



JOHN A. OLSZEWSKI, JR.  
*County Executive*

C. PETE GUTWALD, AICP  
*Director, Department of Permits,  
Approvals and Inspections*

August 8, 2023

Patricia A. Malone  
Venable, LLP.  
210 W. Pennsylvania Avenue  
Suite 500  
Towson, Maryland 21204

RE: Spirit and Intent Request  
2005-0526-SPH  
The Preserve at Holly Neck  
15<sup>th</sup> Election District, 7<sup>th</sup> Councilmanic District

Dear Ms. Malone,

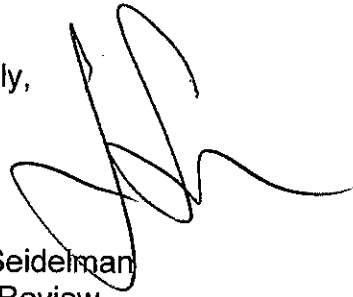
This refers to your letter to Mr. Jeff Perlow, Chief of Zoning. You requested in your letter permission to refine The Preserve at Holly Neck Development Plan, and are asking that the proposed change be deemed to be within the Spirit & Intent of the granted relief in case 2005-0526-SPH. More specifically, the request is to “reduce the width of the single-family attached ‘villa’ units in order to accommodate a narrower product” and to “eliminate the clubhouse/pool and associated parking”.

Please be advised that based upon your provided explanation and site plan and other associated documents, your proposed change has been determined to be within the Spirit & Intent of the original decision and has been APPROVED. This approval is based upon the approved density of the project remaining at 101 units, described as “87 single-family attached ‘villa’ units and 14 single-family detached units”, and the recommendation of the DRC (071823J). Your submitted documents and this letter will become a permanent part of case 2005-0526-SPH.

This letter is strictly limited to the application of the BCZR as applied to the Spirit & Intent request presented in your letter, and does not represent verification or approvals for any other Local, State or other Regulations that may apply to this property.

(JSS23-0667)

Sincerely,

A handwritten signature in black ink, appearing to read 'Jason Seidelman', written in a cursive style.

Jason Seidelman  
Zoning Review

**Patricia A. Malone**  
Counsel  
t 410.494.6206  
f 410.821.0147  
pamalone@venable.com

July 25, 2023

**HAND-DELIVERED**

Mr. Jeffrey N. Perlow, Supervisor  
Baltimore County Department  
Of Permits, Approval and Inspections  
Office of Zoning Review  
County Office Building  
111 West Chesapeake Avenue, Room 111  
Towson, Maryland 21204

Re: *Request for Confirmation of Spirit and Intent*  
The Preserve at Holly Neck - Case No. 2005-526-SPH  
7<sup>th</sup> Councilmanic District, 15<sup>th</sup> Election District

Dear Mr. Perlow:

I am writing on behalf of CBR Holly Neck, LLC, contract purchaser and developer (“Developer”) of the property that is subject to The Preserve at Holly Neck Development Plan. I am requesting confirmation that the refinements to the plan described below are within the spirit and intent of prior approved plan and determination made in Case No. 2005-526-SPH.

By way of background, the Development Plan was originally approved in 2006. The Plan reflects development of the 152.8± acre property with 87 single-family attached “villa” units and 14 single-family detached units (total of 101 lots) in a series of residential pods. This project also required a Chesapeake Bay Critical Area Growth Allocation, which was approved by the State Critical Area Commission on July 5, 2006.

Minor adjustments were made to the project as shown on the 1<sup>st</sup> Refined Development Plan. *See* DRC No. 040708G. The 1<sup>st</sup> Refined Development Plan was vested through recordation of plats in 2008 (Plat Nos. 78-382 through 78-394), and, with the passage of Bill No. 26-23, the life of the Development Plan has been extended until 2034.

When the original Development Plan was under review, Holly Neck Conservation Association, Inc. (“the Association”) and several individual residents filed a Petition for Special Hearing requesting a determination as to the maximum density allowed. Upon remand from the County

July 25, 2023

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Board of Appeals, the Hearing Officer/Zoning Commissioner determined that the density of the project was not to exceed 101 units and approved the Development Plan subject to a Settlement Agreement, which was incorporated by reference into that order. As described by the Hearing Officer, "the Settlement Agreement limits the residential density of the development to a maximum of 101 dwelling units, provides for pedestrian pathways to integrate the proposed subdivision within the existing community, prohibits the installation of gated roads, etc." A copy of the Hearing Officer's Opinion and Development Plan Order in Case Nos. XV-821 & 05-526-SPH is attached.

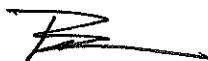
Developer is now proposing to refine the 1<sup>st</sup> Refined Development Plan to reduce the width of the single-family attached "villa" units in order to accommodate a narrower product. *See* attached Development Review Committee ("DRC") Application.

As required by the Settlement Agreement, Developer met with representatives of the Association to discuss its intended revisions prior to submitting the application to the DRC. The Association expressed support for the reduction in size of the villas but requested that Developer also consider eliminating the clubhouse/pool and associated parking. *See* attached letter from Claude Profili, President of the Association. Apparently, the inclusion of these amenities was a point of contention with the community at the time of approval and remains a concern. Developer has agreed to eliminate those amenities. No other changes are proposed.

At this time, I am seeking confirmation that the proposed plan refinements, as described in this letter, are within the spirit and intent of Case No. 2005-526-SPH. The proposed refinement does not result in a density change. As reflected on the enclosed DRC Application, the number of units proposed is still 101 dwelling units (87 single-family attached "villa" units and 14 single-family detached units). The refined plan complies with all other aspects to the Settlement Agreement.

With this letter, I have enclosed a check in the amount of \$200.00 made payable to "Baltimore County, Maryland" to cover the administrative costs associated with your review. If you require any additional information in order to complete your review, please feel free to give me a call.

Very truly yours,



Patricia A. Malone

cc: Mitchell Kellman

# HOLLY NECK CONSERVATION ASSOCIATION, INC.

P.O. Box 16666 • Essex, MD 21221-0666

July 19, 2023

Lloyd T. Moxley  
Development Manager  
Baltimore County Dept of Permits, Approvals, and Inspection

Dear Mr. Moxley,

The Holly Neck Conservation Association (HNCA) would like to thank you for considering our input on the request to amend the previously approved development plan for the Preserve at Holly Neck.

HNCA has always had concerns about the pool and clubhouse and it was originally accepted only as a result of earlier negotiations. Now it appears the development is targeted to buyers with different lifestyles, and the very nearby Baltimore Yacht Club can provide the pool and all the other desired amenities.

Considering this development is in the Chesapeake Bay Critical Area, reducing unit sizes and eliminating the pool and club house and the required parking will preserve green space and reduce impervious surfaces.

HNCA has no opposition to the proposed amendment.

Sincerely,



Claude J. Profili, President  
Holly Neck Conservation Association, Inc.

2/22/06

IN RE: DEVELOPMENT PLAN HEARING	*	BEFORE THE
and SPECIAL HEARING - N & S/S		
Holly Neck Rd., E & W of Engleberth	*	ZONING COMMISSIONER
(Holly Neck Property)		
15 <sup>th</sup> Election District	*	FOR
6 <sup>th</sup> Council District		
	*	BALTIMORE COUNTY
Holly Neck Ltd. Partnership LLLP,		
Owners	*	Case Nos. XV-821 & 05-526-SPH
Centex Homes, Contract Purchaser		

\* \* \* \* \*

**HEARING OFFICER'S OPINION AND DEVELOPMENT PLAN ORDER**

This matter comes before the Hearing Officer/Zoning Commissioner pursuant to the development plan review regulations codified in Article 32, Title 4 of the Baltimore County Code, for consideration of the redlined Development Plan prepared by D.S. Thaler and Associates, which depicts the proposed residential development known as "The Preserve at Holly Neck". Additionally, the matter returns to the undersigned Zoning Commissioner pursuant to the Opinion and Order of the County Board of Appeals of Baltimore County dated May 3, 2006, directing that this matter be remanded for further proceedings consistent with that decision. The subject property is proposed for development by Holly Neck Limited Partnership LLLP, ("Property owner"), and Centex Homes ("Developer"). These entities are collectively referred to hereinafter as the "Developers". The subject property and proposed development are more particularly shown on Developer's Exhibits 1A through 1E; the five page redlined Development Plan.

Insofar as the review of this matter in accordance with the development review regulations contained in Article 32, Title 4 of the Baltimore County Code, a Pre-Concept

Plan Conference was conducted on January 4, 2005, in order to permit the Developers to acquire preliminary County input regarding the subject property and proposed plan. Subsequently, a Concept Plan was filed by the Developers and a Concept Plan Conference with representatives of reviewing County agencies was held on January 24, 2005. Thereafter, as required by law, Community Input Meetings were conducted at Chesapeake High School on February 15, 2005 and March 10, 2005. These meetings were held in order to obtain community input and comment regarding the proposed plan. Subsequently, the Developers filed a Development Plan, and a Development Plan Conference was conducted between representatives of the Developers and reviewing County agencies on April 12, 2006. The Hearing Officer's Hearing was conducted in its entirety on May 5, 2006.

Appearing at the Hearing Officer's Hearing was Leonard P. Berger, MD, principal of Holly Neck Limited Partnership LLLP, property owner. Dr. Berger was represented by Robert W. Cannon, Esquire, and Robert A. Romadka, Esquire. Also present was Jeffrey Ott and Hillorie Morrison on behalf of Centex Homes, the contract purchaser/proposed developer of the subject property. Centex Homes was represented by David K. Gildea, Esquire and Lawrence E. Schmidt, Esquire of Gildea & Schmidt, LLC. Also present were representatives of D.S. Thaler & Associates, the engineering, planning and consulting firm that prepared the development plan. These representatives included Stacey McArthur, a Registered Landscape Architect, Mark S. Vaszil, and Andrew C. Farretti.

The subject proposal has produced significant public interest and comment, as was reflected by the attendance of many residents of the area at the Community Input Meetings and Hearing Officer's Hearing. In this regard, the Developers previously formed an

advisory committee of residents in the area who offered their opinions and input during the preparation of the plan for the proposed development. Other neighbors in the community formed the Holly Neck Conservation Association, Inc. This Association initially expressed concerns about certain aspects of the proposed development. Ultimately, these groups and the Developers reached agreement, so that the current plan enjoys unanimous community support. Appearing on behalf of the Holly Neck Conservation Association, Inc. at the Hearing Officer's Hearing was Jim Mitchell, President. That Association was represented by J. Carroll Holzer, Esquire. Other citizens who appeared at the hearing in support of the plan included Richard Bruzdziński, Ted D'anna, Chris Bichell, Kurt Huppert, Ronald and Elaine Przywara, Neil Schmidt and Marsha Dalton. Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County, also appeared and participated in the hearing pursuant to the authority granted unto his office under the Baltimore County Charter. Mr. Zimmerman's office was a party before the County Board of Appeals in Case No. 05-526-SPH, which has been remanded to the Office of the Zoning Commissioner.

Also appearing at the hearing were representatives of the County agencies that reviewed the subject project for compliance with the various requirements and standards for development in Baltimore County. These included Curtis Murray from the Office of Planning, Jan Cook and Bruce Gill from the Department of Recreation and Parks and Patricia Farr from the Department of Environmental Protection and Resource Management ("DEPRM"). DEPRM, in particular, was intimately involved in the evolution of the development plan, given the environmental constraints associated with this property due to its waterfront location. Also present were various members of reviewing divisions from the



Department of Permits and Development Management, including John Sullivan from Zoning Review, Dennis Kennedy from Development Plans Review and Ron Goodwin from the Bureau of Land Acquisition. Also present was Colleen Kelley, Project Manager assigned to this matter from the Department of Permits and Development Management.

The subject property under consideration is an irregularly shaped parcel of land, approximately 152.8 acres in area, zoned RC-5. The property is a waterfront property located on the Holly Neck Peninsula in eastern Baltimore County. That peninsula is immediately adjacent to the Chesapeake Bay and vehicular access to the site is by way of Holly Neck Road. The property is near the Baltimore Yacht Club, a well-known landmark business in this area of Baltimore County. Presently, the site is improved with approximately 45 shore homes. Many of these are quite old, however, a few remain occupied. They are served by private well and septic systems, many of which are deteriorated and are failing. A large portion of the site is open land, and/or in forest and meadow.

The Developers proposed a major resubdivision of the property. All of the existing shore homes will be razed and the site will be redeveloped with 101 luxury dwelling units, including 14 single-family detached houses and 87 villa/Townhomes (See Developer's Pattern Book, Developer's Exhibit No. 2). In addition, several amenities are proposed in connection with the project, including a clubhouse and pool, five proposed community piers and a pedestrian pathway. The new dwellings will be served by public water and sewer and the existing private well and septic systems will be appropriately abandoned. The above is but a brief summary of the proposal, which is shown in significant detail on

the five page redlined development plan accepted into evidence as Developers' Exhibits 1A-1E.

Particularly given the size of the property, the significance of the proposed development and the property's proximity to the Chesapeake Bay, this project has generated significant public interest and substantial governmental scrutiny. As described above, the project has been subject to the requirements and development review process established for major subdivisions in Article 32, Title 4 of the Baltimore County Code. In addition to that process, the Developer has also sought an award of Growth Allocation, pursuant to the Chesapeake Bay Critical Area Regulations as codified within State law (Natural Resources Article, Annotated Code of Maryland) and Baltimore County law (Baltimore County Code Article 33, Title 2). The Chesapeake Bay Critical Area regulations were enacted by the State of Maryland in 1984. These regulations defined the Chesapeake Bay Critical Area as land that is located within 1,000 feet of the Bay and its tributaries. Under State law, these lands were designated as one of three classifications; namely, Resource Conservation Areas ("RCA"), Limited Development Areas ("LDA") and Intensely Developed Areas ("IDA"). Each classification mandated separate standards/requirements for the use and layout of property. The Growth Allocation process was created to permit a reclassification of property from one category to another. In this case, the property is presently classified RCA. In order to develop the property as proposed, the Developer has sought a Growth Allocation award of approximately 96 acres of the property to reclassify that acreage to IDA. A reclassification of the property to the IDA category will permit the clustered residential development as proposed on the development plan.

The Growth Allocation process requires substantial governmental review. First, a Growth Allocation Review Committee ("GARC"), comprised of various reviewing agencies of Baltimore County, was created to review the proposal in detail. Additionally, after review and recommendation by GARC, the matter is subject to review, public hearing and vote by the Baltimore County Planning Board. Next, the request for an award of growth allocation is considered by the Baltimore County Board of Appeals for a final determination. If the award of growth allocation is recommended by the Board of Appeals, the request is then forwarded to the State Chesapeake Bay Critical Area for final action. In this case, the matter has been reviewed in accordance with that process. GARC has reviewed the application and issued a favorable recommendation. The Planning Board has considered the request on two separate occasions. On June 16, 2005, the Board voted to approve an original version of the plan requesting Growth Allocation award to accommodate up to 110 units. Subsequently, the plan was amended and the number of proposed units reduced to 101 in number. This number is consistent with the maximum RC-5 density, based upon an allowable .667 units per acre. The matter then returned to the Planning Board in February of 2006. After public hearing and review, the Planning Board recommended approval the subsequently amended the plan on February 2, 2006. The matter then went before the County Board of Appeals and by Order of May 3, 2006, the proposed Growth Allocation award was approved. In accordance with the requirements of law, the request for growth allocation has been forwarded to the Chesapeake Bay Critical Area Commission for final review and approval.

In addition to this substantive process, the proposed subdivision has required an amendment of the Baltimore County Master Water and Sewer Plan. This amendment was reviewed as required by law and ultimately approved on October 11, 2005. Additionally, due to the requirements of the proposed plan, the undersigned Hearing Officer received a Request for the Variation of Standards of the Chesapeake Bay Critical Area regulations pursuant to Baltimore County Code Section 32-4-231. This Variation of Standards was referred to and reviewed by the Baltimore County Planning Board, which approved same (See Exhibit 4, Planning Board Minutes of April 25, 2006). I concur with that finding that a variation of standards is appropriate.

As noted above, the subject development has also been scrutinized by members of the surrounding community. After substantial negotiations, the community and Developers have agreed on a plan for the subdivision of this property. Those negotiations were summarized with a Settlement Agreement, which was submitted at the hearing (See Developer's Exhibit No. 3). Among other items, the Settlement Agreement limits the residential density of the development to a maximum of 101 dwelling units, provides for pedestrian pathways to integrate the proposed subdivision with the existing community, prohibits the installation of gated roads, etc.

At the Hearing Officer's Hearing, Stacey McArthur, the Registered Landscape Architect who supervised the preparation of the plan, testified that the plan complied with all relevant and applicable County standards, regulations and policies for development. The Developer identified no open issues or unresolved agency comments.

Similarly, the representatives of the County agencies who appeared at the hearing indicated that there were no outstanding issues. Each of those representatives identified above stated that the plan was in compliance with all applicable standards for development, as administered by their respective agencies. Ms. Farr, in particular, testified about the Growth Allocation process and the substantive environmental review of the project.

Representatives of the community, through counsel, also indicated that there were no outstanding issues and voiced support for the plan. Mr. Zimmerman, People's Counsel, indicated that his office did not oppose Development Plan approval, as his concerns regarding the density of the proposal based upon the R.C.5 zoning classification were satisfied by the reduction of units from 110 to 101.

As noted above, the subject property is proposed for residential subdivision of 101 units. A unique feature of the proposed subdivision is the development of the property in a series of residential "pods". These pods are spaced throughout the site and are more particularly shown on the Development Plan. The pods allow the grouping of units into specific areas on the property. This pod or clustering method of development has significant environmental advantages. It allows large areas of the tract to remain undisturbed. This is particularly important, given the environmental constraints and resources associated with the property. The plan also shows significant mitigation, including replanting of trees upon removal of the failing well and septic systems. Other mitigation provided includes the dedication of substantial portions of the subject property into a conservation easement, as more particularly shown on the Development Plan. This dedication of a portion of the subject site is in addition to the previous conveyance of other

properties owned by Holly Neck Limited Partnership LLLP. That is, the property owner originally held title to over 600 acres of land in this locale, much of which has been placed into mitigation/conservation programs.

Based upon the testimony and evidence offered, I am easily persuaded that the Development Plan meets all applicable standards and requirements for development in Baltimore County and should be approved. All parties are to be commended for their efforts, which resulted in the production of a plan that is appropriate for this property. Thus, the Development Plan shall be approved.

In addition to Development Plan approval, the matter returns to the undersigned Zoning Commissioner upon Order of the County Board of Appeals in Case No. 05-526-SPH. In that case, certain residents of the community filed a Petition for Special Hearing, seeking clarification and/or a limitation of the available density for the subject property. At that time, a Concept Plan then filed proposed a subdivision of 110 units. These residents argued a development at that density was impermissible. The Developers filed a Motion to Dismiss the Petition. Following a public hearing, and for reasons set out in my Order of July 5, 2005, the Petition for Special Hearing was dismissed. A timely appeal was filed by the Protestants and People's Counsel.

On appeal, the Board of Appeals was advised that the parties had reached agreement as to the disposition of that matter. Thus, the Board directed the matter be remanded for further consideration consistent with their Opinion and Order. Specifically, the Board has ordered that the density for this subdivision shall not exceed 101 units, that my Order of July 5, 2005 shall be considered moot, and that a resolution in this fashion is consistent with

the law and nullifies my dismissal of the Petition for Special Hearing and the ruling that the Protestants did not file a timely appeal. The Board further noted that my prior decision shall not be considered as precedent, or as of any weight with respect to the procedural issues therein decided.

Based upon the Settlement Agreement between the Developers and the community dated March 13, 2006, and the direction of the Board of Appeals, I shall dispose of the Petition filed in Case No. 05-526 as directed and indicated above.

Pursuant to the advertising, posting of the property and public hearing held; and pursuant to the development review regulations contained in Article 32, Title 4 of the Baltimore County Code, the five page Development Plan (Developer's Exhibits 1A-1E) shall therefore be approved consistent with the comments contained herein.

THEREFORE, IT IS ORDERED, by the Hearing Officer/Zoning Commissioner for Baltimore County, this 22<sup>nd</sup> day of May, 2006 that the five page redline development plan for **The Preserve at Holly Neck** be and is hereby APPROVED; and,

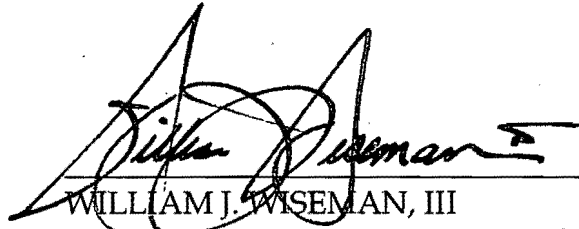
IT IS FURTHER ORDERED, pursuant to the Order of the County Board of Appeals dated May 3, 2006 in Case No. 05-526-SPH, that the density for this subdivision shall not exceed 101 units, that the Order of the undersigned Zoning Commissioner entered in that matter on July 5, 2005 shall be considered moot, and that a resolution in this fashion is consistent with the law and nullifies the dismissal of the Petition for Special Hearing and the ruling that the Protestants did not file a timely appeal. Further, that the prior decision and Order dated July 5, 2005 shall not be considered as precedent, or as of any weight with respect to the procedural issues therein decided; and,

IT IS FURTHER ORDERED, that the Settlement Agreement by and between the parties (Developer's Exhibit No. 3, with Exhibits) shall be incorporated herein as a condition to the approval of the Development Plan; and

IT IS FURTHER ORDERED, that pursuant to Section 32-9-109 (b)(2) of the Baltimore County Code, the approval granted herein of the Developer's Exhibits 1A-1E are conditioned upon the final grant of the application for growth allocation by the Chesapeake Bay Critical Area Commission; and,

IT IS FURTHER ORDERED that the Development Plan shall not be amended without a further hearing, review and approval by the Hearing Officer; and,

Any appeal of this order shall be taken in accordance with Sections 32-3-401 and 32-4-281 of the Baltimore County Code.



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WILLIAM J. WISEMAN, III  
Zoning Commissioner/Hearing Officer  
for Baltimore County



## SETTLEMENT AGREEMENT

EXHIBIT NO.

3

THIS SETTLEMENT AGREEMENT (referred to hereinafter as the "Agreement") made this 13th day of March, 2006 by and between HOLLY NECK LIMITED PARTNERSHIP, LLLP, a Maryland limited liability limited partnership ("Owner") and CENTEX HOMES, a Nevada general partnership ("Builder"), (referred to collectively hereafter as the "Developers"), and HOLLY NECK CONSERVATION ASSOCIATION, INC. ("Conservation Association") and Ronald P. & Catherine Belbot, Michael & Marsha Dalton, Joseph & Barbara Byrnes, Chester & Darlene Stefanowicz, Ethel Webster, John & Kathleen Filar, James & Catherine Mitchell and John & Irma Rybczynski, individually ("Property Owners"), (referred to collectively hereafter as the "Community");

**RECITALS:**

WHEREAS, the Developers are proposing the development of certain real property, approximately 152.7 acres in area, zoned RC5, located on the Holly Neck Peninsula in the Hawk Cove area of eastern Baltimore County, for residential development (as shown on the State Tax Map No.98 for Baltimore County, Maryland, Parcel Nos. 143,424 and 165 (Property Tax Account Nos. 15-1700005908, 15-1700005907, 15-1520000460) (the "Property"); and

WHEREAS, the Developers submitted a concept plan, pursuant to the Baltimore County Development Regulations contained in the Baltimore County Code, for residential development whereby the Property would be developed with a total of one hundred ten (110) dwelling units (villa style and single-family), said plan of development was submitted as the "Holly Neck Property Plan," a copy of which is attached hereto as Exhibit A, reviewed by the County and recommended for approval by the Growth Allocation Review Committee; and

WHEREAS, the Community, through their legal counsel, have expressed certain issues and/ or concerns with respect to, among other things, the density, design, layout and other features as proposed on the Holly Neck Property Plan as they may relate to the Community and the surrounding environment, and the parties negotiated to resolve the outstanding issues; and

WHEREAS, the Developers, for settlement purposes, revised the concept plan, for review by the Community whereby the Property would be developed with a total of one hundred one (101) dwelling units, Exhibit B, which was further modified and revised by redlining said plan to show where the two easternmost single-family units on Holly Beach Road will be relocated and two of the villa style units on the south side of Holly Neck Road will be relocated, Exhibit C, and created a mutually agreed upon version, indicating the agreed upon changes, but without redlines, Exhibit D, to be submitted to the Hearing Officer for Baltimore County (the "Development Plan"); and

NOW, THEREFORE, in consideration of the sum of One Dollar (\$1.00) and other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, the parties hereby covenant and agree as follows:

1. The above recitals form an integral part of this Agreement and are incorporated herein as if set forth again in their entirety.

2. The Property is entirely within the Chesapeake Bay Critical Area, as has been designated by State law. The parties hereto agree that the Property will be developed at a maximum residential density of 101 dwelling units.
3. The Developers and the Community agree that there will not be any community gates or other physical impediments on the Property, which would prohibit vehicular access on the public roads and throughways; nor shall the Developer be permitted to install perimeter fences to separate the Developer from the surrounding Community. Fencing shall be permitted in private yards and/or as may be required by law.
4. The Developers, their successors in interest and assigns agree to install and maintain lights on all proposed community piers as a safety measure intended to make the piers more visible on the waterways.
5. The Developer proposes the development of a "Clubhouse" on Exhibit D. The Community has expressed concerns in regard to the adequacy of parking available to the Clubhouse. The Developer has expressed the purpose of the Clubhouse was to support the pool and it was not to be used as a "catering hall", as defined in BCZR. The design of the Clubhouse shall support the purpose of the facility as expressed herein.
6. While in Title of the property, the Developers agree to support the Community in their goal to maintain the quality of the environment and rural atmosphere of the Back River Neck Peninsula, by supporting the Community in hearings before Baltimore County, State of Maryland or United States government entities considering issues related to the continuance and enhancement of environmental stability and maintaining the rural character of the Back River Neck Peninsula. This support shall not necessarily require the Developers and/or their representatives, to personally appear at any hearings but may take other forms as are appropriate and convenient to the parties.
7. The Developers and the Community agree that the Developers, their successors in interest and assigns will construct and maintain a pervious surface walking path to the swimming pool to address the Community's concerns about adequate parking at the facility. The Developers will employ their best effort in constructing said path along the existing road system. Exhibits C & D.

8. The Developers agree that all critical area easements and undeveloped areas of the Property will be placed into a Conservation Easement with the Maryland Environmental Trust ("MET) or another land trust, as recommended by the Board of Trustees of the MET and as permitted and approved by all appropriate reviewing agencies of Baltimore County and the State of Maryland. The "undeveloped areas" will consist of that portion of the Property outside the area of disturbance and/or development and/or County and/or State required setbacks at the time the finally approved development is accepted, subject to Paragraph 16 of this Agreement. The Conservation Easement shall be recorded in the Land Records of Baltimore County and run with the Land. It is the intention of the parties that there shall be no further development, residential, commercial, agricultural use or otherwise on the undeveloped areas of the Property. The conveyance of said easement(s) shall be concluded by the developers no later than the date of the conveyance of the first lot/unit to a buyer. It is further understood and agreed by the parties that the conveyance of said easement(s) to a land trust shall be subject to all requirements and/or terms shown on the Final Development Plan; including but not limited to the rights and obligations of the Developers arising from any requirements by any reviewing government agency (e.g. the Developers' obligation to plant trees upon the property and the "mitigation credit" awarded to the Developer in connection therewith).
9. The Developers and Community agree to file a Joint Motion for remand of the Memorandum and Order of Zoning Commissioner William J. Wiseman, III, in the matter known as In Re: Petition for Special Hearing (The Preserve at Holly Neck), Case No. 05-526-SPH, which is presently on appeal to the CBA. Upon remand, the Developers and the Community agree to jointly move to strike the Memorandum and Order of the Zoning Commissioner and enter a new Order that sets forth that the Property has a maximum residential density of one hundred one (101) units, to be confirmed at the Hearing Officer's Hearing on the matter. The Community shall withdraw its Petition for Special Hearing in Case No.: 05-526 without prejudice; the Developer will withdraw its opposition thereto; and the Zoning Commissioner/Hearing Officer shall declare his Opinion of July 7, 2005, moot. The Developer will request the Director of PADM to withdraw his findings as set forth in his letter dated April 4, 2005.
10. The Community further agrees to dismiss and withdraw any and all other appeals previously filed to the County Board of Appeals relating to the proposed development of the Property, including, but not limited to, the appeal filed on or about July 28, 2005 from the Baltimore County Planning Board's decision of July 25, 2005 and the proposed referral of same to the Baltimore County Council. (CBA 05-126). The Community also agrees to withdraw its appeal identified as CBA-05-126. Nothing in this Agreement shall nullify the requirement that the CBA review the Planning Boards Growth Allocation recommendation identified as Case No.: 05-130, currently before the CBA and the Community agrees not to oppose Development request for Growth Allocation. The Community agrees to make best efforts to persuade the Office of People's Counsel of Baltimore County to withdraw its appeal to the Board of Appeals in Case No. 05-526-SPH and to support the proposed development in accordance with the terms of this Agreement.

11. The Developers and the Community agree that two (2) members of the Conservation Association will be permitted to participate as non-voting representatives to the Holly Neck Advisory Committee. Likewise, two (2) members of the Holly Neck Advisory Committee will be permitted to participate as non-voting representatives to the Conservation Association. It is the intention of the parties to promote a mutual exchange of information regarding the development of the Holly Neck Peninsula.
12. The Developers agree that, except with respect to that shown on the Development Plan and the Growth Allocation Plan, the Property cannot be further developed by the Developers. The term "Developers," as used in this Agreement, includes the Developers' successors, successors in interest, affiliates, partners, joint ventures, assigns, and any person or entity that purchases, is conveyed or otherwise acquires the Property, in whole or in part, other than a Homeowner (as defined in paragraph 29 below).
13. The Community agrees to support the approval of the Development Plan, Exhibit D, the record plat and any other required federal, state or county approval applicable to the Development Plan provided that the same are in accordance with this Agreement and the Development Plan meet all County & State laws and regulations submitted to the Hearing Officer for approval. Not less than one (1) member of the Community and its legal counsel agree to appear at the hearing to be held by the Hearing Officer for Baltimore County on the Development Plan and to testify in support thereof on behalf of all of the Community, said testimony to be substantially in accord with this Agreement. The Community further agrees to solicit the support of the Back River Neck Peninsula Community Association for the Development Plan.
14. Prior to any party hereto seeking judicial enforcement of this Agreement, the Developers or the Community or anyone or more of them as the case may be, shall give the other written notice of the alleged grievance as provided herein. Within twenty-one (21) days thereafter representatives of the respective parties to this Agreement shall meet to attempt to resolve amicably the alleged noncompliance or grievance. Failure to comply with the provisions of this enumerated paragraph shall nullify the complaining party's ability to enforce the alleged grievance. In the event actions of the Developer cause immediate potential harm to the environment and/or the Community requiring injunctive action, notice is required to be given to Developers and Community shall attempt to resolve the immediate problems with Developer, however the twenty-one (21) day period shall not apply to action required for injunctive relief. In those instances, three (3) business days notice to Developer is required.
15. The Community, acting individually or jointly, shall not in any way, directly or indirectly, oppose in an administrative hearing or meeting, or judicial proceeding the Development Plan, Exhibit D the record plat and any other required federal, state or county approval applicable to the Property, provided that the same are in accordance with this Agreement. Once the development plan is approved and construction has begun, this Agreement does not prohibit Community inquiries of and meeting with various governmental officials, agencies and consultants to ensure compliance with this Agreement and the Approved Development Plan Exhibit D. The Conservation Association is encouraged to bring such matters to the attention of the Holly Neck Advisory Committee as they arise.

16. The Community waives irrevocably the right to appeal any and all approvals, including but not limited to Development Plan approval and Growth Allocation approval, as are appropriate for the proposed development of the Property on site Plan Exhibit D. If the Development Plan for the Property is approved as submitted to the Hearing Officer for Baltimore County in accordance with the information shown thereon and this Agreement, and an appeal is taken by any person or entity who is not a party to this Agreement and on appeal such Development Plan approval is denied as approved, this Agreement shall automatically terminate and not bind the parties.
17. If the Development Plan for the Property is not substantially approved (as described in Paragraph 14) as submitted to the Hearing Officer for Baltimore County, this Agreement shall automatically terminate and be null and void and of no further force and effect.
18. Notwithstanding the terms of this Agreement, the parties hereto agree that reasonable adjustments in the location of buildings, lot lines, building envelopes, landscaping, and other residential features of the development of the Property, shall be permitted provided that the same meets with approvals from the governmental agency having jurisdiction thereover.
19. This Agreement shall be construed, interpreted and enforced according to the laws of the State of Maryland, without regard to principles of conflict of law. Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or construing the same shall not apply a presumption that the terms of any such provision shall be more strictly construed against one party or the other by reason of the rule of construction that a document is to be construed most strictly against the party who itself or through its agent who prepared the same, it being agreed that the agents of all parties hereto have participated in the preparation of this Agreement.
20. This Agreement contains the full and complete agreement of the parties hereto and no oral agreements, past, present or future shall be effective or binding on or against the parties unless the same shall be reduced to writing and executed in the same manner as this Agreement.
21. Each of the parties warrants that it has the authority to enter into this Agreement and to bind itself hereby and have carefully read and understand this Agreement and are cognizant of the terms and conditions hereof and the obligations associated herewith.
22. The parties hereto each warrant and represent that they have the power and requisite legal authority to bind themselves, their organization if acting in a representative capacity and their respective successors and assigns to the agreements herein contained, and if a corporation, limited liability company, partnership or similar entity, each further warrants and represents that it is duly organized and is in existence in accordance with Maryland law and that it has taken all necessary action required to be taken by its charter, by-laws, or other organizational documents to authorize the execution of this Agreement.
23. Any notices required or permitted to be given by either party to the other shall be addressed to the parties as follows:

On behalf of the Community:

J. Carroll Holzer, Esquire  
Holzer & Lee, PA  
508 Fairmount Avenue  
Towson, Maryland 2128

And

Holly Neck Conservation Association, Inc.  
P.O. Box 16666  
Baltimore, MD 21221

On behalf of the Owner:

Robert W. Cannon, Esquire Saul Ewing LLP  
500 E. Pratt Street  
Baltimore MD 21202

On behalf of the Builder:

David K. Gildea, Esquire  
300 E. Lombard Street Suite 1440  
Baltimore, MD 21202

24. Any notice that is required to be given pursuant to this Agreement shall be in writing, and shall be deemed given upon actual receipt and shall be sent to all other parties by certified or registered mail, prepaid, or by federal express or other commercial overnight courier service to the last known address of the receiving party.
25. This Agreement may be amended only by a subsequent written instrument and signed by the parties hereto or their respective successors and/or assigns.
26. The failure in any instance to enforce any of the covenants, restrictions and conditions contained in this Agreement shall in no event constitute a waiver or estoppel of the right to enforce the same or any other covenant, restriction or condition in the event of another violation occurring prior or subsequent thereto. In the event anyone or more of the covenants, restrictions and conditions herein contained should for any reason be declared invalid, the remaining covenants, restrictions or conditions shall continue in full force and effect.
27. Each of the parties hereto has had the benefit of private legal counsel before entering into this Agreement and each has agreed to be responsible for their respective counsel fees.
28. This Agreement may be executed in counterparts, each of which shall be deemed an original for all purposes, all of which shall together constitute one and the same Agreement; each counterpart may be signed and transmitted initially by telefacsimile and the facsimile shall be considered as containing original signatures, provided that said counterpart is provided subsequently to each other party in its original form.

29. The parties hereto covenant and agree to execute such instrument or instruments as may be necessary from time to time to carry out the intent of the Agreement or to amend this Agreement as may be required by any governmental agencies having jurisdiction over the development of the Property and approved by the Hearing Officer in order to obtain all required approvals and to otherwise comply with all applicable laws, regulations and codes in keeping with the spirit and intent of this Agreement.
30. Notwithstanding any provision hereof to the contrary and irrespective of any rule, construction or precedent under the common law of the United States and/or Maryland, neither this Agreement nor any provision hereof shall be binding on any party hereto nor shall any portion of this Agreement be enforceable in any proceeding or otherwise disclosed to any person or entity other than the parties hereto and their respective legal counsel unless and until the complete signatures of all parties to this Agreement have been affixed hereto as provided herein.
31. It is agreed by the parties that the obligations and duties of the Developers under this Agreement shall apply fully to any person or entity that purchases, is conveyed or otherwise acquires the Property, in whole or in part, other than a Homeowner (as defined below). Thus, as used in this Agreement, the term "Developers" includes the Developer's successors, successors in interest, affiliates, partners, joint ventures, assigns, and any person or entity that purchases, is conveyed or otherwise acquires the Property, in whole or in part, other than a Homeowner (as defined below). Any sale, conveyance, grant, transfer, bequest or gift of the property in whole or in part by the Developers to any person or entity, other than a Homeowner (as defined below), must include a provision in the operative documents that the obligations and duties of the Developers under this Agreement are incorporated therein. As used in this Agreement, the term "Homeowner" means the person(s) who purchases from the Developers, its successors and/or assigns for occupation of the dwellings constructed in the Property.
32. In the event that this Agreement is not completely executed by all parties hereto and a fully executed original delivered to legal counsel for the Developers by 5:00 p.m. on Saturday, April 30, 2006, this Agreement and all prior agreements, negotiations, proposals, suggestions, discussions and the like among the Developers, its representatives and the Community and their representatives shall be automatically and without further writing or communication rendered null and void and of no further force and effect.
33. This Agreement shall be incorporated and adopted by the Hearing Officer in his Decision and Order approving the Development Plan, Exhibit D.
34. This Agreement shall be recorded in the Land Records of Baltimore County by the Developer at its expense within sixty (60) days of the final unappealed approval of the of the Development Plan.
35. Subsequent to the approval of the Development Plan, the Developer agrees to provide a copy of the proposed Amended Site Plan to the Community (Paragraph 21) and notify the Community of any DRC application and meeting to modify Exhibit D.

36. In the event that, subsequent to the grievance provided in Paragraph 12, the parties are required to seek legal enforcement of this Agreement, the parties agree that the Circuit Court of Baltimore County has jurisdiction to hear the complaint and the Court has authority to provide injunctive relief to enforce this Agreement.

37. This Agreement shall be made part of the developer's Homeowners' Association documents. The Conservation Association and/or Community shall have standing to enforce violations of this Agreement by the parties hereto and/or their successors and assigns

IN WITNESS WHEREOF, the parties hereto have affixed their respective hands and seals the date and year first above written.

WITNESS/ ATTEST:

WITNESS:

[Handwritten Signature]

Seller:

HOLLY NECK LIMITED PARTNERSHIP LLLP

By: Leonard P. Berger

Name: LEONARD P. BERGER

Title: GENERAL PARTNER

Purchaser:

D R L

CENTEX HOMES

By: [Handwritten Signature]

Name: Robert K. Davis

Title: Division President

Community Association:

HOLLY NECK CONSERVATION ASSOCIATION, INC.

By: [Handwritten Signature]

Name: RONALD Belbot

Title: President

APPROVED FOR LEGAL FORM AND SUFFICIENCY\*  
(SUBJECT TO EXECUTION BY THE DULY AUTHORIZED ADMINISTRATIVE OFFICIAL AND CHAIRMAN OF THE COUNTY COUNCIL, AS INDICATED)

[Handwritten Signature]  
Office of the County Attorney

\*Approval of Legal Form and Sufficiency Does Not Convey Approval Or Disapproval of the Substantive Nature of This Transaction. Approval Is Based Upon Typeset Document-All Modifications Require Re-Approval



Property Owners:

*John Filar*

*R.P. Belbot*

Ronald P. Belbot

*John Filar*

*Catherine Belbot*

Catherine Belbot

*Kathleen Filar*

*Michael Dalton*

Michael Dalton

*Kathleen Filar*

*Marsha A. Dalton*

Marsha Dalton

*Kathleen Filar*

*Joseph Byrnes*

Joseph Byrnes

*R.P. Belbot*

*Barbara Byrnes*

Barbara Byrnes

*Kathleen Filar*

*Chester A. Stefanowicz, Jr.*

Chester Stefanowicz, Jr.

*Darlene D. Stefanowicz*

Darlene Stefanowicz

*John Filar*

*Ethel Webster*

Ethel Webster

*R.P. Belbot*

*John Filar*

John Filar

*Marsha A. Dalton*

*Kathleen Filar*

Kathleen Filar

*R.P. Belbot*

*James Mitchell*

James Mitchell

*Barbara Byrnes*

*Catherine Mitchell*

Catherine Mitchell

*R.P. Belbot*

*John Rybczynski*

John Rybczynski

*R.P. Belbot*

*Irma Rybczynski*

Irma Rybczynski

5/3/06

RE: IN THE MATTER OF:  
THE PRESERVE AT HOLLY NECK  
PETITION FOR SPECIAL HEARING  
APPEAL FROM THE RECOMMENDATION  
OF THE PLANNING BOARD  
APPLICATION FOR GROWTH  
ALLOCATION

\* BEFORE THE COUNTY  
\* BOARD OF APPEALS  
\* FOR  
\* BALTIMORE COUNTY

6th Election & 15th Councilmanic Districts  
Legal Owner: Holly Neck Ltd. Partnership  
LLLP  
Contract Purchaser: Centex Homes

\* Case Nos.: 05-526-SPH,  
\* CBA-05-126, CBA-05-130

\*\*\*\*\*

OPINION

This matter comes to the Baltimore County Board of Appeals as a consolidation of the three separate appeals captioned above (i.e., 05-526-SPH, CBA-05-126, CBA-05-130). These matters were consolidated for the purpose of appeal in that they involve the same property and parties, as well as similar questions of fact and law regarding the proposed residential subdivision to be known as The Preserve at Holly Neck. The subject property is located on the Holly Neck peninsula in eastern Baltimore County and is zoned RC-5. It is proposed for residential development by the property owner (Holly Neck Limited Partnership LLLP) and developer (Centex Homes) (collectively the "Developers").

In case number 05-526-SPH, a Petition for Special Hearing was filed before the Office of Zoning Commissioner of Baltimore County by the Holly Neck Conservation Association, Inc. and certain individual residents of the existing neighborhood (collectively, the "Protestants"). Within that Petition, the Protestants challenged the density shown on a previously submitted concept plan for development of the subject property. Specifically, that concept plan depicted a residential subdivision of 110 units. The Protestants contended

that no more than 101 units are permitted, pursuant to the applicable density regulations for the RC5 zone within the Baltimore County Zoning Regulations (BCZR). Thus, they filed a Petition for Special Hearing to, in part, establish and limit density for this project.

In response to the filing of that Petition, the Developers filed a Motion to Dismiss. That Motion contended that the Petition for Special Hearing filed by the Protestants was improper/untimely and that the Protestants lacked legal standing to bring the Petition. Specifically, the Developers argued that the density issue had previously been resolved by decision of the Director of the Department of Permits & Development Management (Timothy M. Kotroco) on April 28, 2004. Further, it was argued that Director Kotroco's decision was an appealable event from which no appeal was timely filed. Following a public hearing and submission of written briefs by counsel, Zoning Commissioner William J. Wiseman III issued an Opinion and Order on July 7, 2005, granting the Motion and dismissing the Petition. The Protestants filed a timely appeal of that decision to this Board. People's Counsel for Baltimore County also filed an appeal, because of the office's concern to defend the comprehensive zoning maps and to assure procedural due process of law.

The second matter under consideration is designated case number CBA-05-126. In order to accommodate the proposed development of the property, an award of "Growth Allocation" is requested by the Developers. The growth allocation process applies to properties located adjacent to the Chesapeake Bay and its tributaries and arises from State and local law designed to protect those environmental resources. On a State level, the legislature created the Chesapeake Bay Critical Area Commission and regulations administered thereby designed to protect the Chesapeake Bay Critical Area (i.e. "CBCA").

These laws and regulations are codified within the Annotated Code of Maryland (Natural Resources Article, Section 8-1801, et. seq.) and Code of Maryland Regulations ("COMAR") at Title 27, Subtitle 01, Chapter 01, et. seq. In Baltimore County, the growth allocation regulations are codified in Baltimore County Code, Article 33, Title 2. The CBCA law provides that lands located within Critical Area are classified as one of three categories. These categories are RCA (Resource Conservation Area), LDA (Limited Development Area), and IDA (Intensely Developed Area). The classifications permit development of property in the Critical Area at different levels of use and intensity. The subject property is classified RCA and the Developers propose the residential subdivision of the property in a manner that is consistent with the IDA classification. An award of growth allocation is, essentially, that process set forth under law that allows a reclassification of property from one category to another (e.g. RCA to IDA). In the instant case, the Developers have requested a reclassification of a portion of the property (96 acres) from RCA to IDA.

The growth allocation process is described in County Code Sections 32-9-101 to 32-9-113. Where the growth allocation involves or requires an amendment to the Critical Area overlay district but does not require a change to the underlying zone, as with the R.C. 5 Zone here, the County Board of Appeals must review the petition in accordance with statutory standards. Sec. 32-9-112(g). The standards include site restrictions for IDAs (Sec. 32-9-104), design evaluation factors (Sec. 32-9-111), and specific written findings with respect to minimization of adverse environmental impacts; conservation of fish, wildlife and plant habitat; consistency with established land use policies; and growth accommodation; and unavoidable environmental impacts despite control efforts (Secs. 32-9-

112(g)(1), 32-3-511).

Under County law, the Growth Allocation request must be reviewed first through a process that includes a discussion, public hearing and vote by and before the Baltimore County Planning Board. In this case, the matter came before the Planning Board initially for discussion on June 16, 2005, public hearing on July 7, 2005 and vote on July 21, 2005. By its vote of July 21, 2005 as reflected in minutes published on July 25, 2005, the Planning Board recommended approval of the Growth Allocation request. The Protestants filed an appeal of that recommendation to this Board (Case No. CBA-05-126). People's Counsel has advised that it was prepared to appear at the County Board of Appeals hearing. The People's Counsel stated that he did not feel an appeal was necessary in light of the requirement that the Planning Board refer its recommendation to the CBA.

The third matter before the Board also relates to the Growth Allocation request. Following the Planning Board's recommendation of approval of the award of Growth Allocation on July 21, 2005, the Developers and Protestants (Holly Neck Conservation Association, et al.), negotiated a resolution of their differences. Ultimately, a written agreement was signed reflecting the understanding of the parties. People's Counsel is not a party to this agreement. As a result of the agreement, the plan originally reviewed by the Planning Board was revised and the number of proposed residential units was reduced from 110 to 101, which satisfies the maximum R.C. 5 zoning density of .667 lots per acre calculated based on the gross area of the site of 152 acres. Due to this change, the Growth Allocation Award was similarly amended. Seeking an approval of this amendment, the Developers returned to the Baltimore County Planning Board and presented an amended

application for Growth Allocation reflecting the amended plan as agreed to by the Developers and Protestants.

This request for Growth Allocation was approved by the Baltimore County Planning Board by vote on February 2, 2006. In accordance with County law, the matter is referred from the Planning Board to this Board, and now comes before the Board for consideration (Case No. CBA-05-130).

An agreement between a developer and citizens does not, however, resolve the case. See Attman/Glazer v. City of Annapolis 314 Md. 675 (1989). The County Board of Appeals must still review whether or not the proposed growth allocation and CBCA overlay district reclassification meets the statutory standards.

These cases, as consolidated, were considered by the Board in open hearing on February 9, 2006. Appearing at that hearing and offering testimony in support of the proposed subdivision plan was Stacey McArthur, a project manager from D.S. Thaler and Associates. D.S. Thaler and Associates is that company comprised of engineers, surveyors, and consultants that was retained by the Developers to prepare the proposed plan and application for growth allocation. Also appearing at the Board's hearing and offering testimony was Patricia Farr, the supervisor of Baltimore County DEPRM'S Environmental Impact Review division. Ms. Farr's agency is charged with the responsibility of reviewing the Growth Allocation Application to ensure compliance with appropriate county and state law.

Representing the Developers at the hearing were Lawrence E. Schmidt of Gildea & Schmidt, LLC, and Robert W. Cannon of Saul Ewing, LLP. Mr. Schmidt and his firm

represented Centex Homes, the contract purchaser/developer of the site, and Mr. Cannon represented Holly Neck Limited Partnership LLLP, the property owner. Also present at the Board's hearing were J. Carroll Holzer, counsel to the Protestants, Holly Neck Conservation Association and certain individual residents (Ronald Belbot, James Mitchell, et al) who are Officers of that organization and residents of the locale. Peter Max Zimmerman, People's Counsel for Baltimore County also participated as an independent party, pursuant to his Baltimore County Charter authority.

At the onset of the public hearing before the Board, counsel for the parties (Developer and Protestants) advised the Board that an agreement had been reached among these parties as it relates to the proposed subdivision. Unfortunately, at the time of the public hearing, the agreement had not been reduced to writing. Therefore, at these parties' request, the Board allowed the record of the case to remain open. In fact, an agreement by and between the parties dated March 13, 2006, has been submitted to the Board for incorporation into this Opinion and Order. It is the finding of this Board that the statements of fact, terms, and conditions therein are accurate and appropriate and not inconsistent with the factual findings and conclusions of law below, and, thus, that agreement shall be incorporated in this Board's Opinion, as well as in this Order.

Substantial testimony was also offered at the Board's hearing by Ms. McArthur and Ms. Farr. Their testimony centered on the design of the proposed subdivision that has been developed to comply with the numerous Growth Allocation requirements. The subject property under consideration is 152.7 acres in area, zoned RC5. The property is located on the Holly Neck Peninsula in the Hawk Cove area of eastern Baltimore County. Presently,

the property is largely undeveloped; however, there are approximately 45 shore homes that have been on the site for many years. Some of these structures are dilapidated and in need of repair; however, many are occupied. Presently, many of the homes are served by private well and septic systems. Most of the homes are quite old and were constructed at a time well before the adoption of the significant environmental regulations that currently apply to the property.

The Developer proposes a comprehensive residential redevelopment of the property. All the existing shore homes will be razed and a new community containing 101 units will be constructed. Of that total, 87 units will be villa/townhouse-style units and 14 will be single-family dwellings. In addition to the homes, new infrastructure is proposed throughout the property, including roads and public utilities. The new dwellings will be served by public water and sewer. Additionally, a unique feature associated with the development is the clustering of the homes into several "pods" throughout the property. In this regard, significant testimony was offered by both Ms. McArthur and Ms. Farr as to the desirability of this clustering concept. Clustering of development within the site allows less disturbance across the overall property and the retention of large and contiguous natural environmentally constrained areas. Additionally, the plan shows the development of a pool/clubhouse facility that will be available to residents of the community. Additionally, other aspects of the proposed development (piers, etc.) are shown. The project has been designed to respect the environmental constraints and natural features associated with the property. The above is but a brief summary of the extensive testimony and evidence offered. Suffice it to say, the documents submitted in support of the proposal, as well as the



oral testimony by Ms. McArthur and Ms. Farr comprehensively addressed the requirements of law.

It appears that the proposal meets the minimum site requirement of 20 acres. Code Sec. 32-9-104(a)(1)(i). It also appears, based on the report of the Growth Allocation Review Committee, that the design evaluation factors were adequately addressed with respect to resource management, quality of design, and location. Code Sec. 32-9-111(b). In addition, Ms. McArthur and Ms. Farr gave substantial and sufficient testimony to demonstrate that the cluster concept reasonably minimizes environmental impact, preserves substantial contiguous natural areas, is consistent with conservation goals, and otherwise satisfies general land use policies to control development while accommodating some growth in the Chesapeake Bay Critical Area. Code Sec. 32-3-511(d). The Board is also satisfied that the conditions in the agreement between the Developer and the Protestants are consistent with these goals and helpful to the legal resolution of this case. People's Counsel, while not a party to the agreement, does not oppose the conditions set forth in it.

Turning first to the Order of the Zoning Commissioner in case number 05-526-SPH, the parties have agreed to request that the Board remand that matter to the Zoning Commissioner with instructions. Specifically, as set forth in paragraph eight of the agreement, the Developers and Protestants agree upon remand to jointly move to strike the previously entered Memorandum Opinion and Order of the Zoning Commissioner and request that he enter a new Order that establishes that the property has a maximum residential density of 101 units. This determination of density is to be confirmed at the hearing officer's hearing for the development plan on this matter. People's Counsel concurs

that the revised plan is consistent with the aforementioned applicable density standard of the R.C. 5 Zone. Upon remand, it is anticipated that the Zoning Commissioner/Hearing Officer shall declare his special hearing opinion of July 7, 2005, moot, and as indicated above, confirm that the density for this subdivision shall not exceed 101 units. The Board finds that this is a legally correct and proper disposition of that appeal and will so order by way of remand. This will also have the effect of nullifying the Zoning Commissioner's July 7, 2005 dismissal of the petition and his ruling that the citizens did not file a timely appeal. His earlier decision shall not, therefore, be considered as precedent or as of any weight with respect to the procedural issues therein decided.

As to case CBA-05-126, the Board again notes the agreement of the parties, particularly as contained in paragraph eight of the Agreement. Under the terms of that agreement, the Protestants have agreed to withdraw their appeal of that matter. We concur that the appeal is premature under the Growth Allocation process established under law, in view of the Board's responsibility to make a final decision, and, in any event is moot, particularly in view of the amendment to the Growth Allocation Application subsequently filed by the Developers. The Board will accept the Protestants withdrawal of their appeal in that matter and will so order.

Finally, insofar as case CBA-05-130, the matter comes before the Board in accordance with the required process, procedure and standards set forth in Sections 32-9-101 through 32-9-113 of the Baltimore County Code. Those Sections set out a specific process for Growth Allocation Application review and approval. The process includes the formation of the Growth Allocation Review Committee comprised of a number of member agencies of

Baltimore County. This Committee was chaired by Ms. Farr. The regulations further provide for the review and recommendation by that committee to be considered by the Baltimore County Planning Board and ultimately this Board. In this case, testimony and evidence presented that this process has been followed in this case. Indeed, this matter comes before the Board at this time pursuant to Section 32-9-112 (g) of the Code.

To repeat, the essential standard for review of a Growth Allocation request involving a CBCA overlay district reclassification is set out in section 32-3-511 of the Baltimore County Code. Therein, these specific criteria must be determined to exist before the Board of Appeals may grant an amendment to the Chesapeake Bay Critical Area overlay areas. Specifically, the Board must find that the proposed amendment will "1) minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have runoff for surrounding lands; 2) conserve fish, wildlife and plant habitats; and 3) be consistent with established land use policies for development in the Chesapeake Bay Critical Area that: i) accommodate growth and ii) address the fact that even if pollution is controlled, the number, movement, and activities of persons that are in the area can create adverse environmental impacts." The record of this case will disclose that there was specific and detailed testimony offered by Ms. McArthur and Ms. Farr as to these criteria. In general, the clustering of the proposed units and related infrastructure, the retention of large contiguous undisturbed and natural areas, the proposed means of mitigation to preserve and protect the environment, etc., are all factors that support the conclusion that these standards have been met. The Board is therefore satisfied that the award of Growth Allocation for 96 acres of the site is warranted and justified and will so

order.

Having determined the appropriate disposition of the above matters set forth herein, the Board shall grant relief as follows.

ORDER

Therefore it is this 3rd day of May, 2006, by the County Board of Appeals of Baltimore County,

ORDERED that Case No. 05-526-SPH is hereby remanded to the Zoning Commissioner of Baltimore County with instructions that the Zoning Commissioner strike the Memorandum of Opinion and Order entered on July 7, 2005, and enter further findings as provided herein above; that the density for this subdivision shall not exceed 101 units; that the Zoning Commissioner's July 7, 2005 special hearing opinion is moot; that this resolution is consistent with law and nullifies his dismissal of the Petition for Special Hearing and his ruling that the protestants did not file a timely appeal; and that this earlier decision shall not, therefore, be considered as precedent or as of any weight with respect to the procedural issues therein decided; and,


IT IS FURTHER ORDERED that the appeal filed by the Holly Neck Preservation Association and others from the original Planning Board decision in Case No. CBA-05-126 be and is hereby declared moot and dismissed on that basis; and,

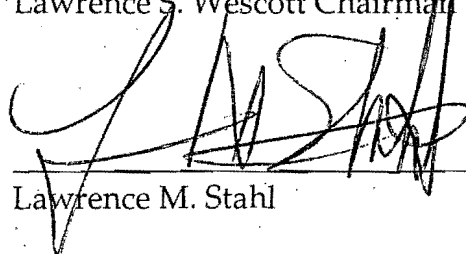
IT IS FURTHER ORDERED that, by final action, the Petition for an Award of Growth Allocation for 96 acres on the subject property to reclassify that acreage from RCA to IDA, as is more particularly shown on the plan to accompany the request for Growth Allocation application (Exhibit \_\_\_), be and is hereby granted; and,


IT IS FURTHER ORDERED that the plan accompanying the request for growth allocation, and upon which it is based, shall not be amended without a further hearing, review and approval by the County Board of Appeals of Baltimore County; and,

IT IS FURTHER ORDERED that the agreement by and between the Developers and the Holly Neck Preservation Association dated March 13, 2006, be and is hereby incorporated herein as a condition to the grant of the relief herein provided.

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.

  
Lawrence S. Wescott Chairman

  
Lawrence M. Stahl

  
Margaret Brassil, PhD.

Approved as to Content and Form:

*Lawrence E. Schmidt* 5/2/06

Lawrence E. Schmidt, Attorney for Centex Homes

*Robert W. Cannon*, ~~LLP~~ 5/2/06

Robert W. Cannon, Attorney for Holly Neck Limited Partnership, LLP

*J. Carroll Holzer* 5/2/06

J. Carroll Holzer, Attorney for Holly Neck Preservation Association, et al

*Peter Max Zimmerman* May 2, 2006

Peter Max Zimmerman  
People's Counsel for Baltimore County

PJM

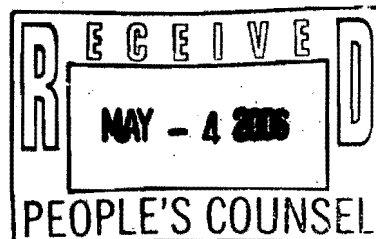


# County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49  
400 WASHINGTON AVENUE  
TOWSON, MARYLAND 21204

410-887-3180  
FAX: 410-887-3182

May 3, 2006



J. Carroll Holzer, Esquire  
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GILDEA & SCHMIDT LLC  
300 E. Lombard Street  
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Baltimore, MD 21202

Robert W. Cannon, Esquire  
SAUL EWING, LLP  
Lockwood Place  
500 E. Pratt Street  
Baltimore, MD 21202

✓ Peter M. Zimmerman, People's Counsel -  
for Baltimore County  
Room 47, Old Courthouse  
400 Washington Avenue  
Towson, MD 21204

RE: *In the Matter of: Holly Neck Ltd. Partnership, LLLP – Legal Owner;*  
*Centex Homes – Contract Purchaser / Case No. 05-526-SPH;*  
*Case No. CBA-05-126; and Case No. CBA-05-130*

Dear Counsel:

Enclosed please find a copy of the final Opinion and Order issued this date by the County Board of Appeals of Baltimore County in the subject matter.

Very truly yours,

*Kathleen C. Bianco*  
Kathleen C. Bianco 27  
Administrator

## Enclosure

- c: Holly Neck Conservation Assn, Inc. John & Irma Rybczynski
- Ronald & Catherine Belbot Michael & Marsha Dalton
- Joseph & Barbara Byrnes Chester & Darlene Stefanowicz
- John & Kathleen Filar James & Catherine Mitchell
- Ethel Webster
- Holly Neck Ltd Partnership LLC
- Robert Romadka, Esquire
- Pat Keller, Director /Planning
- Growth Allocation Review Committee: P. Farr; W. Korpman; D. Rascoe; J. Cook; S. Klots; L Lanham
- William J. Wiseman III /Zoning Commissioner
- Don Rascoe /PDM
- Timothy M. Kotroco, Director /PDM
- John E. Beverungen, Acting County Attorney

RE: IN THE MATTER OF:  
THE PRESERVE AT HOLLY NECK  
PETITION FOR SPECIAL HEARING  
APPEAL FROM THE RECOMMENDATION  
OF THE PLANNING BOARD  
APPLICATION FOR GROWTH  
ALLOCATION

- \* BEFORE THE COUNTY
- \* BOARD OF APPEALS
- \* FOR
- \* BALTIMORE COUNTY
- \* Case Nos.: 05-526-SPH,
- \* CBA-05-126, CBA-05-130

6th Election & 15th Councilmanic Districts  
Legal Owner: Holly Neck Ltd. Partnership  
LLLP  
Contract Purchaser: Centex Homes

\*\*\*\*\*

OPINION

This matter comes to the Baltimore County Board of Appeals as a consolidation of the three separate appeals captioned above (i.e., 05-526-SPH, CBA-05-126, CBA-05-130). These matters were consolidated for the purpose of appeal in that they involve the same property and parties, as well as similar questions of fact and law regarding the proposed residential subdivision to be known as The Preserve at Holly Neck. The subject property is located on the Holly Neck peninsula in eastern Baltimore County and is zoned RC-5. It is proposed for residential development by the property owner (Holly Neck Limited Partnership LLLP) and developer (Centex Homes) (collectively the "Developers").

In case number 05-526-SPH, a Petition for Special Hearing was filed before the Office of Zoning Commissioner of Baltimore County by the Holly Neck Conservation Association, Inc. and certain individual residents of the existing neighborhood (collectively, the "Protestants"). Within that Petition, the Protestants challenged the density shown on a previously submitted concept plan for development of the subject property. Specifically, that concept plan depicted a residential subdivision of 110 units. The Protestants contended



7/12/05

RD  
PHZ

IN RE: PETITION FOR SPECIAL HEARING  
N & S Holly Neck Road  
1,400' NE Fantat Road  
(The Preserve at Holly Neck)

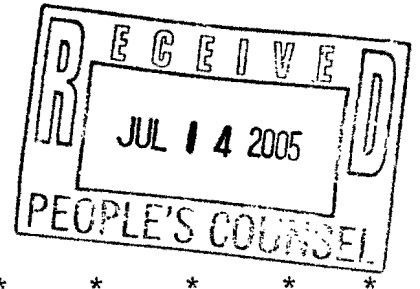
15th Election District  
6th Councilmanic District

Holly Neck Limited Partnership, LLP,  
Owner, and  
Centrex Homes, Contract Purchaser,  
Respondents

Holly Neck Conservation, Inc., et al.,  
Petitioners

\* BEFORE THE  
\* ZONING COMMISSIONER  
\* OF BALTIMORE COUNTY

Case No.: 05-526-SPH



\* \* \* \* \*

NOTICE OF APPEAL

Holly Neck Conservation Association, Inc., Ronald Belbot, President, P.O. Box 16666;  
and individuals Ronald and Catherine Belbot, 2624 Holly Beach Road; Michael and Marsha  
Dalton, 2733 Holly Beach Road; Joseph and Barbara Byrnes, 2731 Holly Beach Road; Chester  
and Darlene Stefanowicz, 2729 Holly Beach Road; Ethel Webster, 2622 Holly Beach Road; John  
and Kathleen Filar, 2626 Holly Beach Road; James and Catherine Mitchell, 1241 Engleberth  
Road; and John and Irma Rybczynski, 1138 Fantat Road, all of Essex, MD 21221, Appellants in  
the above captioned case, by and through their attorney, J. Carroll Holzer and Holzer and Lee,  
feeling aggrieved by the decision of the Zoning Commissioner in the above captioned case,  
hereby note an appeal to the County Board of Appeals from Memorandum and Order of the  
Zoning Commissioner of Baltimore County dated July 7, 2005 attached hereto, and incorporated  
herein as **Exhibit #1**.

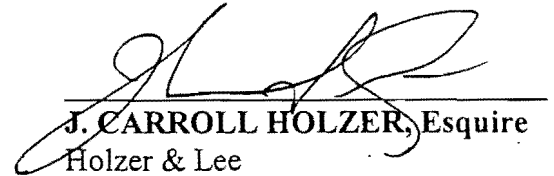
LAW OFFICE  
HOLZER AND LEE  
THE 508 BUILDING  
508 FAIRMOUNT AVENUE  
TOWSON, MARYLAND  
21286

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

RECEIVED  
JUL 12 2005  
Per.....

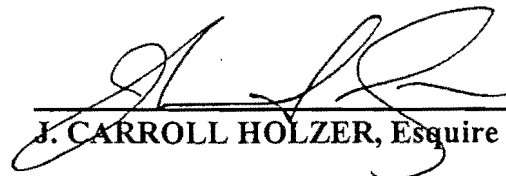
Filed concurrently with this Notice of Appeal is Appellants' check made payable to Baltimore County to cover the costs of the appeal. Appellants were parties below and fully participated in the proceedings.

Respectfully submitted,

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

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 12th day of July, 2005, a copy of the foregoing Notice of Appeal was mailed first class, postage pre-paid to Lawrence Schmidt, Esquire, Gildea and Schmidt, LLC, 300 E. Lombard Street, Suite 1440, Baltimore, MD 21202; County Board of Appeals, Basement Old Court House, 400 Washington Ave., Towson, MD 21204; People's Counsel for Baltimore County, Basement, Old Courthouse, 400 Washington Ave., Towson, MD 21204; Robert Romadka, Esquire, 104 B Briarwood Road, Baltimore, MD 21222; and Robert Cannon, Saul Ewing, LLP, 100 South Charles Street, 15<sup>th</sup> Floor, Baltimore, MD 21201.

  
**J. CARROLL HOLZER, Esquire**

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
N & S Holly Neck Road		
1,400' NE Fantat Road	*	ZONING COMMISSIONER
(The Preserve At Holly Neck)		
15 <sup>th</sup> Election District	*	OF BALTIMORE COUNTY
6 <sup>th</sup> Council District		
Holly Neck Limited Partnership, LLP,	*	
Owner, and		
Centrex Homes, Contract Purchaser	*	Case No. 05-526-SPH
<i>Respondents</i>		
	*	
Holly Neck Conservation Association,		
Inc. et al,	*	
<i>Petitioners</i>		
	*	

\* \* \* \* \*

**MEMORANDUM AND ORDER**

Presently pending is a Motion to Dismiss the Petition for Special Hearing, filed by respondents Holly Neck Limited Partnership, LLP and Centex Homes. Petitioners, Holly Neck Conservation Association, Inc., Ronald P. Belbot, Michael E. and Marsha A. Dalton, Joseph T. and Barbara J. Byrnes, Chester J. and Darlene D. Stefanowicz, Ethel L. Webster, John A and Kathleen A. Filar, James and Catherine Mitchell, John and Irma Rybczynski, individually, have filed an opposition thereto, and additional briefs have also been filed and considered. This Memorandum and Order will address the arguments raised by the parties in the order in which they were presented.

**I. WAS APRIL 28, 2005 LETTER OF DIRECTOR AN "OPERATIVE EVENT"**

The initial issue raised in the Motion to Dismiss concerns whether petitioners have belatedly filed their petition for special hearing, given that Permits and Development Management ("PADM") Director Kotroco issued an "approval" on April 28, 2004, and no appeal was noted from that Administrative Decision. The resolution of this issue hinges upon whether the PADM director's April 28, 2004 letter constituted an "operative event."

2/7/05

IN RE:	PETITION FOR SPECIAL HEARING	*	BEFORE THE
	N & S Holly Neck Road		
	1,400' NE Fantat Road	*	ZONING COMMISSIONER
	<b>(The Preserve At Holly Neck)</b>		
	15 <sup>th</sup> Election District	*	OF BALTIMORE COUNTY
	6 <sup>th</sup> Council District		
	Holly Neck Limited Partnership, LLP,	*	
	Owner, and		
	Centrex Homes, Contract Purchaser	*	Case No. 05-526-SPH
	<i>Respondents</i>		
		*	
	Holly Neck Conservation Association,		
	Inc. et al;	*	
	<i>Petitioners</i>		
		*	

\* \* \* \* \*

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Under the Maryland Express Powers Act, chartered counties such as Baltimore County are permitted to create an administrative forum known as a Board of Appeals. Md. Ann. Code. Art. 25A §5(U). Baltimore County has, of course, exercised this authority, and in §601 of the Charter, Baltimore County has created a Board of Appeals whose authority is co-extensive with that permitted under the legislative delegation in Art. 25A §5(U). *Beth Tfiloh*, 152 Md. App. 97 103 (2003).

Thereunder, the Board of Appeals is authorized and empowered to conduct hearings and issue decisions on a variety of matters, including “the issuance, renewal, denial, revocation, suspension, annulment, or modification of any license, permit, approval, exemption, waiver, certificate, registration, or other form of permission.” Art. 25A §5(U) (emphasis supplied). In a pair of recent decisions, our Court of Special Appeals has delineated the appropriate boundaries of what constitutes an “operative event” sufficient to trigger jurisdiction in the Board of Appeals.

In *Meadows of Greenspring Homeowners Association v. Foxleigh Enterprises, Inc.*, 133 Md. App. 510 (2000), the court considered whether a letter issued by the director of PADM constituted an operative event. In the letter, the director permitted the developer to proceed with its development project through an older, less onerous development process. The homeowner’s association, of course, wanted the project to be reviewed under the newer development regulations, which provide for more community input and involvement and are generally considered to be more burdensome to developers. In its holding, the court concluded that the director’s letter was not an operative event, in that it merely advised the developer what set of development rules and regulations it must follow to secure approval for its project. The court noted that the “operative event” in that scenario had not yet occurred, but would be the action ultimately taken by the county with respect to the development plan. *Id.* at 516.

The Court of Special Appeals reached the opposite conclusion in *Beth Tfiloh*, 152 Md. App. 97 (2003). Therein, the court, citing §602 of the County Charter, recognized that the Board of Appeals had statutory jurisdiction to review administrative orders, including an “approval.” *Id.* at 105-09. In *Beth Tfiloh*, the director of PADM denied Beth Tfiloh a development exemption under the Baltimore County Code, despite the fact that the congregation’s project involved a “lot of record,” which entitled the owner to an exemption from the development process. *Id.* at 104. The court considered the director’s letter to be an “operative event,” given that it involved the issuance of an “exemption,” which is specified as a ground for Board of Appeals jurisdiction in Art. 25A §5(U). *Id.* at 110.

In the case at bar, the April 28, 2004 letter is more akin to the director’s letter at issue in *Beth Tfiloh*, and for that reason I find that it did constitute an operative event. Like *Beth Tfiloh*, the director’s letter in the case at bar permitted the developer to proceed with its project at a specific density, which undoubtedly constituted an “approval” and/or “other form of permission” as those terms are used in the Express Powers Act. In essence, the PADM director was “administering” a law (i.e., the recent Holly Neck Bill enacted by the County Council) pertaining to development and/or zoning, as permitted by County Code §3-2-1103. While the parties disagree as to the proper interpretation and scope of these Baltimore County Code sections, it does appear that the director had authority to issue the approval he did, and if petitioners sought to challenge that approval, the proper method for doing so was by filing a timely appeal to the Board of Appeals, pursuant to County Code section 32-3-401.

In the present case, it is beyond dispute that petitioners did not note an appeal to the Board of Appeals within thirty (30) days of the director’s April 28, 2004 “approval” of the residential density for the Holly Neck project. In a long line of cases, our highest court has explicitly stated that when there exists a remedy before a chartered county’s board of appeals,

an “aggrieved party” must invoke and exhaust that administrative and judicial review remedy, which under the Express Powers Act is deemed to be an exclusive remedy. *See, e.g., Maryland Reclamation Associates, Inc. v. Harford County*, 342 Md. 476 (1996); *Holiday Point Marina Partners v. Anne Arundel County*, 349 Md. 190 (1998). Having failed to exhaust their administrative remedies, which by statute are deemed to be “exclusive,” I find that the petition for special hearing was improperly filed herein, and must be dismissed.

In reaching this conclusion, I have had the benefit of well-done and exhaustive briefs from both sides. In petitioners’ most recent submission, repeated reference is made to whether Mr. Kotroco’s density determination constituted a “final decision.” Under the case law and the text of the Express Powers Act, that is not the test; rather, Art. 25A references “approvals” as one of the “operative events” (per *BethTfiloh*) from which an appeal lies. Perhaps petitioners unwittingly concede this point, given that they refer to “the approval” of Kotroco...” Holzer letter of June 27, 2005, p. 2.

Petitioners also attach several additional affidavits of individuals who contend they knew nothing of Kotroco’s April 28, 2004 letter. While I have no reason to doubt the veracity of these affiants, I also believe them to have no impact on the issue at hand. What is undisputed is that many members of the community association did learn of Kotroco’s approval, and in sufficient time to seek counsel as to whether an appeal should be noted. In this scenario, the community association and its members are in privity (much like an employer and its employees, *deLeon v. Slear*, 328 Md. 569, 581-82 (1992)), and notice to the association and many of its members is therefore imputed to the affiants.

Finally, in its most recent submission, the petitioners reference a May 6, 2004 e-mail from Director Kotroco, and argue that even the Director did not think his density approval was a “final decision.” As discussed earlier, whether or not the determination or density was a “final

decision” is not significant. The referenced e-mail clearly indicates that the decision was an “administrative determination” approving the density, which is an “operative event.” More to the point, it is my prerogative as Zoning Commissioner to interpret and apply the relevant law, and whether or not the Director of Permits and Development Management believes that a matter is appealable is of no moment, since that is a legal issue for this tribunal. It was incumbent upon petitioners to determine whether an appeal should have been filed, and nothing Mr. Kotroco did or did not say alters this fact. Our highest court has repeatedly cautioned that those dealing with municipal agents are bound to determine the extent of their authority, and the County cannot be estopped if the offered interpretation is inaccurate. *Gontrum v. City of Baltimore*, 182 Md. 370, 375 (1943); *Marzullo v. Kahl*, 366 Md. 158, 194 (2001). In this instance, the Director’s suggestion that the density issue could be raised at the development plan hearing was mistaken - - though obviously not deliberately so.

Petitioners repeatedly argue that the Director’s interpretation of the density issue is without “status” or “legal basis.” That is not the case. Under section 32-3-102 of the County Code, the Director is expressly authorized to “interpret” the zoning regulations. In this regard, Maryland courts uniformly hold that the regulation and/or determination of density is a zoning matter. See, e.g., *People’s Counsel v. Crown Development Corp.*, 328 Md. 303 (1992). While petitioners may disagree with his decision, it is beyond dispute that the Director was vested by County law to approve the density for the development, as an aspect of interpreting and administering the zoning code.

As an adjunct to this issue, petitioner in its papers raises an argument asserting that the community association was denied due process. I am unable to credit such an argument, for two reasons. First, as a factual matter, it appears as if the Association (and at least some of its officers and members) had notice of the director’s April 28, 2004 approval. Indeed, respondents’



attach an Affidavit of Ronald Przywara in support of their motion to dismiss, wherein the affiant testifies that the director's April 28, 2004 approval was presented and discussed at a May 17, 2004 meeting of the Holly Neck Conservation Association, at which the president and other members were present. At the very least, this affidavit would generate a factual dispute concerning whether or not petitioner had notice of the director's action, and if the affidavit is credited, petitioners would have had eleven (11) days after the community association meeting in which to note an appeal to the Board of Appeals.

Secondly, and perhaps most importantly, petitioners have no legal basis upon which to advance a due process argument. While petitioners may qualify as "aggrieved persons" or "interested parties," (which will be discussed in the next section of this Memorandum and Opinion), this does not equate to the possessing of a "property" interest under the due process clause. Under the procedural due process doctrine, a litigant is entitled to "notice" and "an opportunity to be heard." *Cleveland Board of Education v. Loudermill*, 105 S.Ct. 1487 (1985). Of course, one is not entitled to procedural due process protections until he or she has established that there is a life, liberty or property interest at stake. It seems clear that the only arguable claim petitioners would have is that they enjoyed a "property" interest, although that claim is unavailing. Under well settled law, property interests are created by state law, and petitioners have not, nor could they, allege in their Petition for Special Hearing that they enjoy a state created entitlement or benefit (such as a job with tenure or government provided welfare benefits) entitled to protection under the due process clause of either the federal or state constitutions.

## **II. PETITIONERS' STANDING**

In its opposition to the Motion to Dismiss, the petitioners have presented a thorough and convincing history of the generous latitude accorded litigants in administrative and zoning

matters. Under Maryland law, an agency's long-term and consistent interpretation of a statute (in this case BCZR 500.7), is entitled to deference. *Ideal Fed. Savings Bank v. Murphy*, 339 Md. 446, 461 (1995). In this regard, it certainly appears as if the Holly Neck Conservation Association would qualify as an "interested person" (in the words of BCZR §500.7) sufficient to confer standing on that community association, as has been done in numerous other zoning matters in this forum and in the courts of this state.

Unfortunately for petitioners however, this conclusion provides no solace, since they would enjoy standing to raise any and all issues with respect to the proposed development at Holly Neck, other than the residential density issue resolved in the director's April 28, 2004 approval. As noted earlier, the remedy providing an appeal to the board of appeals has been held to be both primary and exclusive. *Holiday*, 379 Md. at 202-03. If petitioners sought to challenge the director's approval with respect to the residential density issue, it was incumbent upon them to initiate and exhaust their remedies before the board of appeals and circuit court.

In its opposition, the petitioners contend that the doctrine of estoppel is inapplicable to chartered counties such as Baltimore County. Petitioner is correct, although it has misconstrued the application of that doctrine. Since *Gontrum*, the law is clear that a municipality is not bound by the unauthorized or wrongful acts of its employees. That, however, is not at issue in the case at bar. On the record before me, Baltimore County has not denied the propriety or lawfulness of the director's April 28, 2004 approval letter, and no one is seeking to estop the County from making such an assertion. Rather, in the scenario at hand, the respondents are seeking to apply the estoppel doctrine against the community association, and as such, *Gontrum* and its progeny, including the cases cited by petitioners, are inapposite.

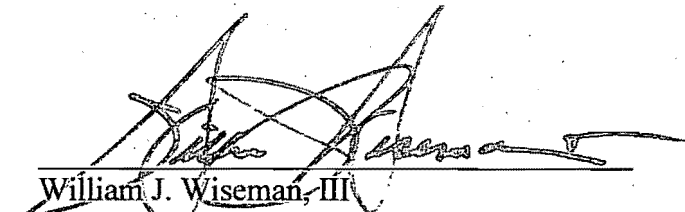
While I am not unmindful of the cogent arguments petitioners present regarding the community's ability to participate in the development process, I am constrained to follow and

enforce the law as it exists. Although it would benefit all involved if the rules and regulations pertaining to the development process were simplified and made more transparent, that is a legislative function beyond my purview.

Based upon Counsel's arguments, legal memoranda and evidence presented, and an examination of State and County statutes, regulations and applicable case law, I find that Respondents' Motion to Dismiss shall be granted thereby dismissing the Petitioners request for a re-determination of the allowable density on the subject property.

THEREFORE, IT IS ORDERED, by the Zoning Commissioner for Baltimore County this 7<sup>th</sup> day of July, 2005, that the Petition for Special Hearing filed in this matter requesting that a determination be made as to whether the owner/developer of the subject property is correct in calculating the allowable density permitted on the subject site, be and is hereby DISMISSED.

Any appeal of this decision must be entered within thirty (30) days of the date hereof.

  
William J. Wiseman, III  
Zoning Commissioner  
for Baltimore County

WJW:bjs

## Zoning Commissioner

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



7/7  
Baltimore County

James T. Smith, Jr., County Executive  
William J. Wiseman III, Zoning Commissioner

July 7, 2005

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

Re: Petition for Special Hearing  
Case No. 05-526-SPH  
Preserve at Holly Neck

Dear Mr. Holzer:

Enclosed please find the Pre-Hearing Decision rendered on the Motion to Dismiss filed in the above-captioned case. The Petition for Special Hearing has been dismissed in accordance with the enclosed Memorandum and Order.

In the event the decision rendered is unacceptable to you, the Community Association or named individuals, please be advised that they or anyone of them may file an appeal within thirty (30) days from the date of Order to the Department of Permits and Development Management.

If you require additional information concerning filing an appeal, please feel free to contact our Appeals Clerk at (410) 887-3391.

Very truly yours,

A handwritten signature in black ink, appearing to read "WJW", written over a circular stamp or seal.

William J. Wiseman III  
Zoning Commissioner

WJW:dlm

Enclosure

cc: Mr. and Mrs. Ronald Belbot  
Mr. and Mrs. Michael E. Dalton  
Mr. and Mrs. Joseph T. Byrnes  
Mr. and Mrs. Chester Stefanowicz, Jr.  
Ms. Ethel L. Webster  
Mr. and Mrs. John Filar  
Mr. and Mrs. James Mitchell  
Mr. and Mrs. John Rybczynski  
Mr. Leonard P. Bergerund  
Robert W. Cannon, Esquire

Visit the County's Website at [www.baltimorecountyonline.info](http://www.baltimorecountyonline.info)



J. Carroll Holzer, Esquire  
July 7, 2005  
Page 2

Mr. Robert Romadka  
D.S. Thaler, P.E.  
Mr. Jeff Ott  
Ms. Catherine T. Travis  
Mr. Jack U. Mowell  
Ms. Jackie Nickel  
Mr. Carl Maynard  
Ms. Dana Edmond  
Lawrence E. Schmidt, Esquire  
✓ Peter Max Zimmerman, Office of People's Counsel

## Zoning Commissioner

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



## Baltimore County

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William J. Wiseman III, Zoning Commissioner

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Zoning Commissioner

WJW:dlm

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Robert W. Cannon, Esquire

Visit the County's Website at [www.baltimorecountyonline.info](http://www.baltimorecountyonline.info)



CBCA Service PROP-OFF



# Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at Holly Neck Rd.  
which is presently zoned RC-5; RC-20; BC; BMB  
(See attached Plan)

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 and 500.6.

(See Supplemental Sheet)

The following language should be used for advertising purposes only:

*"Petitioners request the Zoning Commissioner to determine whether the owner/developer of the subject property is correct in calculating the allowable density permitted on the subject site."*

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.

(See Petitioners List attached)

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:

N/A  
Name - Type or Print

Signature

Address Telephone No.

City State Zip Code

Attorney For Petitioner:

[Signature]  
Name - Type or Print City

Signature

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

City State Zip Code

410-825-6961  
Telephone No.

Legal Owner(s): Petitioners are Not Legal Owners - See List

Holly Neck Limited Partnership, LLP  
Name - Type or Print

Signature

Name - Type or Print

Signature C/O Robert W. Cannon, Resident Agent  
~~10100 Coastal Highway~~ 100 S. Charles St., 15<sup>th</sup> Floor  
Address Ocean City MD 3184 Balto, MD 21201  
City State Zip Code 410-332-8816

Representative to be Contacted:

J. Carroll Holzer, ESQ.  
Name  
508 Fairmount Ave. 410-825-6961  
Address Telephone No.  
TOWSON, MD 21286  
City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING \_\_\_\_\_

UNAVAILABLE FOR HEARING \_\_\_\_\_

Case No. 05-526-SPH

Reviewed By JNP per WCR Date 4/14/05  
PROP-OFF

**Pursuant to the Baltimore County Zoning Regulation, §500.6 and §500.7, Petitioners, Holly Neck Conservation, Inc. and named individuals, raise the following questions for the Zoning Commissioner's determination pursuant to this Special Hearing request:**

In the proposed Development Plan for the subject site, designated on the attached Petition for Special Hearing, the Developer has calculated the density permitted on the site, which calculation was apparently approved by the Director of Permits and Development Management. The Developer's calculations showed a total acreage on three (3) parcels of 152.7 acres with 45 existing dwellings claimed to be on the property. The Developer assumed an allowance for the existing 45 houses, allocating one acre for each of the 45 houses leaving 107.7 acres. The Developer applied the RC 5 density (.667 per acre) to the 107.7 acres equally which equals 71 permitted houses. They added the 71 to the original allowance of 45 for a total of 116 residential dwelling units.

The Petitioners herein take exception to that methodology of calculation and believe that it exceeds the permitted density on the site as follows: applying RC 5 density to the entire acreage yields only 101 density units for the site ( $152.7 \times .667 = 101$ ).

Petitioners, in addition, believe that the Developer has suggested there are 20.4 acres of tidal wetlands on the property that cannot be built on (being under water at high tide). Petitioners believe that although RC 5 does not require the subtraction of non-buildable areas before the density calculation, in fact, the unbuildable areas represent 13.3% of the land and has a significant impact. If the wetlands were subtracted from the acreage, the density would be 88 units ( $152.7 - 20.4 = 132.2 \times .667 = 88$  density units).

Petitioners submit that the 100 foot buffer along the shoreline that cannot be built on due to the Chesapeake Bay Critical Area Legislation further reduces the buildable land by approximately 15 acres. Petitioners believe that the intent of the Chesapeake Bay Critical Area



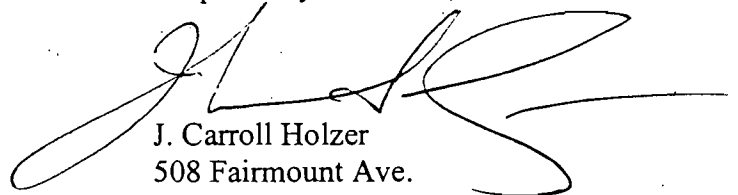
law was to protect the land around the bay from over-development and that it does not follow that a computation methodology which would allow more than the normal maximum density should be granted for a development within the Chesapeake Bay Critical Area.

The Developer's Concept Plan was submitted with 110 Units which exceeds what Petitioners believe is the appropriate density calculation for the site. Petitioners also submit that in reviewing the Concept Plan, problems that are created by the excessive density include:

(a) the individual homes are placed as close as 25 feet from the roadway. These are large (approximately 4,500 square foot homes). The required 40 foot right-of-way means the right-of-way will be 14 feet from the front doors of the houses. Further, there is not sufficient room to install turnarounds in several of the courts so there will be potentially limited access for firefighting equipment or trash collection. Further, the normal separation that will be required for incompatible building types is being ignored; also very large individual homes are placed directly against smaller individual homes and multi-unit row homes are intermingled therein.

The Petitioners request that the Zoning Commissioner determine the correct methodology for density calculation of the Petitioners site plan to determine compliance with the Baltimore County Zoning Regulations.

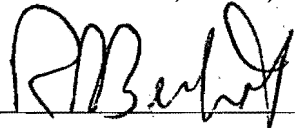
Respectfully submitted,



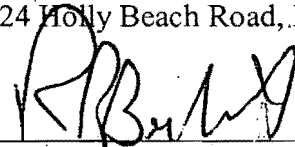
J. Carroll Holzer  
508 Fairmount Ave.  
Towson, MD 21286  
410-825-6961  
Attorney for Petitioners


**PETITIONERS' SIGNATURE SHEET**  
**SPECIAL HEARING**  
**FOR HOLLY NECK PROPERTY**  
**BY HOLLY NECK CONSERVATION, INC.**  
**AND NAMED INDIVIDUALS**

Holly Neck Conservation Association, Inc.  
Mr. Ronald Belbot, President  
P.O. Box 16666, Essex, Maryland 21221

  
\_\_\_\_\_


Ronald P. Belbot, Individually  
Catherine A. Belbot, Individually  
2624 Holly Beach Road, Essex, Maryland 21221

  
\_\_\_\_\_

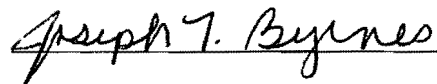
  
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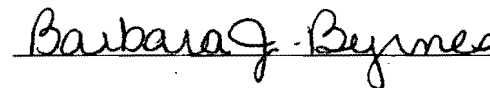
Michael E. Dalton, Individually  
Marsha A. Dalton, Individually  
2733 Holly Beach Road, Essex, Maryland 21221

  
\_\_\_\_\_

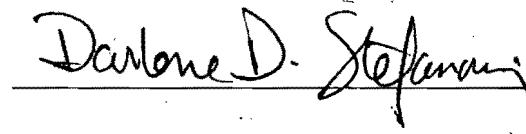
  
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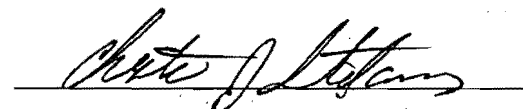
Joseph T. Byrnes, Individually  
Barbara J. Byrnes  
2731 Holly Beach Road, Essex, Maryland 21221

  
\_\_\_\_\_

  
\_\_\_\_\_

Chester J. Stefanowicz, Jr., Individually  
Darlene D. Stefanowicz, Individually  
2729 Holly Beach Road, Essex, Maryland 21221

  
\_\_\_\_\_

  
\_\_\_\_\_

Ethel L. Webster, Individually  
2622 Holly Beach Road, Essex, Maryland 21221

Ethel L. Webster

John A. Filar, Individually  
Kathleen A. Filar, Individually  
2626 Holly Beach Road, Essex, Maryland 21221

John A. Filar

Kathleen A. Filar

James Mitchell, Individually  
Catherine Mitchell  
1241 Engleberth Road, Baltimore, Maryland 21221

James Mitchell

Catherine M. Mitchell

John Rybczynski, Individually  
Irma Rybczynski, Individually  
1138 Fantat Road, Baltimore, Maryland 21221

John Rybczynski

Irma Rybczynski

RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
Holly Neck Road; N & S Holly Neck Road,		
1,400' NE Fantat Road	*	ZONING COMMISSIONER
15 <sup>th</sup> Election & 6 <sup>th</sup> Councilmanic Districts		
Legal Owner(s): Holly Neck Limited	*	FOR
Partnership, LLP c/o Robert Cannon,		
Resident Agent	*	BALTIMORE COUNTY
Petitioner(s)	*	05-526-SPH

\* \* \* \* \*

**ENTRY OF APPEARANCE**

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

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

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

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 25<sup>th</sup> day of April, 2005, a copy of the foregoing Entry of Appearance was mailed to J. Carroll Holzer, Esquire, Holzer & Lee, 508 Fairmount Avenue, Towson, MD 21286, Attorney for Petitioner(s).

RECEIVED  
APR 25 2005  
Per. Ken.....

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

Need Planning Bd minutes  
Holly Neck Preserve  
05526-SPH

**Advance Tentative Agenda\***  
**Thursday, July 7, 2005**  
**MEETING**  
**beginning at 4:00 p.m.,**  
**Room 407, County Courts Building**  
**401 Bosley Avenue**  
**(enter from the Courthouse Plaza)**  
**Towson, Maryland**

\*\*\*\*\*

**Meeting**  
**of the**  
**Baltimore County Planning Board**  
**Frank O. Heintz, Chairman**

**Call to order, introduction of Board members, pledge of allegiance to the Flag, and announcements**

**Review of today's Agenda Items for initial or continued discussion**

**Minutes of the June 16, 2005 meeting**

**Items for initial or continued discussion**

- \*\* 1. Modification of a Planned Unit Development – Commercial (PUD-C) plan – “The Lakes at Stansbury Shores” – N/S Peninsula Expressway and S/S Stansbury Road opposite Cove Road, Council District 7: Presentation by staff and the developer’s representative, and possible comments by the community
2. Water and Sewer Plan – Amendment Cycle 23: Introductory presentation by Public Works staff and scheduling of the Public Hearing for July 21, 2005 at 5 p.m.

**Items for continued discussion and vote**

3. Chesapeake Bay Critical Area Growth Allocation – “The Preserve at Holly Neck”- Sixth Council District, near the intersection of Holly Neck Road and Browns Cove Road – Request for a reclassification of approximately 95.3 acres from Resource Conservation Area (RCA) to Intensely Developed Area

**Other business**

- 4. Status report on legislative actions by the County Council

**Adjournment of the Board meeting**

\*\*\*\*\*

- \* This Advance Tentative Agenda, published June 30, 2005, is subject to review and modifications at the meeting. A copy of the agenda, the previous minutes, and some of the enclosures, if any, are sent to the Towson library or are available on-line at [www.co.ba.md.us](http://www.co.ba.md.us) under the Office of Planning and its advisory boards or at [www.baltimorecountyonline.info/go/planning](http://www.baltimorecountyonline.info/go/planning).
- \*\* For each Agenda item marked with a double asterisk, there is a separate sign up sheet, posted in the hallway outside the meeting room, on which citizens may register to address the Planning Board (for themselves or as representatives of organizations or clients). The Chairman will announce the point(s) during the Board's deliberations (generally, after the presentation by the County staff and/or the applicant), at which this testimony will be received. The specific rules of procedure for the testimony are also posted in the hallway.

It is requested that individuals giving presentations to the Planning Board make every effort to present visual materials i.e. maps, plans, etc. using a digital format such as power point. Please contact Caren B. Hoffberger at 410-887-3495 **at least 48 hours in advance**. Rendered site plans must be mounted and GIS aerials must be mounted or easily visible on an overhead projector. All of the above items and a copy of the digital materials must be given to the Chief of Development Review, Lynn Lanham at 410-887-3480 **no later than 48 hours in advance**.

If, because of a disability, you need a reasonable accommodation such as service or aid to participate in this event, please call the Office of Planning at 410-887-3495 or via TTY, at 1-800-735-2258 or 711, at least two working days before the event.

**From:** Barbara Weaver  
**To:** Adams, Edward; Barrett, Bob; Beegle, Ann; Bianco, Kathleen; Canter, Phil; Counsel, People's; Ferguson, Meg; Fischer, Claudia; Gardina, Vincent; Hairston, Joe; Harvey, Mary; Iler, Tom; Jameson, Roberta; Kamenetz, Kevin; Katzenberger, Rose; Keller, Pat; Knatz, Bobby; Kotroco, Timothy; Lanham, Lynn; Long, Jeff; MacMillan, Jackie; Marchione, Anthony; Mayhew, Jeff; Mohler, Don; Murphy, John; Oliver, Ken; Olszewski, Sr., John; Outen, Donald; Pash, Barbara; Popelarski, Catherine (Kitty); Principe, Frank; Rowe, Brian; Schlabach, Kathy; Seibert, Derek; Shah, Ghassan; Thomas, David; Van Arsdale, Andrea; Wiseman, Bill  
**Date:** 07/14/2005 9:17 AM  
**Subject:** Planning Board Meeting and Public Hearing on July 21, 2005, 4 p.m.

The next regularly scheduled meeting of the Planning Board is Thursday, July 21, 2005 at 4 p.m. For your information, attached are copies of the Agenda and the Minutes of the last Planning Board Meeting, July 7, 2005. Please let us know if you have any questions.

Barbara  
Barbara J. Weaver  
Office of Planning  
410-887-3495

**CC:** Hoffberger, Caren; Murray, Curtis

**Advance Tentative Agenda\***  
**Thursday, July 21, 2005**  
**MEETING**  
 beginning at 4:00 p.m.,  
 and  
**HEARING**  
 beginning at 5:00 p.m.,  
**Room 407, County Courts Building**  
**401 Bosley Avenue**  
**(enter from the Courthouse Plaza)**  
**Towson, Maryland**

\*\*\*\*\*

**Meeting**  
**of the**  
**Baltimore County Planning Board**  
**Frank O. Heintz, Chairman**

**Call to order, introduction of Board members, pledge of allegiance to the Flag, and announcements**

**Review of today's Agenda**

**Minutes of the July 7, 2005 meeting**

**Items for initial discussion**

- \*\*1. Neighborhood Traffic Management Program – Report on the successes and challenges of traffic calming techniques: Presentation by Public Works staff and the Chief of the Bureau of Traffic Engineering and Transportation Planning, Darrell A. Wiles

**Items for discussion and vote**

- 2. Modification of a Planned Unit Development – Commercial (PUD-C) plan – “The Lakes at Stansbury Shores” – N/S Peninsula Expressway and S/S Stansbury Road opposite Cove Road, Council District 7: Presentation by staff and the developer’s representative, and possible comments by the community



**Other business**

- 3. Status report on legislative actions by the County Council
- 4. Report from the Landmarks Preservation Commission

**Adjournment of the Board meeting**

\*\*\*\*\*

**Public Hearing\*\*\***  
**by the**  
**Baltimore County Planning Board**  
**Frank O. Heintz, Chairman**

**Call to order, introduction of Board members, and remarks on procedures by Chairman**

*Water and Sewerage Plan – Amendment Cycle 23: Presentation by Public Works staff, Mr. Dave Thomas, Assistant to the Director (Vote will occur in September, 2005)*

**\*\* Comments by citizens**

\*\*\*\*\*

\* This Tentative Agenda, published July 14, 2005, is subject to review and modifications at the meeting. A copy of the agenda and some of the enclosures, if any, are sent to the Towson library or are available on-line at [www.co.ba.md.us](http://www.co.ba.md.us) under the Office of Planning and its advisory boards.

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\*\*\* As advertised, the Public Hearing will begin at 5:00 p.m.

If, because of a disability, you need a reasonable accommodation such as service or aid to

participate in this event, please call the Office of Planning at 410-887-3495 or via TTY, at 1-800-735-2258 or 711, at least two working days before the event.

Draft 7/13/05

**MINUTES**  
**Baltimore County Planning Board**  
**July 7, 2005**

**Contents**

**Call to order, introduction of Board members, pledge of allegiance to the Flag, and announcements**

**Review of today's Agenda**

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**Items for initial or continued discussion**

1. Modification of a Planned Unit Development – Commercial (PUD-C) plan – “The Lakes at Stansbury Shores” – N/S Peninsula Expressway and S/S Stansbury Road opposite Cove Road, Council District 7: Presentation by staff and the developer’s representative, and possible comments by the community
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**Items for continued discussion and vote**

3. Chesapeake Bay Critical Area Growth Allocation – “The Preserve at Holly Neck”- Sixth Council District, near the intersection of Holly Neck Road and Browns Cove Road – Request for a reclassification of approximately 95.3 acres from Resource Conservation Area (RCA) to Intensely Developed Area

**Other business**

4. Status report on legislative actions by the County Council including:  
**Resolution 80-05 Recreational Vehicles – parking and storage**

**Adjournment of the Board meeting**

*Appendices*

- Appendix A** Revised Agenda
- Appendix B** Approved Minutes of the June 16, 2005 meeting
- Appendix C** "The Lakes at Stansbury Shores" – Revised PUD-C Plan:  
Request for modification
- Appendix D** Briefing on Water and Sewerage Master Plan and CD for  
Water and Sewer Amendment 23
- Appendix E** "The Preserve at Holly Neck" – Concept Plan, Pattern  
Book, Growth Allocation Request, Growth Allocation  
Review Committee Report
- Appendix F** Status report on County Council legislative actions –  
Resolution 80-05 Recreational Vehicles – parking and  
storage, Open Deck (Open Porches/Open Patio) Variance  
and Existing Small Lot and Infill – Clean up of Zoning  
Regulations and Small Lot Table

*Minutes*  
July 7, 2005

Call to order, introduction of Board members, pledge of allegiance to the Flag, and announcements

Chair, Frank O. Heintz, called the regularly scheduled meeting of the Baltimore County Planning Board to order at 4:00 p.m. The following Board members were:

Present

Mr. Randall Cogar  
Mr. Aaron E. Dock, Sr.  
Ms. Dorothy Foos  
Mr. Paul G. Miller  
Mr. Edward A. St. John  
Mr. Robert J. Palmer  
Mr. H. Edward Parker  
Mr. Ellwood A. Sinsky  
Dr. Robert Gregory  
Mr. Gordon K. Harden, Jr.  
Mr. Dennis P. Hoover  
Mr. Wayne C. McGinnis

Not Present

Mr. R. Craig Witzke, Jr.

County staff present included Arnold F. 'Pat' Keller, III (Secretary to the Board), Jeffrey Mayhew, Caren B. Hoffberger, Curtis Murray, Barbara Weaver, Lynn Lanham, Amanda Conn, Assistant County Attorney, Pat Farr, Manager, Environmental Impact Review, Department of Environmental Protection and Resource Management (DEPRM)

Review of today's Agenda

Mr. Heintz acknowledged that several last minute items regarding "The Preserve at Holly Neck" and the Growth Allocation matter had come to the staff. They were delivered as quickly as possible to members via e-mail and fax and, hopefully, all the members had time to read and digest the information. On another matter, the Chairman asked everyone to fill out a ballot in the packet regarding possible dates for a retreat sometime in the fall of 2005.

There was a minor change to the published Tentative Advance Agenda. Under Item 4 – Status report on legislative actions by the County Council, the staff added Resolution 80-05 Recreational Vehicles – parking and storage as a separate and distinct item. A Revised Agenda with this addition was placed in the Planning Board members' notebooks the day of the meeting, and is filed as Appendix A.

Minutes of the June 16, 2005 meeting

Mr. Cogar moved the acceptance of the draft minutes as mailed. The motion was seconded by Mr. Parker and passed by acclamation. Absent were Mr. Witzke and Mr. St. John. The approved minutes are filed as Appendix B.

Items for initial discussion

1. Modification of a Planned Unit Development – Commercial (PUD-C) plan – “The Lakes at Stansbury Shores” – N/S Peninsula Expressway and S/S Stansbury Road opposite Cove Road, Council District 7: Presentation by staff and the developer’s representative, and possible comments by the community

Mr. Heintz explained that, although the Board has reviewed this matter twice before, the number of slips remained an “open” matter. He called on Ms. Lanham, Chief of Development Review for the Office of Planning, to give an overview of tonight’s revision.

Ms. Lanham reviewed the facts regarding the proposed development, a Planned Unit Development – Commercial (PUD-C) consists of 149 total residential units with 79 single family detached, 56 multi-family condominium units and 14 multi-family duplex units with a Community Pier for use and ownership exclusively by the homeowner’s within this development. In June 2004 the plan came to the Board with 50 slips and the members approved that plan. Then, as the developer proceeded through the process, the State Critical Area Commission told them that they could only have 14 slips with a Community Pier. So, when the developer came before the Board again in May 2005 for a Variation of Standards approval, the plan then had to change to only the 14 slips. Now, the developer is asking the Board to approve 72 slips with 36 corresponding parking spaces.

Mr. Dino LaFiandra, attorney for the developer, explained the details behind this latest modification to the plan. Since May 2005, the developer has had the opportunity to meet with the State Critical Area Commission and the Commission advised them that if they made the Community Pier a Commercial Marina they could have as many slips as were environmentally feasible. With that in mind, the developer is here today to request no more than 72 slips along with the required 36 parking spaces (1 space for every 2 slips). However, the developer never did nor do they now intend to allow anyone other than homeowners in this project to own or utilize any of the slips. Therefore, they would like to proffer the concept of restrictions/covenants that would either be written on the development plan, final development plan, record plat and/or recorded with the deed or any combination thereof.

Mr. LaFiandra mentioned one final point. There is submerged aquatic vegetation

(SAV) and since its location is still not all mapped out and because these areas require protection, this could affect the ultimate number of slips and the configuration of the slips. Therefore, Mr. LaFiandra respectfully requested that the Board vote to approve the slips so as not to exceed 72, and the exact number of slips and the design are subject to the approval of the Department of Environmental Protection and Resource Management (DEPRM).

Board members asked a few clarifying questions of staff and the developer's attorney and then Mr. Art Cox of Anchor Bay East Marina, testified in favor of the project and the associated proposed Marina.

Mr. Heintz thanked everyone for their participation and reminded the Board that the vote and any corresponding restrictions/covenants will be worked out at the next meeting on July 21, 2005.

The Revised PUD-C Plan for the Lakes at Stansbury Shores is filed as Appendix C.

2. Water and Sewer Plan – Amendment Cycle 23: Introductory presentation by Public Works staff and scheduling of the Public Hearing for July 21, 2005 at 5 p.m.

Mr. David L. Thomas, Assistant to the Director, for the Department of Public Works, came before the Board to introduce the Water and Sewerage Plan Amendment Cycle 23 which he provided to the members on CD. He also mentioned that it would be available on the Planning Board web-site within a few days. Annually property owners may petition the County to request an amendment in the plan to change the water and/or sewer designation for their property, thus, for example, allowing a property to be developed with public water and sewer service. Mr. Thomas explained that the State of Maryland requires each jurisdiction to have a Master Water and Sewer Plan.

Under the authority of the Executive Order issued on April 11, 1990, the Director of the Department of Public Works must review reports transmitted to him by the Office of Planning and the Department of Environmental Protection and Resource Management and, in turn, submit a report to the Planning Board with the recommendations of the Department of Public Works. In compliance with that order, nineteen petitions to amend the Water and Sewerage Plan (designated Amendment Cycle 23) have been carefully reviewed by the staff of the three agencies, and the recommendations are now before the Board for review, and a public hearing on July 21, 2005 and vote during the month of September 2005.

Mr. Thomas called to the Board members' attention the fact that he has also supplied them with a briefing of this cycle as well as the last few cycles. In this cycle there are some items that can be grouped together. As an example, the 6 items in Council District 6 which fall under the Middle River-Bird River Area Plan have requested to receive the new designation of W-3, S-3 - Capital Facilities eligible. The State has

just issued its approval for the Middle River-Bird River Plan and that was after the May 1, 2005 petition deadline. These items as part of the plan are now officially approved for W-3, S-3 and require no further action by the Planning Board.

The Briefing on The Water and Sewerage Plan Amendments and the CD for Amendment Cycle 23 are filed as Appendix D.

Items for continued discussion and vote

3. Chesapeake Bay Critical Area Growth Allocation – “The Preserve at Holly Neck”- Sixth Council District, near the intersection of Holly Neck Road and Browns Cove Road – Request for a reclassification of approximately 95.3 acres from Resource Conservation Area (RCA) to Intensely Developed Area

Mr. Heintz reviewed with the Board members the fact that this is the third time that they have had “The Preserve at Holly Neck” come before them, first with a detailed presentation overview, then with the Public Hearing, and now the discussion and decision making process. In between, the Board has had voluminous materials to review including items coming as late as this very day. Staff faxed and e-mailed and asked some members to arrive early to have adequate time to taken in all the facts.

The zoning/density matter was brought to the Zoning Commissioner and his order was just available late this afternoon. Mr. Heintz asked Amanda Conn, Assistant County Attorney, to explain the Zoning Commissioner’s finding. Ms. Conn explained that Mr. William J. Wiseman, III, as Zoning Commissioner, felt that Mr. Timothy Kotroco’s, Director of Permits and Development Management (PDM), letter stating that 110 dwelling units was the correct density calculation, was an “operative event,” and therefore under the State’s Express Powers Act the community then had 30 days from the date of Mr. Kotroco’s letter to appeal his decision to the Board of Appeals. The community did not appeal within 30 days thus there is nothing the Zoning Commissioner can do on this issue.

Mr. Heintz clarified once again this afternoon that the Board’s focus is on resource conservation and environmental protection. Ms. Conn concurred.

Mr. Miller asked several questions and among them he asked Ms. Pat Farr, Manager, Environmental Impact Review, Department of Environmental Protection and Resource Management (DEPRM), whether the Growth Allocation Review Committee (GARC) Item #14 should say “will” instead of “may?” and instead of “changes,” “significant changes?” Ms. Farr responded that she would have no problem with either wording. Ms. Farr went on to explain, in response to Mr. Miller and other members’ questions, that the overarching goal of the plan is that as a whole it should be balanced and integrated. Maximum forested areas should be connected, plantings should be in large numbers, the location of units should be and are such that they have the least environmental impact, the clustering is used to minimize the footprints on



the land, piers with no slips will minimize adverse in-water impacts, a path system next to the water will clearly separate the developed area from the buffer, and plantings will increase the forest interior bird habitat.

Dr. Gregory moved the acceptance of the GARC committee's approval of the Growth Allocation along with the 14 recommendations. Mr. Cogar seconded the motion.

Mr. Miller moved to amend Dr. Gregory's motion to change Item #14 to say "will" rather than "may" and "significant changes" rather than just "changes." Mr. Palmer seconded the amended motion. The amendment was passed with Messrs. Hoover, Cogar, Heintz, Dock, Miller, McGinnis, Sinsky, and Palmer casting favorable votes, Ms. Foos and Messrs. St. John, Gregory, Harden and Parker against. Thus the amendment carried. Absent was Mr. Witzke.

The main motion as amended was passed by acclamation. Absent was Mr. Witzke.

**BE IT MOVED THAT,** The Planning Board recommends approval of the Growth Allocation for the Preserve at Holly Neck project, with the following conditions as recommended by the Growth Allocation Review Committee with two changes to item #14:

1. Out of the approximately 152.8 acres that encompass the site, a maximum of 96 acres of Growth Allocation conversion from RCA to IDA shall be reserved for the Preserve at Holly Neck project. The IDA designation is necessary to permit clustering of dwelling units on the site. The portion of the property south of Holly Neck Road and west of Browns Cove Road shall remain RCA; except for a strip of land no more than 100 feet wide along Holly Neck Road, between Browns Cove Road and Engleberth Road. The final Growth Allocation acreage shall be determined by DEPRM at the time of record plat review.
2. No more than 110 dwelling units shall be constructed on the Preserve at Holly Neck Property in association with this Growth Allocation request, including 98 villas and 12 single family dwellings.
3. Development of the property shall generally conform to the "Growth Allocation Request Plan: Site Proposal Map" dated April 8, 2005; and to information contained in both the Growth Allocation Request document dated April 8, 2005, and the Pattern Book dated March 2005. However, it is recognized that the referenced Site Proposal Map and documents are conceptual, and that variations will occur as the project proceeds through the County's development process.
4. Development of the property shall meet all Chesapeake Bay Critical Area IDA requirements outlined in the Baltimore County Code and COMAR 27.01.02.03.
5. The Growth Allocation is contingent upon approval of a Chesapeake Bay Critical

Area variance for proposed buffer and setback impacts on the property, in accordance with Natural Resources Article § 8-1808(d), COMAR 27.01.11 and Critical Area variance provisions in the Baltimore County Code.

6. All mitigation shown on the plan entitled "Mitigation Plan: Overall Site Area" shall be implemented by the developer within a timeframe established by DEPRM. A final mitigation plan shall be submitted to DEPRM for review and approval prior to any grading plan approval for the site. Any changes to the mitigation plan will require prior written permission from DEPRM. At the discretion of DEPRM, the three-year monitoring requirement for mitigation plantings may be extended up to an additional two years to ensure establishment of a functioning forest or buffer.
7. All wetlands, buffers, forests, Habitat Protection Areas, and mitigation planting areas shall be protected via a perpetual Critical Area Easement. This easement shall be shown on the record plat for the project, and recorded in the Land Records of Baltimore County along with an associated Declaration of Protective Covenants. The developer may request that a portion of the protected areas be dedicated in fee to the County as a Critical Area Reservation, subject to the approval of DEPRM.
8. The developer shall install permanent monuments and non-disturbance or educational signs along the limits of the Critical Area Easements and Critical Area Reservations on the property within a timeframe determined by DEPRM. Prospective residents of the Preserve at Holly Neck shall be notified in writing by the developer about the presence and purpose of these monuments and signs, and that they must not be removed. Locations of the monuments and signs shall be shown on the final mitigation plan. DEPRM may require reference to the signs and monuments within the Critical Area Easement Declaration of Protective Covenants.
9. The proposed community piers shall comply with all Chesapeake Bay Critical Area water-dependent facility requirements, as determined by DEPRM. The piers shall contain no slips and shall provide no overnight docking. Signs shall be clearly posted that limit temporary boat tie-ups to the ends of the piers. Use of piers, and access paths to the piers, shall be limited to residents of the Preserve at Holly Neck and their guests.
10. The proposed pedestrian walkway (excluding pier access paths) shall connect development pods within the property, and shall provide an interconnection between the proposed development and the existing community. The applicant shall submit the conceptual walkway design, layout, and cross-section to the Growth Allocation Review Committee for approval prior to submittal of the Development Plan. Prior to grading plan approval, the final walkway location; including walkways to the proposed piers; shall be flagged in the field by the

applicant, and approved by DEPRM.

11. Maintenance of the community piers, pedestrian walkways, and revetment shall be the responsibility of the Preserve at Holly Neck residents or their Homeowners Association. The developer shall notify prospective residents of the development in writing about this responsibility.
12. Any proposed Homeowners Association Covenants shall be provided to DEPRM for review and approval by all agencies on the Growth Allocation Review Committee prior to the issuance of any building permits.
13. Pursuant to Section 32-9-109 of the Code, the Hearing Officer shall condition any approval the Development Plan upon receipt of Growth Allocation approval by both the Baltimore County Council and the State Critical Area Commission.
14. Any proposed significant changes to the site layout or proposed site uses will require written permission from one or more agencies on the Growth Allocation Review Committee, at the discretion of DEPRM. Any proposed changes to the Growth Allocation acreage or location of the IDA or RCA on the property may require approval from the State Critical Area Commission.

The following documents relating to "The Preserve at Holly Neck" are filed as Appendix E: Concept Plan, Growth Allocation Request, Growth Allocation Review Committee Report and Pattern Book.

#### Other business

4. Status report on legislative actions by the County Council including: Resolution 80-05 Recreational Vehicles – parking and storage

Mr. Keller summarized legislative actions of interest to the Planning Board. In particular, he highlighted:

- Two items generated by the Office of Planning and Permits and Development Management (PDM). These two items were sent over to the County Council to review and if they were satisfied with them, we had asked that they send them back for the Planning Board to review and work on the Comprehensive Manual of Development Policies (CMDP) portion and any other additions. They were so pleased with both issues (Open Deck Variances and Existing and Infill Small Lots) that they were willing to draft the legislation immediately and bring it up as an item for the August 1, 2005 County Council Public Hearing. These two items are: (1) Streamlining the process for – Open Decks/Open Porches/Open Patios Variances. As Mr. Keller explained, approximately 25% of all variances reviewed by the Office of Planning, Permits and Development Management and the Hearing Officer, involve open deck (open porch/open patio) variances. In

brief, the recommendation is to revise the Comprehensive Manual of Development Policies (CMDP) to accommodate a minimum 10-foot rear yard open deck (open porch/open patio) instead of the smaller 7-foot open deck. (2) Clean up Existing Infill and Small Lots. Mr. Keller noted some inconsistencies and conflicts regarding side yard setbacks as one example. These matters required updating of the Small Lot Table in the Baltimore County Zoning Regulations.

- Resolution 80-05 – Councilman Vincent J. Gardina, July 5, 2005. Mr. Keller advised that the County Council requested that the Planning Board review the provisions of the Baltimore County Zoning Regulations and the Baltimore County Code relating to the parking and storage of recreational vehicles on residential property and on residential streets and to recommend to the Council any amendments. A response is needed by October 3, 2005. To this end, Mr. Keller outlined that the Planning Office could meet with staff from Permits and Development Management, the Police and possibly Public Works as an in-house review then report the findings back to the Board.

Mr. Hoover moved that staff review the code and zoning regulations along with the other department staff members as Mr. Keller suggested and report back to the Board. The motion was seconded by Mr. Palmer and passed by acclamation. Absent was Mr. Witzke.

Memoranda on Open Deck (open porch/open patio) variances and Existing Small Lot and Infill – Clean up issues along with Resolution 80-05 Recreational Vehicles – parking and storage are filed as Appendix F.

#### Adjournment of the Board meeting

Mr. Hoover moved the adjournment of the Board meeting. The motion was seconded by Mr. Parker and passed by acclamation at 5:06 p.m. Absent was Mr. Witzke.

CBH

RML

## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (referred to hereinafter as the "Agreement") made this 13th day of March, 2006 by and between HOLLY NECK LIMITED PARTNERSHIP, LLLP, a Maryland limited liability limited partnership ("Owner") and CENTEX HOMES, a Nevada general partnership ("Builder"), (referred to collectively hereafter as the "Developers"), and HOLLY NECK CONSERVATION ASSOCIATION, INC. ("Conservation Association") and Ronald P. & Catherine Belbot, Michael & Marsha Dalton, Joseph & Barbara Byrnes, Chester & Darlene Stefanowicz, Ethel Webster, John & Kathleen Filar, James & Catherine Mitchell and John & Irma Rybczynski, individually ("Property Owners"), (referred to collectively hereafter as the "Community");

### RECITALS:

WHEREAS, the Developers are proposing the development of certain real property, approximately 152.7 acres in area, zoned RC5, located on the Holly Neck Peninsula in the Hawk Cove area of eastern Baltimore County, for residential development (as shown on the State Tax Map No.98 for Baltimore County, Maryland, Parcel Nos. 143,424 and 165 (Property Tax Account Nos. 15-1700005908, 15-1700005907, 15-1520000460) (the "Property"); and

WHEREAS, the Developers submitted a concept plan, pursuant to the Baltimore County Development Regulations contained in the Baltimore County Code, for residential development whereby the Property would be developed with a total of one hundred ten (110) dwelling units (villa style and single-family), said plan of development was submitted as the "Holly Neck Property Plan," a copy of which is attached hereto as Exhibit A, reviewed by the County and recommended for approval by the Growth Allocation Review Committee; and

WHEREAS, the Community, through their legal counsel, have expressed certain issues and/ or concerns with respect to, among other things, the density, design, layout and other features as proposed on the Holly Neck Property Plan as they may relate to the Community and the surrounding environment, and the parties negotiated to resolve the outstanding issues; and

WHEREAS, the Developers, for settlement purposes, revised the concept plan, for review by the Community whereby the Property would be developed with a total of one hundred one (101) dwelling units, Exhibit B, which was further modified and revised by redlining said plan to show where the two easternmost single-family units on Holly Beach Road will be relocated and two of the villa style units on the south side of Holly Neck Road will be relocated, Exhibit C, and created a mutually agreed upon version, indicating the agreed upon changes, but without redlines, Exhibit D, to be submitted to the Hearing Officer for Baltimore County (the "Development Plan"); and

NOW, THEREFORE, in consideration of the sum of One Dollar (\$1.00) and other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, the parties hereby covenant and agree as follows:

1. The above recitals form an integral part of this Agreement and are incorporated herein as if set forth again in their entirety.