless, the amount falling upon the nearby property owner might be within "acceptable" limits. The impact upon a nearby property owner may well be different from the impact upon the general public but may not amount to legally cognizable harm. Therefore, standing to challenge governmental action, and the merits of the challenge, are separate and distinct issues. *See, e.g., Assn. of Data Processing Service Org. v. Camp,* 397 U.S. 150, 153, 90 S.Ct. 827, 830, 25 L.Ed.2d 184, 188 (1970) (whether there has been an invasion of one's " 'legal interest' ... goes to the merits. The question of standing is different. It concerns ... the question whether the interest sought to be protected by the complainant is arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question "); *Flast v. Cohen,* 392 U.S.

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83, 99, 88 S.Ct. 1942, 1952, 20 L.Ed.2d 947, 961 (1968) ("The fundamental aspect of standing is that it focuses on the party seeking to get his complaint before a ... court and not on the issues he wishes to have adjudicated"); *Town of Somerset v. Board, supra,* 245 Md. at 63, 225 A.2d at 301 (distinguishing between "the merits of the substantive issues decided by the Board" and whether "the appellants have the requisite standing to have those issues reviewed"); Stein, Mitchell & Mezines, *Administrative* ****618** *Law* § 50.01, at 50-3 (5th ed. 1996) ("Questions of standing focus ***296** not on the merits of the case but on what parties have the right to seek judicial review").

[6] If a plaintiff's standing in court to challenge the issuance of a government permit allowing particular activity on the permittee's land were dependent upon the plaintiff's establishing that he or she would suffer legally cognizable harm, the result would be that numerous permits, issued after adjudicatory hearings, would be immune from judicial review. Furthermore, as illustrated by the present case, plaintiffs in judicial review actions would be faced with an unreasonable hurdle. The Court of Special Appeals did seem to require in the present case, as a pre-requisite for the denial of standing, that the record contain substantial evidence supporting the administrative findings and conclusions that the emission levels from the incinerator would be within acceptable limits under governmental standards. But, in the instant case, the plaintiffs' argument on the merits is not that particular findings by the ALJ were unsupported by substantial evidence. Instead, as discussed in Part III of this opinion, *infra,* the plaintiffs contend that the ALJ committed numerous errors of law by excluding relevant issues and evidence, by misconstruing the applicable governmental air quality standards, and by ignoring certain evidence. According to the plaintiffs' theory, if the ALJ had not erroneously excluded certain issues and evidence, the ALJ would have found that the levels of toxic substances falling on nearby property owners were not acceptable, and thus the nearby property owners would have suffered legally cognizable harm. Similarly, under the plaintiffs' theory, if the ALJ had applied correct governmental standards, she would have found that the amount of pollutants emitted from the incinerator and falling on nearby property owners was unacceptable. If the plaintiffs' contentions on the merits are valid, they may have suffered legally cognizable harm. But they were precluded from making these arguments in the courts below on the ground that, under the ALJ's decision, they would not suffer legally cognizable harm. Under the approach taken by the Court of Special Appeals and the respondents, an administrative agency can, by erroneously ***297** excluding issues and evidence or by misconstruing the law, conclude that none of the challengers to the issuance of a permit would be harmed in a legally significant manner, and such finding, if supported by sufficient evidence at the hearing, would deprive any challengers of standing to maintain a judicial review action. The challengers would lack standing even though, if the challengers' arguments on the merits are sound, they might suffer such legally cognizable harm.

Consequently, we reject the argument that the plaintiffs lack standing because, in the respondents' view, the likely fallout of toxic substances upon their properties will be acceptable under government air quality standards. Under Maryland law, this is an erroneous test for standing.

C.

It is a settled principle of Maryland law that, " 'where there exists a party having standing to bring an action ... we shall not ordinarily inquire as to whether another party on the same side also has standing.' " *People's Counsel v. Crown Development Corp.,* 328 Md. 303, 317, 614 A.2d 553, 559-560 (1992), quoting *Board v. Haberlin,* 320 Md. 399, 404, 578 A.2d 215, 217 (1990). *See, e.g., County Council v. Md. Reclamation,* 328 Md. 229, 232 n. 1, 614 A.2d 78, 80 n. 1 (1992); *Sugarloaf v. Waste Disposal, supra,* 323 Md. at 650 n. 6, 594 A.2d at 1119 n. 6, and cases there cited.

The record in the present case establishes that the Buchanans had standing to maintain this action. Consequently, it is unnecessary to determine whether any of the other plaintiffs also had standing.

[7] In actions for judicial review of administrative land use decisions, "[a]n adjoining, confronting or nearby property owner is deemed, *prima facie,* ... a person aggrieved. The person challenging the fact of aggrievement has the burden of denying such damage in his answer to the petition for [judicial

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review] and of coming forward with evidence to establish that the petitioner is not, in fact, ****619** aggrieved." *Bryniarski v. Montgomery Co., supra,* 247 Md. at 145, 230 A.2d at 294. *See, e.g.,* ****298** Md.- Nat'l Cap. P. & P. v. Rockville,* 269 Md. 240, 248, 305 A.2d 122, 127 (1973) (indicating that one who "owns any property located within sight or sound of the subject property" is aggrieved); *Wier v. Witney Land Co.,* 257 Md. 600, 612-613, 263 A.2d 833, 839 (1970) (" 'At least three of the protestants ... are in sight distance of the property forming the subject of the petition.... These protestants were ... nearby property owners and are deemed, prima facie, to be specially damaged and, consequently, persons aggrieved' "); *Chatham Corp. v. Beltram,* 252 Md. 578, 251 A.2d 1, 4 (1969) ("In light of the testimony of Mr. Beltram and Mrs. Hahn with reference to the proximity of their homes within the same subdivision to the reclassified area ... there was no error in the ruling that [they] had standing to sue"); *Aubinoe v. Lewis,* 250 Md. 645, 650-652, 244 A.2d 879, 882-883 (1968); *The Chatham Corp. v. Beltram, supra,* 243 Md. at 148, 220 A.2d at 595 ("Since Beltram's evidence was that he owned property, in which he lived, in close proximity to the reclassified land ..., there was no error in ruling that Beltram had standing to sue"); *Toomey v. Gomeringer,* 235 Md. 456, 460, 201 A.2d 842, 844 (1964) (although "the protestants' properties were more than two city blocks away from the property for which rezoning was sought," they were accorded standing); *Bd. of Zoning Appeals v. Bailey,* 216 Md. 536, 539, 141 A.2d 502, 503 (1958) (standing accorded to zoning reclassification protestants who lived "three-fourths of a mile by road and between one-third and one-half a mile as the crow flies" from the subject property).

[8] In cases involving government-issued permits allowing activity which causes the emission of toxic substances into the air, the concept of "nearby" property owners who are presumptively aggrieved may well include persons in a greater geographical range than in a typical zoning matter. We need not, however, explore that issue in the present case. Under the above-cited decisions, the Buchanans were adjacent or nearby property owners who were prima facie aggrieved. Their farm was adjacent to the PEPCO tract of land which encircled the incinerator and which contained the generating stations utilizing the energy produced by the incinerator. The ***299** Buchanans' farm was only 2,000 feet from the incinerator itself. If the Buchanans' farm would not be considered adjoining or sufficiently nearby because of the size of the tract on which the joint PEPCO-Montgomery County operation was to take place, then no property owner would be presumptively aggrieved. In our view, the Buchanans were adjoining or nearby property owners, and, therefore, they were prima facie aggrieved. Since the respondents failed in the circuit court to "com[e] forward with evidence to establish that [they were] not, in fact, aggrieved," *Bryniarski v. Montgomery Co., supra,* 247 Md. at 145, 230 A.2d at 294, the Buchanans had standing to maintain this action for judicial review. [FN15]

FN15. In arguing that the Buchanans were not "nearby" property owners and thus not presumptively aggrieved, the applicants rely upon *Wilkinson v. Atkinson,* 242 Md. 231, 218 A.2d 503 (1966), and *DuBay v. Crane,* 240 Md. 180, 213 A.2d 487 (1965) (Brief of Northeast Maryland Waste Disposal Authority and Montgomery County at 16). Neither case supports the applicants' argument. Both *DuBay* and *Wilkinson* involved challenges to zoning reclassifications. In *DuBay* the protestants lived "at least 1500 feet in a straight line from the rezoned property" (240 Md. at 183, 213 A.2d at 489), and in *Wilkinson* the protestants "could see the reclassified property from [their] home" (242 Md. at 234, 218 A.2d at 505). In both cases, upon evidence adduced in the circuit court, it was decided that the protestants were not aggrieved. The basis for both decisions, however, was not that the protestants were not "nearby" property owners. Instead, in each case the Court relied on the fact that the protestants' property was separated from the rezoned property by the Baltimore Beltway. The Court in *Wilkinson* thus stated (242 Md. at 235, 218 A.2d at 506):

"The [protestants'] property is on the opposite side of the Beltway, and, in *DuBay,* we pointed out ..., the Beltway 'if not a complete shield against the apartments to be constructed, will serve as

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an adequate barrier.' It is true that, in that case, the property was 1500 feet from the rezoned property, and it was not shown that Dubay could see the reclassified property from his home, *but it was the existence of the broad, heavily traveled intervening Beltway which was the determining factor.*" (Emphasis added).
In the case at bar, unlike *DuBay* and *Wilkinson,* no evidence was presented to the circuit court rebutting the Buchanans' prima facie standing. Moreover, the evidence in the administrative record discloses no barrier to the emissions from the incinerator which would function comparably to the Baltimore Beltway in a zoning case.

**620 [9] Moreover, as indicated earlier, the evidence adduced at the administrative hearing demonstrated that much higher *300 levels of toxic substances would fall on the Buchanans' farm and on other nearby property owners than would fall on properties farther away from the site. This would ordinarily be expected in any case involving a permit for activity causing toxic emissions into the air. Thus, as acknowledged in the applicants' brief in this Court, there was expert testimony that property four miles from the incinerator would be less impacted than nearby property "that will be most impacted by the" incinerator. (Brief of the Northeast Maryland Waste Disposal Authority and Montgomery County at 27). The applicants also acknowledged "that the ambient impact analysis by [applicants'] expert shows different geographic areas experience different levels of impact" (*id.* at 21), and that persons in close proximity to the incinerator, such as the Buchanans, will be exposed to higher levels of pollutants.

As to the level of toxins on soil, vegetation and water, one expert stated that "the peak concentration point is predicted to occur" within four or five kilometers from the incinerator, while another expert put this distance as within three miles. The applicants' expert witness Dr. Jones had conducted a toxic risk assessment on the Buchanans' farm pond, and testified that one "would anticipate the highest deposition and runoff [of mercury and dioxide] into the [Buchanans'] pond." With respect to mercury contamination of fish taken from the pond, Dr. Jones stated that the "hazard index ... based on the emissions rates from ... this facility was approximately ... 20% of the allowable hazard index," and Dr. Jones characterized this as "acceptable" under federal air quality standards. With regard to dioxins, he stated that "the calculated risk for dioxins due to fish consumption of the pond was two and a half chances in a million" which he viewed as an "acceptable" risk.

As previously discussed, however, the fact that the level of pollutants from the incinerator falling on nearby property may be "acceptable" under governmental air quality standards, thereby justifying the issuance of the permits, is not the test for a plaintiff's standing to seek judicial review. Instead, the test is whether the plaintiff is affected in a way different from *301 the public generally. The administrative record in this case, without contradiction, shows that nearby property owners such as the Buchanans would be affected in a way different from the general public.

III.

Turning to the merits, the plaintiffs contend that the ALJ committed numerous errors of law in the course of the extensive administrative hearing and in her proposed decision which was adopted by the Department.

A.

[10] The plaintiffs initially contend that the ALJ, in a prehearing memorandum order filed on December 24, 1991, concerning the issues to be considered at the adjudicatory hearing, erroneously excluded from consideration any "air quality issues addressed in the PSD approval stage" even though these same "air quality matters ... [were] at the heart of whether an air quality Permit to Construct should be issued." (Plaintiffs' supplemental brief at 17). The plaintiffs advance the same argument with regard to the refuse disposal permit. (*Id.* at 40-45). The only such allegedly excluded issue which is identified and discussed in the plaintiffs' briefs, however, concerned "the best available control technology for toxic air emissions" or "T-BACT" as it is referred to by the parties. The plaintiffs assert that "ALJ Wagner clearly erred in concluding that T-BACT ... issues were part of the PSD regulatory program and therefore must be excluded" from the adjudicatory hearing on the permit to construct and

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the refuse disposal permit. (*Id.* at 45). [FN16] **621 The applicants respond by arguing, *inter alia,* that under the broad listing of issues which the ALJ agreed to consider, and at the hearing itself, *302 the plaintiffs "had the opportunity to present evidence ... in relation to every applicable air regulatory standard." (Applicants' supplemental brief at 14).

FN16. It is not clear to us, from the portions of the record contained in the record extracts before this Court, that the ALJ treated the T-BACT issues as being included in the "PSD" issues resolved at the earlier PSD permit stage. At times, the ALJ referred to "T-BACT" issues and "PSD" issues separately.

If the ALJ had actually excluded issues and evidence relevant to the construction and the refuse disposal permit applications on the ground that such issues had been resolved in the earlier PSD permit proceeding, then we would agree with the plaintiffs that the ALJ would have committed a prejudicial error requiring a reversal of the administrative decision. As discussed previously, this Court in *Sugarloaf I* held that, under the statutory and regulatory air quality scheme, the permit to construct stage is the more appropriate time at which to hold a contested case hearing. *Sugarloaf I, supra,* 323 Md. at 659, 594 A.2d at 1124. In support of this conclusion, we explained as follows (323 Md. at 658, 594 A.2d at 1123):

"The PSD approval, however, is simply a preliminary finding that the incinerator will not significantly harm the air quality in the Sugarloaf Mountain area generally. Although such approval is required in order to construct and operate the incinerator, the PSD approval itself does not authorize the construction or operation of the facility. As noted previously, Montgomery County and the Northeast Authority must engage in a permit application approval process at each of these stages also. Approval of the PSD permit has no immediate effect on any individual property rights, nor does it grant to the County the authority to begin constructing the proposed facility.

"Conversely, the granting of a permit to construct would more immediately affect the individuals living around the proposed facility whose property might be harmed by the incinerator. The construction permit would create an immediate right in the County to begin building the facility. Clearly at this stage in the process, where actual harm may occur, a contested case hearing is more appropriate."

Because the PSD permit approval was "simply a preliminary finding," and because the PSD hearing was not a trial type *303 hearing, we specifically held in *Sugarloaf I* that "the determinations made at the non-trial type hearing at the PSD stage would not be preclusive under principles of res judicata or collateral estoppel." 323 Md. at 658-659 n. 13, 594 A.2d at 1123-1124 n. 13. Consequently, the resolution of an issue at the PSD stage would not preclude consideration of that same issue at a later administrative hearing on the construction permit or refuse disposal permit applications if the issue was pertinent to those permit applications.

The plaintiffs correctly assert that, in her memorandum order of December 24, 1991, the ALJ did state that "none of the PSD Approval determinations is subject to review in this proceeding." In a later pre-hearing proceeding, on February 10, 1992, the ALJ reiterated that "the issues involving ... PSD ... are all stricken from consideration at [the] hearing" and that "I will not entertain any evidence on those." These statements by the ALJ were inconsistent with *Sugarloaf I* and were erroneous to the extent that any PSD approval determinations concerned issues which were also pertinent to the applications for a construction permit or a refuse disposal permit. The ALJ did not in her December 24th memorandum order, or in any later statements, otherwise identify these PSD "determinations," and nothing in the parties' briefs or record extracts has enabled us to identify them. No portion of the transcript of the 15-day hearing, involving the exclusion of offered evidence, has been called to our attention.

As indicated earlier, the only issue which is identified and discussed in the plaintiffs' briefs as having been allegedly excluded because it was resolved at the PSD stage related to TBACT. Neither side disputes that consideration of T-BACT is relevant at both the PSD approval stage and the permit to **622 construct stage. [FN17] Indeed, pursuant to COMAR 26.11.15.05, *304 "[a] person may not construct, reconstruct, operate, or cause to

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be constructed, reconstructed, or operated any new installation or new source that will discharge a toxic air pollutant to the atmosphere without installing and operating T-BACT."

FN17. "T-BACT" is defined in COMAR 26.11.15.01.B(3) as "production technology, emissions control technology, operation and maintenance procedures, other measures, or combination of them that results in the maximum degree of emission reduction that the Department determines, on a case-by-case basis, is achievable by an installation, for each toxic air pollutant discharged, taking into account the potency and toxicity of each toxic air pollutant discharged as well as technical and economic feasibility."

An examination of the record reveals, however, that the ALJ did not exclude T-BACT issues. To the contrary, in her findings, conclusions and proposed decision, the ALJ specifically listed the following as having been issues at the hearing: 2.e. "Will [the facility] comply with COMAR 26.11.15.06. regarding unreasonable endangerment?" and 2.f. "Will the pollution control equipment required for the [facility] adequately capture the volatized mercury, dioxin and related chemicals in order to avoid unreasonable endangerment?" These issues are directly relevant to a determination of whether the facility will be using T-BACT, as defined in COMAR 26.11.15.01.B(3). Moreover, the record reveals that the plaintiffs presented evidence concerning the T-BACT standard for mercury. For example, the plaintiffs introduced evidence regarding experimental work being performed in Germany and California on the use of carbon injection to control mercury. The ALJ recognized this evidence, but found that "[such technology] is not yet required for compliance with COMAR 26.11.15.05 [related to T-BACT]." Consequently, the ALJ concluded that, "although [the plaintiffs] raised a number of issues regarding the proposed [facility's] compliance with [COMAR 26.11.15], they presented no evidence to demonstrate the facility will not be using T-BACT." Accordingly, the record does not support the contention that the ALJ excluded the issue of T-BACT from consideration at the adjudicatory hearing.

Although the ALJ may have made erroneous statements in her pre-hearing memorandum and order of December 24, 1991, and at the pre-hearing proceeding on February 10, 1992, ***305** the plaintiffs have failed to demonstrate that they were actually precluded at the adjudicatory hearing from raising an issue or presenting evidence pertinent to the construction and refuse disposal permits on the ground that the issues had earlier been resolved at the preliminary PSD stage.

B.

[11] The plaintiffs maintain that the ALJ "misconstrued the legal significance of uncontroverted evidence in the record of pollution from the ... incinerator that will cause harm to wildlife and humans." (Plaintiffs' supplemental brief at 30). Specifically, the plaintiffs argue that the ALJ ignored Department of Natural Resources (DNR) findings and expert opinions that emissions of toxic PCBs, arsenic and mercury will cause unsafe conditions in farm ponds and to fish within those ponds. For support, the plaintiffs rely primarily on a DNR Risk Assessment [FN18] indicating that toxic emissions of these pollutants will exceed the federal Environmental Protection Agency (EPA) criteria for pond water. The plaintiffs claim that, taken together, the presence of these pollutants in the environment would constitute both air pollution and a nuisance. [FN19] (*Id.* at 33).

FN18. A "risk assessment" is a study of the increased risk of cancer caused by emissions resulting from the resource recovery facility.

FN19. For support, the plaintiffs cite COMAR 26.11.06.08 which provides in pertinent part: "An installation or premises may not be operated ... in such manner that a nuisance or air pollution is created."

Contrary to the plaintiffs' contention, the ALJ did not "ignore" this evidence. Rather, the ALJ was persuaded that arsenic emissions would be captured in a pollution control device which would keep the level of arsenic at acceptable levels. Moreover, the ALJ acknowledged ****623** that the risk assessment

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produced by the applicants did not calculate the risk for PCBs, but the ALJ accepted the opinion of the applicants' expert that "the risk from dioxin was most representative of ***306** the most significant risk." Accordingly, she determined that a risk analysis for PCBs was unnecessary.

The ALJ did, however, discuss at length the impact of mercury in farm ponds and upon fish within those ponds. Studies performed by the applicants' experts persuaded her that the level of mercury in fish and pond water would be substantially *below* EPA and federal Food and Drug Administration standards. In addition, the testimony of a Department environmental specialist convinced the ALJ that the mercury level in fish and other aquatic species would not increase if the facility was built. Consequently, the ALJ adopted the position that "risks to human health and aquatic organisms through mercury deposition in ponds are minimal and acceptable." Furthermore, the ALJ discussed evidence presented in the form of carcinogenic risk assessments by both the plaintiffs and the applicants, and she concluded that, under EPA standards, the overall level of risk to the environment from the facility was "insignificant." [FN20]

FN20. "Insignificant risk concentration" is defined in COMAR 26.11.15.01B(8) as "a concentration of a ... toxic air pollutant in the atmosphere that would result in an excess individual lifetime cancer risk of not more than 1 in 100,000 ... assuming continuous exposure for 70 years and using procedures consistent with EPA's Risk Assessment Guidelines."

The ALJ did not "ignore" evidence that pollution from the incinerator will harm wildlife and humans. Instead, she considered such evidence, along with conflicting evidence, and made findings and conclusions. It is not the function of a reviewing court independently to weigh the conflicting evidence. *See MVA v. Karwacki,* 340 Md. 271, 280-285, 666 A.2d 511, 515-518 (1995), and cases there cited.

C.

[12] The plaintiffs assert that the ALJ improperly determined that the level of dioxide emissions from the facility would comply with New Source Performance Standards (NSPS) under COMAR 26.11.06.12, as provided for in 40 ***307** C.F.R. 60 (1992). [FN21] (Plaintiffs' supplemental brief at 37). Under 40 C.F.R. 60.53a(b), the standard for dioxide emissions is set at "30 nanograms per dry standard cubic meter." According to the plaintiffs, the ALJ erred in finding this standard to be equivalent to a .46 toxicity equivalent (TEQ) and, as a result, concluding that the .42 TEQ offered by the applicants met the standard under 40 C.F.R. 60.53a(b). The plaintiffs maintain that the ALJ, in using the two figures as equivalents, "arbitrarily redefined the law to the benefit of the Applicants." (Plaintiffs' supplemental brief at 37-39).

FN21. The New Source Performance Standards apply to an "[i]ncinerator capable of charging more than 50 tons ... of refuse per 24-hour day." COMAR 26.11.01.01C(3). Under COMAR 26.11.06.12, "[a] person may not construct, modify, operate, or cause to be constructed, modified, or operated, a New Source Performance Standard (NSPS) source as defined in COMAR 26.11.01.01C, which results or will result in violation of the provisions of 40 CFR 60, 1992 edition." As noted in the plaintiffs' brief, if the facility is not in compliance with these standards, the MDE must deny an application for an air quality permit. *See* COMAR 26.11.02.06B(1)(a).

The record indicates that the ALJ did not "arbitrarily" arrive at .46 TEQ as an equivalent measure of compliance with NSPS. Rather, the ALJ cited the preamble to the Federal Register, in which the EPA explained that there are several methods by which the 30 nanograms can be measured, one of which is by toxicity equivalents (TEQs). *See* 56 Fed.Reg. 5504. Applying a method of calculation developed in 1987, the EPA explained that the 30 nanograms corresponded to a TEQ of approximately .46. Because the applicants calculated the level of dioxide emissions as .42 TEQ using the 1987 scheme, the ALJ appropriately applied the corresponding 1987 .46 TEQ limit to determine whether the dioxide level calculated by the applicants complied with NSPS. Accordingly, the ALJ did not commit an error of law by using .42

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TEQ to determine whether the dioxide level conformed with NSPS.

**624 D.

[13] The plaintiffs argue that the ALJ issued the permits without first considering whether the applicants had satisfied *308 relevant provisions of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et. seq.* (1994), relating to solid waste incinerator ash. In particular, the plaintiffs argue that the federal statute requires 1) the testing of the incinerator ash and, if the test discloses that the ash is hazardous, 2) the designation of an appropriate landfill in which to store the hazardous ash. [FN22]

FN22. The exhaustive permit requirements necessary for treatment, storage or disposal of hazardous waste are set forth in 42 U.S.C. § 6925.

In 1994, the United States Supreme Court held that ash generated from a resource recovery facility was subject to the hazardous waste provisions contained in the Resource Conservation and Recovery Act. *City of Chicago v. Environmental Defense Fund,* 511 U.S. 328, 114 S.Ct. 1588, 128 L.Ed.2d 302 (1994). [FN23] Therefore, the ALJ erred in finding the federal statute inapplicable to the incinerator ash generated from the facility in question. Nevertheless, the ALJ was also persuaded by the applicants' argument that, "if it is determined the ash must be tested for toxicity and does, in fact, test toxic, [the Applicants] will dispose of such ash at the GSX Services Landfill." Thus, as an alternate ground for decision concerning this issue, the applicants satisfied the ALJ that they had considered the possibility that the ash might test hazardous and would deal with the situation accordingly.

FN23. Prior to 1994, courts had issued inconsistent opinions on this issue. Some courts viewed incinerator ash as being exempt from the hazardous waste provisions of the statute, *see, e.g., Environmental Defense Fund v. Wheelabrator Technologies, Inc.,* 931 F.2d 211 (2nd Cir.), *cert. denied,* 502 U.S. 974, 112 S.Ct. 453, 116 L.Ed.2d 471 (1991), while other courts determined that incinerator ash was subject to these provisions. *See, e.g., Environmental Defense Fund v. City of Chicago,* 948 F.2d 345 (7th Cir.1991), *judgment vacated,* 506 U.S. 982, 113 S.Ct. 486, 121 L.Ed.2d 426 (1992).

E.

[14] On a related issue, the plaintiffs contend that the refuse disposal permit was incomplete because it lacked necessary disposal sites for the non-hazardous and possibly hazardous *309 ash discharged from the facility. They maintain that the permit application required "material changes" which could only be implemented through submission to the Secretary of the Environment and amendments to Montgomery County's solid waste plan. [FN24] According to the plaintiffs, the ALJ failed to consider these issues at the adjudicatory hearing.

FN24. Relying on Code (1984, 1996 Repl.Vol.), § 9-204(e)(2), of the Environment Article, the plaintiffs claim that, in order to complete their permit applications, the applicants must "[s]ubmit to the Secretary any material change in the plans and specifications, with the reason for the change." In this case, the "material changes" included sites for the incinerator ash. Citing § 9-204(h)(2) of the Environment Article, the plaintiffs assert that before such change can be implemented, the Secretary must issue a "revised permit based on the submission to the Secretary under subsection (e)(2)."

We reject the plaintiffs' contention that the refuse disposal permit was issued improperly. At the beginning of her findings, conclusions, and proposed decision, the ALJ listed the following as an issue to be resolved: "Has the site [which] applicants intend to use for disposal of the incinerator ash and noncombustibles been fully analyzed or licensed in accordance with COMAR 26.04.07.25.B(11)." The ALJ recognized that, under COMAR 26.04.07.25B(11), an applicant for a refuse disposal permit must identify a proposed site for the ash. She then pointed out that the applicants designated "Oak Landfill" in their permit application as their proposed site. As discussed

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above, the ALJ also accepted the applicants' representation that, in the event that the ash tested hazardous in the future, the applicants had designated an alternative landfill in which to store the ash.

In addition, the ALJ devoted eight pages of her proposed decision to a discussion of the applicants' compliance with the Montgomery County Solid Waste Plan. She first noted that, under COMAR 26.04.07.25G, the following two conditions must be met before a refuse waste disposal permit can be issued:

> ****625** "(1) A statement from the appropriate local governmental agency concerning the consistency of the proposed facility ***310** with the approved county comprehensive solid waste management plan ...
> (2) Proof that the facility is consistent with the approved county comprehensive solid waste management plan."

The ALJ then determined that the applicants had met both of these requirements. The first requirement was satisfied by a letter attached to the application for the refuse disposal permit and signed by the Director of the Montgomery County Department of Environmental Protection. [FN25] The letter stated that the facility was "part of the Montgomery Solid Waste Management Plan." While refusing to review in this proceeding the County's Solid Waste Plan itself, [FN26] the ALJ did permit the parties to present evidence as to whether the facility complied with the plan. After a detailed review of evidence presented at the hearing by the parties on this issue, the ALJ concluded that "the weight of the evidence supports the finding that the Facility described in the Refuse Disposal Permit Application is consistent with the County's approved comprehensive solid waste management plan."

FN25. The ALJ noted that this requirement was also satisfied by statements made by the applicants on the face of the application for the refuse waste disposal permit that the facility was "consistent with the County Plan."

FN26. The ALJ thus stated:
"Plaintiff Walton was adamant in its determination to have the county solid waste planning policy become an issue in this proceeding. These decisions were made by the County subsequent to public hearings and enactment by the County Council. I do not have the authority to review or evaluate either the plan or its implementation. The County determines how to address its solid waste with input from the public and general oversight by MDE. In this proceeding, I do have authority to determined[sic] if the Applicants have submitted an appropriate statement and proof of consistency with the County's approved comprehensive solid waste management plan."

The refuse disposal permit was neither incomplete nor improper on the grounds asserted by the plaintiffs.

F.

[15] The plaintiffs further challenge the issuance of the permits on the ground that the incinerator would not be in ***311** compliance with the more demanding air quality standards for ozone non-attainment areas under the 1990 Amendments to the federal Clean Air Act, Title I, Part D, 42 U.S.C. §§ 7502, 7503 (1994). [FN27] (Plaintiffs' supplemental brief at 24). The applicants, on the other hand, maintain that the 1990 Clean Air Act Amendments are not applicable to the facility at issue. (Applicants' supplemental brief at 20).

FN27. An ozone non-attainment area is an area found, under § 107 of the Clean Air Act, 42 U.S.C. § 7407, to exceed the national primary or secondary ambient air quality standard for ozone. 42 U.S.C. § 7501(2). The National Capital Interstate Air Quality Control Region, which includes Montgomery County, has been labeled a non-attainment area for ozone for purposes of solid waste management plan preparation under 42 U.S.C. § 7511a.

It is undisputed that issuance of the permits in this case was not in compliance with the pertinent air quality standards under the 1990 Amendments to the federal Clean Air Act. It follows that if the permits were subject to the requirements specified in §§ 7502 and 7503 of the 1990 Clean Air Act, the

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Department erred in issuing them.

We conclude, however, that the terms of the Clean Air Act, coupled with interpretive guidance from the EPA, indicate that the permits in question are not subject to the more rigid standards demanded under the 1990 Amendments to the Clean Air Act. [FN28]

FN28. Further amendments to the Clean Air Act were enacted in 1995. The 1995 Amendments do not, however, change any of the substantive questions at issue in this case.

Pursuant to § 7409(a) of the Clean Air Act, the EPA is directed to establish national primary and secondary ambient air quality standards for certain air pollutants which threaten the health and welfare of the Nation. 42 U.S.C. § 7409(a)(1). Congress delegated to the states the responsibility of implementing these standards through State Implementation Plans, 42 U.S.C. § 7410(a). In 1990, Congress amended the Clean Air Act to include more rigorous air quality standards ****626** which states were required to incorporate into their existing plans. At issue in this case are new source review standards, contained ***312** in §§ 7502 and 7503, which govern sources contained in ozone non-attainment areas.

The plaintiffs argue that, pursuant to § 7401's "Effective Date of 1990 Amendment" provision, §§ 7502 and 7503 became effective on November 15, 1990, the date on which they were enacted. That provision provides as follows:

"Except as otherwise expressly provided, the amendments made by this Act ... shall be effective on the date of enactment of this Act [November 15, 1990]."

The new standards, however, did not immediately apply to all permits issued after November 15, 1990. Under § 7511, states were required to submit their revised plans to the EPA by November 12, 1992. *See* 42 U.S.C. § 7511. For those states which had not incorporated the new plan provisions by November 15, 1992, however, the "existing" plans would be effective and continue to govern all permit applications submitted prior to November 15, 1992.

This interpretation is consistent with that of the EPA in two guidance memoranda issued by John S. Seitz, Director of the Office of Air Quality Planning and Standards. [FN29] In his first memorandum, dated March 11, 1991, the Director explained that:

FN29. In these two guidance memoranda, the EPA sought to clarify the complex and significant changes made to the Clean Air Act in anticipation of numerous issues certain to be raised concerning the 1990 Amendments. In particular, the EPA anticipated that many states would not be able to incorporate the new standards into their plans by the November 15, 1992 deadline, and issued these memoranda to provide further guidance to those states.

"[T]he 1990 Amendments require States to submit to EPA new NSR permit program rules for ozone nonattainment areas by November 15, 1992.... The EPA interprets this as an expression of congressional intent not to mandate that states adhere to the more stringent ... NSR requirements in nonattainment areas during the time provided for state implementation (SIP) development. Thus, for NSR permitting purposes in nonattainment areas, the new NSR requirements ***313** in Title I are not in effect until the States, as required by the Act, adopt NSR permit program rules to implement the Title I provisions."

Mr. Seitz further interpreted Title I of the 1990 Amendments in his September 3, 1992 memorandum:

"Title I of the 1990 CAAA requires that States with nonattainment ares or areas in the Northeast Ozone Transport Region (NOTR) submit to EPA, by specified deadlines, augmented new source permit rules which meet the amended requirement of Part D of Title I of the Act.... For ozone, the 1990 CAAA require that States submit [plans] meeting the amended Part D NSR requirements by November 15, 1992. Where States do not submit the Part D NSR [plans] by the applicable statutory deadline ... sources that have submitted complete permit applications ... by the submittal deadline may receive final permits under existing State NSR rules. In this situation, such sources will be considered by EPA to be in compliance with the Act without meeting the amended Part D NSR provisions of the 1990 CAAA [provided

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they meet certain requirements]...."

The EPA is the federal agency responsible for implementing the provisions of the federal Clean Air Act. As such, its interpretation of the provisions of the Clean Air Act is entitled to deference if it is "based on a permissible construction of the statute." *Chevron U.S.A. v. Natural Res. Def. Council,* 467 U.S. 837, 843-844, 104 S.Ct. 2778, 2781-2782, 81 L.Ed.2d 694, 702-704 (1984). Consistent with 1990 Clean Air Act provisions and EPA guidance, before the 1990 Amendments take effect in Maryland, the State of Maryland must, at the very least, incorporate the new regulations into its existing plan. [FN30]

FN30. The "savings clause" contained in § 110(n), 42 U.S.C. § 7410(n)(1) indicates that before the 1990 Amendments take effect, the EPA must also approve the state's revised plan. Section 110(n) reads as follows:
"Any provision of any applicable implementation plan that was approved or promulgated by the Administrator [of the EPA] pursuant to this section as in effect before November 15, 1990, shall remain in effect as part of such applicable implementation plan, except to the extent that a revision to such provision is approved or promulgated by the Administrator pursuant to this chapter."

****627 *314** Our holding is consistent with that of other courts which have decided this identical issue. *See, e.g., In the Matter of Crown/Vista Energy Project,* 279 N.J.Super. 74, 652 A.2d 212 (App.Div.), *cert. denied,* 140 N.J. 277, 658 A.2d 301 (1995). In that case, an air pollution control permit was issued by the New Jersey Department of Environmental Protection to the operator of a coal-fueled power plant for the sale of electricity. On February 28, 1992, the operator submitted an application for the permit, which the Department issued to him on October 1, 1993. A group of citizens and individuals sought review of the Department's decision on the ground that the permit was not in compliance with § 7511a of the 1990 Clean Air Act in that it did not meet the new emission standards required under that section. Analyzing the statutory scheme underlying the Clean Air Act, and citing the EPA memoranda for support, the New Jersey Court rejected the petitioners' claim that the permit, issued *after* the date of enactment of the 1990 Amendments, was subject to the more stringent emissions requirements. 652 A.2d at 216-217.

The same position was adopted by the United States District Court for the Northern District of California in *Citizens for a Better Environment v. Wilson,* 775 F.Supp. 1291, 1299 (N.D.Cal.1991). On this issue, the court in *Wilson* concluded that (775 F.Supp. at 1299):

"... Congress intended to hold agencies to [regulations contained] in existing [plans], pending formal [plan] revision. Such an interpretation best reconciles and harmonizes the purposes of the Clean Air Act and the provisions of the 1990 Amendments. It is most consistent with the overall purpose of achieving healthy air as expediously as practicable and the statutory scheme of retaining the enforceability of existing [plans] until replaced...."

In the case at bar, the applicants submitted their permit applications sometime in 1990. On November 6, 1991, the EPA designated Montgomery County as a serious ozone non-***315** attainment area. 40 C.F.R. § 81.321. Maryland did not, however, incorporate the new plan regulations pertaining to ozone non-attainment areas until April 26, 1993. *See* COMAR 26.11.17. Accordingly, at the time that the applicants submitted their permit applications, Maryland had not yet incorporated the new regulations into its plan. Thus, the 1990 Amendments are not applicable to the permits at issue in this case.

G.

[16] According to the plaintiffs, the ALJ erred in finding that "pollutant levels in water, fish, and food ... cannot be considered when determining compliance with MDE's prohibition on unreasonable endangerment under 26.11.15.06. [FN31]" (Plaintiffs' supplemental brief at 46). The record indicates otherwise.

FN31. COMAR 26.11.15.06 provides, in pertinent part as follows:
"A. Requirements for New Installations, Sources, or Premises.

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(1) Except as provided ... below, a person may not construct, modify, or operate or cause to be constructed, modified, or operated any new installation or source without first demonstrating to the satisfaction of the Department using procedures established in this chapter that total allowable emissions from the premises of each toxic air pollutant discharged by the new installation or source will not unreasonably endanger human health."

As previously discussed in Part III B of this opinion, *supra,* the ALJ devoted several pages of her findings, conclusions and proposed decision to a consideration of the risks to "water fish and food" from incinerator pollutants. In particular, the ALJ considered two comprehensive risk assessments which both examined the various toxins likely to accumulate in local farm ponds and measured the resulting harm from consumption of fish within those ponds. The risk assessments also estimated the level of harm through the consumption of milk and beef from live-stock raised on local farms and from vegetables grown on those farms. Thus, the plaintiffs' argument that the ALJ ****628** "ignored food chain routes of exposure to ***316** air toxins released from the incinerator" is not supported by the record.

H.

[17] We find no merit in the plaintiffs' final argument that "[t]he ALJ's determination that pre-hearing discovery was not permitted denied [plaintiffs] due process of law as required by the United States and Maryland Constitutions." (Plaintiffs' supplemental brief at 46). There is no provision in the Maryland Administrative Procedure Act which provides for discovery at the pre-hearing stage. Furthermore, under COMAR 26.01.02.21A, which governs the Department of the Environment contested case proceedings, "[d]iscovery may be taken only in accordance with the stipulation of the parties." Parties may, however, "request governmental documents under the Maryland Public Information Act, State Government Article, § 10-611 et. seq." COMAR 26.01.02.21B. There was no stipulation in this case providing for discovery. Consequently, the ALJ properly determined that, absent such stipulation, she was not authorized to require the extensive discovery requested by the plaintiffs. Moreover, pursuant to COMAR 26.01.02.21B, the plaintiffs requested certain documents under the Maryland Public Information Act which they received without delay. Finally, the plaintiffs do not dispute the respondents' representations that the plaintiffs were furnished with several documents.

The plaintiffs do not argue that the ALJ or the Department relied upon any document which was not previously shown to the plaintiffs, or with regard to which there was no opportunity for rebuttal. *Cf. Rogers v. Radio Shack,* 271 Md. 126, 129, 314 A.2d 113, 115 (1974) ("We agree with Rogers that under the circumstances here, with no opportunity for cross-examination or rebuttal, fundamental fairness would preclude reliance upon the report by an administrative agency"). The plaintiffs have cited no case in the Supreme Court or in this Court, and we are unaware of any such case, holding that due process mandates pre-hearing discovery in an administrative proceeding. *See, *317Replacement Rent-A-Car v. Smith,* 99 Md.App. 588, 593, 638 A.2d 1217, 1219 (1994) ("The Maryland Rules relating to discovery apply only to proceedings in the circuit courts and not to proceedings before administrative agencies.... It is equally well-established that there is no broad constitutional right to pre-hearing discovery in administrative proceedings and that any general right to such discovery must come from the statutes or rules governing those proceedings. * * * Neither the State Administrative Procedure Act nor the statute governing the [agency] provides such entitlement ..."), and cases there cited.

Thus, we perceive no error in the ALJ's refusal to require pre-hearing discovery.

IV.

For the reasons set forth in Parts II and III of this opinion, the circuit court should have affirmed the administrative decision rather than dismissing the plaintiffs' action for lack of standing.

JUDGMENT OF THE COURT OF SPECIAL APPEALS REVERSED, AND CASE REMANDED TO THE COURT OF SPECIAL APPEALS WITH DIRECTIONS TO REVERSE THE JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY

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COUNTY AND REMAND THE CASE TO THAT COURT WITH DIRECTIONS TO ENTER A JUDGMENT AFFIRMING THE DECISION OF THE DEPARTMENT OF THE ENVIRONMENT. COSTS IN THIS COURT AND IN THE COURT OF SPECIAL APPEALS TO BE PAID BY THE RESPONDENTS.

344 Md. 271, 686 A.2d 605

END OF DOCUMENT

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Westlaw Attached Printing Summary Report for TANCZYN,MICHAEL 1812118

Date/Time of Request:	Wednesday, February 16, 2005 17:29:00 Eastern
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Database:	MD-CS
Citation Text:	686 A.2d 605
Lines:	1670
Documents:	1
Images:	0

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THIS DEED OF CONSERVATION EASEMENT ("Conservation Easement") made this 29 day of December, 1998, by and between MARK J. DANEKER ("Grantor") and the LONG GREEN VALLEY CONSERVANCY, INC., having an address at Post Office Box 133, Long Green, Maryland 21092 ("Grantee").

WITNESSETH

WHEREAS the Long Green Valley Conservancy, Inc., is a not-for-profit, tax-exempt organization established to preserve the farmland, historic landmarks and predominantly rural character of the Long Green Valley National Register Historic District and its environs;

WHEREAS Grantor owns in fee simple 19.02 acres, more or less, of certain real Property ("Property") situate, lying and being in the eleventh election District of Baltimore County, Maryland, and more particularly described in Exhibit A attached hereto, which was conveyed to the Grantor by Mildred Z. Daneker, Personal Representative by Deed dated February 13, 1988 and recorded among the land records of Baltimore County, Maryland in Liber SM No. 7835, folio 15 ;

WHEREAS Grantor is willing to grant a perpetual Conservation Easement over the Property, thereby restricting and limiting the use of the land and contiguous water areas of the Property, on the terms and conditions and for the purposes hereinafter set forth, and Grantee is willing to accept such Conservation Easement;

WHEREAS Grantor and Grantee recognize the open-space conservation value of the Property as a natural and rural area that has not been subject to development, and have identified significant conservation features in Exhibit B attached hereto;

WHEREAS Grantor and Grantee have a common purpose in conserving the dominant scenic, cultural, rural, agricultural, woodland and wetland character of the Property, and, except as hereinafter provided, limiting the use or development of the Property for any purpose or in any manner that would conflict with the maintenance of the Property in its open-space condition;

WHEREAS Grantee is authorized by the State of Maryland to accept, hold and administer conservation easements, and possesses the authority to accept and is willing to accept this Conservation Easement under the terms and conditions hereinafter described, and is a "qualified organization" within the meaning of Section 170(h)(3) of the Internal Revenue Code;

NOW THEREFORE, as an absolute gift for no monetary consideration ($0.00) but in consideration of the mutual covenants, terms, conditions and restrictions hereinafter set forth, Grantor unconditionally and irrevocably hereby grants and conveys unto Grantee, its successor and assigns, forever and in perpetuity a Conservation Easement of the nature and character and to the extent hereinafter set forth, with respect to the Property.

The purpose of this Conservation Easement is to preserve and protect the environment of the Property and to maintain permanently the open-space values of the Property and the dominant scenic, historic, cultural, rural, agricultural, woodland and wetland character of the Property.

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To achieve these objectives, the following conditions and restrictions are set forth:

ARTICLE I. DURATION OF EASEMENT

The Conservation Easement shall be perpetual. It is an easement in gross and as such is inheritable and assignable in accordance with Article VI and runs with the land as an incorporeal interest in the Property, enforceable with respect to the Property by the Grantee against Grantor and his personal representatives, heirs, successors and assigns.

ARTICLE II. PROHIBITED AND RESTRICTED ACTIVITIES

A. Industrial or commercial activities other than farming, silviculture and horticulture are prohibited on the Property, except for (1) such activities as can be conducted in residential structures (or their replacements) without material effect on the external appearance thereof, and (2) the sale to the public of agricultural or forestry products produced on the Property.

B. Display of billboards, signs or advertisements is prohibited on or over the Property, except (1) to state solely the name and/or address of the Property and/or the owners; (2) to advertise the sale or lease of the Property; (3) to advertise the agricultural, horticultural, silvicultural and naturalistic uses of the Property; (4) to advertise the sale of goods or services produced by permitted uses of the Property; (5) to post the Property against hunting and trespassing; or (6) to commemorate the history of the Property, its recognition under state or federal historical registers, or its protection under this easement or state and local environmental or game laws; provided that no sign or billboard on the Property shall exceed four feet by six feet. Multiple signs shall be limited to a reasonable number, shall not damage living trees, and shall be placed in accordance with applicable local regulations.

C. Dumping of soil, trash, ashes, garbage, waste, abandoned vehicles, appliances, machinery or other materials on the Property is prohibited, except that soil, rock, other earth materials, wood, vegetative matter, manure or compost may be placed (1) as may be reasonably necessary for agriculture and silviculture on the Property or (2) as may be reasonably necessary for the construction or maintenance of structures permitted under this Conservation Easement and means of access.

D. Excavation, dredging, mining and removal of loam, gravel, soil, rock, sand, coal, petroleum and other materials are prohibited, except (1) for the purpose of combatting erosion or flooding, (2) for agriculture or silviculture on the Property, or (3) for the construction and/or maintenance of permitted structures, homesites, means of access and wildlife habitat.

E. Diking, draining, filling or removal of wetlands is prohibited.

F. Management and harvesting of all forests on the Property shall be in accord with the Guide to Forest Harvest Operations and Best Management Practices or comparable provisions of any guidelines or regulations which may replace the Guide in the future or as they may be amended from time to time except that Grantee will not cut timber or trees within 50 feet of any stream on the Property.

G. No more than two residential dwellings and no other buildings, facility, or other structure shall be constructed on the Property after the date of this Conservation Easement, except:

(1) To construct accessory structures designed, constructed and utilized for the purpose of serving the two principal residences permitted (for example, garage, well house, swimming pool);

(2) To construct accessory structures designed, constructed and utilized in connection with the agricultural, horticultural, forestry, and naturalistic uses of the Property (for example, run-in sheds);

(3) To replace all existing structures and other structures permitted under this Conservation Easement with structures of similar purpose;

(4) To improve, repair, restore, alter, expand, remodel, and maintain all existing structures and other structures permitted under this Conservation Easement in this Article;

(5) To construct and maintain reasonable means of access to all permitted uses and structures;

(6) Grantors shall notify Grantee at least forty-five (45) days in advance of any work whether for construction or preparatory to construction regarding the location of any replacement residential structure if different from the original location of the replaced structure, and the location of a new means of access to a residential structure, and any such change shall be subject to the prior written approval of Grantee, not to be unreasonably withheld. The original location of the two residential structures shall be at the sole option of Grantor.

H. The total number of residential structures (including for example, but not limited to, principal residences, guest houses, tenant houses, farm manager houses, condominiums, apartments, fixed mobile homes and seasonal cabins)on the Property shall never exceed two (2).

I. Subdivision of the Property into two separate parcels in accordance with Baltimore County Regulations shall be permitted with all appropriate easements and restrictions, but subdivision into more than two parcels of land, is prohibited except that division to establish and grant a road bed, right of way or easement shall not be prohibited nor require Grantee's consent and shall not be considered Subdivision of the Property for purposes of this paragraph. However, Grantee may approve the division of the Property for other reasons which Grantee determines are sufficiently extraordinary to justify an exception to the prohibition. A division of the Property to effect a trade for other property which is subjected to an easement acceptable to the Grantee is illustrative.

J. The Property has five development rights under current Baltimore County Zoning regulations. Grantor hereby grants to Grantee all development rights except two which are specifically reserved hereby together with any hereafter allocated to, implied, or inherent in the Property, and the parties agree that said three granted rights will not be exercised by the Grantor

and may not be used or transferred to any portion of the Property as it now or hereafter may be bounded or described, or to any other property adjacent or otherwise, nor used for the purpose of calculating permissible lots on the Property. All such granted development rights which might now or hereafter become or represent a transferable density right attributable exclusively to the Property, except the two specifically retained, are hereby assigned and transferred to Long Green Valley Conservancy, Inc. and may be sold by it as a participant in any transferable density rights program for use outside of the Long Green Valley Historic District.

K. All rights reserved by Grantor or activities not prohibited by this Conservation Easement shall be exercised so as to prevent or to minimize damage to water quality, air quality, land/soil stability and productivity, wildlife, scenic and cultural values, and the natural topographic and open-space character of the Property.

L. Except to the extent that prior written approval of Grantee is required by any paragraph of this Article, all rights reserved by Grantors or not prohibited by this Conservation Easement are considered to be consistent with the conservation purpose of this Conservation Easement and require no prior notification or approval, except that, if Grantor believes or reasonably should believe that the exercise of a reserved right may have a significant adverse effect on the conservation interests associated with the Property, Grantor shall notify Grantee in writing before exercising such right.

ARTICLE III. ENFORCEMENT AND REMEDIES

A. Upon any breach of the terms of this Conservation Easement by Grantor, Grantee may, after reasonable notice to Grantor, exercise any or all of the following remedies:

(1) institute suits to enjoin any breach or enforce any covenant by ex parte temporary, and/or permanent injunction either prohibitive or mandatory; and

(2) require that the Property be restored promptly to the condition required by this Conservation Easement.

Grantee's remedies shall be cumulative and shall be in addition to any other rights and remedies available to Grantee at law or equity.

B. No failure on the part of Grantee to enforce any covenant or provision hereof shall discharge or invalidate such covenant or any other covenant, condition, or provision hereof or affect the right of Grantee to enforce the same in the event of a subsequent breach or default.

C. Grantee, its employees and agents and its successors and assigns, have the right, with reasonable notice, to enter the Property at reasonable times for the purpose of inspecting the Property to determine whether the Grantors, their personal representatives, heirs, successors or assigns are complying with the terms, conditions and restrictions of this Conservation Easement. This right of inspection does not include access to the interior of buildings and structures.

D. Nothing herein contained is intended to bestow or grant to any person or

organization other than Grantee any right or interest entitling such person or organization to enforce this agreement or to obtain any remedy. It is intended that the Grantee shall have sole discretion and exclusive rights to enforcement or remedies with regard to this Agreement.

ARTICLE IV. PUBLIC ACCESS

The granting of this Conservation Easement does not convey to the public the right to enter the Property for any purpose whatsoever.

ARTICLE V. EXHIBITS

The following exhibits are hereby made a part of this Conservation Easement:

A. Exhibit A: Boundary Description and Property Reference is attached and made part hereof. Exhibit A consists of two pages.

B. Exhibit B: Summary of Conservation Values is attached and made part hereof. Exhibit B consists of two pages.

These exhibits reflect the existing uses, conservation values and structures on the Property as of the date of this Conservation Easement.

ARTICLE VI. MISCELLANEOUS

A. Grantee may assign, upon prior written notice to Grantor, its rights under this Conservation Easement to any "qualified organization" within the meaning of Section 170(h)(3) of the Internal Revenue Code or the comparable provision in any subsequent revision of the Code and only with assurances that the purposes of this Conservation Easement will be maintained; and, if any such assignee shall be dissolved or shall abandon this Conservation Easement or the rights and duties of enforcement herein set forth, or if the proceedings are instituted for condemnation of this Conservation Easement, the easement and rights of enforcement shall revert to Grantee; and if grantee shall be dissolved and if the terms of the dissolution fail to provide a successor, then Grantors, their personal representatives, heirs, successors or assigns, shall institute a court of competent jurisdiction proceeding to appoint an appropriate successor as Grantee. Any such successor shall be a "qualified organization" within the meaning of Section 170(h)(3) of the Internal Revenue Code or the comparable provision in any subsequent revision of the Code. No assignment may be made by Grantee of its rights under this Conservation Easement unless Grantee, as a condition of such assignment, requires the assignee to carry out the conservation purposes of this Conservation Easement.

B. Grantor agrees for himself, his personal representatives, heirs, successors and assigns, to notify Grantee in writing of the names and addresses of any party to whom the Property, or any part thereof, is to be transferred at or prior to the time said transfer is consummated. Grantor, his personal representatives, heirs, successors and assigns further agrees to make specific reference to this Conservation Easement in a separate paragraph of any subsequent deed or other legal instrument by which any interest in the Property is conveyed.

C. Grantee agrees to hold this Conservation Easement exclusively for conservation purposes, as defined in Section 170(h)(4)(A) of the Internal Revenue Code.

D. The donation of this Conservation Easement gives rise to a property right, immediately vested in Grantee, with a fair market value equal to the proportionate value that the Conservation Easement bears to the value of the Property as a whole.

E. This Conservation Easement shall be construed to promote the purposes of the statutes creating and governing the Maryland Environmental Trust, the purposes of Section 2-118 of the Real Property Article of the Annotated Code of Maryland, and the conservation purposes of this Conservation Easement, including such purposes as are defined in Section 179(h)(4)(A) of the Internal Revenue Code.

F. The provisions of this Conservation Easement do not replace, abrogate or otherwise set aside any local, state or federal laws, requirements or restrictions applicable to the Property.

G. This instrument sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings or agreement relating to the Conservation Easement. If any provision is found to be invalid, the remainder of the provisions of this Conservation Easement, and the application of such provision to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

H. Grantee shall record this instrument in timely fashion in the official records of Baltimore County, Maryland, and may re-record it at any time as may be required to preserve their rights under this Conservation Easement.

I. Grantor and Grantee agree that all mortgages and deeds of trust affecting the property are subordinate to the rights of Grantee under this Conservation Easement.

J. Any notices by Grantor to Grantee pursuant to any provision hereof shall be sent by registered mail, return receipt requested, addressed to the Long Green Valley Conservancy, Inc., Post Office Box 133, Long Green, Maryland 21092 or to such other addresses as Grantee may establish in writing on notification to Grantors.

K. In any case where the terms of this Conservation Easement require the consent of Grantee, such consent shall be requested by notice to Grantee. Such consent shall be deemed to have been given unless within forty-five (45) days after receipt of notice Grantee mails notice to grantor of disapproval and the reason therefore.

L. The terms "Grantor" and "Grantee" shall include their respective successors and assigns.

TO HAVE AND TO HOLD unto THE LONG GREEN VALLEY CONSERVANCY, INC. its successors and assigns forever. The covenants agreed to and the terms, conditions,

restrictions and purposes imposed as aforesaid shall be binding upon Grantors, their survivors, agents, personal representatives, heirs, assigns and all other successors to them in interest, and shall continue as a servitude running in perpetuity with the Property.

IN WITNESS WHEREOF, Grantor and Grantee have hereunto set their hands and seals the day and year above written.

WITNESS:

GRANTOR:

Mark J. Daneker (SEAL)

STATE OF MARYLAND, COUNTY OF BALTIMORE: TO WIT:

I HEREBY CERTIFY, that on this 24th day of December 1998, before me the subscriber, a Notary Public of the State aforesaid, personally appeared Mark J. Daneker, known to me (or satisfactorily proven) to be the Grantor of the foregoing Deed of Conservation Easement and acknowledged that he executed the same for the purposes therein contained and in my presence signed and sealed the same.

WITNESS my hand and Notarial Seal.

Notary Public

DOROTHY JEAN CROSS NOTARY PUBLIC HARFORD COUNTY, MD.

My Commission Expires: 10/1/02

ACCEPTED BY

THE LONG GREEN VALLEY CONSERVANCY, INC., AS GRANTEE:

Catherine G. Ebert, President

I hereby certify that the within instrument was prepared by me or under my supervision, and that I am an attorney duly admitted to practice before the Court of Appeals of the State of Maryland.

GORDON T. LANGDON
EDWARD F. DEIACO-LOHR
BRUCE E. DOAK

GERHOLD, CROSS & ETZEL, LTD.
Registered Professional Land Surveyors
SUITE 100
320 EAST TOWSONTOWN BOULEVARD
TOWSON, MARYLAND 21286-5318
410-823-4470
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EMERITUS
PAUL G. DOLLENBERG
FRED H. DOLLENBERG
CARL L. GERHOLD
PHILIP H. CROSS
OF COUNSEL
JOHN F. ETZEL
WILLIAM G. ULRICH

October 2, 1998

Portion of the Property
of Mark J. Daneker (17.992 Acres parcel)

All that piece of parcel of land situate, lying and being in the Eleventh Election District of Baltimore County, State of Maryland and described as follows to wit:

Beginning for the same at a stone heretofore set at the beginning of a parcel of land which by a deed dated February 13, 1988 and recorded among the Land Records of Baltimore County in Liber S.M. No. 7835 folio 15 was conveyed by Mildred Z. Daneker, Personal Representative of the Estate of Clayton W. Daneker, to Mark J. Daneker and thence running with and binding on the first line and on a part of the second line of said parcel of land and referring the courses of this description to the Baltimore County Grid Meridian, the two following courses and distances, viz: 1) North 86 degrees 56 minutes 14 seconds West 948.40 feet and, 2) North 87 degrees 38 minutes 37 seconds West 77.04 feet to intersect the easternmost outline of a parcel of land 100 feet wide which by a deed dated August 30, 1910 and recorded among the Land Records of Baltimore County in Liber W.P.C. No. 367 folio 149 was conveyed by Thomas T. Boswell and Sarah E. Boswell, his wife to the Susquehanna Transmission Company of Maryland, thence running and binding on a part of the easternmost outline of the said Susquehanna Transmission Company, 3) North 15 degrees 28 minutes 16 seconds East 668.97 feet to the southernmost outline of the parcel of land designated as part of Lot 8 containing 0.775 of an acre of land, more or less, and as shown Plat Two of Dulaney Valley Estates II which Plat is intended to be recorded among the Land Records of Baltimore County, thence leaving the aforesaid easternmost outline of the Susquehanna Transmission Company and binding on the outlines of the said designated part of Lot 8 the two following courses and distances, viz: 4) South 79 degrees 10 minutes 00 seconds East 134.54 feet and, 5) North 00 degrees 15 minutes 00 seconds East 510.77 feet to intersect the aforesaid easternmost outline of the Susquehanna Transmission Company and thence running and binding on a part of the aforesaid easternmost outline of the Susquehanna Transmission Company, 6) North 15 degrees 28 minutes 16 seconds East 440.73 feet to intersect the fourteenth or South 76 degrees 05 minutes 56 seconds East 483.84 foot line of the aforesaid parcel of land which was conveyed by Mildred Z. Daneker, Personal Representative, to Mark J. Daneker, and thence running with and binding on a part of said fourteenth line, 7) South 82 degrees 10 minutes 15 seconds East 13.52 feet to an iron pipe, heretofore set, at the beginning of the last line of the aforesaid parcel which was conveyed by Daneker to Daneker and running thence with and binding on said last line, 8) South 19 degrees 51 minutes 14 seconds East

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Registered Professional Land Surveyors

1708.51 feet to the place of beginning.

Containing 17.992 Acres of land, more or less.

Being a part of the land which by a deed dated February 13, 1988 and recorded among the Land Records of Baltimore County in Liber S.M. No. 7835 folio 15 was conveyed by Mildred Z. Daneker, Personal Representative of the Estate of Clayton W. Daneker to Mark J. Daneker.

For Title also see a deed dated December 15, 1980 and recorded among the Land Records of Baltimore County in Liber E.H.K. Jr. No. 6297 folio 345.

Being a part of Future Plat 3 as designated on the aforesaid Plat Two Dulaney Valley Estates II which plat Two is intended to be recorded among the Land Records of Baltimore County.

Together with the right and the use thereof in common with others entitled thereto of Bart Allen Lane, Milbert Ridge Drive and East Devonfield Drive as shown on the plats of Dulaney Valley Estates, said plats recorded among the Land Records of Baltimore County in Plat Book O.T.G. No. 32 folio 73 and G.L.B. No. 23 folio 17.

Together with the right to cross and recross the herein referred to property of the Susquehanna Transmission Company of Maryland.

STATE OF MARYLAND
PROPERTY LINE SURVEYOR
No. 172
REGISTERED

C:\OFFICE\WPWIN\WPDOCS\DESCRIPT\DANEK17A.WPD

SUITE 100 • 320 EAST TOWSONTOWN BOULEVARD • TOWSON, MARYLAND 21286 • 410-823-4470 • FAX 410-823-4473

GORDON T. LANGDON
EDWARD F. DEIACO-LOHR
BRUCE E. DOAK

GERHOLD, CROSS & ETZEL, LTD.
Registered Professional Land Surveyors
SUITE 100
320 EAST TOWSONTOWN BOULEVARD
TOWSON, MARYLAND 21286-5318
410-823-4470
FAX 410-823-4473

EMERITUS
PAUL G. DOLLENBERG
FRED H. DOLLENBERG
CARL L. GERHOLD
PHILIP R. CROSS
OF COUNSEL
JOHN F. ETZEL
WILLIAM G. ULRICH

October 2, 1998

Portion of the Property
of Mark J. Daneker (1.037 acres parcel)

All that piece or parcel of land situate, lying and being in the Eleventh Election District of Baltimore County, State of Maryland and described as follows to wit:

Beginning for the same at an iron pipe, heretofore set, in the fourteenth or South 76 degrees 05 minutes 56 seconds East 483.84 foot line of a parcel of land which by a deed dated February 13, 1988 and recorded among the Land Records of Baltimore County in Liber S.M. No. 7835 folio 15 and was conveyed by Mildred Z. Daneker, Personal Representative of the Estate of Clayton W. Daneker to Mark J. Daneker, at the intersection of said line with the westernmost outline of a parcel of land 100 feet wide, which by a deed dated August 30, 1910 and recorded among the Land Records of Baltimore County in Liber W.P.C. No. 367 folio 149 was conveyed by Thomas T. Boswell and Sarah E. Boswell, his wife to the Susquehanna Transmission Company of Maryland, thence leaving the aforesaid fourteenth line and running and binding on aforesaid westernmost outline of the Susquehanna Transmission Company and referring the courses of this description to the Baltimore County Grid Meridian, 1) South 15 degrees 28 minutes 16 seconds West 236.34 feet, thence leaving the said westernmost outline and binding on the northeasternmost outline of plat two Dulaney Valley Estates II which plat is intended to be recorded among the Land Records of Baltimore County, 2) North 48 degrees 41 minutes 59 seconds West 424.73 feet to the beginning of the aforesaid fourteenth line of the parcel of land which was conveyed by Daneker to Daneker and running thence with and binding on a part of said fourteenth line, 3) South 82 degrees 10 minutes 15 seconds East 385.72 feet to the place of beginning.

Containing 1.037 Acres of land, more or less.

Being a part of the parcel of land which by a deed dated February 13, 1988 and recorded among the Land Records of Baltimore County in Liber S.M. No. 7835 folio 15 was conveyed by Mildred Z. Daneker, Personal Representative of the Estate of Clayton W. Daneker to Mark J. Daneker.

For Title also see a deed dated December 15, 1980 and recorded among the Land Records of Baltimore County in Liber E.H.K. Jr. No. 6297 folio 345.

C:\OFFICE\WPWIN\WPDOCS\DESCRIPT\DANEKIA.WPD

GERHOLD, CROSS & ETZEL, LTD.
Registered Professional Land Surveyors

Being a part of Future Plat 3 as designated on the aforesaid Plat Two Dulaney Valley Estates II which Plat Two is intended to be recorded among the Land Records of Baltimore County.

Together with the right to cross and recross the herein referred to property of the Susquehanna Transmission Company of Maryland.

C:\OFFICE\WPWIN\WPDOCS\DESCRIPT\DANEKIA.WPD

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DEED OF CONSERVATION EASEMENT

Exhibit B

Summary of Conservation Values
Page One

1. Master Plan: This Conservation Easement is consistent with and supports the land use policy of the Baltimore County Maser Plan, 1989-2000 adopted in 1990 by the Baltimore County Planning Board.

   The Property lies within the Agricultural Preservation Zone. County goals for Agricultural Preservation Zones include:

   (a) Preserving agriculture and other resource conservation areas in Baltimore County is important for present and potential production of food and other crops, economic diversity, maintenance of environmental quality, open space protection, cultural site protection, and general quality of life. The County reaffirms its public policy to support the retention of a viable agricultural industry, and the protection of resource conservation areas.

   (b) It is the policy of Baltimore County to improve the quality of its environment by preserving rare and significant species habitat, anadromous fish habitat, tidal and non-tidal wetland habitat, in-stream and riparian habitat, and upland forest habitat. The property includes approximately 1000 feet of stream.

   (c) It is the policy of Baltimore County to restore and protect the water supply reservoirs.

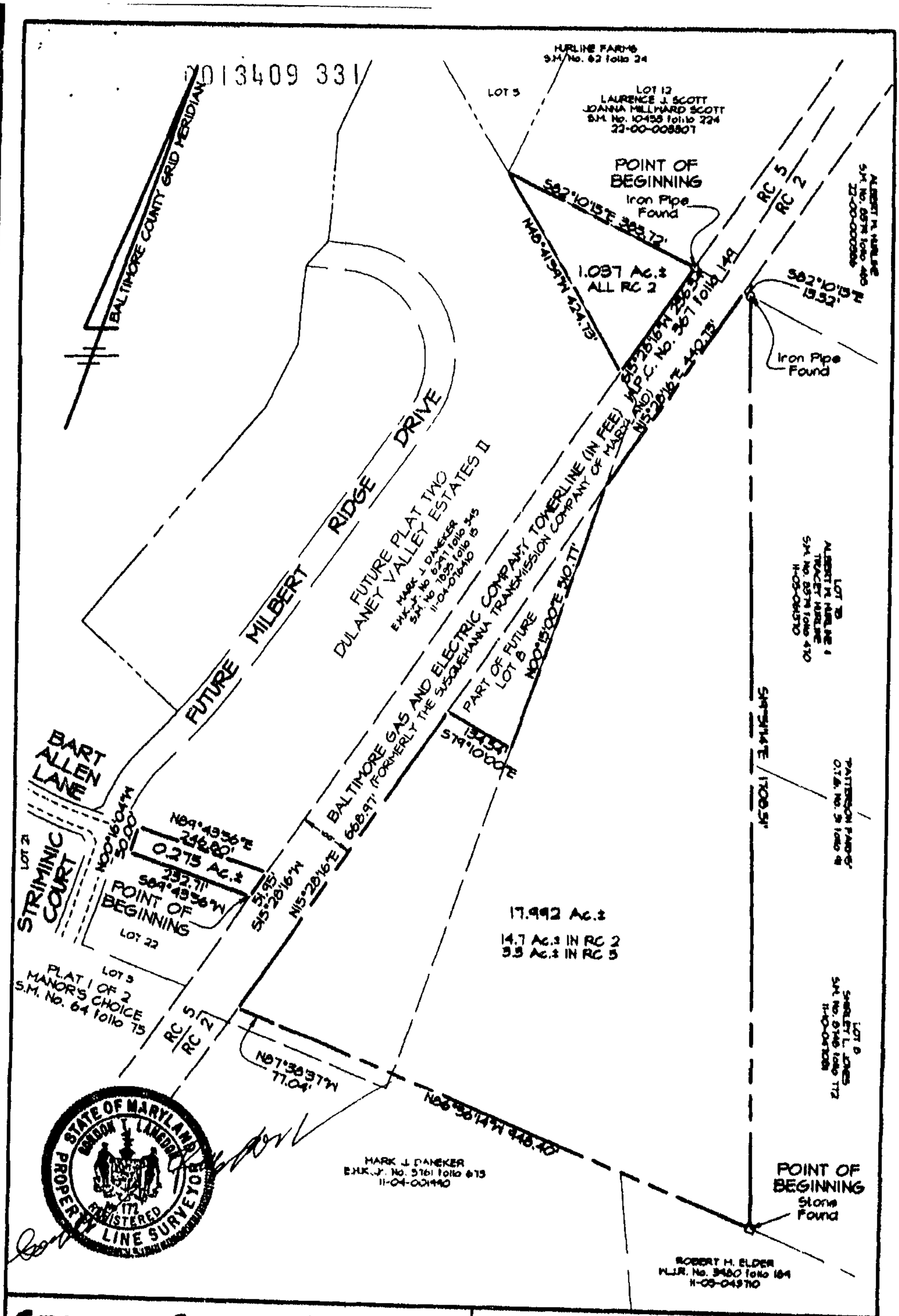
2. Area of Critical State Concern: The Property lies within Long Green Valley, and the Long Green Run watershed, which were designated as Area of Critical State Concern for Baltimore County in 1977 by the Baltimore County Planning Board. (Source: Designation of Areas of Critical State Concern within Baltimore County, Baltimore County Planning Board, 1977.)

3. Scenic Value: The Property is an integral part of the rural scenic landscape of Baltimore County visible to the public from East Devonfield Road and Bart Allen Road.

4. Agricultural Land and Woodland: The Property includes about 5 acres of agricultural land and 14 acres of woodland which provides an extensive wildlife corridor linking other restricted use and conservation buffer areas.

5. Historic Value: The Property is located in the Long Green Valley National Register Historic District.

6. Long Green Valley Conservancy, Inc.: The conservation values of the Property defined above are pursuant to the conservation policies adopted by the Long Green Valley Conservancy, Inc.



GERHOLD, CROSS & ETZEL, LTD.
REGISTERED PROFESSIONAL LAND SURVEYORS
Suite 100
320 East Towsontown Boulevard
Towson, Maryland 21286
PH: (410)823-4470 FAX: (410)823-4473

PLAT SHOWING A PORTION OF THE PROPERTY OF
MARK J. DANEKER
DEED REF: E.H.K.,Jr. No. 6297 folio 345 & S.M. No. 7855 folio 15
11th ELECTION DISTRICT
BALTIMORE COUNTY, MARYLAND

FIELD WORK: G.T.L. 1991	DRAWN: S.A.L.	DATE: Oct. 2, 1998	SCALE: 1" = 200'

00134 09 332

State of Maryland Land Instrument Intake Sheet

☐ Baltimore City ☐ County: _____

Information provided is for the use of the Clerk's Office, State Department of Assessments and Taxation, and County Finance Office only.

(Type or Print in Black Ink Only—All Copies Must Be Legible)
(☐ Check Box if Addendum Intake Form is Attached.)

IMP FD SURE $ 2.00
RECORDING FEE 75.00
TOTAL 77.00
Rec# BAC: Rct # 47803
3M DM Blk # 4290
Dec 30, 1998 10:17 am

1 Type(s) of Instruments: Deed; Deed of Trust; Mortgage; Lease; ☒ Other Conservation Easement; Other

2 Conveyance Type Check Box: Improved Sale Arms-Length /1/; Unimproved Sale Arms-Length /2/; Multiple Accounts Arms-Length /3/; ☒ Not an Arms-Length Sale /9/

3 Tax Exemptions (if Applicable)
Cite or Explain Authority: Recordation; State Transfer; County Transfer

4 Consideration and Tax Calculations

Consideration Amount	
Purchase Price/Consideration	$ 0
Any New Mortgage	$
Balance of Existing Mortgage	$
Other:	$
Other:	$
Full Cash Value	$ 0

Finance Office Use Only — Transfer and Recordation Tax Consideration	
Transfer Tax Consideration	$
X ( ) % =	$
Less Exemption Amount –	$
Total Transfer Tax =	$
Recordation Tax Consideration	$
X ( ) per $500 =	$
TOTAL DUE	$

5 Fees

Amount of Fees	Doc. 1	Doc. 2
Recording Charge	$	$
Surcharge	$	$
State Recordation Tax	$	$
State Transfer Tax	$	$
County Transfer Tax	$	$
Other	$	$
Other	$	$

Agent:
Tax Bill:
C.B. Credit:
Ag. Tax/Other:

6 Description of Property (SDAT requires submission of all applicable information. A maximum of 40 characters will be indexed in accordance with the priority cited in Real Property Article Section 3-104(g)(3)(i).)

District | Property Tax ID No. (1) | Grantor Liber/Folio | Map | Parcel No. | Var. LOG (5)

Subdivision Name | Lot (3a) | Block (3b) | Sect/AR(3c) | Plat Ref. | SqFt/Acreage (4)

Location/Address of Property Being Conveyed (2)
Easement — Bart Allen Dr.

Other Property Identifiers (if applicable) | Water Meter Account No.

Residential ☐ or Non-Residential ☒ Fee Simple or Ground Rent Amount:
Partial Conveyance? ☐ Yes ☐ No Description/Amt. of SqFt/Acreage Transferred:

If Partial Conveyance, List Improvements Conveyed:

7 Transferred From
Doc. 1 - Grantor(s) Name(s): Mark J Dunaker
Doc. 2 - Grantor(s) Name(s)
Doc. 1 - Owner(s) of Record, if Different from Grantor(s)
Doc. 2 - Owner(s) of Record, if Different from Grantor(s)

8 Transferred To
Doc. 1 - Grantee(s) Name(s): Long Green Valley Conservancy Inc
Doc. 2 - Grantee(s) Name(s)
New Owner's (Grantee) Mailing Address: No Change

9 Other Names to Be Indexed
Doc. 1 - Additional Names to be Indexed (Optional)
Doc. 2 - Additional Names to be Indexed (Optional)

10 Contact/Mail Information
Instrument Submitted By or Contact Person
Name: Mark J Dunaker
Firm: Dunaker Kilpatrick & Marie
Address: 210 N. Charles St.
Baltimore Md. 21201
Phone: (410) 649 4753

☒ Return to Contact Person
Hold for Pickup
Return Address Provided

11 IMPORTANT: *BOTH* THE ORIGINAL DEED *AND* A PHOTOCOPY MUST ACCOMPANY EACH TRANSFER

Assessment Information
☐ Yes ☐ No Will the property being conveyed be the grantee's principal residence?
☐ Yes ☐ No Does transfer include personal property? If yes, identify:
☐ Yes ☐ No Was property surveyed? If yes, attach copy of survey (if recorded, no copy required).

Assessment Use Only - Do Not Write Below This Line
☐ Terminal Verification ☐ Agricultural Verification ☐ Whole ☐ Part ☐ Tran. Process Verification
Transfer Number: Date Received: Deed Reference: Assigned Property No.:

Year	19	19	Geo.	Map	Sub	Block
Land			Zoning	Grid	Plat	Lot
Buildings			Use	Parcel	Section	Occ. Cd.
Total			Town Cd	Ex. St.	Ex. Cd.	

REMARKS:

TRANSFER TAX NOT REQUIRED
Per Dept. of Assessments and Finance
Per Baltimore County, Maryland
Authorized Signature
12-30-98 Sec 33-139 (c)

Distribution: White - Clerk's Office
Canary - SDAT
Pink - Office of Finance
Goldenrod - Preparer
AOC-CC-300 (6/95)

DANEKER, McINTIRE, SCHUMM, PRINCE, GOLDSTEIN, MANNING & WIDMANN, P.C.

Attorneys At Law
Suite 2450
One North Charles Street
Baltimore, Maryland 21201

FACSIMILE NO. (410) 649-4758

FACSIMILE COVER SHEET

IMPORTANT NOTICE

PLEASE DELIVER THE FOLLOWING MATERIAL AS SOON AS POSSIBLE TO:

COMPANY: Baltimore County
ATTENTION: Wally Lippincott

RECIPIENT FAX NUMBER: 410 – 887 – 4804

FROM: Mark J. Daneker **DIRECT DIAL:** 410-649-4753

NUMBER OF PAGES: _3_ (Including Cover Sheet)

DATE TRANSMITTED: November 20, 2002

PHONE NUMBER TO VERIFY MESSAGE RECEIVED: (410) 649-4747

COMMENTS: Wally, attached is a copy of my letter of Sept. 27, 2002 which accompanied the plat that I sent, but which did not come to your attention. This was the same information presented to the DRC in September. They tabled it until I could take it to the Ag Board and then to Zoning . I am sorry that I did not realize you did not have this. Thank you for remembering that I did want to present this to the Board. I am afraid that I'm not clear on what else Mr. Colhoun wants me to present. If you have a sample of a presentation which he has found acceptable or can advise me in this regard it will be appreciated. I would like to have this back on the next meeting agenda. Please advise me when that will occur. I am hopeful that there will be a December meeting as I will be unavailable from January 8 through Jan. 22 and this has already been a long wait. Thank you.

Mark J. Daneker
NOTE: Hard copy to follow by mail? Yes___ No_x__

Plat NO 3

DANEKER, McINTIRE, SCHUMM, PRINCE , GOLDSTEIN, MANNING & WIDMANN, P.C.

Attorneys At Law
Suite 2450
One North Charles Street
Baltimore, Maryland 21201-3740
(410) 649-4747
Facsimile (410) 649-4758

Mark J. Daneker
Direct Dial (410) 649-4753

September 27, 2002

Mr. Wally Lippincott
Baltimore County Dept. of
Environmental Protection
County Courts Building
401 Bosley Avenue, Suite 416
Towson, Maryland 21204

Dear Wally:

As I believe you will recall, the Agricultural Preservation District for my farm consists of 100 acres while the farm is actually a little more than 111 acres. When the farm when into the agricultural district it was described as excluding approximately 11 acres located at the north end of the farm which consisted of a field adjacent to other property which I own which could only be reached by going down a very steep hill, crossing a stream and coming back up a very steep hill. I had ceased to farm that field actively years ago because of the difficulty in reaching it and its proximity to development which made farming activities there difficult.

The field is adjacent to a parcel of approximately 19 acres which I own and which had five development rights. I have donated an easement to the Long Green Valley Conservancy reducing the development rights to two rights. It is my intention to divide this parcel into two lots as are more or less shown on the plat attached hereto. Most of these two parcels lie within stream buffers and are wooded. One of my daughters would like one of the two parcels, but would like more clear land in order to keep animals. I have requested approval of the DRC to add the approximately 11 acre parcel to the lot adjacent to it as a non-density transfer in order to end up with a tract of approximately 18 acres of which about 11 would be clear and which would be enough to give her the ability to keep some farm animals on a small scale.

I believe it would be helpful and expedite the County approval of this non-density transfer if the Baltimore County Agricultural Land Preservation Advisory Board would consider this request and find that this non-density transfer would be for an agricultural purpose.

Since I am not using this field and do not believe it is particularly feasible for any future owner of my farm to use this field because of the distance and terrain between the rest of the farm

and the field and because I need to resolve what is to be done with this before I could complete the sale of an agricultural easement on the rest of the 100 acres, I would like to have this considered by the Board and approved if they find it agreeable.

I would appreciate it if you would place this on the agenda for your next meeting and advise me so that I may be present. Please do not hesitate to let me know if you have any questions.

Very truly yours,

Mark J. Daneker

MJD/djc
jc\docs\Bregel\Lippincott.02 9-27

November 19, 2002

Attn: Wally Lippincott

Thanks for calling about the intended use of the farmland that I want to remove from my farm to combine with the eight acre mostly wooded parcel I intend to transfer to my daughter. The parcel to be transferred, approximately 10 or 11 mostly clear acres, is not presently being used as part of the farm. I used to use it but had so much trouble with people from the development opening the gates and letting animals out or trees falling or other accidents to the fences, that I quit using the field altogether. I had several damage claims when animals got out and one of them was 4 thousand dollars. Fortunately my insurance Company paid it, but you can only do that to your insurance Company once or twice before they cancel you.

The plan will be to restore this acreage to productive use by having my daughter raise and keep my replacement heifers in that field where they will be safe from the bull which I use to breed my cows. That has been another management problem for me. It seems that the bull likes to walk through the fence to breed the heifers before it is time. She also likes to raise calfs and we may start to raise and run a few extra calfs there.

Mark J. Daneker

Plot. No 4

PROPOSED SMALL FARM USE OF AG SUBDIVISION
PARCEL OF DANEKER FARM

Approximately eleven acres is proposed for transfer from the 111 acres of Mark J. Daneker and Susan B. Daneker by way of a Non-Density Transfer to be combined with approximately eight acres shown as a combination of two lots in the Subdivision known as Dulaney Valley Estates, II. This property will be transferred to Emily A. Daneker, daughter of Mark and Susan Daneker for her use and her husband's use. A topographical plat showing the eleven acres in question outlined in pink which is to be transferred for combination with the area outlined in yellow is attached. Likewise an aerial photo from the soil conservation plan showing the area to be transferred as "Field No. 3 Natural Area" and combined with part of "Field No. 4 Natural Area" is also attached.

By looking at the aerial photo and the topographical map, you can see that this field in question, Field No. 3, is separated by fifty-five acres of woods from the remainder of the Daneker farm which is presently used as pasture and hay land to support the Daneker beef cow operation.

This farm has been owned by Mark and Susan Daneker since 1969. Originally Field No. 3 and 4 were used for corn crops for both silage and ear corn. Because of the long distance, lack of road access, steep terrain and stream which had to be crossed to return these crops to the main farm, hay was tried but terminated for the same reason. Subsequent use of the area as pasture did not work out because of problems with fences from people in the nearby subdivision. As a consequence, these areas are presently in a natural state and are not being used for a productive agricultural purpose.

The owner's daughter, Emily A. Daneker, is married, presently lives in White Marsh and desires to locate in the area and wishes to have a piece of ground on which she can engage in some small scale, but nevertheless productive farming activity. The Danekers plan to transfer the eight acre parcel which had two development rights with approved and perk tested building sites on it to

Pset 5

her for use as a personal residence, one of these development rights has already been donated to the Long Green Valley Conservancy. The one house still allowed could be located on either site, but only one can be used. This parcel has approximately three acres of cleared ground and is not sufficient to allow any farming activity. The balance of that parcel to the north which is owned by Mark J. Daneker is primarily wooded and likewise does not allow for any meaningful farming activity. The combination with the parcel being requested for Ag Subdivision approval would give ten acres of cleared land to be returned to productive agricultural use.

The present plan for use of this property when Emily Daneker builds her house there is to have her raise the replacement heifer calves for the beef cow operation from the time they are weaned until they are ready to be returned to the Daneker farm for breeding. On average this would be five or six calves a year. It is also anticipated that to the extent the property could carry some additional animals, cross bred bull calves will be purchased at the market or from local dairy farmers and raised there for sale as feeders. Emily's back-up plan to this plan is to raise a meat type goat for sale on a local basis to the increasing number of immigrant citizens who come from a culture where goat meat is valued as a desirable meat.

It is anticipated that the open fields would be fenced in at least two sections, possibly three, to provide for rotation. Water would be provided by a well with a back-up corridor access to the stream running through the existing lot for a back-up source of water in the event of power outages. It is anticipated that a small barn would be built on the fence line adjacent to the home site to provide for equipment and feed storage on one side and a run-in shed and pen on the field side. One other small run-in shed would probably be needed if the pasture area is divided into three fields.

RESOLUTION

LONG GREEN VALLEY ASSOCIATION

RESOLVED: That the position of the Long Green Valley Association as adopted by the Board of Directors on the zoning matter known as:

5020 Elder Road

Case No. 4-368-SPH

is that:

RC-2 land should not be used in conjunction with RC-5 land for the purpose of making the RC-5 land/lots more attractive. The Association has historically opposed using RC-2 land for enhancement and/or support of any RC-5 development parcel and the Board of Directors of the Long Green Valley Association specifically voted to oppose this particular request at the Board meeting of April 13, 2004 and again at the Board meeting of July 20, 2004.

AS WITNESS our hands and seal this 16th day of February, 2005.

ATTEST:

LONG GREEN VALLEY ASSOCIATION

Carol Trela

Carol Trela

SECRETARY

Charlotte Pine

Charlotte Pine

RESIDENT

BOA protest Exhibit #7

Prot 7

RESOLUTION

LONG GREEN VALLEY ASSOCIATION

RESOLVED: That at the Annual Meeting of the Long Green Valley Association held on May 5, 2004, it was decided by the Association that the responsibility for review and action on all zoning matters for the period of one (1) year be placed in the Board of Directors consisting of the following members:

Charlotte Pine	Rosanne DiFonzo	Roger Hayden
Patricia Garner	Stephen Preston	Thomas Schneider
Denise McCloskey	John Storck	Sharon Rohrbaugh
Carol Shaw	Carol Trela	Mary Ambrose

AS WITNESS our hands and seal this 16th of February, 2005.

ATTEST:

Carol Trela

Carol Trela

SECRETARY

Charlotte Pine

Charlotte Pine

PRESIDENT

STATE OF MARYLAND:
BALTIMORE COUNTY, ss:

TO WIT:

I hereby swear upon penalty of perjury that I am currently a duly elected member of the Board of Directors of the Long Green Valley Association.

ATTEST:

Carol Trela
SECRETARY

Charlotte Pine
PRESIDENT

LONG GREEN VALLEY ASSOCIATION

Boundary Map

BOA
P=28 8

Long Green Valley Association

Boundaries:

Starting at the intersection of the Harford County line and Harford Roads and proceeding south/southeast of Harford Road, transecting the Little Gunpowder Falls and following the watershed east of the Sweathouse Branch of the Gunpowder River south/southwest to the Gunpowder River and then following the Gunpowder River west to Loch Raven Reservoir.

Following the northern boundary of the Loch Raven Reservoir west to the watershed area west of Loch Raven Drive and Dulaney Valley Road.

From there proceeding north and following the watershed west of Dulaney Valley Road along Jenkins Run and Fitzhue Run to Sweet Air Road just west of its intersection with Manor Road and then following Sweet Air Road east to the watershed west of Green Road.

Following the watershed north to the Harford County line and then following the Harford County line east to the intersection with Harford Road.

13 of 14

LONG GREEN VALLEY ASSOCIATION
P.O. Box 91
Baldwin, Maryland 21013

MINUTES FOR APRIL 13, 2004

A regular meeting of the Board of Directors of the Long Green Valley Association was held at Boordy Vineyard.

Board Members In attendance (*)

M. Ambrose*	R. DiFonzo	P. Garner*	S. Preston*
D. McCloskey*	S. Rohbaugh*	C. Shaw*	R. Hayden
C. Trela*	C. Pine*	D. Felling*	J. Storck*

1. A quorum was declared present.

2. The annual meeting will be held on May 5th at 7:30pm at the Long Green Fire hall. All are urged to attend this important annual meeting. S. Rohbaugh will be in charge of refreshments. She will also report the results of the nominating committee meeting held at C. Pine's home. C. Trela will have an agenda prepared for the meeting, several copies of the by laws and articles of incorporation available, a copy of Robert's rules of order, a copy of rule 8 to be voted on, and several copies of a list of all board members. C. Trela will introduce B. McIntire, C. Shaw will introduce B. Hughey, and S. Preston will introduce a speaker from the Chesapeake Bay Foundation.

3. There were many comments regarding the problems that were created with the request to downzone several properties in Glen Arm. The Board voted unanimously to notify people in person or by letter if the association is requesting a change in their current zoning and to invite them to attend a board meeting to discuss the issue.

4. J. Storck attended a meeting and represented the association at the Odd Fellows Hall in Glen arm regarding the rezoning issues in that area. He noted there were many problems including the lack of communication and understanding regarding the issues.

5. C. Shaw brought up the notice of a special hearing on Friday, May 28th, regarding the Daneker property on Elder Road for the purpose of a lot line adjustment. She had her file from two years previous when she had attended a DRC meeting where Mark Daneker had requested DRC approval but Dan Rascoe (from DRC) deferred it to the Hearing Officer. The request is with respect to his development of Dulaney Valley Estates II. The Board voted unanimously to oppose the request and to retain counsel.

BCA
P Mot 10A

6. The Board voted unanimously to reaffirm LGVA's charter and articles of amendments.

7. The next meeting will be the annual meeting on May 5, 2004 at 7:30 at the Long Green Fire Hall at Long Green and Manor Roads.

Prepared by Carol Trela, Secretary

LONG GREEN VALLEY ASSOCIATION
P.O. Box 91
Baldwin, Maryland 21013

MINUTES FOR JULY 20, 2004

A regular meeting of the Board of Directors of the Long Green Valley Association was held at Boordy Vineyard.

***Board Members In attendance* (*)**

M. Ambrose*	R. DiFonzo*	P. Garner*	S. Preston*
D. McCloskey	S. Rohbaugh*	C. Shaw*	R. Hayden*
C. Trela*	C. Pine*	J. Storck*	

---

1. The meeting was called to order. Guests were: Linda Clarke

2. The minutes of June 13, 2004 were approved and amended as follows: #1 eliminate "and a quorum was not present"; #5 line 6 should be "density and kept the development rights" in his agreement with the conservancy. He also stated that Mr. Daneker must go through the full development process with his request. "

3. S. Preston stated that the Lynch hearing is tentatively set for September 7th. The important issue is the precedent setting use of RC2 land to support development in a higher density zone. The People's Council is appealing this issue along with LGVA.

4. The Board unanimously accepted the resignation of Donna Felling and stated that they would look forward to her rejoining in the future.

5. P. Garner gave the Treasurer's report.

6. The Board voted unanimously to appeal the Daneker (Elder property) issue.

7. Both the Belzner and McKenzie hearings have been postponed.

8. J. Storck and S. Rohbaugh will find about the fundraiser on September 10th at Boordy. They will follow up with D. Felling.

9. The board voted unanimously to write to the Conservancy regarding participation in a fundraiser at Boordy on October 31, 2004. C. Trela will write the letter. BCA

Ret 10B

10. The Umerly issue will be discussed tonight at a meeting of the Jacksonville Association and a vote will be taken.

11. There was a discussion of the MTBE issue in Upper Crossroads. The Board will monitor the situation to see its possible effect on the Long Green Valley.

12. The Board suggested that each Board member write to B. McIntire regarding his upzoning of 22 acres in Fork. It was decided that making our position known early will be beneficial before the councilman makes other choices and commitments.

13. C. Shaw and R. DeFonzo will send letters to the Fork community regarding water quality in their area. This has to do with the request to upzone 22 acres in the area.

14. As a result of the combined efforts of the LGVA and the community, the new cell tower in the Church tower (steeple) in Fork is a good job and is tastefully done. It is hardly noticeable.

15. The family regarding issue 3-033 has not sent a copy of the plat to the Board as they said they would. Therefore, no vote on the issue was taken.

16. C. Shaw distributed copies of a proxy form but there was no time for discussion. It will be discussed at the next meeting.

17. The next meeting will be August 17, 2004 at 7:00 at Boordy.

DANEKER, McINTIRE, SCHUMM, PRINCE, GOLDSTEIN, MANNING & WIDMANN, P.C.

Attorneys At Law
Suite 2450
One North Charles Street
Baltimore, Maryland 21201

FACSIMILE NO. (410) 649-4758

FACSIMILE COVER SHEET

IMPORTANT NOTICE

PLEASE DELIVER THE FOLLOWING MATERIAL AS SOON AS POSSIBLE TO:

COMPANY: Baltimore County
ATTENTION: Wally Lippincott

RECIPIENT FAX NUMBER: 410 – 887 – 4804

FROM: Mark J. Daneker **DIRECT DIAL:** 410-649-4753

NUMBER OF PAGES: _3_ (Including Cover Sheet)

DATE TRANSMITTED: **November 20, 2002**

PHONE NUMBER TO VERIFY MESSAGE RECEIVED: (410) 649-4747

COMMENTS: Wally, attached is a copy of my letter of Sept. 27, 2002 which accompanied the plat that I sent, but which did not come to your attention. This was the same information presented to the DRC in September. They tabled it until I could take it to the Ag Board and then to Zoning . I am sorry that I did not realize you did not have this. Thank you for remembering that I did want to present this to the Board. I am afraid that I'm not clear on what else Mr. Colhoun wants me to present. If you have a sample of a presentation which he has found acceptable or can advise me in this regard it will be appreciated. I would like to have this back on the next meeting agenda. Please advise me when that will occur. I am hopeful that there will be a December meeting as I will be unavailable from January 8 through Jan. 22 and this has already been a long wait. Thank you.

Mark J. Daneker
NOTE: Hard copy to follow by mail? Yes___ No_x__

Prot NO 3

BOA Petitioner's Exhibit #7

DANEKER, McINTIRE, SCHUMM, PRINCE , GOLDSTEIN, MANNING & WIDMANN, P.C.

Attorneys At Law
Suite 2450
One North Charles Street
Baltimore, Maryland 21201-3740
(410) 649-4747
Facsimile (410) 649-4758

Mark J. Daneker
Direct Dial (410) 649-4753

September 27, 2002

Mr. Wally Lippincott
Baltimore County Dept. of
Environmental Protection
County Courts Building
401 Bosley Avenue, Suite 416
Towson, Maryland 21204

Dear Wally:

As I believe you will recall, the Agricultural Preservation District for my farm consists of 100 acres while the farm is actually a little more than 111 acres. When the farm when into the agricultural district it was described as excluding approximately 11 acres located at the north end of the farm which consisted of a field adjacent to other property which I own which could only be reached by going down a very steep hill, crossing a stream and coming back up a very steep hill. I had ceased to farm that field actively years ago because of the difficulty in reaching it and its proximity to development which made farming activities there difficult.

The field is adjacent to a parcel of approximately 19 acres which I own and which had five development rights. I have donated an easement to the Long Green Valley Conservancy reducing the development rights to two rights. It is my intention to divide this parcel into two lots as are more or less shown on the plat attached hereto. Most of these two parcels lie within stream buffers and are wooded. One of my daughters would like one of the two parcels, but would like more clear land in order to keep animals. I have requested approval of the DRC to add the approximately 11 acre parcel to the lot adjacent to it as a non-density transfer in order to end up with a tract of approximately 18 acres of which about 11 would be clear and which would be enough to give her the ability to keep some farm animals on a small scale.

I believe it would be helpful and expedite the County approval of this non-density transfer if the Baltimore County Agricultural Land Preservation Advisory Board would consider this request and find that this non-density transfer would be for an agricultural purpose.

Since I am not using this field and do not believe it is particularly feasible for any future owner of my farm to use this field because of the distance and terrain between the rest of the farm

and the field and because I need to resolve what is to be done with this before I could complete the sale of an agricultural easement on the rest of the 100 acres, I would like to have this considered by the Board and approved if they find it agreeable.

I would appreciate it if you would place this on the agenda for your next meeting and advise me so that I may be present. Please do not hesitate to let me know if you have any questions.

Very truly yours,

Mark J. Daneker

MJD/djc
jc\docs\Bregel\Lippincott.02.9-27

November 19, 2002

Attn: Wally Lippincott

Thanks for calling about the intended use of the farmland that I want to remove from my farm to combine with the eight acre mostly wooded parcel I intend to transfer to my daughter. The parcel to be transferred, approximately 10 or 11 mostly clear acres, is not presently being used as part of the farm. I used to use it but had so much trouble with people from the development opening the gates and letting animals out or trees falling or other accidents to the fences, that I quit using the field altogether. I had several damage claims when animals got out and one of them was 4 thousand dollars. Fortunately my insurance Company paid it, but you can only do that to your insurance Company once or twice before they cancel you.

The plan will be to restore this acreage to productive use by having my daughter raise and keep my replacement heifers in that field where they will be safe from the bull which I use to breed my cows. That has been another management problem for me. It seems that the bull likes to walk through the fence to breed the heifers before it is time. She also likes to raise calfs and we may start to raise and run a few extra calfs there.

Mark J. Daneker

BCA
Petitioner's
Exhibit
8

Prot. No
4

PROPOSED SMALL FARM USE OF AG SUBDIVISION
PARCEL OF DANEKER FARM

Approximately eleven acres is proposed for transfer from the 111 acres of Mark J. Daneker and Susan B. Daneker by way of a Non-Density Transfer to be combined with approximately eight acres shown as a combination of two lots in the Subdivision known as Dulaney Valley Estates, II. This property will be transferred to Emily A. Daneker, daughter of Mark and Susan Daneker for her use and her husband's use. A topographical plat showing the eleven acres in question outlined in pink which is to be transferred for combination with the area outlined in yellow is attached. Likewise an aerial photo from the soil conservation plan showing the area to be transferred as "Field No. 3 Natural Area" and combined with part of "Field No. 4 Natural Area" is also attached.

By looking at the aerial photo and the topographical map, you can see that this field in question, Field No. 3, is separated by fifty-five acres of woods from the remainder of the Daneker farm which is presently used as pasture and hay land to support the Daneker beef cow operation.

This farm has been owned by Mark and Susan Daneker since 1969. Originally Field No. 3 and 4 were used for corn crops for both silage and ear corn. Because of the long distance, lack of road access, steep terrain and stream which had to be crossed to return these crops to the main farm, hay was tried but terminated for the same reason. Subsequent use of the area as pasture did not work out because of problems with fences from people in the nearby subdivision. As a consequence, these areas are presently in a natural state and are not being used for a productive agricultural purpose.

The owner's daughter, Emily A. Daneker, is married, presently lives in White Marsh and desires to locate in the area and wishes to have a piece of ground on which she can engage in some small scale, but nevertheless productive farming activity. The Danekers plan to transfer the eight acre parcel which had two development rights with approved and perk tested building sites on it to

BCA
Exhibit
#12
~~Protestant~~
Petitioner

Page 5

her for use as a personal residence, one of these development rights has already been donated to the Long Green Valley Conservancy. The one house still allowed could be located on either site, but only one can be used. This parcel has approximately three acres of cleared ground and is not sufficient to allow any farming activity. The balance of that parcel to the north which is owned by Mark J. Daneker is primarily wooded and likewise does not allow for any meaningful farming activity. The combination with the parcel being requested for Ag Subdivision approval would give ten acres of cleared land to be returned to productive agricultural use.

The present plan for use of this property when Emily Daneker builds her house there is to have her raise the replacement heifer calves for the beef cow operation from the time they are weaned until they are ready to be returned to the Daneker farm for breeding. On average this would be five or six calves a year. It is also anticipated that to the extent the property could carry some additional animals, cross bred bull calves will be purchased at the market or from local dairy farmers and raised there for sale as feeders. Emily's back-up plan to this plan is to raise a meat type goat for sale on a local basis to the increasing number of immigrant citizens who come from a culture where goat meat is valued as a desirable meat.

It is anticipated that the open fields would be fenced in at least two sections, possibly three, to provide for rotation. Water would be provided by a well with a back-up corridor access to the stream running through the existing lot for a back-up source of water in the event of power outages. It is anticipated that a small barn would be built on the fence line adjacent to the home site to provide for equipment and feed storage on one side and a run-in shed and pen on the field side. One other small run-in shed would probably be needed if the pasture area is divided into three fields.

NEW! Property Map click here...

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BALTIMORE COUNTY
Real Property Data Search

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Page 1 of 1

Name	Account	Street	OWN OCC	Town	Parcel	Lot
ARMSTRONG WILLIAMJ	11 2300009849	13702 MILBERT RIDGE	H	000	427	2
BARNES DAVID J	11 2300009850	13704 MILBERT RIDGE	H	000	427	3
CALTABIANO SALVATO	11 2300009851	13706 MILBERT RIDGE	N	000	427	4
COLEMAN JOHN C	11 2300009852	13708 MILBERT RIDGE	N	000	427	5
KEYSER CHARLES F	11 2300009853	13711 MILBERT RIDGE	H	000	427	6
RITCHIE JAMES E	11 2300009854	13709 MILBERT RIDGE	H	000	427	7
LOPEZ ANGEL L	11 2300009855	13707 MILBERT RIDGE	H	000	427	8
VELTRI ROBERT W	11 2300009856	13705 MILBERT RIDGE	H	000	427	9
SNOOPS LAWRENCE AS	11 2300009857	13703 MILBERT RIDGE	H	000	427	10
HALE EDWIN FJR	11 2300009858	13701 MILBERT RIDGE	H	000	427	11

Posting

BOA
BA Prop #6

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BALTIMORE COUNTY
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Ground Rent

Account Identifier: **District** - 11 **Account Number** - 2300009849

Owner Information

Owner Name: ARMSTRONG WILLIAM,JR
ARMSTRONG LAURIE

Use: RESIDENTIAL

Principal Residence: YES

Mailing Address: 13702 MILBERT RIDGE DR
BALDWIN MD 21013-9747

Deed Reference: 1) /15611/ 158
2)

Location & Structure Information

Premises Address
13702 MILBERT RIDGE DR

Legal Description
1.217 AC
13702 MILBERT RDG DR WS
DULANEY VALLEY EST II

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Group	Plat No:
44	11	427					2	82	Plat Ref: 73/ 4

Special Tax Areas

Town
Ad Valorem
Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
2001	4,740 SF	1.22 AC	04

Stories	Basement	Type	Exterior
2 1/2	YES	STANDARD UNIT	SIDING

Value Information

	Base Value	Value As Of 01/01/2003	Phase-in Assessments As Of 07/01/2003	As Of 07/01/2004
Land:	71,540	102,200		
Improvements:	284,570	447,890		
Total:	356,110	550,090	420,770	485,430
Preferential Land:	0	0	0	0

Transfer Information

Seller: HANDCRAFT HOMES	**Date:** 09/28/2001	**Price:** $490,000
Type: NOT ARMS-LENGTH	**Deed1:** /15611/ 158	**Deed2:**
Seller: DANEKER MARK J	**Date:** 11/03/2000	**Price:** $120,000
Type: MULT ACCTS ARMS-LENGTH	**Deed1:** /14793/ 159	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**

Exemption Information

Partial Exempt Assessments	Class	07/01/2003	07/01/2004
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *

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BALTIMORE COUNTY
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Ground Rent

Account Identifier: **District** - 11 **Account Number** - 2300009850

Owner Information

Owner Name:	BARNES DAVID J STRAUSSER KRISTIN B	**Use:**	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	13764 MILBERT RIDGE DR BALDWIN MD 21013-9747	**Deed Reference:**	1) /15433/ 377 2)

Location & Structure Information

Premises Address
13704 MILBERT RIDGE DR

Legal Description
1 AC
13704 MILBERT RDG DR WS
DULANEY VALLEY EST II

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Group	Plat No:
44	11	427					3	82	Plat Ref: 73/ 4

Special Tax Areas **Town** **Ad Valorem** **Tax Class**

Primary Structure Built	Enclosed Area	Property Land Area	County Use
2001	3,988 SF	1.00 AC	04

Stories	Basement	Type	Exterior
2 1/2	YES	STANDARD UNIT	BRICK

Value Information

	Base Value	Value As Of 01/01/2003	Phase-in Assessments As Of 07/01/2003	As Of 07/01/2004
Land:	70,000	100,000		
Improvements:	290,780	384,870		
Total:	360,780	484,870	402,143	443,506
Preferential Land:	0	0	0	0

Transfer Information

Seller: DANEKER MARK J		**Date:** 08/02/2001	**Price:** $117,500
Type: NOT ARMS-LENGTH		**Deed1:** /15433/ 377	**Deed2:**
Seller:		**Date:**	**Price:**
Type:		**Deed1:**	**Deed2:**
Seller:		**Date:**	**Price:**
Type:		**Deed1:**	**Deed2:**

Exemption Information

Partial Exempt Assessments	Class	07/01/2003	07/01/2004
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *

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BALTIMORE COUNTY
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Ground Rent

Account Identifier: **District** - 11 **Account Number** - 2300009851

Owner Information

Owner Name: CALTABIANO SALVATORE
CALTABIANO ROSEMARY

Use: RESIDENTIAL

Principal Residence: NO

Mailing Address: 240 LEASTONE LANE
ABINGDON MD 21009-3106

Deed Reference: 1) /15748/ 313
2)

Location & Structure Information

Premises Address
13706 MILBERT RIDGE DR

Legal Description
1.137 AC
13706 MILBERT RDG DR WS
DULANEY VALLEY EST II

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Group	Plat No:
44	11	427					4	82	Plat Ref: 73/ 4

Special Tax Areas

Town
Ad Valorem
Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
2003	3,422 SF	1.14 AC	04

Stories	Basement	Type	Exterior
2	YES	STANDARD UNIT	SIDING

Value Information

	Base Value	Value As Of 01/01/2003	Phase-in Assessments As Of 07/01/2003	As Of 07/01/2004
Land:	101,400	101,400		
Improvements:	302,260	327,220		
Total:	403,660	428,620	76,400	420,300
Preferential Land:	0	0	0	0

Transfer Information

Seller: KEPPELER MARK C	Date: 11/13/2001	Price: $140,500	
Type: IMPROVED ARMS-LENGTH	Deed1: /15748/ 313	Deed2:	
Seller: DANEKER MARK J	Date: 11/15/2000	Price: $127,500	
Type: IMPROVED ARMS-LENGTH	Deed1: /14810/ 211	Deed2:	
Seller:	Date:	Price:	
Type:	Deed1:	Deed2:	

Exemption Information

Partial Exempt Assessments	Class	07/01/2003	07/01/2004
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *

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BALTIMORE COUNTY
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Ground Rent

Account Identifier: **District** - 11 **Account Number** - 2300009852

Owner Information

Owner Name: COLEMAN JOHN C
DORBERT-COLEMAN LAURA A

Use: RESIDENTIAL

Principal Residence: NO

Mailing Address: 7 HOBAN COURT
BALTIMORE MD 21236-4757

Deed Reference: 1) /14816/ 482
2)

Location & Structure Information

Premises Address
13708 MILBERT RIDGE DR

Legal Description
1.146 AC
13708 MILBERT RDG DR WS
DULANEY VALLEY EST II

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Group	Plat No:
44	11	427					5	82	Plat Ref: 73/ 4

Special Tax Areas **Town** **Ad Valorem** **Tax Class**

Primary Structure Built	Enclosed Area	Property Land Area	County Use
0000		1.15 AC	04

Stories	Basement	Type	Exterior

Value Information

	Base Value	Value As Of 01/01/2003	Phase-in Assessments As Of 07/01/2003	As Of 07/01/2004
Land:	76,500	76,500		
Improvements:	0	0		
Total:	76,500	76,500	76,500	76,500
Preferential Land:	0	0	0	0

Transfer Information

Seller: DANEKER MARK J	**Date:** 11/17/2000	**Price:** $122,500
Type: IMPROVED ARMS-LENGTH	**Deed1:** /14816/ 482	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**

Exemption Information

Partial Exempt Assessments	Class	07/01/2003	07/01/2004
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *

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BALTIMORE COUNTY
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New Search
Ground Rent

Account Identifier: **District** - 11 **Account Number** - 2300009853

Owner Information

Owner Name: KEYSER CHARLES F
KEYSER KATHLEEN M

Use: RESIDENTIAL

Principal Residence: YES

Mailing Address: 13711 MILBERT RIDGE DR
BALDWIN MD 21013-9757

Deed Reference: 1) /14760/ 614
2)

Location & Structure Information

Premises Address
13711 MILBERT RIDGE DR

Legal Description
2.656 AC
13711 MILBERT RDG DR NS
DULANEY VALLEY EST II

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Group	Plat No:
44	11	427					6	82	Plat Ref: 73/ 4

Special Tax Areas **Town** **Ad Valorem** **Tax Class**

Primary Structure Built	Enclosed Area	Property Land Area	County Use
2002	3,697 SF	2.66 AC	04

Stories	Basement	Type	Exterior
2	YES	STANDARD UNIT	SIDING

Value Information

	Base Value	Value As Of 01/01/2003	Phase-in Assessments As Of 07/01/2003	As Of 07/01/2004
Land:	81,620	116,600		
Improvements:	256,100	380,200		
Total:	337,720	496,800	390,746	443,772
Preferential Land:	0	0	0	0

Transfer Information

Seller:	DANEKER MARK J	**Date:**	10/18/2000	**Price:**	$125,000
Type:	NOT ARMS-LENGTH	**Deed1:**	/14760/ 614	**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	

Exemption Information

Partial Exempt Assessments	Class	07/01/2003	07/01/2004
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *

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BALTIMORE COUNTY
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Ground Rent

Account Identifier: **District** - 11 **Account Number** - 2300009854

Owner Information

Owner Name: RITCHIE JAMES E
RITCHIE JENNIFER L

Use: RESIDENTIAL

Principal Residence: YES

Mailing Address: 13709 MILBERT RIDGE DR
BALDWIN MD 21013-9757

Deed Reference: 1) /16310/ 221
2)

Location & Structure Information

Premises Address
13709 MILBERT RIDGE DR

Legal Description
2.692 AC
13709 MILBERT RDG DR ES
DULANEY VALLEY EST II

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Group	Plat No:
44	11	427					7	82	Plat Ref: 73/ 4

Special Tax Areas

Town
Ad Valorem
Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
2001	3,288 SF	2.69 AC	04

Stories	Basement	Type	Exterior
2	YES	STANDARD UNIT	SIDING

Value Information

	Base Value	Value As Of 01/01/2003	Phase-in Assessments As Of 07/01/2003	As Of 07/01/2004
Land:	81,830	116,900		
Improvements:	217,010	339,570		
Total:	298,840	456,470	351,383	403,926
Preferential Land:	0	0	0	0

Transfer Information

Seller:	Date:	Price:
Type: IMPROVED ARMS-LENGTH	Deed1: /16310/ 221	Deed2:
Seller: DANEKER MARK J	Date: 06/25/2001	Price: $127,500
Type: IMPROVED ARMS-LENGTH	Deed1: /15334/ 231	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:

Exemption Information

Partial Exempt Assessments	Class	07/01/2003	07/01/2004
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *

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Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search

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New Search
Ground Rent

Account Identifier: **District** - 11 **Account Number** - 2300009855

Owner Information

Owner Name:	LOPEZ ANGEL L LOPEZ SHEELAH	**Use:**	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	13707 MILBERT RIDGE DR BALDWIN MD 21013-9757	**Deed Reference:**	1) /16780/ 286 2)

Location & Structure Information

Premises Address
13707 MILBERT RIDGE DR

Legal Description
1.951 AC
13707 MILBERT RDG DR ES
DULANEY VALLEY EST II

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Group	Plat No:
44	11	427					8	82	Plat Ref: 73/ 4

Special Tax Areas **Town** **Ad Valorem** **Tax Class**

Primary Structure Built	Enclosed Area	Property Land Area	County Use
2002	3,506 SF	1.95 AC	04

Stories	Basement	Type	Exterior
2	YES	STANDARD UNIT	SIDING

Value Information

	Base Value	Value As Of 01/01/2003	Phase-in Assessments As Of 07/01/2003	As Of 07/01/2004
Land:	76,650	109,500		
Improvements:	324,720	347,390		
Total:	401,370	456,890	419,876	438,382
Preferential Land:	0	0	0	0

Transfer Information

Seller:	LAKESPRING INC	**Date:**	09/04/2002	**Price:**	$449,000
Type:	IMPROVED ARMS-LENGTH	**Deed1:**	/16780/ 286	**Deed2:**	
Seller:	DANEKER MARK J	**Date:**	12/19/2001	**Price:**	$120,000
Type:	NOT ARMS-LENGTH	**Deed1:**	/15874/ 518	**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	

Exemption Information

Partial Exempt Assessments	Class	07/01/2003	07/01/2004
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *

Click here for a plain text ADA compliant screen.

Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search

Go Back
View Map
New Search
Ground Rent

Account Identifier: **District -** 11 **Account Number -** 2300009856

Owner Information

Owner Name:	VELTRI ROBERT W VELTRI SUZANNE	**Use:**	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	13705 MILBERT RIDGE DR BALDWIN MD 21013-9757	**Deed Reference:**	1) /16139/ 82 2)

Location & Structure Information

Premises Address
13705 MILBERT RIDGE DR

Legal Description
1.120 AC
13705 MILBERT RDG DR ES
DULANEY VALLEY EST II

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Group	Plat No:
44	11	427					9	82	Plat Ref: 73/ 4

Special Tax Areas **Town** **Ad Valorem** **Tax Class**

Primary Structure Built	Enclosed Area	Property Land Area	County Use
2001	3,504 SF	1.12 AC	04

Stories	Basement	Type	Exterior
2	YES	STANDARD UNIT	SIDING

Value Information

	Base Value	Value As Of 01/01/2003	Phase-in Assessments As Of 07/01/2003	As Of 07/01/2004
Land:	70,840	101,200		
Improvements:	241,000	352,670		
Total:	311,840	453,870	359,183	406,526
Preferential Land:	0	0	0	0

Transfer Information

Seller:	CHAVIS HOME BUILDERS,INC	**Date:**	02/25/2002	**Price:**	$480,110
Type:	IMPROVED ARMS-LENGTH	**Deed1:**	/16139/ 82	**Deed2:**	
Seller:	DANEKER MARK J	**Date:**	03/19/2001	**Price:**	$100,000
Type:	MULT ACCTS ARMS-LENGTH	**Deed1:**	/15048/ 717	**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	

Exemption Information

Partial Exempt Assessments	Class	07/01/2003	07/01/2004
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *

Click here for a plain text ADA compliant screen.

Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search

Go Back
View Map
New Search
Ground Rent

Account Identifier: **District** - 11 **Account Number** - 2300009857

Owner Information

Owner Name: SNOOPS LAWRENCE A,SR
SNOOPS KAREN E

Use: RESIDENTIAL

Principal Residence: YES

Mailing Address: 13703 MILBERT RIDGE DR
BALDWIN MD 21013-9757

Deed Reference: 1) /16124/ 626
2)

Location & Structure Information

Premises Address
13703 MILBERT RIDGE DR

Legal Description
1.142 AC
13703 MILBERT RDG DR ES
DULANEY VALLEY EST II

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Group	Plat No:
44	11	427					10	82	Plat Ref: 73/ 4

Special Tax Areas

Town
Ad Valorem
Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
2001	3,098 SF	1.14 AC	04

Stories	Basement	Type	Exterior
2	YES	STANDARD UNIT	SIDING

Value Information

	Base Value	Value As Of 01/01/2003	Phase-in Assessments As Of 07/01/2003	As Of 07/01/2004
Land:	70,980	101,400		
Improvements:	252,230	318,850		
Total:	323,210	420,250	355,556	387,902
Preferential Land:	0	0	0	0

Transfer Information

Seller:	CHAVIS HOME BUILDERS INC	**Date:**	02/20/2002	**Price:**	$440,000
Type:	IMPROVED ARMS-LENGTH	**Deed1:**	/16124/ 626	**Deed2:**	
Seller:	DANEKER MARK J	**Date:**	01/16/2001	**Price:**	$100,000
Type:	UNIMPROVED ARMS-LENGTH	**Deed1:**	/14920/ 375	**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	

Exemption Information

Partial Exempt Assessments	Class	07/01/2003	07/01/2004
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *

Click here for a plain text ADA compliant screen.

Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search

Go Back
View Map
New Search
Ground Rent

Account Identifier: **District** - 11 **Account Number** - 2300009858

Owner Information

Owner Name: HALE EDWIN F,JR
HALE ELIZABETH A P

Use: RESIDENTIAL

Principal Residence: YES

Mailing Address: 13701 MILBERT RIDGE DR
BALDWIN MD 21013-9757

Deed Reference: 1) /15982/ 239
2)

Location & Structure Information

Premises Address
13701 MILBERT RIDGE DR

Legal Description
1.193 AC
13701 MILBERT RDG DR ES
DULANEY VALLEY EST II

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Group	Plat No:
44	11	427					11	82	Plat Ref: 73/ 4

Special Tax Areas

Town
Ad Valorem
Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
2001	2,990 SF	1.19 AC	04

Stories	Basement	Type	Exterior
2	YES	STANDARD UNIT	SIDING

Value Information

	Base Value	Value As Of 01/01/2003	Phase-in Assessments As Of 07/01/2003	As Of 07/01/2004
Land:	71,330	101,900		
Improvements:	232,450	295,910		
Total:	303,780	397,810	335,123	366,466
Preferential Land:	0	0	0	0

Transfer Information

Seller:	HALE EDWIN F,JR	Date:	01/15/2002	Price:	$0
Type:	NOT ARMS-LENGTH	Deed1:	/15982/ 239	Deed2:	
Seller:	CHAVIS HOME BUILDERS INC	Date:	07/25/2001	Price:	$390,000
Type:	IMPROVED ARMS-LENGTH	Deed1:	/15409/ 715	Deed2:	
Seller:	DANEKER MARK J	Date:	11/09/2000	Price:	$100,000
Type:	UNIMPROVED ARMS-LENGTH	Deed1:	/14802/ 400	Deed2:	

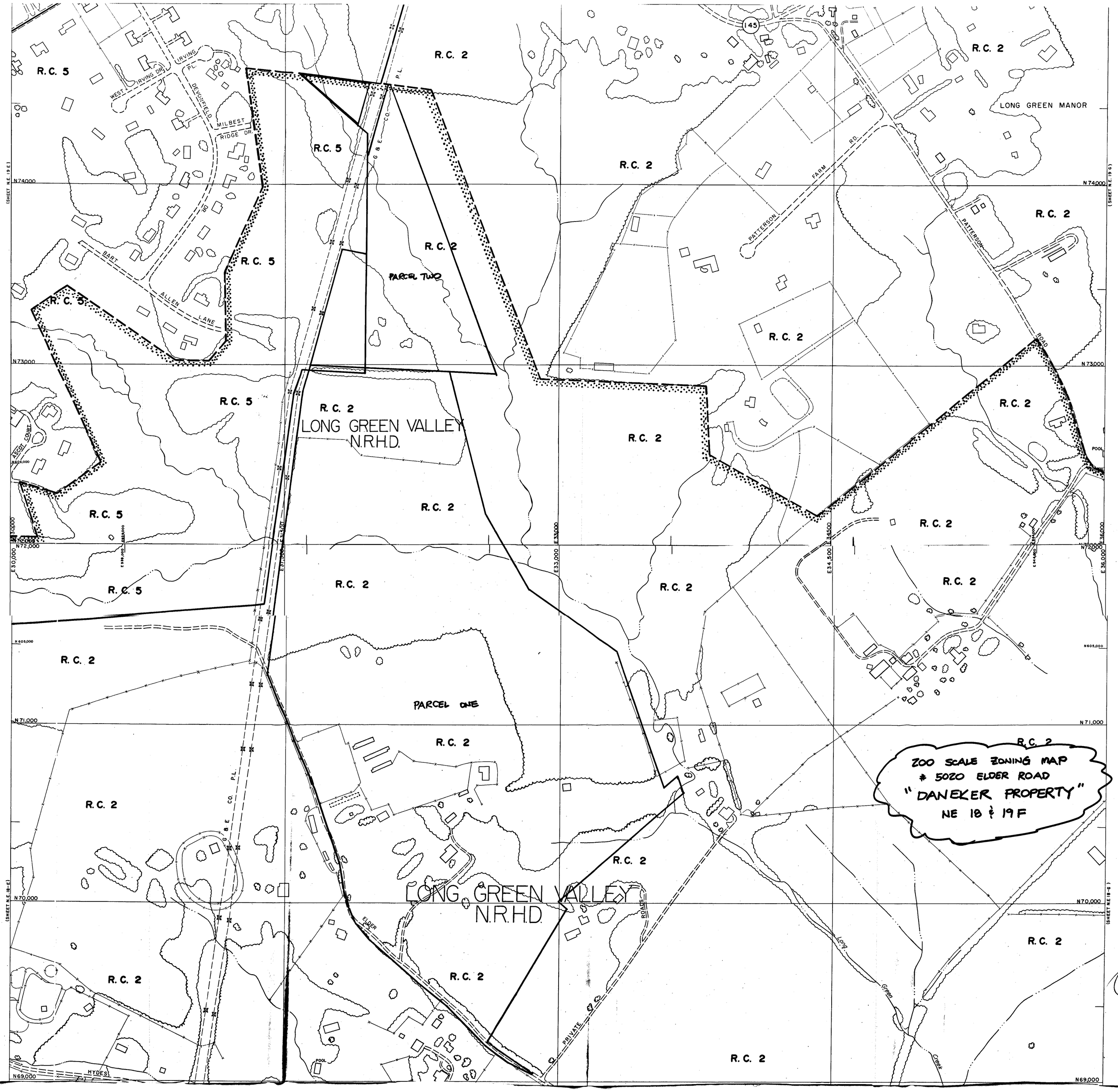
Exemption Information

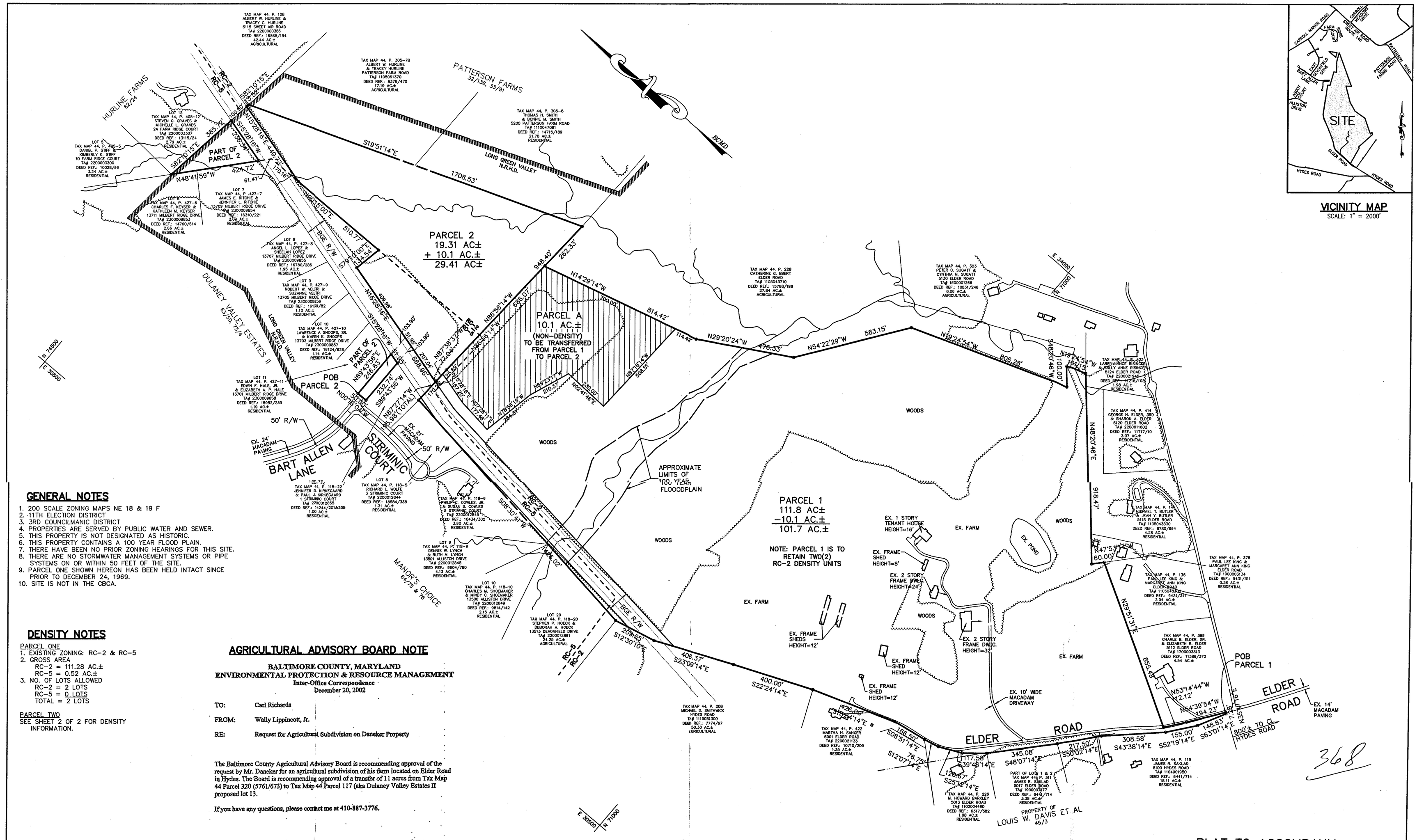
Partial Exempt Assessments	Class	07/01/2003	07/01/2004
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *


R.C. 5
R.C. 2
WEST IRVING DR.
IRVING PL.
DEVONFIELD DR.
MILBEST RIDGE DR.
BART ALLEN LANE
ASCOT COURT
G & E CO. P.L.
PARCEL TWO
PARCEL ONE
LONG GREEN VALLEY N.R.H.D.
145
LONG GREEN MANOR
PATTERSON FARM RD.
PATTERSON ROAD
POOL
ELDER ROADS
PRIVATE
HYDES
Long Green Creek
N74,000
N73,000
N72,000
N71,000
N70,000
N69,000
N605,000
E30,000
E31,500
E33,000
E34,500
E36,000
(SHEET N.E. 19 E)
(SHEET N.E. 19 G)
(SHEET N.E. 18-E)
(SHEET N.E. 18-G)
ZOO SCALE ZONING MAP
5020 ELDER ROAD
"DANEKER PROPERTY"
NE 18 & 19 F
NE
368



VICINITY MAP

SCALE: 1" = 2000'

GENERAL NOTES

1. 200 SCALE ZONING MAPS NE 18 & 19 F
2. 11TH ELECTION DISTRICT
3. 3RD COUNCILMANIC DISTRICT
4. PROPERTIES ARE SERVED BY PUBLIC WATER AND SEWER.
5. THIS PROPERTY IS NOT DESIGNATED AS HISTORIC.
6. THIS PROPERTY CONTAINS A 100 YEAR FLOOD PLAIN.
7. THERE HAVE BEEN NO PRIOR ZONING HEARINGS FOR THIS SITE.
8. THERE ARE NO STORMWATER MANAGEMENT SYSTEMS OR PIPE SYSTEMS ON OR WITHIN 50 FEET OF THE SITE.
9. PARCEL ONE SHOWN HEREON HAS BEEN HELD INTACT SINCE PRIOR TO DECEMBER 24, 1969.
10. SITE IS NOT IN THE CBCA.

DENSITY NOTES

PARCEL ONE

1. EXISTING ZONING: RC-2 & RC-5
2. GROSS AREA
   RC-2 = 111.28 AC.±
   RC-5 = 0.52 AC.±
3. NO. OF LOTS ALLOWED
   RC-2 = 2 LOTS
   RC-5 = 0 LOTS
   TOTAL = 2 LOTS

PARCEL TWO

SEE SHEET 2 OF 2 FOR DENSITY INFORMATION.

AGRICULTURAL ADVISORY BOARD NOTE

BALTIMORE COUNTY, MARYLAND
ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT
Inter-Office Correspondence
December 20, 2002

TO: Carl Richards

FROM: Wally Lippincott, Jr.

RE: Request for Agricultural Subdivision on Daneker Property

The Baltimore County Agricultural Advisory Board is recommending approval of the request by Mr. Daneker for an agricultural subdivision of his farm located on Elder Road in Hydes. The Board is recommending approval of a transfer of 11 acres from Tax Map 44 Parcel 320 (5761/673) to Tax Map 44 Parcel 117 (aka Dulaney Valley Estates II proposed lot 13.

If you have any questions, please contact me at 410-887-3776.

OWNER INFO

PARCEL 1
MARK J. DANEKER &
SUSAN B. DANEKER
5020 ELDER ROAD
HYDES, MD 21082
DEED REF.: 5761/673
TAX ACCOUNT NO.: 11-04001990
TAX MAP 44 GRID 17 PARCEL 320

PARCEL 2
MARK J. DANEKER
5020 ELDER ROAD
HYDES, MD 21082
DEED REF.: 7935/15
TAX ACCOUNT NO.: 11-04076410
TAX MAP 44 GRID 11 PARCEL 117

STATE OF MARYLAND
GEOFFREY CRAIG SCHULTZ
No. 21154
PROFESSIONAL LAND SURVEYOR

GCS 2/9/04
GEOFFREY C. SCHULTZ DATE
MARYLAND REG. No. 21154

McKEE & ASSOCIATES, INC.
Engineering – Surveying – Natural Resources Planning
Real Estate Development
SHAWAN PLACE, 5 SHAWAN ROAD HUNT VALLEY, MARYLAND 21030
TELEPHONE: (410) 527-1555 FACSIMILE: (410) 527-1563

PLAT TO ACCOMPANY SPECIAL HEARING REQUEST
#5020 ELDER ROAD
DANEKER PROPERTY

11TH ELECTION DISTRICT BALTIMORE COUNTY, MARYLAND
3RD COUNCILMANIC DISTRICT
SCALE: 1" = 200' DATE: FEBRUARY 6, 2004

SHEET 1 OF 2

MAI PROJECT #03-071

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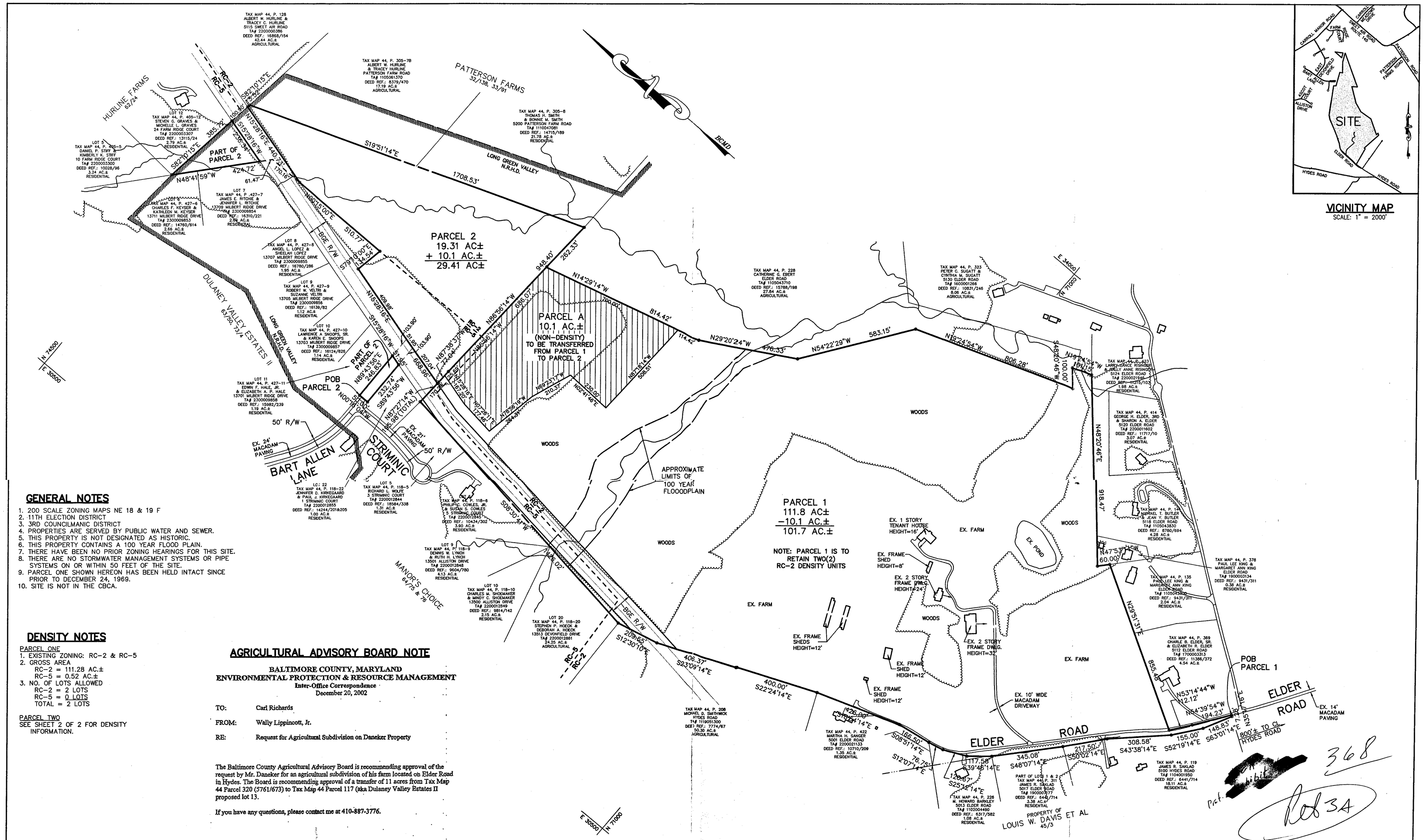

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PARCEL TWO

SEE SHEET 2 OF 2 FOR DENSITY INFORMATION.

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If you have any questions, please contact me at 410-887-3776.

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STATE OF MARYLAND — GEOFFREY CRAIG SCHULTZ — No. 21154 — PROFESSIONAL LAND SURVEYOR

GC 2/9/04
GEOFFREY C. SCHULTZ DATE
MARYLAND REG. No. 21154

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5020 ELDER ROAD
HYDES, MD 21082
DEED REF.: 7935/15
TAX ACCOUNT NO.: 11-04076410
TAX MAP 44 GRID 11 PARCEL 117

368

Exhibit

Pet 3A

PLAT TO ACCOMPANY SPECIAL HEARING REQUEST
#5020 ELDER ROAD
DANEKER PROPERTY

11TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND
SCALE: 1" = 200'
DATE: FEBRUARY 6, 2004

SHEET 1 OF 2

MAI PROJECT #03-071

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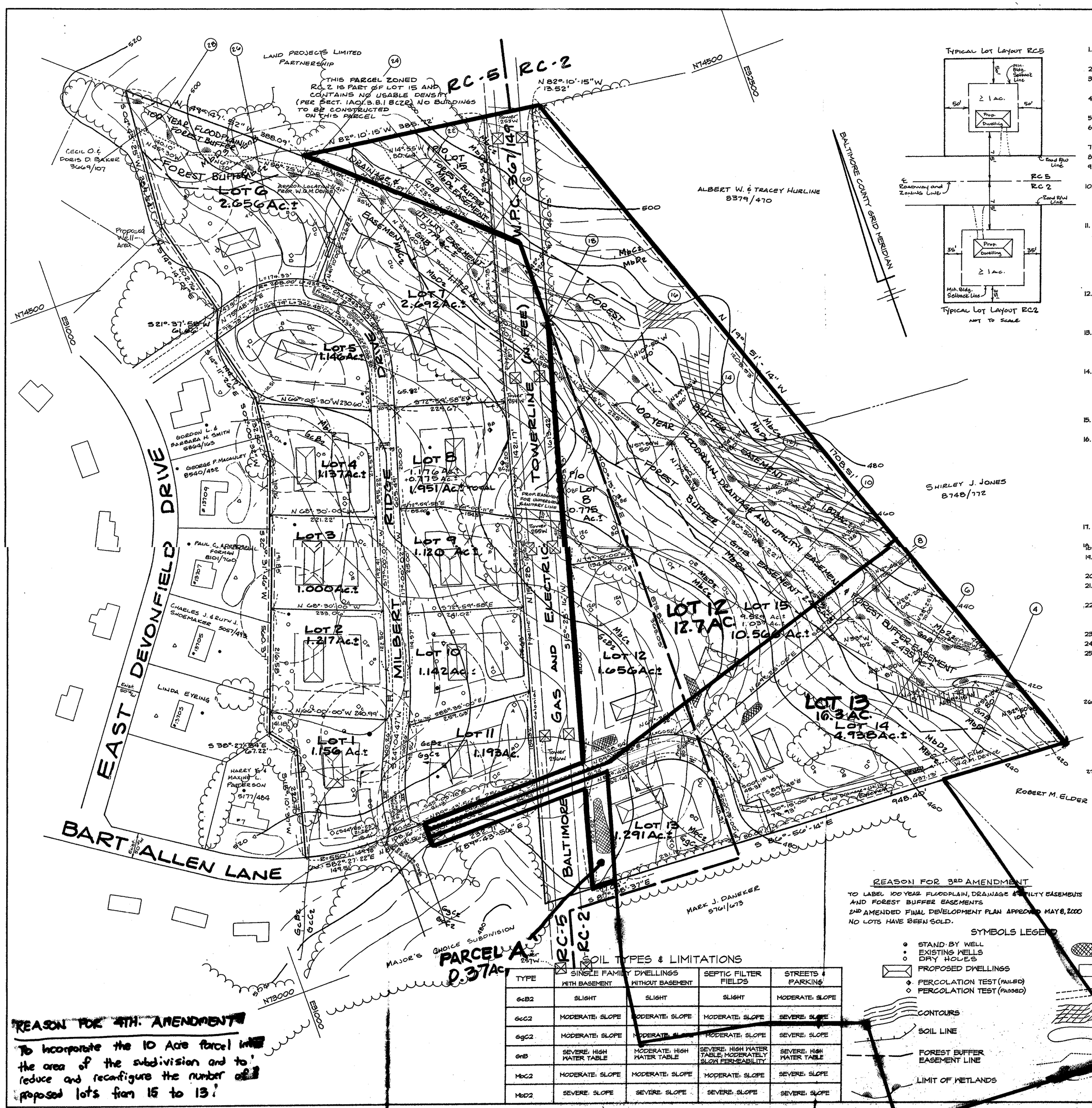
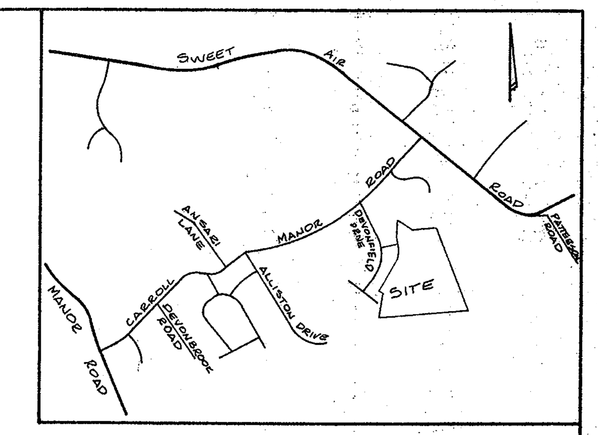


Typical Lot Layout RC2
NOT TO SCALE

GENERAL NOTES

1. CENSUS TRACT 4112.02 COUNCILMANIC DISTRICT 6
   WATERSHED 3 & 7 SUBSENERSHED 81
2. CRG PLAN APPROVED JULY 1, 1992.
3. A LANDSCAPE PLAN MUST BE APPROVED BY THE PRIOR TO ISSUANCE OF A BUILDING PERMIT.
4. SOIL TYPES SHOWN HEREON TAKEN FROM BALTIMORE COUNTY SOIL SURVEY MAP 19.
5. A.D.T'S: 15 X 12.4 = 186
6. ALL EXISTING SEPTIC SYSTEMS, WELL, AND PERCOLATION TESTS HERE FIELD LOCATED.
7. NO GRADING IS TO BE DONE IN THE SEPTIC RESERVE AREA.
8. THERE ARE NO UNDERGROUND FUEL STORAGE TANKS APPARENT ON THE SITE.
9. ALL LOTS SHOWN HEREON TO BE SERVED BY PRIVATE WELLS AND SEPTIC SYSTEMS.
10. HIGHWAY, SLOPE EASEMENTS, DRAINAGE AND UTILITIES EASEMENTS, ACCESS EASEMENTS, AND STORM WATER MANAGEMENT AREAS, NO MATTER HON ENTITLED, SHOWN HEREON, ARE RESERVED UNTO THE OWNER AND ARE HEREBY OFFERED FOR DEDICATION TO BALTIMORE COUNTY, MARYLAND.
11. BALTIMORE COUNTY MAKES NO WARRANTY EXPRESSED OR IMPLIED AS TO THE RIGHT OF ANY PRESENT OR FUTURE OWNER OF ANY LOT SHOWN ON THIS PLAT TO USE ALL OR ANY PART OF THAT LAND DESIGNATED AS PRIVATE RIGHT OF WAY FOR THE PURPOSE OF INGRESS, EGRESS, OR THE RIGHT TO OPEN OR EXCAVATE THE AFORESAID RIGHT OF WAY FOR THE PURPOSES OF INSTALLING, CONSTRUCTING, AND MAINTAINING UTILITIES SUCH AS BUT NOT LIMITED TO WATER, SEWER, ELECTRICAL, TELEPHONE OR CABLE T.V.
12. ANY FOREST BUFFER EASEMENT SHOWN HEREON IS SUBJECT TO PROTECTIVE COVENANTS WHICH MAY BE FOUND AMONG THE LAND RECORDS OF BALTIMORE COUNTY, MARYLAND AND WHICH RESTRICT DISTURBANCE AND USE OF THESE AREAS.
13. THERE SHALL BE NO CLEARING, GRADING, CONSTRUCTION OR DISTURBANCE OF VEGETATION IN THE FOREST BUFFER EASEMENTS, EXCEPT AS PERMITTED BY THE BALTIMORE COUNTY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT.
14. ENVELOPES SHOWN HEREON ARE FOR THE LOCATION OF ALL PRINCIPAL BUILDINGS ONLY. ACCESSORY STRUCTURES, FENCES AND PROJECTIONS INTO YARDS MAY BE CONSTRICTED OUTSIDE THE ENVELOPE, BUT MUST COMPLY WITH SECTIONS 400 AND 301 OF THE BALTIMORE COUNTY ZONING REGULATIONS. (SUBJECT TO COVENANTS AND APPLICABLE BUILDING PERMITS.)
15. ACCESSORY STRUCTURES, FENCES AND PROJECTIONS INTO YARD CANNOT BE LOCATED IN FLOOD PLAIN AREAS OR HYDRIC SOILS.
16. THIS DEVELOPMENT PLAN IS APPROVED BY THE DIRECTOR OF ZADM BASED ON HIS INTERPRETATION OF THE ZONING REGULATIONS, THAT IT COMPLIES WITH PRESENT POLICY, DENSITY AND BULK CONTROLS AS THEY ARE DELINEATED IN THE REGULATIONS. ANY PART OR PARCEL OF THIS TRACT THAT HAS BEEN UTILIZED FOR DENSITY TO SUPPORT DWELLINGS SHOWN HEREON SHALL NOT BE FURTHER DIVIDED OR DEVELOPED FOR ADDITIONAL DWELLINGS OR ANY PURPOSE OTHER THAN THAT INDICATED PRESENTLY ON SAID PLAN. UTILIZATION WILL HAVE OCCURRED WHEN A DWELLING IS CONSTRUCTED AND TRANSFERRED FOR THE PURPOSE OF OCCUPANCY.
17. THIS DEVELOPMENT PLAN COMPLIES WITH THE CRG PLAN AND ALL CRG PLAN COMMENTS.
18. ~~OPEN SPACE NOT REQUIRED IN RC-2 ZONES.~~
19. THERE ARE NO KNOWN HISTORIC BUILDINGS, CRITICAL AREAS, ARCHEOLOGICAL SITES, ENDANGERED SPECIES HABITAT OR HAZARDOUS MATERIALS ON THIS SITE.
20. NO MORE THAN 15% OF ANY RC-5 LOT MAY BE COVERED BY BUILDINGS.
21. NO MORE THAN 25% OF NATURAL VEGETATION MAY BE REMOVED FROM ANY RC-5 LOT.
22. PARKING AREAS, DRIVEWAYS AND PANHANDLE DRIVES SHALL HAVE A DURABLE AND DUSTLESS SURFACE (MACADAM OR TAR & CHIP). PARKING REQUIRED AND PROVIDED: 2 SPACES PER LOT.
23. A WAIVER OF SWM REQUIREMENTS WAS APPROVED APRIL 6, 1992.
24. LOTS SHOWN HEREON ARE FOR SALE FOR SINGLE FAMILY DWELLINGS.
25. THIS PROPOSED DEVELOPMENT IS IN CLOSE PROXIMITY TO ACTIVE AGRICULTURAL OPERATIONS. BE ADVISED THAT AGRICULTURE HAS A PREFERRED USE STATUS AND THAT ODORS, NOISE, DUST, FARM EQUIPMENT, LIVESTOCK OPERATIONS AND AGRICULTURAL CHEMICALS (PESTICIDES, FERTILIZER, HERBICIDES AND OTHER CONTROL AGENTS) MAY BE IN ACTIVE USE.
26. THE PORTION OF LOT 8 EAST OF THE IN FEE BALTIMORE GAS AND ELECTRIC RIGHT OF WAY AND THE PORTION OF LOT 15 WEST OF THE B.G.&E. RIGHT OF WAY WILL EACH BE RECORDED AS INSEPARABLE PORTIONS OF THE RESPECTIVE LOTS AND EACH WITH ONE CLOSING METES AND BOUNDS PROPERTY DESCRIPTION SAVING AND EXCEPTING THE B.G.&E. RIGHT OF WAY.
27. PROPOSED WATER QUALITY DEVISE BETWEEN LOTS 6 & 7 SHOWN FOR PICTURE PURPOSES ONLY. EXACT LOCATION, SIZE, AND DESIGN TO BE DETERMINED WHEN MILBERT RIDGE DRIVE ROAD PLANS ARE SUBMITTED.



VICINITY MAP

Scale: 1"=2000'

WELL PERMIT NUMBERS

LOT 1		LOT 9	BA-92-0735
LOT 2	BA-92-0742	LOT 10	BA-92-0734
LOT 3	BA-92-0741	LOT 11	BA-92-0733
LOT 4	BA-92-0740	LOT 12	
LOT 5	BA-92-0739	LOT 13	
LOT 6	BA-92-0738	LOT 14	
LOT 7	BA-92-0737	LOT 15	
LOT 8	BA-92-0736		

CURVE DATA

	RADIUS	ARC	CHORD
I	900.00'	111.20'	S 20°-32'-24"W 111.13'
II	850.00'	105.02'	S 20°-32'-24"W 104.95'
III	275.00'	101.85'	S 13°-28'-09"W 101.27'
IV	325.00'	123.10'	S 13°-13'-43"W 122.37'
V	150.00'	236.98'	S 45°-00'-32"E 213.09'
VI	100.00'	157.98'	S 45°-00'-32"E 142.00'

DENSITY CALCULATIONS

ZONED RC-5 & RC-2
GROSS AREA ~~47.25~~ Ac +/- 47.45
AREA IN RC-2 ~~2.45~~ +/- 25.2
AREA IN RC-5 22.25 Ac +/-

ZONING	LOTS PERMITTED	PROPOSED	REMAINING
RC-5	22.25 x 0.667 = 14.8	~~14~~ 11	1
RC-2	2	2	0

~~3RD AMENDED~~ 4TH. AMENDED

FINAL DEVELOPMENT PLAN
DULANEY VALLEY ESTATES II

11th ELECTION DISTRICT
BALTIMORE COUNTY, MARYLAND
DEED REFS: E.H.K.Jr. 6297 folio 345 & S.M. 7835 folio 15
CRG PLAN APPROVED JULY 1, 1992
PUBLIC SERVICES CRG No. 91-335
CURRENT PLANNING CRG No. XI-655
PROPERTY ACCOUNT NUMBER: 11-04-076410

BOA Petitioners Exhibit #4

SCALE: 1"=100' DATE: JULY 25, 2000

GERHOLD, CROSS & ETZEL
REGISTERED PROFESSIONAL LAND SURVEYORS
Suite 100
320 East Towsontown Boulevard
Towson, Maryland 21286
(410) 823-4470

OWNER/DEVELOPER
MARK J. DANEKER
5020 ELDER ROAD
HYDES, MD. 21082
410-576-9832

REASON FOR 1ST AMENDMENT

LOTS RECONFIGURED TO UTILIZE APPROVED WELLS AND SEPTIC RESERVED AREAS.

NO LOTS HAVE BEEN SOLD.

ORIGINAL FINAL DEVELOPMENT PLAN APPROVED DECEMBER 28, 1992.

REASON FOR 2ND AMENDMENT

TO SHOW REVISED STORM DRAINS, WATER QUALITY DEVISE & SEPTIC RESERVE AREAS ON LOTS 1 & 7

NO LOTS HAVE BEEN SOLD.

1ST AMENDED FINAL DEVELOPMENT PLAN APPROVED JUNE 20, 1994

REASON FOR 3RD AMENDMENT

TO LABEL 100 YEAR FLOODPLAIN, DRAINAGE & UTILITY EASEMENTS AND FOREST BUFFER EASEMENTS

2ND AMENDED FINAL DEVELOPMENT PLAN APPROVED MAY 8, 2000

NO LOTS HAVE BEEN SOLD.

REASON FOR 4TH. AMENDMENT

To incorporate the 10 Acre parcel into the area of the subdivision and to reduce and reconfigure the number of proposed lots from 15 to 13!

SYMBOLS LEGEND

- STAND-BY WELL
- EXISTING WELLS
- DRY HOLES
- PROPOSED DWELLINGS
- PERCOLATION TEST (FAILED)
- PERCOLATION TEST (PASSED)
- CONTOURS
- SOIL LINE
- FOREST BUFFER EASEMENT LINE
- LIMIT OF WETLANDS
- PROPOSED WELL AREAS
- EXISTING DWELLINGS
- EXISTING ROADS & DRIVEWAYS
- SLOPES >25%
- SEPTIC RESERVE AREAS
- 100 YEAR FLOODPLAIN
- STREAM

SOIL TYPES & LIMITATIONS

TYPE	SINGLE FAMILY DWELLINGS WITH BASEMENT	SINGLE FAMILY DWELLINGS WITHOUT BASEMENT	SEPTIC FILTER FIELDS	STREETS & PARKING
GcB2	SLIGHT	SLIGHT	SLIGHT	MODERATE: SLOPE
GcC2	MODERATE: SLOPE	MODERATE: SLOPE	MODERATE: SLOPE	SEVERE: SLOPE
GgC2	MODERATE: SLOPE	MODERATE: SLOPE	MODERATE: SLOPE	SEVERE: SLOPE
GnB	SEVERE: HIGH WATER TABLE	MODERATE: HIGH WATER TABLE	SEVERE: HIGH WATER TABLE, MODERATELY SLOW PERMEABILITY	SEVERE: HIGH WATER TABLE
MbC2	MODERATE: SLOPE	MODERATE: SLOPE	MODERATE: SLOPE	SEVERE: SLOPE
MbD2	SEVERE: SLOPE	SEVERE: SLOPE	SEVERE: SLOPE	SEVERE: SLOPE

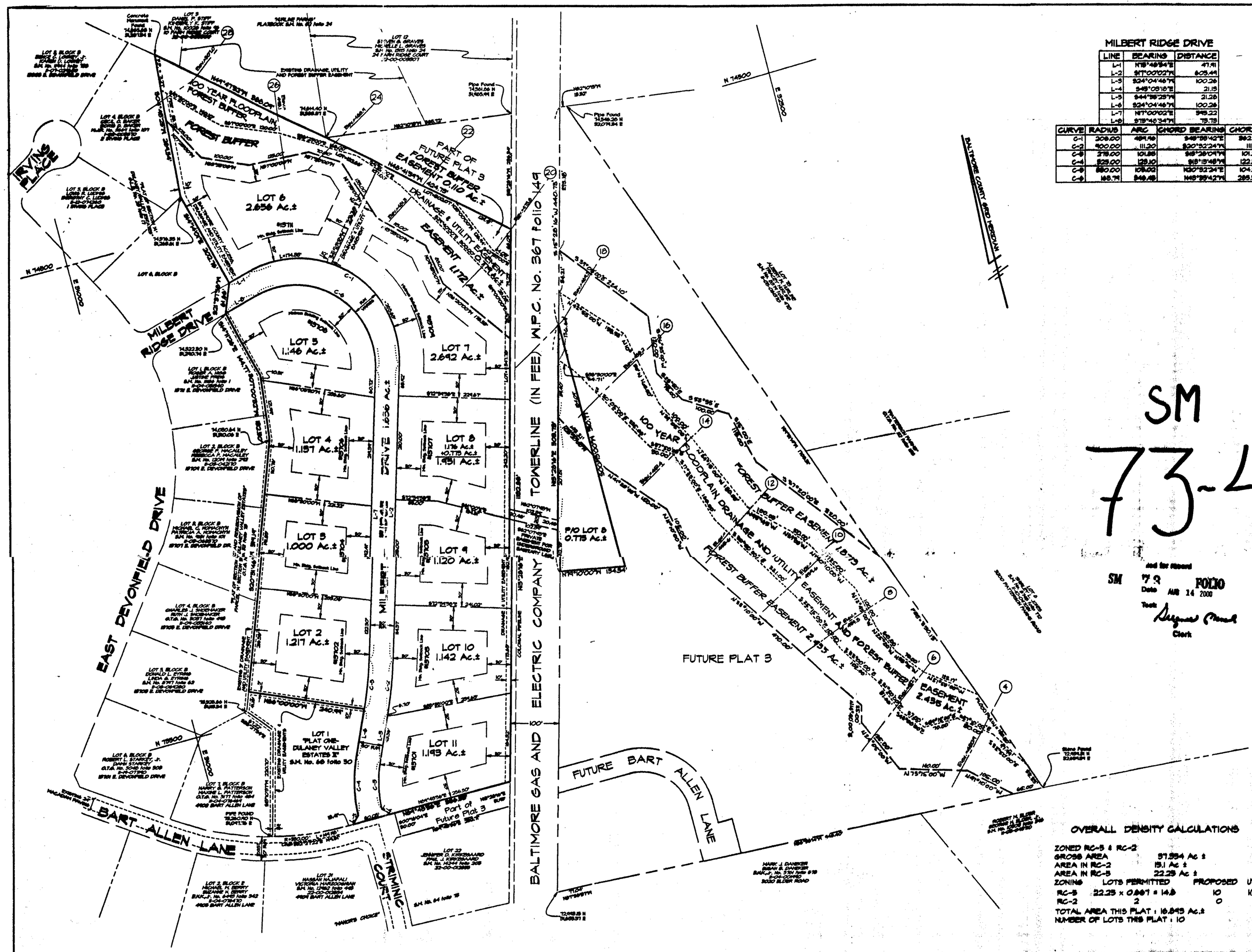
DATE	REVISION
JULY 27, 2000	"FOREST BUFFER EASEMENT" ADDED TO 100 YEAR FLOOD PLAIN, DRAINAGE AND UTILITY EASEMENT" ON EAST SIDE OF TOWERLINE.

RECEIVED AUG 1 2000 DEPT. OF PERMITS AND DEVELOPMENT MANAGEMENT

OFFICE OF PLANNING AND ZONING APPROVED BY:
DIRECTOR OF PLANNING — DATE 8/03/00
DIRECTOR OF PDM — DATE

TO FILE

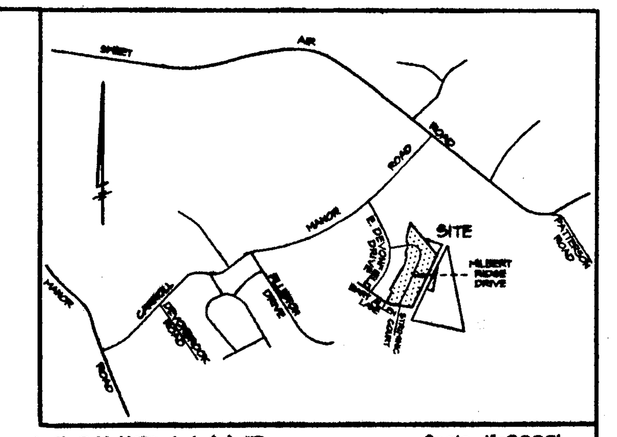
SHEET 2 OF 2



MILBERT RIDGE DRIVE

LINE	BEARING	DISTANCE
L-1	N18°46'54"E	47.41
L-2	S17°00'02"E	605.44
L-3	S24°04'46"E	100.26
L-4	S49°06'16"E	21.15
L-5	S44°58'29"W	21.26
L-6	S24°04'46"E	100.26
L-7	N17°00'02"E	945.22
L-8	S18°46'34"E	72.73

CURVE	RADIUS	ARC	CHORD BEARING	CHORD
C-1	325.00	491.59	S49°39'42"E	592.41
C-2	400.00	111.20	S20°32'24"E	111.15
C-3	275.00	101.88	S18°39'04"E	101.27
C-4	329.00	129.10	S18°15'48"E	122.57
C-5	380.00	105.03	N20°32'24"E	104.72
C-6	468.76	849.48	N49°39'42"E	589.24



VICINITY MAP

Scale: 1"=2000'

GENERAL NOTES

1. Highways and highway widenings, slope easements, drainage and utility easements, access easements, forest buffer or forest conservation areas in fee or easement, greenway areas in fee or easement, and storm water management areas, no matter how entitled, shown hereon, are reserved into the owner and, except for those indicated as private, are hereby offered for dedication to Baltimore County, Maryland. The owner, his personal representatives and assigns, shall convey said areas, by deed, to Baltimore County, Maryland, at no cost. Until such time as said conveyance is accepted by Baltimore County, the owner authorizes Baltimore County, its agents and assigns, the right to enter upon the property for the purpose of installing, constructing, maintaining and replacing roads, utility lines and facilities, and storm water management ponds and facilities.
2. Streets and/or roads shown hereon and mention thereof in deeds are for purposes of description only, and the same are not intended to be dedicated to public use; the fee simple title to the beds thereof is expressly reserved in the grantors of the deed to which this plat is attached, their heirs and assigns.
3. This plat duly expires in accordance with the provisions of the Baltimore County Code, Section 26-206.
4. The recording of this plat does not guarantee the installation of streets or utilities by Baltimore County, Maryland.
5. The information shown hereon may be superseded by a subsequent or amended plat.
6. Additional information concerning this plat may be obtained from the Baltimore County Office of Planning and Zoning and the Department of Public Works.
7. The recording of this plat does not constitute or imply acceptance by the County of any street, easement, park, open space or other public area shown on the plat.
8. The owner/developer will comply with the best management practices adopted by the Baltimore County Department of Environmental Protection and Resource Management.
9. The C.R.G. Plan for the property shown on the plat was approved on July 1, 1992, the Final Development Plan was approved on December 28, 1992, the 1st Amended Final Development Plan was approved on June 20, 1994 and the 2nd Amended Final Development Plan was approved on May 9, 2000.
10. Soil percolation tests will be valid for a period of five(5) years from the date the record plat is signed by the Director of the Department of Environmental Protection and Resource Management. At the expiration of this period, new tests may be required.
11. All requirements of the Maryland State Department of the Environment and Baltimore County Department of Environmental Protection and Resource Management pertaining to private water and/or sewage systems must be complied with prior to approval of building applications.
12. Except as otherwise indicated, all building restriction lines shown hereon have been placed as the result of an interpretation only of currently applicable regulations and policies of the Baltimore County Office of Planning and Zoning. Exceptions to these restrictions may apply.
13. This site is located in the Gunpowder Falls Watershed.
14. There shall be no clearing, grading, construction or disturbance of vegetation in the Forest Buffer Easement except as permitted by the Baltimore County Department of Environmental Protection and Resource Management.
15. Any Forest Buffer Easement shown hereon is subject to protective covenants which may be found in the Land Records of Baltimore County and which restrict disturbance and use of these areas.
16. The floodplain information is based on Baltimore County Flood Insurance Study dated [illegible] and a minimum of 1 foot vertical freeboard. The elevations shown on the floodplain sections are the 100-year design frequency surface elevations.
17. The roads and storm drains of lots put on this plat have been designed by a Professional Engineer, RICHARD TRUELOVE, P.E. Reg. No. 10800.
18. Design and Drawing based on Baltimore County Metropolitan District Grid System and Datum.
19. Logging and timber harvesting operations shall be permitted within the Forest Buffer Easement only in accordance with a Forest Management Plan prepared by a Registered Forester, that is designed to maximize water quality and wildlife habitat. No timber harvest shall be allowed within 50 feet of any stream or within the limits of non-tidal wetlands. Any timber harvest must leave a residual basal area of 70 square feet of timber per acre as measured using standard forestry practices. Any future subdivision or recordation of Lots 12, 13, 14 or 15 shall render this note null and void.
20. Baltimore County may access the Forest Buffer Easements on the east side of the towerline from any portion of the Forest Buffer Easements on the west side of the towerline pursuant to the right of access reserved in W.P.C. No. 367 folio 149.
21. The 3rd Amended Final Development Plan was approved on August 9, 2000.

SM 73-4

and for record

SM 73 FOLIO 4

Date AUG 14 2000

Test: [signature]
Clerk

PLAT RECORDING
TOTAL 15.00
Book 0002 Page 4 67941
SM 73 Blk 4 1327
Aug 14, 2000 11:35 am

PLAT TWO
DULANEY VALLEY ESTATES II

11th ELECTION DISTRICT
BALTIMORE COUNTY, MARYLAND
DEED REFS.: E.H.K.Jr.No. 6291 folio 545
& S.M.No. 7885 folio 15
CRG PLAN APPROVED: JULY 1, 1992
PUBLIC SERVICES CRG No. 91-355
CURRENT PLANNING CRG No. XI-655
PROPERTY ACCOUNT NUMBERS:
11-04-076410

Ref No 6

OVERALL DENSITY CALCULATIONS

ZONED RC-5 & RC-2
GROSS AREA 37.554 Ac.±
AREA IN RC-2 15.1 Ac.±
AREA IN RC-5 22.23 Ac.±

ZONING	LOTS PERMITTED	PROPOSED	UTILIZED	REMAINING
RC-5	22.23 x 0.667 = 14.8	10	10 (PLAT 1)	8
RC-2	2	0	0	2

TOTAL AREA THIS PLAT: 10.843 Ac.±
NUMBER OF LOTS THIS PLAT: 10

SCALE: 1"=100'

APRIL 9, 2000

PWA Completed 110002
Final Plat:
Public Services P.D.M.
Dev. Design
Dev. Engineer
Street, Numbering 6/8/00
Planning
Land Acquisition
Assessments

APPROVED FOR THE DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT

7-19-00

DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT

APPROVED BY THE DIRECTOR OF PERMITS AND DEVELOPMENT MANAGEMENT PURSUANT TO SECTION 26-215(c), BALTIMORE COUNTY CODE

Donald T. Rascoe 8-14-00
DATE
DIRECTOR OF PERMITS AND DEVELOPMENT MANAGEMENT

NOTE: COORDINATES and BEARINGS shown on this plat are referred to the system of coordinates established in The Baltimore County Metropolitan District and are based on the following traverse stations:

B.C.M. 15447 N 75,218.87 E 50,842.60
B.C.M. 15446 N 74,717.11 E 24,181.22

OWNER - DEVELOPER

MARK J. DANEKER
3020 ELDER ROAD
HYDES, MD. 21082
PHONE (410) 516-4852

OWNER'S CERTIFICATE

The undersigned, Owner of the land shown on this Plat, hereby certifies that, to the best of it's knowledge, the requirements of Subsection (C) of Section 9-108 of the Real Property Article of the Annotated Code of Maryland has been complied with insofar as same concerns the making of the Plat and setting of the markers.

By: [signature] 6-7-2000
MARK J. DANEKER

SURVEYOR'S CERTIFICATION

The undersigned, a registered Property Line Surveyor of the State of Maryland, does hereby certify that he is the Surveyor who prepared this Plat and that the land shown on this Plat has been laid out and the Plat thereof has been prepared, in Compliance with Subsection (C) of Section 9-108 of the Real Property Article of the Annotated Code of Maryland, particularly insofar as same concerns the making of the Plat and setting the markers.

[signature] 6-6-2000
GORDON T. LANGDON - PROPERTY LINE SURVEYOR #172

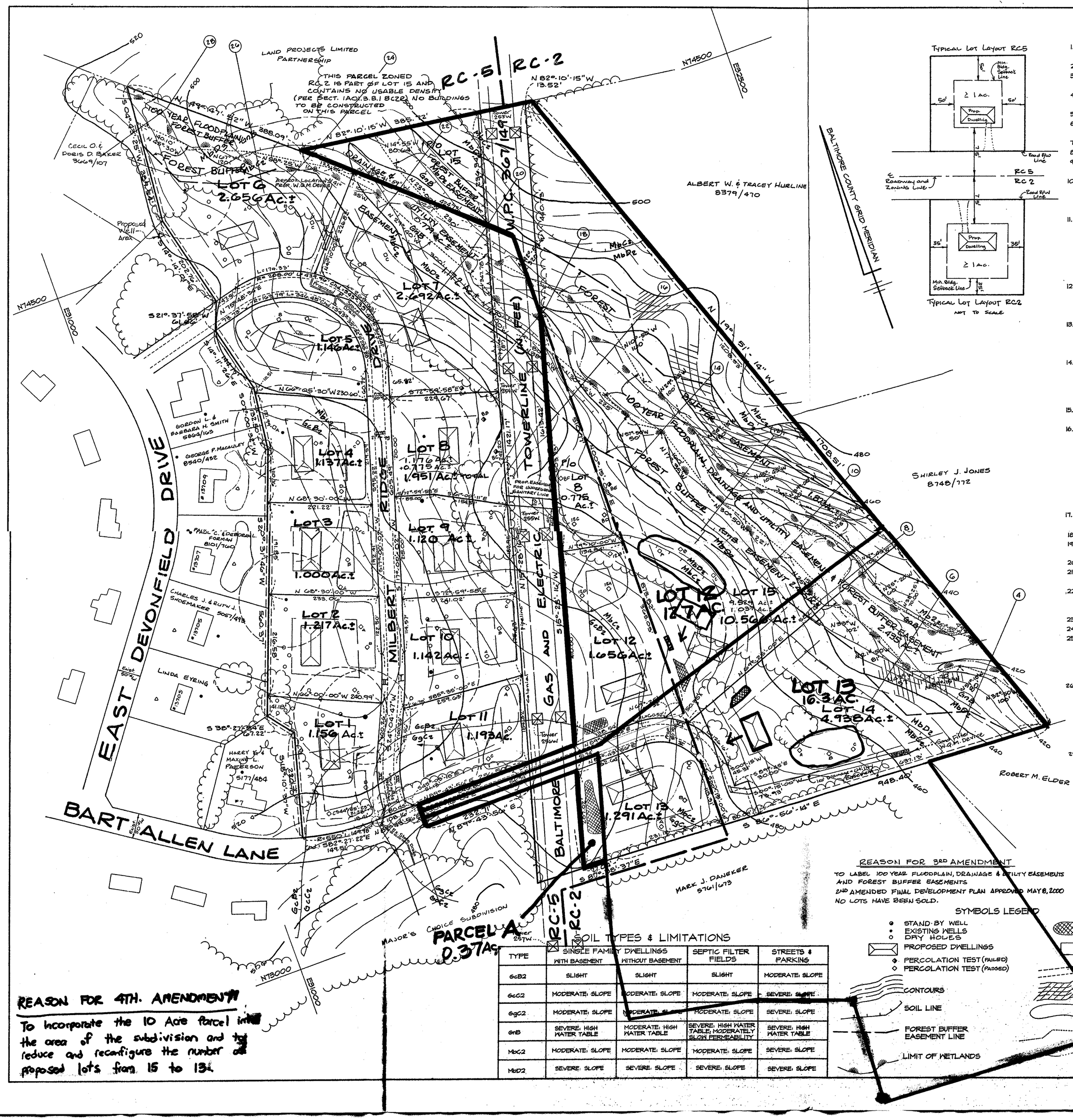
STATE OF MARYLAND GORDON T. LANGDON No. 172 PROPERTY LINE SURVEYOR

I HEREBY CERTIFY THAT I HAVE REVIEWED THIS PLAT FOR COMPLIANCE WITH THE DULANEY VALLEY FINAL DEVELOPMENT PLAN DATED: JULY 21, 2000 AND HAVE FOUND THE PLAT TO BE IN COMPLIANCE WITH THE DULANEY VALLEY FINAL DEVELOPMENT PLAN.

GERHOLD, CROSS & ETZEL, LTD.
REGISTERED PROFESSIONAL LAND SURVEYORS
Suite 100
320 East Towsontown Boulevard
Towson, Maryland 21286
(410) 823-4470

COMPUTED: E.D.L. DRAWN: S.A.L./CAD CHECKED: G.T.L. FILE No. 11-604

73-4



Typical Lot Layout RC5

Typical Lot Layout RC2

NOT TO SCALE

GENERAL NOTES

1. CENSUS TRACT 4112.02 COUNCILMANIC DISTRICT 6
   WATERSHED 3 & 7 SUBSENERSHED B1
2. CRG PLAN APPROVED JULY 1, 1992.
3. A LANDSCAPE PLAN MUST BE APPROVED BY THE PRIOR TO ISSUANCE OF A BUILDING PERMIT.
4. SOIL TYPES SHOWN HEREON TAKEN FROM BALTIMORE COUNTY SOIL SURVEY MAP 14.
5. A.D.T.'S: 15 X 12.4 = 186
6. ALL EXISTING SEPTIC SYSTEMS, WELL, AND PERCOLATION TESTS WERE FIELD LOCATED.
7. NO GRADING IS TO BE DONE IN THE SEPTIC RESERVE AREA.
8. THERE ARE NO UNDERGROUND FUEL STORAGE TANKS APPARENT ON THE SITE.
9. ALL LOTS SHOWN HEREON TO BE SERVED BY PRIVATE WELLS AND SEPTIC SYSTEMS.
10. HIGHWAY, SLOPE EASEMENTS, DRAINAGE AND UTILITIES EASEMENTS, ACCESS EASEMENTS, AND STORM WATER MANAGEMENT AREAS, NO MATTER HOW ENTITLED, SHOWN HEREON, ARE RESERVED UNTO THE OWNER AND ARE HEREBY OFFERED FOR DEDICATION TO BALTIMORE COUNTY, MARYLAND.
11. BALTIMORE COUNTY MAKES NO WARRANTY EXPRESSED OR IMPLIED AS TO THE RIGHT OF ANY PRESENT OR FUTURE OWNER OF ANY LOT SHOWN ON THIS PLAT TO USE ALL OR ANY PART OF THAT LAND DESIGNATED AS PRIVATE RIGHT OF WAY FOR THE PURPOSE OF INGRESS, EGRESS, OR THE RIGHT TO OPEN OR EXCAVATE THE AFORESAID RIGHT OF WAY FOR THE PURPOSED OF INSTALLING, CONSTRUCTING, AND MAINTAINING UTILITIES SUCH AS BUT NOT LIMITED TO WATER, SEWER, ELECTRICAL, TELEPHONE OR CABLE T.V.
12. ANY FOREST BUFFER EASEMENT SHOWN HEREON IS SUBJECT TO PROTECTIVE COVENANTS WHICH MAY BE FOUND AMONG THE LAND RECORDS OF BALTIMORE COUNTY, MARYLAND AND WHICH RESTRICT DISTURBANCE AND USE OF THESE AREAS.
13. THERE SHALL BE NO CLEARING, GRADING, CONSTRUCTION OR DISTURBANCE OF VEGETATION IN THE FOREST BUFFER EASEMENTS, EXCEPT AS PERMITTED BY THE BALTIMORE COUNTY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT.
14. ENVELOPES SHOWN HEREON ARE FOR THE LOCATION OF ALL PRINCIPAL BUILDINGS ONLY. ACCESSORY STRUCTURES, FENCES AND PROJECTIONS INTO YARDS MAY BE CONSTRUCTED OUTSIDE THE ENVELOPE, BUT MUST COMPLY WITH SECTIONS 400 AND 301 OF THE BALTIMORE COUNTY ZONING REGULATIONS. (SUBJECT TO COVENANTS AND APPLICABLE BUILDING PERMITS.)
15. ACCESSORY STRUCTURES, FENCES AND PROJECTIONS INTO YARD CANNOT BE LOCATED IN FLOOD PLAIN AREAS OR HYDRIC SOILS.
16. THIS DEVELOPMENT PLAN IS APPROVED BY THE DIRECTOR OF ZADM BASED ON HIS INTERPRETATION OF THE ZONING REGULATIONS, THAT IT COMPLIES WITH PRESENT POLICY, DENSITY AND BULK CONTROLS AS THEY ARE DELINEATED IN THE REGULATIONS. ANY PART OR PARCEL OF THIS TRACT THAT HAS BEEN UTILIZED FOR DENSITY TO SUPPORT DWELLINGS SHOWN THEREON SHALL NOT BE FURTHER DIVIDED OR DEVELOPED FOR ADDITIONAL DWELLINGS OR ANY PURPOSE OTHER THAN THAT INDICATED PRESENTLY ON SAID PLAN. UTILIZATION WILL HAVE OCCURRED WHEN A DWELLING IS CONSTRUCTED AND TRANSFERRED FOR THE PURPOSE OF OCCUPANCY.
17. THIS DEVELOPMENT PLAN COMPLIES WITH THE CRG PLAN AND ALL CRG PLAN COMMENTS.
18. OPEN SPACE NOT REQUIRED IN RC ZONES.
19. THERE ARE NO KNOWN HISTORIC BUILDINGS, CRITICAL AREAS, ARCHEOLOGICAL SITES, ENDANGERED SPECIES HABITAT OR HAZARDOUS MATERIALS ON THIS SITE.
20. NO MORE THAN 15% OF ANY RC-5 LOT MAY BE COVERED BY BUILDINGS.
21. NO MORE THAN 25% OF NATURAL VEGETATION MAY BE REMOVED FROM ANY RC-5 LOT.
22. PARKING AREAS, DRIVEWAYS AND PANHANDLE DRIVES SHALL HAVE A DURABLE AND DUSTLESS SURFACE (MACADAM OR TAR & CHIP). PARKING REQUIRED AND PROVIDED: 2 SPACES PER LOT.
23. A WAIVER OF SHM REQUIREMENTS WAS APPROVED APRIL 6, 1992.
24. LOTS SHOWN HEREON ARE FOR SALE FOR SINGLE FAMILY DWELLINGS.
25. THIS PROPOSED DEVELOPMENT IS IN CLOSE PROXIMITY TO ACTIVE AGRICULTURAL OPERATIONS. BE ADVISED THAT AGRICULTURE HAS A PREFERRED USE STATUS AND THAT ODORS, NOISE, DUST, FARM EQUIPMENT, LIVESTOCK OPERATIONS AND AGRICULTURAL CHEMICALS (PESTICIDES, FERTILIZER, HERBICIDES AND OTHER CONTROL AGENTS) MAY BE IN ACTIVE USE.
26. THE PORTION OF LOT 8 EAST OF THE IN FEE BALTIMORE GAS AND ELECTRIC RIGHT OF WAY AND THE PORTION OF LOT 15 WEST OF THE B.G.&E. RIGHT OF WAY WILL EACH BE RECORDED AS INSEPARABLE PORTIONS OF THE RESPECTIVE LOTS AND EACH WITH ONE CLOSING METES AND BOUNDS PROPERTY DESCRIPTION SAVING AND EXCEPTING THE B.G.&E. RIGHT OF WAY.
27. PROPOSED WATER QUALITY DEVISE BETWEEN LOTS 6 & 7 SHOWN FOR PICTURE PURPOSES ONLY. EXACT LOCATION, SIZE, AND DESIGN TO BE DETERMINED WHEN MILBERT RIDGE DRIVE ROAD PLANS ARE SUBMITTED.

REASON FOR 1ST AMENDMENT

LOTS RECONFIGURED TO UTILIZE APPROVED WELLS AND SEPTIC RESERVED AREAS.

NO LOTS HAVE BEEN SOLD.

ORIGINAL FINAL DEVELOPMENT PLAN APPROVED DECEMBER 28, 1992.

REASON FOR 2ND AMENDMENT

TO SHOW REVISED STORM DRAINS, WATER QUALITY DEVISE & SEPTIC RESERVE AREAS ON LOTS 1 & 7

NO LOTS HAVE BEEN SOLD.

1ST AMENDED FINAL DEVELOPMENT PLAN APPROVED JUNE 20, 1994

REASON FOR 3RD AMENDMENT

TO LABEL 100 YEAR FLOODPLAIN, DRAINAGE & UTILITY EASEMENTS AND FOREST BUFFER EASEMENTS

2ND AMENDED FINAL DEVELOPMENT PLAN APPROVED MAY 8, 2000

NO LOTS HAVE BEEN SOLD.

REASON FOR 4TH. AMENDMENT

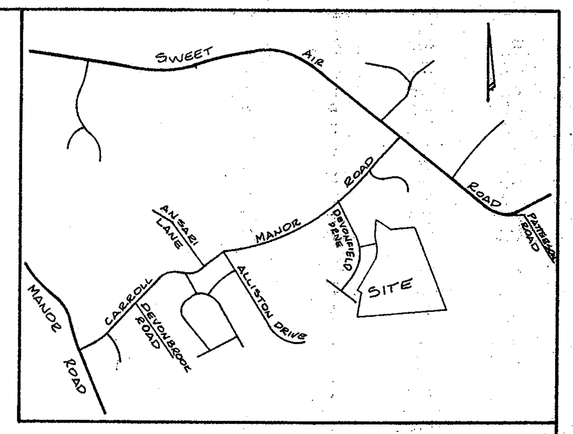
To incorporate the 10 Acre parcel into the area of the subdivision and to reduce and reconfigure the number of proposed lots from 15 to 13.

SOIL TYPES & LIMITATIONS

TYPE	SINGLE FAMILY DWELLINGS WITH BASEMENT	SINGLE FAMILY DWELLINGS WITHOUT BASEMENT	SEPTIC FILTER FIELDS	STREETS & PARKING
GcB2	SLIGHT	SLIGHT	SLIGHT	MODERATE: SLOPE
GcC2	MODERATE: SLOPE	MODERATE: SLOPE	MODERATE: SLOPE	SEVERE: SLOPE
GgC2	MODERATE: SLOPE	MODERATE: SLOPE	MODERATE: SLOPE	SEVERE: SLOPE
GnB	SEVERE: HIGH WATER TABLE	MODERATE: HIGH WATER TABLE	SEVERE: HIGH WATER TABLE; MODERATELY SLOW PERMEABILITY	SEVERE: HIGH WATER TABLE
MbC2	MODERATE: SLOPE	MODERATE: SLOPE	MODERATE: SLOPE	SEVERE: SLOPE
MbD2	SEVERE: SLOPE	SEVERE: SLOPE	SEVERE: SLOPE	SEVERE: SLOPE

SYMBOLS LEGEND

- STAND-BY WELL
- EXISTING WELLS
- DRY HOLES
- PROPOSED DWELLINGS
- PERCOLATION TEST (FAILED)
- PERCOLATION TEST (PASSED)
- CONTOURS
- SOIL LINE
- FOREST BUFFER EASEMENT LINE
- LIMIT OF WETLANDS
- PROPOSED WELL AREAS
- EXISTING DWELLINGS
- EXISTING ROADS & DRIVEWAYS
- SLOPES >25%
- SEPTIC RESERVE AREAS
- 100 YEAR FLOODPLAIN
- STREAM



VICINITY MAP

Scale: 1"=2000'

WELL PERMIT NUMBERS

LOT 1		LOT 9	BA-92-0735
LOT 2	BA-92-0742	LOT 10	BA-92-0734
LOT 3	BA-92-0741	LOT 11	BA-92-0733
LOT 4	BA-92-0740	LOT 12	
LOT 5	BA-92-0739	LOT 13	
LOT 6	BA-92-0738	LOT 14	
LOT 7	BA-92-0737	LOT 15	
LOT 8	BA-92-0736		

CURVE DATA

	RADIUS	ARC	CHORD
I	900.00'	111.20'	S 20°-32'-24"W 111.13'
II	850.00'	105.02'	S 20°-32'-24"W 104.95'
III	275.00'	101.85'	S 13°-28'-09"W 101.27'
IV	325.00'	123.10'	S 13°-13'-43"W 122.37'
V	150.00'	236.98'	S 45°-00'-32"E 213.09'
VI	100.00'	157.98'	S 45°-00'-32"E 142.00'

DENSITY CALCULATIONS

ZONED RC-5 & RC-2	
GROSS AREA	~~[illegible]~~ Ac +/- 47.454
AREA IN RC-2	~~[illegible]~~ +/- 25.2
AREA IN RC-5	22.25 Ac +/-

ZONING	LOTS PERMITTED	PROPOSED	REMAINING
RC-5	22.25 x 0.667 = 14.8	~~[illegible]~~ 11	1
RC-2	2	2	0

4TH. AMENDED
~~3RD AMENDED~~

FINAL DEVELOPMENT PLAN
DULANEY VALLEY ESTATES II

11th ELECTION DISTRICT
BALTIMORE COUNTY, MARYLAND
DEED REFS: E.H.K.Jr. 6297 folio 345 &
S.M. 7835 folio 15
CRG PLAN APPROVED JULY 1, 1992
PUBLIC SERVICES CRG No. 91-335
CURRENT PLANNING CRG No. XI-655
PROPERTY ACCOUNT NUMBER:
11-04-076410

SCALE: 1"=100'

DATE: JULY 25, 2000

GERHOLD, CROSS & ETZEL
REGISTERED PROFESSIONAL LAND SURVEYORS
Suite 100
320 East Towsontown Boulevard
Towson, Maryland 21286
(410) 823-4470

OWNER/DEVELOPER
MARK J. DANEKER
5020 ELDER ROAD
HYDES, MD. 21082
410-576-9832

RECEIVED
AUG 1 2000
DEPT. OF PERMITS AND DEVELOPMENT MANAGEMENT

OFFICE OF PLANNING AND ZONING
APPROVED BY:
DIRECTOR OF PLANNING — DATE 8/10/00
DIRECTOR OF PDM — DATE

DATE	REVISION
JULY 27, 2000	"FOREST BUFFER EASEMENT" ADDED TO 100 YEAR FLOOD PLAIN, DRAINAGE AND UTILITY EASEMENT ON EAST SIDE OF TOWERLINE.

TO FILE

SHEET 2 OF 2

SOILS - TYPE AND LIMITATIONS

TYPE	SEPTIC TANKS	HOUSES W/ BSMTS.	STREETS
GcB2	Slight	Slight	Moderate
GcC2	Moderate	Moderate	Severe
GgC2	Moderate	Moderate	Severe
GnB	Severe	Severe	Severe
MbC2	Moderate	Moderate	Severe
MbD2	Severe	Severe	Severe

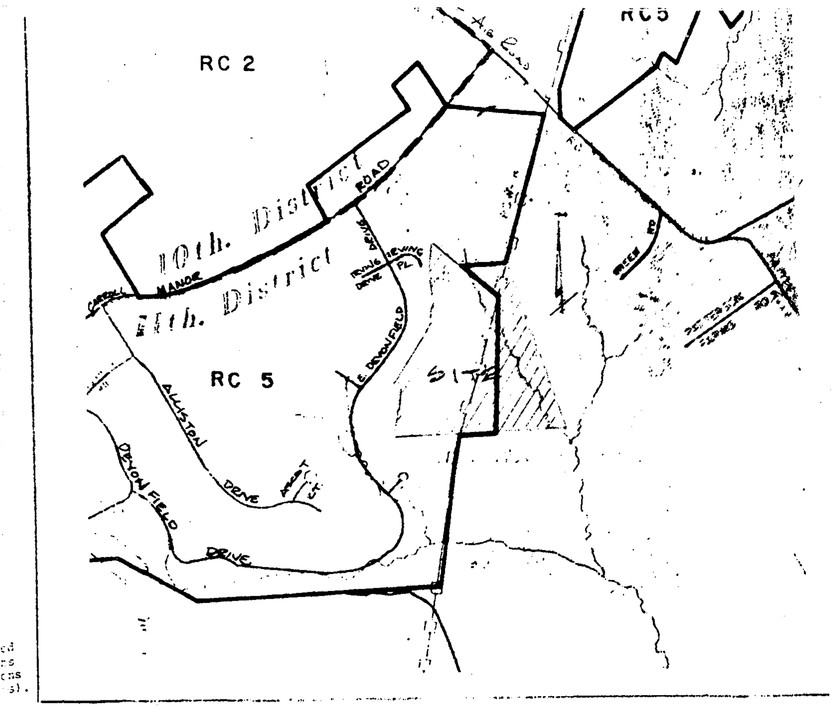
2. Tax Account Number: 11-1104076410
3. Tax Map 44 Block 11 Parcel 117
4. Date of Pre-Development Meeting: JULY. 16, 1991
5. Existing Zoning: RC-5 and RC-2
6. Gunpowder Falls Watershed
7. Watershed Number: 3-7
8. Subsewershed Number: 81
9. Councilmanic District: 6
10. Census Tract Number: 4112.01
11. Lots shown hereon are for single-family residential use only, and are for sale.
12. Lots shown hereon will operate on private well and septic systems
13. Soil types shown hereon are taken from Baltimore County Soil Survey Map No. 19.
14. Topography taken from Baltimore County Photogrammetric Maps.
15. Boundary information from Deeds, Plats of Record, and other sources.
16. There are no historic buildings, critical areas, archeological sites, endangered species habitat, or hazardous materials on this site.
17. There are no underground fuel or pesticide tanks on this site.
18. Water runoff quality will be maintained or improved by landscaping, and by directing stormwater runoff into infiltration devices if feasible. If infiltration devices are not feasible, splash blocks may be used. Water quality management shall be provided for the first one-half inch of runoff from all impervious surfaces.
19. Average Daily Trips: 12.4 x 15 units/day = 186
20. Trash to be collected at each lot by Baltimore County.
21. All roads proposed are to be public.
22. Existing land use is Cornfield.
23. All lighting standards to be 14 feet high, directed away from the dwelling units, and to have mercury vapor bulbs. (WAIVER HAS BEEN APPROVED FOR)
24. Building Setbacks are as follows for RC5
    75' from the centerline of any street
    50' from any other lot line
25. Envelopes shown hereon are for the location of all principal buildings only. Accessory structures, fences, and projections into yards may be constructed outside of the envelope but must comply with Sections 301 and 400 of the Baltimore County Zoning Regulations (subject to covenants and applicable building permit).
26. Individual lot grading will be accomplished by the Home Building Contractor.
27. Any lot grading and/or clearing for new home contruction shall be kept to the minimum required for such construction.

28. No major changes are proposed to existing grade except that required to install public road and localized house grades.
29. No more than 15% of any RC-5 lot may be covered by buildings. No buildings shall exceed 35 feet in height.
30. Parking required and provided: 2 spaces per lot.
31. Parking areas, driveways, and panhandle drives shall have a durable and dustless surface and be properly drained per standard details.
32. Landscaping to be done in accordance with Section V, Paragraph A of the Baltimore County Landscape Manual.
33. Landscape Requirements:
    1 planting unit/20 linear foot of interior road
    Screen rear and side yard from public view.
34. Existing trees and vegetation are to be preserved where possible outside of road, utility, and building construction.
35. An amendment to the Final Development Plan will be required if a lot purchaser proposes to front a dwelling contrary to the directional arrows shown hereon.
36. This proposed development is in close proximity to active agricultural operations. Be advised that agriculture has a preferred use status and that odors, noise, dust, farm equipment, livestock operations, and agricultural chemicals (pesticides, fortilizer, herbicides, and other control agents) may be in active use.
37. This development is in the Carroll Manor Elementary School District.
    School capacity: 452 students
    1991 Enrollment: 539 students
    Estimated Pupil Yield (15 lots x 0.230): 4 students
38. Density Calculation:

Gross Area	Zoning	Allowed	Proposed	Remaining
	RC-5 (22.Ac.)	14	11	+3
	RC-2 (15 Ac.)	2	2	0
40.9 Gr.A.	~~DENSITY:~~ NON DENSITY - 11.8 Ac			

    Open Space Required = 0
    Open Space Provided = 0

39. Building setbacks for RC 2 75' from Ctr of any street
    50' from any other lot line
40. There shall be no clearing, grading, construction or disturbance of vegetation in the Forest Buffer, except as permitted by the Baltimore County Department of Environmental Protection and Resource Management.
41. Any Forest Buffer shown hereon is subject to protective covenants which may be found in the Land Records of Baltimore County and which restrict disturbance and use of these areas.
42. Perimeter boundary shown hereon does not include Lots 21 and 22 as shown on the approved C.R.G. Plat of "Manor's Choice" and Parcel B. Said two Lots and Parcel are in the title of the herein referred to deeds E.H.K., Jr. 6297 folio 345 from Carolyn M. Spector to Mark J. Daneker and Clayton W. Daneker, and Mildred Z. Daneker personal representative of Clayton W. Daneker to Mark J. Daneker recorded in Liber E.H.K., Jr. 7835 folio 015. Areas of same are not included in the 15 Lot subdivision hereon entitled "Dulaney Valley Estates II".
43. -/-/-/-/-/-/-/-/-/- indicates 350 foot sight line, the area between the sight line and the curb line must be cleared, graded, and kept free of any obstruction.
44. Landscape Plan must be approved by Office of Planning prior to the issuance of a building permit.
45. A FLOOD PLAIN STUDY IS IN PROGRESS BY AN ENGINEER.
46. Bart Allen Lane, Striminik Court, and Hilbert Ridge Drive may meet minor residential street standards and may be 18 feet mountable curb and gutter on a 40 foot Right of way. If design shows this is possible, decision lies with the Developer on type of Street.
47. Zoning line act as Lot lines wherever they appear.
48. SWM Waiver has been approved April 6, 1992.
49. "NO PARKING" signs shall be posted prohibiting parallel parking on streets and within the "T" turnaround area.
50. Ramps shall be provided for physically handicapped persons at all street intersections.
51. The portion of Lot 8 east of the in fee Baltimore Gas and Electric Right of Way and the portion of Lot 15 west of the Baltimore Gas and Electric Right of Way will each be recorded as inseparable portions of the respective Lots and each with one closing metes and bounds property description saving and excepting the Baltimore Gas and Electric Right of Way.



PERK TEST SYMBOLS

- ⊕ PASSED
- ● FAILED

NOTE: BALTIMORE GAS AND ELECTRIC COMPANY AND COLONIAL PIPELINE COMPANY TO BE CONTACTED BEFORE TRENCHING PRIVATE SEWER LINE FROM LOT 8 TO LOT 8 PERK FIELD.

* see also notes 33 and 34

52.* Landscape Requirements: 1 planting unit/20 linear feet of interior road, approx. 2500 linear feet of road = 125 planting units.
53.* Rear and side yards shall be screened from public view at a rate of 1 planting unit/15 linear feet (Class 'A' Standards)
54. Waiver of Standards has been applied for for sidewalk and street lights.
55. Limit of disturbance will be shown on the Final Development Plan, grading, sediment control plan and landscape plan.

RECEIVED
JUL 2 1992
OFFICE OF PLANNING & ZONING

BALTIMORE COUNTY MD.
COUNTY REVIEW GROUP
This Plan Was Reviewed By The CRG On 5-14-92
With The Following Action Taken
PLAN APPROVED
Plan Approved DPW — 7/1/92
Plan Approved OPZ
Approval Expiration Date 5-14-95
Plan Disapproved
Continued Mtg. Required
Plan Referred To Plan. Bd.

C.R.G. PLAN

DULANEY VALLEY ESTATES II
11th ELECTION DISTRICT
BALTIMORE COUNTY, MD
6 COUNCILMANIC DISTRICT

BCA Petitioner's Exhibit #6

TAX ACCT. NOS.:
11·04·001990
11·04·076410

PLAN TO ACCOMPANY DRC REQUEST

Lot No 8

DATE	DESCRIPTION	BY
6-1-92	Plan hang and revisions per Contours Civil Engineer	P.Smith
5-8-92	Revised per comm. Pre-CRG meeting	P.Smith
	REVISIONS	

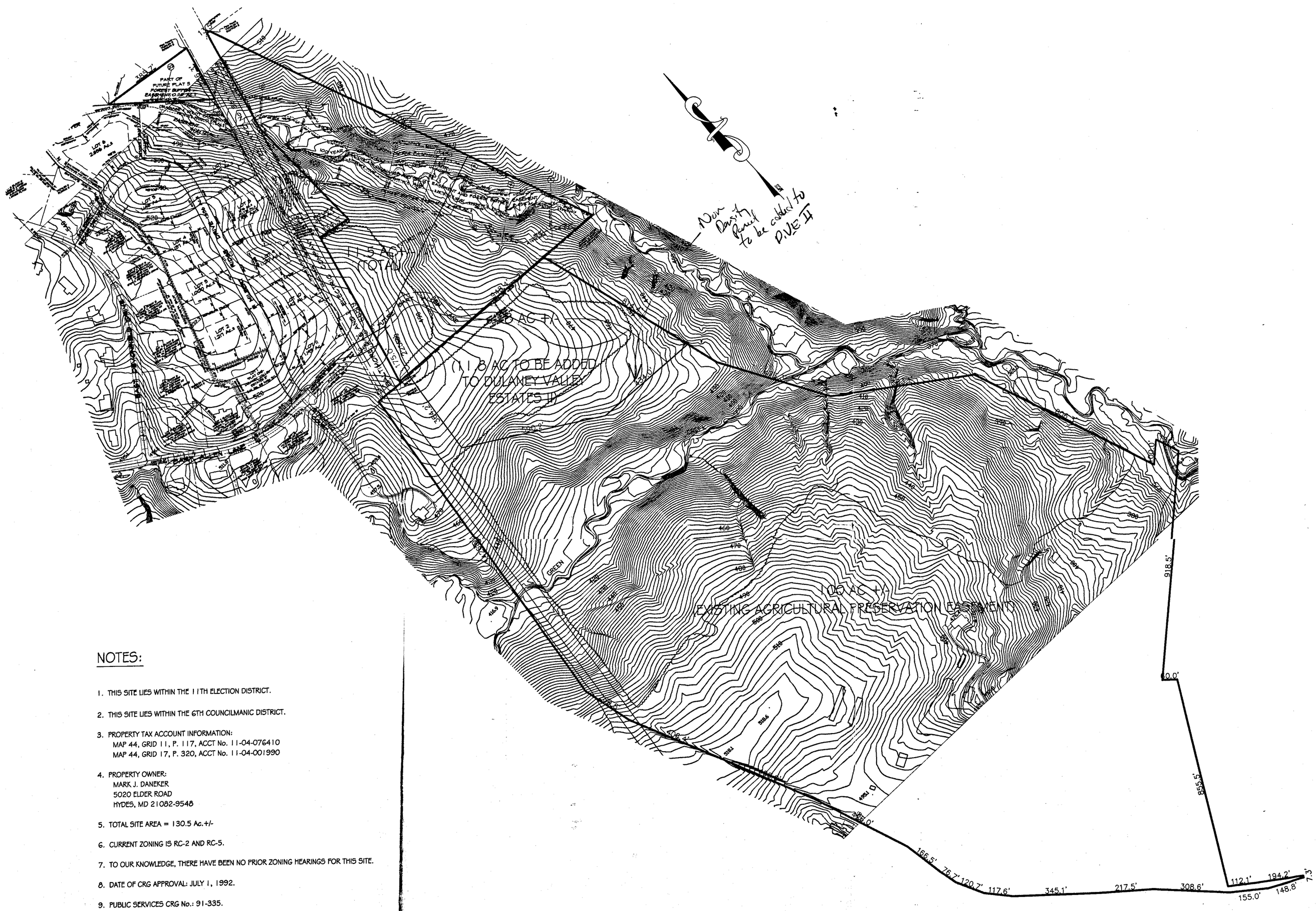
DATE	DESCRIPTION	BY
4/22/92	Revised plan per CRG comments and various other comments from G. Parcels	P.Smith
1/31/92	Revised plan per Pre-CRG meeting and various comments	P.Smith
1/22/92	Revised Prop well & septic reserve areas locations per comments of Rob Powell	P.Smith
1/17/92	Revised Parcel Buffer	P.Smith
1/8/92	Revised per comments	P.Smith
1/3/92	Revised per comments	P.Smith
12/19/91	Revised per comments	P.Smith
12/17/91	Revised per comments	P.Smith
	REVISIONS	

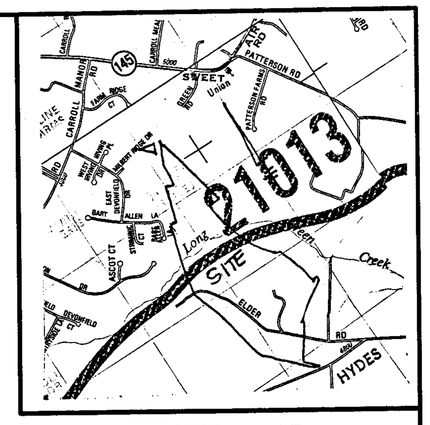
OWNER:
MARK J. DANEKER
5020 ELDER ROAD
HYDES, MD

SCALE: 1"=100'
NOVEMBER 11, 1991
OCTOBER 18, 1991

GERHOLD, CROSS & ETZEL
REGISTERED PROFESSIONAL LAND SURVEYORS
412 DELAWARE AVENUE
TOWSON, MARYLAND 21204
(301) 823-4470

FILE COPY





COPYRIGHT ADC THE MAP PEOPLE
PERMITTED USE NUMBER 2040213 6

VICINITY MAP
SCALE: 1"= 2000'

NOTES:

1. THIS SITE LIES WITHIN THE 11TH ELECTION DISTRICT.
2. THIS SITE LIES WITHIN THE 6TH COUNCILMANIC DISTRICT.
3. PROPERTY TAX ACCOUNT INFORMATION:
   MAP 44, GRID 11, P. 117, ACCT No. 11-04-076410
   MAP 44, GRID 17, P. 320, ACCT No. 11-04-001990
4. PROPERTY OWNER:
   MARK J. DANEKER
   5020 ELDER ROAD
   HYDES, MD 21082-9548
5. TOTAL SITE AREA = 130.5 Ac.+/-
6. CURRENT ZONING IS RC-2 AND RC-5.
7. TO OUR KNOWLEDGE, THERE HAVE BEEN NO PRIOR ZONING HEARINGS FOR THIS SITE.
8. DATE OF CRG APPROVAL: JULY 1, 1992.
9. PUBLIC SERVICES CRG No.: 91-335.
10. PLANNING No.: XI-655.

PLAT TO ACCOMPANY DRC REQUEST

DULANEY VALLEY ESTATES II

11TH ELECTION DISTRICT
SCALE: 1"= 200'

BALTIMORE COUNTY, MARYLAND
DATE: JULY 23, 2002

McKEE & ASSOCIATES, INC.
Engineering – Land Planning – Land Surveying
Natural Resource Planning – Real Estate Development
5 SHAWAN ROAD, Suite 1
COCKEYSVILLE, MARYLAND 21030
TELEPHONE: (410) 527-1555
FACSIMILE: (410) 527-1563

COMPUTED BY:	DRAWN BY:	CHECKED BY:	JOB No.:
	JDG		02-105

f. Spirits manufacture, including the manufacture of alcohol to be used in gasoline/alcohol mixtures, but excluding the production of these mixtures. **[Bill Nos. 178-1979; 51-1993]**

g. Firewood operations. **[Bill No. 151-1992]**

h. Winery, including accessory retail and wholesale distribution of wine produced on-premises. Temporary promotional events, such as wine tastings or public gatherings associated with the winery, are permitted, within any limits set by the special exception. **[Bill No. 51-1993]**

i. Bottled water plant, if the source of the water is located on the same site as the plant, and provided that the Director of Environmental Protection and Resource Management makes a recommendation that the proposed facility will not adversely affect the quality or capacity of surface water or groundwater. **[Bill No. 51-1993]**

1A01.3 Height and area regulations.

A. Height regulation. No structure hereafter erected in an R.C.2 Zone shall exceed a height of 35 feet, except as otherwise provided under Section 300.

B. Area regulations. **[Bill No. 178-1979]**

1. Subdivision lot density. No lot of record lying within an R.C.2 Zone and having a gross area of less than two acres may be subdivided. No such lot having a gross area between two and 100 acres may be subdivided into more than two lots (total), and such a lot having a gross area of more than 100 acres may be subdivided only at the rate of one lot for each 50 acres of gross area. In cases where land in single ownership is crossed by existing or proposed roads, rights-of-way or easements, the portions of land on either side of the road, right-of-way or easement shall not be considered separate parcels for the purpose of calculating the number of lots of record, with the exception that any zoning petition site plan, subdivision plan or record plat filed with or approved by the county between November 27, 1979, and October 1, 1990, shall not be so affected and be considered valid, provided as to any zoning petition pending on appeal, that it be upheld on appeal. **[Bill No. 199-1990]**

2. Lot size. A lot having an area less than one acre may not be created in an R.C.2 Zone.

3. Setback requirements. No principal structure or dwelling (whether or not it is a principal structure) in an R.C.2 Zone may be situated within 75 feet of the center line of any street or within 35 feet of any lot line other than a street line.

4. Principal dwellings per lot. No more than one principal dwelling is permitted on any lot in an R.C.2 Zone.

1A01.4 Maryland Agricultural Land Preservation Program. The use or development of land in an agricultural district established in accordance with § 2-509 of the Agricultural

Article of the Annotated Code of Maryland shall be governed by agricultural land preservation provisions enacted by the County Council pursuant to § 2-513 of that Article in the case of any conflict between those provisions and these regulations. **[Bill No. 178-1979]**

the facility and field; and

e. The facility and field shall be located:

(1) Within proximity to adequate road access; and

(2) On publicly owned land.

1A04.3 Height and area regulations.

A. Height regulation. No structure hereafter erected in an R.C.5 Zone shall exceed a height of 35 feet, except as provided under Section 300.

B. Area regulations.

1. Lot area; density control. **[Bill Nos. 178-1979[13]55-2004[14]]**

a. A lot having an area of less than 1 1/2 acres may not be created in an R.C. 5 Zone. The maximum gross residential density of a lot of record is 0.667 dwelling per acre.

b. The owner of a single lot of record that is not a subdivision and that is in existence prior to September 2, 2003 but does not meet the minimum acreage requirement, or does not meet the setback requirement of Paragraph 2., may apply for a special hearing under Article 5 to alter the minimum lot size requirement. However, the provisions of Section 1A04.4 may not be varied.

2. Building setbacks. **[Bill No. 55-2004]**

a. As used in this section, "collector road" means a street or road that is designed for speeds of at least 35 miles per hour, and is intended for travel, including commuter travel, between residential neighborhoods, but not for travel within neighborhoods, and is not designated as a principal arterial.

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13 Editor's Note: This bill also repealed former Paragraph 2, "Minimum diametral dimension," which followed this paragraph.

14 Editor's Note: This bill also stated that it would not apply to any concept plan or application for limited exemption or waiver accepted for filing prior to June 7, 2004, that it would not apply to the Back River Neck District as defined in Section 4A03.13 of the Baltimore County Zoning Regulations, and any structure, building or use in existence prior to the effective date of this bill that is damaged or destroyed by fire or other casualty after the effective date of this bill would be subject to the provisions of Section 104 of the Baltimore County Zoning Regulations regarding nonconforming uses. The effective date of this bill is 6-11-2004.

Page #3

Protestant Witness
Carol Schall Meighan
Board of Directors for Clare

Witness #3
Mr Lipincot - Balt. Co Nat. Res Mgr
Secretary to Board Ag Preservation.
11/19/02 Meeting discussed issue of division of Land
1) Need sep for Agriculture opinion to determine farm use
2) If change enhances farming operation
3) 11.8 Ac Prime & Production use RC 2
4) Rec'd Plat, not full set such as plat.
along with conservation easement.
5) Did not could consider smaller parcel
6) annex to residential lot to enhance farm use
7) aerial photo identified as open area
8) Board visits property
9) On ~~agenda~~ adgenda at Nov. board meeting req more information - perpare daughter appearance.
Mr Hannech return w/ additional material for board to consider.
10) 12/2 Board approved subdivision via phone.
11) Some deliberation among board. Meeting depend on legislation annual Bray 1/4
~~12)~~

Cross