IN RE: PETITION FOR SPECIAL HEARING West Side of Stonehurst Road, 218' South of c/l of Windemere Parkway **(3 Stonehurst Road)** 11th Election District 6th Council District Joseph A. Stepcich, et ux Petitioners	*	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY Case No. 06-419-SPH

* * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for Baltimore County for consideration of a Petition for Special Hearing filed by the owners of the subject property, Joseph A. Stepcich and his wife Joy Stepcich. The Petitioners are requesting confirmation that the zoning in place at the time of the original approval of a vested subdivision continues as the applicable zoning even if the zoning has subsequently changed. In other words, is a vested subdivision subject to the subdivision regulations and zoning in place at the time of the original approval of the subdivision.

Appearing at the requisite public hearing in support of the request were Arnold Jablon, Esq., with the law firm of Venable, LLP, on behalf of the Petitioners, and Brian Dietz, a registered land surveyor and Joseph Stepcich, the property owner. There were no Protestants or any other interested parties in attendance, however, it is to be noted that Nancy C. West, Assistant County Attorney, entered her appearance and filed a Memorandum of Law with this Zoning Commissioner, on April 14, 2006. Ms. West, on behalf of Baltimore County asserts that "the mere fact the Windemere subdivision plat was approved and recorded in 1970 has absolutely nothing to do with whether an owner of a lot in that subdivision is immunized against subsequent changes in zoning."

PETITIONER'S EXHIBIT 6

For the reasons set forth below, I respectfully disagree with the County's position, and find that a vested subdivision plat is governed by the development and zoning regulations in force at the time of its approval. This finding is of no comfort to Petitioners however, since what they seek is to re-subdivide their "lot of record," mandating compliance with the R.C. 6 zoning.

Testimony and evidence offered by the Petitioners revealed that they want to subdivide their 5+/- acre lot into two lots. The Petitioners reside at 3 Stonehurst Road, in Phoenix, Maryland, located between Dulaney Valley Road and Manor Road, off of Windemere Parkway. Their lot of record is part of the plat known as "Section III, Windemere". The plat was approved by the Baltimore County Planning Board on February 19, 1970 and subsequently recorded. The Petitioners purchased their lot in 1970, built a home thereon, and have lived there continuously since. The current zoning is R.C.6; the zoning in place at the time of the original approval of their subdivision was Rural Suburban Conservation (RSC). The RSC regulations existing in 1970 permitted a minimum lot size of one acre. If the RSC were to be applied, the Petitioners would be permitted to resubdivide their property; if the R.C.6 regulations apply, they cannot.

Relying on the RSC zoning designation, the Petitioners in or about 2002 began their efforts to gain county approval to divide their property into two lots. The Petitioners have been to the DRC, the Office of Planning, the Planning Board and the County Board of Appeals (CBA). They are now before the Zoning Commissioner. The issue here is not what subdivision regulations are applicable; the CBA has ruled that the subdivision regulations in effect in 1970 govern. The issue is what zoning is applicable; the Board apparently did not decide this issue.

The Office of Law argues that the current zoning is applicable; the Petitioners argue the RSC zone is applicable. As stated above, if the former, the Petitioners will not be able to do what they propose; if the latter, they will.

As the history of this case and the exhibits submitted will demonstrate, the Petitioners have received mixed messages from county agencies. The Department of Permits and Development Management agreed that the RSC zoning was applicable; the Office of Planning disagrees.

From the evidence presented at the hearing, the Office of Law's position as stated in its Memorandum is at best indecisive given the Office's own historic application of what constitutes vesting. Past opinions by County Attorney's as well as Letters of Advice, introduced into evidence, on this very point unequivocally conclude that a vested subdivision is protected from changes in zoning. (See Petitioner's Exhibits 19, 20 and 21) Historically and consistently, the County by statute has recognized that a subdivision or section or parcel of the subdivision is considered vested if a building permit has been issued or substantial construction on required public improvements or private improvements has occurred. Historically, and consistently prior to this Petitioners' request to resubdivide, as the weight of the evidence presented at this hearing confirms, the County concluded that a vested subdivision is governed by the subdivision regulations and the zoning in place at the time of the original approval of the subdivision. Moreover, in January, 2004, the Office of Planning sent out notices during the Comprehensive Zoning Map Process in which it stated in part:

> "Existing lots in recorded subdivisions would continue to be regulated by the zoning regulations that were in effect at the time the existing lot was created." (Petitioner's Exhibit 7)

The definition of "vesting" in Baltimore County has been consistently interpreted, from the statutes adopted by the County Council, to mean that a previously approved subdivision is governed not only by the subdivision regulations in effect at the time of the original approval but by the zoning then in place.

Even so, the past practices of County agencies, or opinions of former County Attorneys, are not dispositive of this issue, which presents a pure question of law. Indeed, Baltimore County (unlike a private entity) is not subject to estoppel, and is free to assert the invalidity of prior practices. *Town of Berwyn Heights v. Rogers* 228 Md. 271 (1962); *Lipsitz v. Parr,* 164 Md. 222 (1933).

In this regard, the Baltimore County Office of Law cites Baltimore County Code (B.C.C.) Section 32-4-104(b), which provides that "proposed development shall be in compliance with the present zoning classification on the property to be developed." Under B.C.C. Section 32-4-101(p), "development" is given an expansive meaning, including "the improvement of property for any purpose involving building." Given that Petitioners are clearly proposing to develop their lot (and in fact are subdividing their "lot of record"), it seems inescapable that the present R.C.6 zoning is applicable in this scenario.

Also pertinent (and perhaps dispositive) is Bill No. 24-06, recently adopted by the Baltimore County Council. Under that Bill, which amended B.C.C. Section 32-4-104 and Section 32-4-261, a vested plat is subject to the development and zoning regulations in effect at the time of approval, only "if those regulations were not otherwise subsequently abrogated or superceded by other law." In this case, as noted at the outset, the RSC zoning was "superceded" by the R.C.6 regulation.

Bill 24-06 has another impact which is also detrimental to Petitioners' cause. Specifically, the Bill recites that it is adopted independently of the Baltimore County Zoning Regulation (B.C.Z.R.) 103, and "supercedes and abrogates the rights to the vesting of a development that would otherwise accrue." In my review of the entire case file (including the record from CBA No. 04-157), it would appear as if Petitioners attempt to rely on B.C.Z.R.

103.1 and 103.3 to bolster their argument that the applicable zoning is that in effect at the time of subdivision approval is no longer persuasive. The aforesaid provisions of Bill No. 24-06 effectively neutered that argument.

Pursuant to the advertisement, posting of the property and public hearing on this Petition held, and for the reasons set forth above, it is my opinion that a vested subdivision is governed by the zoning in place at the time of the original approval; specifically, in the instant case, the Petitioners' lot of record is governed by RSC zoning and not the current zoning of R.C.6.

THEREFORE, IT IS ORDERED, by the Zoning Commissioner for Baltimore County this 16th day of May 2006, that a vested subdivision is governed by the zoning in place at the time of the original approval of the subdivision, and

IT IS FURTHER ORDERED, that any further resubdivision of Petitioners' vested lot of record shall be governed by, and be in compliance with, the present (R.C.6) zoning classification on the property to be developed.

THEREFORE, the Petition for Special Hearing is granted in part and yet denied in part as it relates to any future resubdivision.

Any appeal of this Order shall be taken in accordance with Baltimore County Code Section 32-3-401.

WILLIAM J. WISEMAN, III,
Zoning Commissioner
for Baltimore County

Verified KD Verified 5-15-07
Verified 4-24-07

Stepcick-Pridgen

Petitioners Exhibits

1. Plat of Windemere III 1920
2. letter from Arnold Jablon Dir. 5-23-2002
3. Arial Photo of subject property
4. Amended JSPC Plan 10-10-03 (recreated)
5. Plat to Accompany zoning Special Hearing 2-3-06
6. Hearing Officers Order May 16 2006
7. letter from Arnold Jablon 3-14-2006
8. letter from Timothy Kotroco 4-12-06
9. ~~Deed~~ Declaration made this 2nd day of Sept. 1970
10. 2 CMP letter 1-21-04
11. letter from Timothy Kotroco 5-28-2004
12. letter from John R. Alexander 2-8-2002
13. Bill No. 24-06 2-6-06
14. letter from Robert Powell Soil Evaluation Program 6-3-2003
15. PERC Plan
16. Plan to Accompany DRC Request (Lot 3 + Parcel B)
17. Letter from Timothy Kotroco 9-2-04
18. Letter from Jeffrey Long 12-3-04
19. Application for DRC 3-13-06
20. Plan to Accompany DRC Request (RC 6)
21. Letter from Arnold Jablon 3-13-06
22. Letter from Timothy Kotroco 4-12-06
23. Mylar overlay
24. 1956 Plan
25. Long Shadow Plan
26. Development Regulations CMAP

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 5902

DATE 6/13/06 ACCOUNT 001-0950-6150

AMOUNT $ 400.00

RECEIVED FROM: Venable

FOR: Appeal - 06-419-SPH

3 Stonehurst Rd

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT

BUSINESS	ACTUAL	TIME	DRW
6/15/2006	6/13/2006	15:57:51	2

REG WS04 WALKIN DDOL DMD
>>RECEIPT # 366696 6/13/2006 OFLN
Dept 5 528 ZONING VERIFICATION
CR NO. 005902
Recpt Tot $400.00
$400.00 CK $.00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 36505

DATE 12/28/04 ACCOUNT 001-6150

AMOUNT $ 225.00

RECEIVED FROM: Richard N. Pridgeon + Harold Jablon

FOR: Appeal re Pridgeon Property - Wendemire

#16 Stonehurst Road - parcel B

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT

BUSINESS	ACTUAL	TIME	DRW
12/28/2004	12/27/2004	11:34:07	4

REG WS06 WALKIN KMCH KXM
>>RECEIPT # 322558 12/27/2004 OFLN
Dept 5 528 ZONING VERIFICATION
CR NO. 036505
Recpt Tot $225.00
$225.00 CK $.00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION

BALTIMORE COUNTY, MARYLAND No. 1698
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

DATE 2.28.06 ACCOUNT 001.006.6150

AMOUNT $ 130.00

RECEIVED FROM: A. JABLON 3 Stadelman

FOR: SP. HRG.

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

CASHIER'S VALIDATION

PAID RECEIPT
BUSINESS ACTUAL TIME
2/28/2006 2/28/2006 10:38:20
REG 0506 CALKIN KOSH KXN
>>RECEIPT # 449403 2/28/2006
Dept 5 528 ZONING VERIFICATION
ZV NO. 001698
Recpt Tot $130.00
CD-CA CK $0.00 CA
Baltimore County, Maryland

Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 3 Stonehurst Road

which is presently zoned RC 6

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

to confirm what constitutes the vesting of a previously approved subdivision

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

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

Contract Purchaser/Lessee:

Name - Type or Print

Signature

Address Telephone No.

City State Zip Code

Legal Owner(s):

Joy Stepcich
Joseph A. Stepcich

Name - Type or Print

Signature

Name - Type or Print

Signature

3 Stonehurst Road

Address Telephone No.

Phoenix, Maryland 21131

City State Zip Code

Attorney For Petitioner:

Arnold Jablon

Name - Type or Print

Signature

Venable, LLP

Company

210 Allegheny Ave. 410 494 6298

Address Telephone No.

Towson, Maryland 21204

City State Zip Code

Representative to be Contacted:

Arnold Jablon

Name

210 Allegheny Ave 410 494 6298

Address Telephone No.

Towson, Maryland 21204

City State Zip Code

ORDER RECEIVED FOR FILING
Date 2-28-06
By

Case No. 06-419-SPH

REV 9/15/98

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Reviewed By _____ Date 2.28.06

Zoning Description
For
3 Stonehurst Road

Beginning at a point on the West side of Stonehurst Road, which is 50 feet wide, at the distance of 218 +/- feet South of the centerline of Windemere Park Way, which is 50 feet wide. Being Lot 1, in the subdivision of Section III, Windemere, as recorded in Baltimore County Plat Liber 34, Folio 10. C ontaining 5.137 acres of land. Also known as 3 Stonehurst Road and located in the 11th Election District, 6th Councilmanic District.

NOTICE OF ZONING HEARING

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

Case: #06-419-SPH
3 Stonehurst Road
West side of Stonehurst Road, 218 feet +/- south of centerline of Windermere Park Way
11th Election District
6th Councilmanic District
Legal Owner(s):
Joy & Joseph A. Stepcich
Special Hearing: to confirm what constitutes the vesting of a previously approved subdivision.
Hearing: Tuesday, April 18, 2006 at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue, Towson 21204.

WILLIAM J. WISEMAN, III
Zoning Commissioner for
Baltimore County
NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Contact the Zoning Commissioner's Office at (410) 887-4386.
(2) For information concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391.
JT 4/605 Apr. 4 90207

CERTIFICATE OF PUBLICATION

4/6, 2006

THIS IS TO CERTIFY, that the annexed advertisement was published in the following weekly newspaper published in Baltimore County, Md., once in each of 1 ~~successive~~ weeks, the first publication appearing on 4/4, 2006.

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

S. Wilkinson

LEGAL ADVERTISING

CERTIFICATE OF POSTING

RE: Case No.: 06-419-SPH

Petitioner/Developer: JOY + JOSEPH STEPCICH

Date of Hearing/Closing: 4-18-06

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

ATTN: Kristen Matthews {(410) 887-3394}

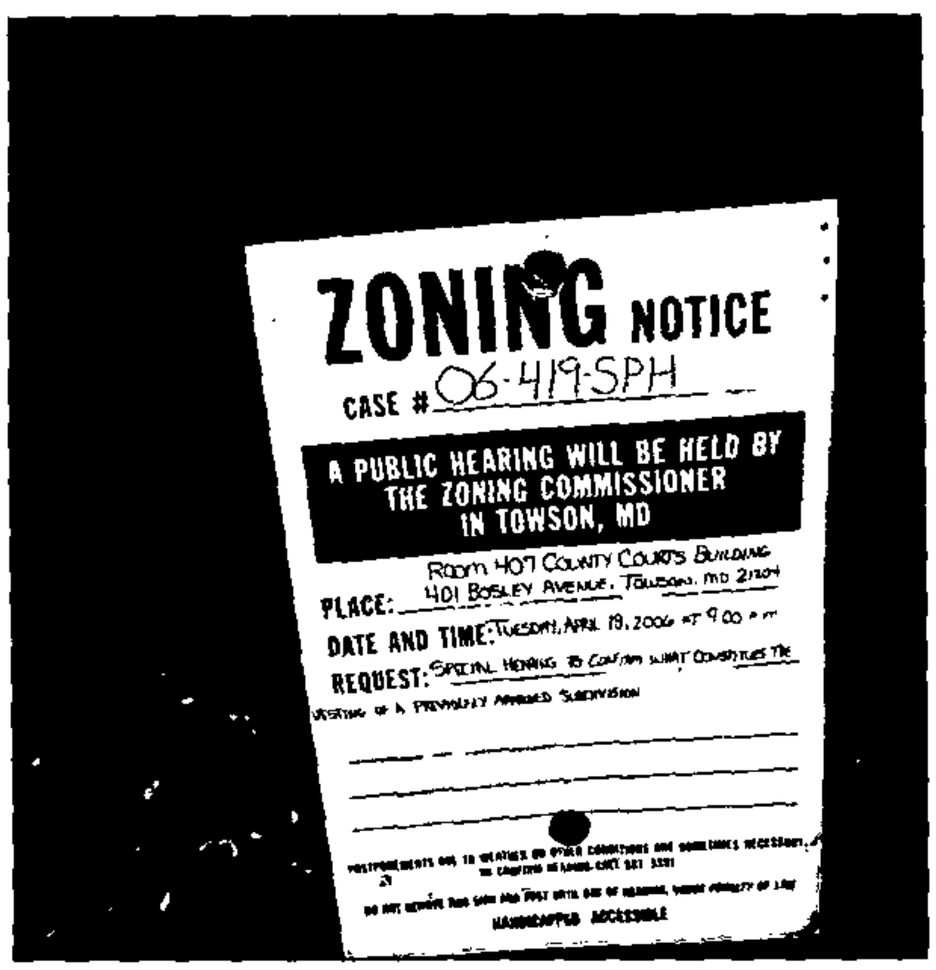
Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were *posted conspicuously on the property located at:*

3 STONEHURST ROAD

The sign(s) were posted on 4-3-06
(Month, Day, Year)

Sincerely,



Robert Black 4-5-06
(Signature of Sign Poster) **(Date)**

SSG Robert Black

(Print Name)

1568 Leslie Road

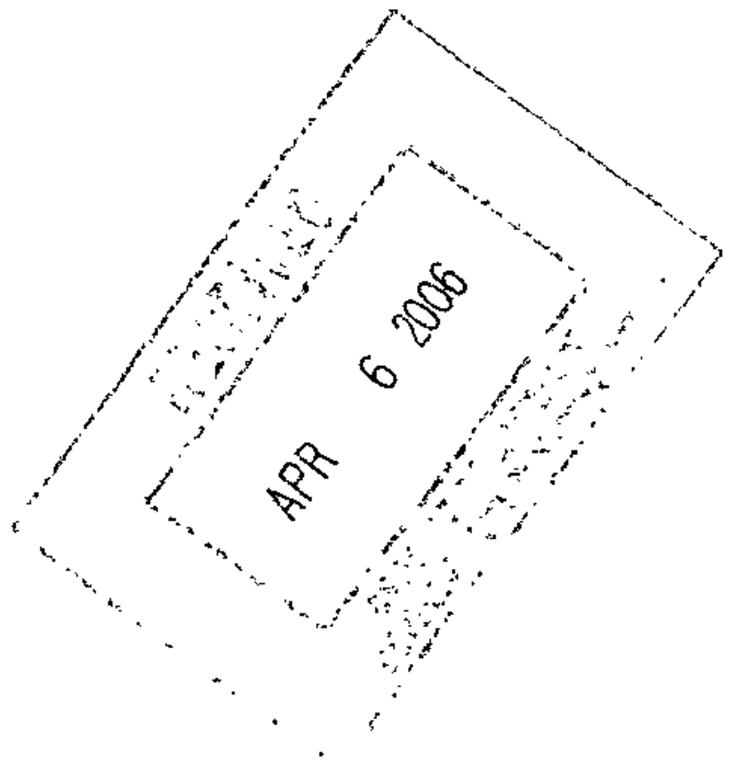
(Address)

Dundalk, Maryland 21222

(City, State, Zip Code)

(410) 282-7940

(Telephone Number)


APR 6 2006

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 36503

DATE 11/17/04 ACCOUNT 001-6150

AMOUNT $ 225.00

RECEIVED FROM: Ronald Gutlon, Wachs LLP

FOR: [illegible]

[illegible]

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT

BUSINESS ACTUAL TIME DRW
11/22/2004 11/19/2004 [illegible] 2
REG USER MARL JEVA JEE
RECEIPT # 274240 11/19/2004 OFFICE
Dept 5 550 ZONING VERIFICATION
CR NO. 036504
Rcpt Tot $225.00
$225.00 CK $.00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 20091

DATE 3-16-06 ACCOUNT R-001-6150

AMOUNT $ 50.00

RECEIVED FROM: Venable LLP, Amy L. Dontell

FOR: Lot 3 & Parcel B. Windermere III

DEPT# D403016F SA

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT

BUSINESS	ACTUAL	TIME	CSH
3/16/2006	3/16/2006	12:07:23	4

RECEIPT # 035751 3/16/2006 OTLH
Dept 5 ZONING VERIFICATION
Rec'd from
$50.00 CK $0.00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
ZONING REVIEW

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

The Baltimore County Zoning Regulations (BCZR) require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property (responsibility of the petitioner) and placement of a notice in a newspaper of general circulation in the County, both at least fifteen (15) days before the hearing.

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

OPINIONS MAY NOT BE ISSUED UNTIL ALL ADVERTISING COSTS ARE PAID.

For Newspaper Advertising:

Item Number or Case Number: 419

Petitioner: Joy Stepcich

Address or Location: 3 Stone Hurst Rd. Phoenix, Md. 21131

PLEASE FORWARD ADVERTISING BILL TO:

Name: _____

Address: Same

_____

_____

Telephone Number: 410-494-6298

Revised 2/20/98 - SCJ

APPEAL SIGN POSTING REQUEST

CASE NO. 06-419-SPH

3 STONEHURST ROAD

11TH ELECTION DISTRICT APPEALED: 5/31/2006

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

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

CERTIFICATE OF POSTING

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

Attention: Kathleen Bianco
Administrator

CASE NO.: 06-419-SPH

LEGAL OWNER: JOSEPH STEPCICH

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

3 STONEHURST ROAD

MAP 20 C7

The sign was posted on 8/4, 2006.

By: _____
(Signature of Sign Poster)

Jeff Radcliffe.
(Print Name)

Department of Permits and Development Management

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

Baltimore County

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

March 16, 2006

NOTICE OF ZONING HEARING

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

CASE NUMBER: 06-419-SPH
3 Stonehurst Road
West side of Stonehurst Road, 218 feet +/- south of centerline of Windermere Park Way
11th Election District – 6th Councilmanic District
Legal Owners: Joy & Joseph A. Stepcich

Special Hearing to confirm what constitutes the vesting of a previously approved subdivision.

Hearing: Tuesday, April 18, 2006 at 9:00 a.m. in Room 407, County Courts Building,
401 Bosley Avenue, Towson 21204

Timothy Kotroco
Director

TK:klm

C: Arnold Jablon, 210 Allegheny Avenue, Towson 21204
Mr. & Mrs. Stepcich, 3 Stonehurst Road, Phoenix 21131

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY MONDAY, APRIL 3, 2006.**
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

TO: PATUXENT PUBLISHING COMPANY
Tuesday, April 4, 2006 Issue - Jeffersonian

Please forward billing to:
Joy Stepcich
3 Stonehurst Road
Phoenix, MD 21131

410-494-6298

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WILLIAM J. WISEMAN III
ZONING COMMISSIONER FOR BALTIMORE COUNTY

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VENABLE LLP

210 Allegheny Avenue
Post Office Box 5517
Towson, Maryland 21285-5517

Telephone 410-494-6200
Facsimile 410-821-0147

www.venable.com

ARNOLD JABLON
(410) 494-6298

aejablon@venable.com

15 November 2005

Ms. Kathleen C. Bianco
Administrator
County Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Ave.
Towson, Maryland 21204

RECEIVED
NOV 15 2005
BALTIMORE COUNTY
BOARD OF APPEALS

Re: Pridgeon Property
Case No. CBA 04-159
Hearing date: 11/30/05
Section 6—Windemere—6 Stonehurst Rd
11th ED; 6th CD

Dear Ms. Bianco:

Please be advised that I represent the appellant in this matter, Mr. Richard Pridgeon. The issues presented in this matter are very similar to those presented in the matter of Joseph Stepcich, Case No. CBA 04-157, in which I also represented the appellant therein, Mr. Stepcich. In fact, both matters involve proposed re-subdivisions of existing lots in the Windemere subdivision. In both matters, appeals were taken from letters denying the proposed re-subdivisions from the Director of the Office of Planning.

In Stepcich, the Board of Appeals reversed the decision of the Office of Planning and remanded the case to the Planning Board.

Inasmuch as the issues in both are very much the same, I believe that it be appropriate that the instant matter be postponed indefinitely until such time as a final decision can be rendered in the Stepcich matter. There is no sense

in making the same arguments in this case while a final decision in Stepcich is pending. I have discussed this with the deputy director of the Office of Planning and he concurs. He agrees that a final decision in Stepcich will dictate the eventual outcome of Pridgeon.

Therefore, I request that this matter be postponed until such time as Stepcich is decided. Thank you for your consideration.

Sincerely,

Arnold Jablon

c: Richard Pridgeon
Jeffrey Long, Deputy Director of Office of Planning

Department of Permits and Development Management

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

Baltimore County

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

March 16, 2006

NOTICE OF ZONING HEARING

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

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Timothy Kotroco
Director

TK:klm

C: Arnold Jablon, 210 Allegheny Avenue, Towson 21204
Mr. & Mrs. Stepcich, 3 Stonehurst Road, Phoenix 21131

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(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

County Board of Appeals of Baltimore County

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

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

November 9, 2006

NOTICE OF POSTPONEMENT

CASE #: CBA-06-019 **IN THE MATTER OF: PRIDGEON PROPERTY**
6 Stonehurst Road DRC 040306 E 11th E; 3rd C

and

CASE #: CBA-06-020 **IN THE MATTER OF: STEPCICH PROPERTY**
3 Stonehurst Road DRC 040306 D 11th E; 3rd C

4/12/06 – Denial of request to reconfigure lots of record

which was scheduled to be heard on 11/14/06 and 11/15/06 has been **POSTPONED** at the request of Baltimore County and at the request of Counsel for Long Green Valley Assn., et al; **to be reassigned to January dates upon agreement of counsel as to availability.**

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

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

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

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

Kathleen C. Bianco
Administrator

---

c: Counsel for Appellants /Property Owners : Arnold Jablon, Esquire
Appellants /Property Owners : Mr. Richard Pridgeon (6 Stonehurst)
: Mr. and Mrs. Joseph Stepcich (3 Stonehurst)

David Martin /GW Stephens & Assoc.
Brian R. Dietz

J. Carroll Holzer, Esquire, Counsel for
Carol Trela
Long Green Valley Assn.

Adrienne True and Kim Ward
Dr. Eusebia Gonzales

Office of People's Counsel
Walt Smith, Dev. Manager /PDM
Timothy M. Kotroco, Director /PDM
Nancy C. West, Assistant County Attorney
John E. Beverungen, County Attorney

Printed with Soybean Ink
on Recycled Paper

From: Linda Fliegel
To: Kathleen Bianco
Date: 1/29/2007 1:16:04 PM
Subject: Ed Crizer - Death in the Family

Kathi,

Ed called to inquire about his schedule for this week. I told him that he was on for Tuesday and Thursday. Ed doesn't have a problem with Tuesday, however, his uncle passed away and the funeral is Thursday. I told him that I would make you aware of the situation and that you would call him. For your convenience, Ed's number is (443)992-0819 (cell) and (410)477-1793(home).

l.m.-sent 6 pm
1-29-07

ppd to
3/29/07
notified all
courses
and Bonnie
ant cl
1-30-07

Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

Room 47, Old CourtHouse
400 Washington Ave.
Towson, MD 21204

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

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

February 20, 2007

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

RECEIVED
FEB 2 0 2007
BALTIMORE COUNTY
BOARD OF APPEALS

Re: In the Matter of the Stepcich Property
Section III, Windemere Subdivision
Case Nos: CBA-04-157, CBA-06-019, CBA-06-020 and 06-419-SPH

Dear Ms. Bianco:

I am writing to request a postponement of the hearing set for March 29, 2007 at 10:00 a.m for Day 2 of the proceeding in this matter. However, I will be out of town on vacation from March 18th through March 31, 2007. It is my understanding that April 19th and April 24th are available as possible alternative dates. We will kindly work with your office to find a new agreeable date for all parties.

Thank you in advance for your anticipated consideration.

Sincerely,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

PMZ\rmw

cc: Arnold Jablon, Esquire
Nancy West, Assistant County Attorney
J. Carroll Holzer, Esquire

County Board of Appeals of Baltimore County

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

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue March 12, 2007

SECOND NOTICE OF POSTPONEMENT & REASSIGNMENT /Day #2

CASE #: CBA-04-159 **IN THE MATTER OF: PRIDGEON PROPERTY**
Section 6 Windemere – 6 Stonehurst Road Phoenix, MD 21131 11th E; 3rd C
RE: **JSPC Decision** – Denial of proposed lot line adjustment /amendment to JSPC subdivision plan aka Section III Windemere – 6 Stonehurst Road was DENIED.

and
CASE #: CBA-06-019 **IN THE MATTER OF: PRIDGEON PROPERTY**
Section 6 Windemere – 6 Stonehurst Road Phoenix, MD 21131 11th E; 3rd C
RE: **DRC Decision** – Denial of Appellant's req to recnfgre lots of rcrd into two buildable lots

and
CASE #: CBA-06-020 **IN THE MATTER OF: STEPCICH PROPERTY**
Windmere – 3 Stonehurst Road Phoenix, MD 21131 11th E; 3rd C
RE: **DRC Decision** – Denial of Appellant's req to rcnfgre lots of rcrd into two buildable lots

and
CASE #: 06-419-SPH **IN THE MATTER OF: JOSEPH STEPCICH -Petitioner**
3 Stonehurst Road 11th E; 3rd C
5/16/2006 - Z.C.'s Order in which Petition for Special Hearing was granted in part and "yet denied in part as it relates to any future subdivision."

Day #2 from 1/10/07

which was reassigned to 3/29/07 **has been postponed** at request of People's Counsel due to schedule conflict; and has been

REASSIGNED FOR: **TUESDAY, APRIL 24, 2007 at 10:00 a.m.** **/Day #2**

NOTICE: This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.
Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.
IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with *Rule 2(c).*
If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

Kathleen C. Bianco, Administrator

c: Appellant : Office of People's Counsel

Counsel for Appellants /Property Owners : Arnold Jablon, Esquire
: Mr. and Mrs. Joseph Stepcich (3 Stonehurst)
: Mr. Richard Pridgeon (6 Stonehurst)

Brian R. Dietz
J. Carroll Holzer, Esquire, Counsel for
Carol Trela / Long Green Valley Association
Donna Spicer
Adrienne True and Kim Ward
Dr. Eusebio Gonzales
Timothy M. Kotroco, Director /PDM
Pat Keller, Planning Director
William J. Wiseman III /Zoning Commissioner
Walt Smith, Dev. Manager /PDM

Jeffrey Long, Deputy Planning Director
Caren B. Hoffberger /Planning
Jeff Mayhew, Chief /Community Planning
Lynn Lanham, Chief /Development Review
Nancy C. West, Assistant County Attorney
John E. Beverungen, County Attorney

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County Board of Appeals of Baltimore County

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

Hearing Room – Room 48

Old Courthouse, 400 Washington Avenue April 24, 2007

NOTICE OF ASSIGNMENT /Day #3

CASE #: CBA-04-159
IN THE MATTER OF: PRIDGEON PROPERTY
Section 6 Windemere – 6 Stonehurst Road Phoenix, MD 21131 11th E; 3rd C
RE: **JSPC Decision** – Denial of proposed lot line adjustment /amendment to JSPC subdivision plan aka Section III Windemere – 6 Stonehurst Road was DENIED.

and

CASE #: CBA-06-019
IN THE MATTER OF: PRIDGEON PROPERTY
Section 6 Windemere – 6 Stonehurst Road Phoenix, MD 21131 11th E; 3rd C
RE: **DRC Decision** – Denial of Appellant's req to recnfgre lots of rcrd into two buildable lots

and

CASE #: CBA-06-020
IN THE MATTER OF: STEPCICH PROPERTY
Windmere – 3 Stonehurst Road Phoenix, MD 21131 11th E; 3rd C
RE: **DRC Decision** – Denial of Appellant's req to rcnfgre lots of rcrd into two buildable lots

and

CASE #: 06-419-SPH
IN THE MATTER OF: JOSEPH STEPCICH -Petitioner
3 Stonehurst Road 11th E; 3rd C
5/16/2006 - Z.C.'s Order in which Petition for Special Hearing was granted in part and "yet denied in part as it relates to any future subdivision."

Day #3 from 4/24/07

ASSIGNED FOR: TUESDAY, MAY 15, 2007, at 10:30 a.m. /Day #3

NOTICE: This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.
Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.
IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).
If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

Kathleen C. Bianco, Administrator

---

c: Appellant : Office of People's Counsel

Counsel for Appellants /Property Owners : Arnold Jablon, Esquire
: Mr. and Mrs. Joseph Stepcich (3 Stonehurst)
: Mr. Richard Pridgeon (6 Stonehurst)

Brian R. Dietz
J. Carroll Holzer, Esquire, Counsel for
Carol Trela / Long Green Valley Association
Donna Spicer
Adrienne True and Kim Ward
Dr. Eusebio Gonzales
Timothy M. Kotroco, Director /PDM
Pat Keller, Planning Director
William J. Wiseman III /Zoning Commissioner
Walt Smith, Dev. Manager /PDM

Jeffrey Long, Deputy Planning Director
Caren B. Hoffberger /Planning
Jeff Mayhew, Chief /Community Planning
Lynn Lanham, Chief /Development Review
Nancy C. West, Assistant County Attorney
John E. Beverungen, County Attorney

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on Recycled Paper

County Board of Appeals of Baltimore County

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

May 18, 2007

NOTICE OF DELIBERATION

IN THE MATTER OF:

CASE #: CBA-04-159 — **IN THE MATTER OF: PRIDGEON PROPERTY and**
CASE #: CBA-06-019 — **IN THE MATTER OF: PRIDGEON PROPERTY and**
CASE #: CBA-06-020 — **IN THE MATTER OF: STEPCICH PROPERTY and**
CASE #: 06-419-SPH — **IN THE MATTER OF: JOSEPH STEPCICH -Petitioner**
11th E; 3rd C

Having heard this matter on 1/10, 4/24, and 5/15/07, public deliberation has been scheduled for the following date /time:

DATE AND TIME : **WEDNESDAY, AUGUST 8, 2007 at 9:00 a.m.**

LOCATION : **Hearing Room 48, Basement, Old Courthouse**

NOTE: Closing briefs are due on Monday, July 16, 2007
(Original and three [3] copies)

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

Kathleen C. Bianco, Administrator

c: Appellant : Office of People's Counsel

Counsel for Appellants /Property Owners : Arnold Jablon, Esquire
: Mr. and Mrs. Joseph Stepcich (3 Stonehurst)
: Mr. Richard Pridgeon (6 Stonehurst)

Brian R. Dietz
J. Carroll Holzer, Esquire, Counsel for
Carol Trela / Long Green Valley Association
Donna Spicer
Adrienne True and Kim Ward — Jeffrey Long, Deputy Planning Director
Dr. Eusebio Gonzales — Caren B. Hoffberger /Planning
Timothy M. Kotroco, Director /PDM — Jeff Mayhew, Chief /Community Planning
Pat Keller, Planning Director — Lynn Lanham, Chief /Development Review
William J. Wiseman III /Zoning Commissioner — Nancy C. West, Assistant County Attorney
Walt Smith, Dev. Manager /PDM — John E. Beverungen, County Attorney

fyi: 2-4-7

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on Recycled Paper

Department of Permits and Development Management

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

Baltimore County

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

April 14, 2006

Arnold Jablon
Venable, LLP
210 Allegheny Avenue
Towson, MD 21204

Dear Mr. Jablon:

RE: Case Number: 06-419-SPH, 3 Stonehurst Road

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on February 28, 2006.

The Zoning Advisory Committee (ZAC), which consists of representatives from several approval agencies, has reviewed the plans that were submitted with your petition. All comments submitted thus far from the members of the ZAC are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to ensure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. All comments will be placed in the permanent case file.

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

Very truly yours,

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR:amf

Enclosures

c: People's Counsel
Joy Stepcich Joseph A. Stepcich 3 Stonehurst Road Phoenix 21131

R.C.4

84-253A
N62190
E22575

1980 Zoning Map

P.C. 30

R C 4

1984 Zoning MAP

RC 3E

VALLEY

EY

PRIVATE G&E CO. GAS P.L.

G&E CO. P.L.

WINDEMERE PARKWAY

STONEHURST RD.

ALPINE RD.

WINDEMERE

GLEN

SIESTA GARTH

R. C. 4

R. C. 4

WINDEMERE

ROAD

PRIVATE

BALTIMORE COUNTY ROAD

BALTIMOR

NANTUCKET GARTH

GLEN ALPINE

1988 Zoning Map

P.C. 3F

R. C. 4

VALLEY

R. C. 4

PRIVATE G.B.E. CO. GAS P.L.

G.B.E. CO. P.L.

WINDEMERE PARKWAY

STONEHURST RD.

ALPINE RD.

WINDEMERE

GLEN

SIESTA GARTH

LINGWOOD

R. C. 4

WINDEMERE

BALTIMORE COUNTY ROAD

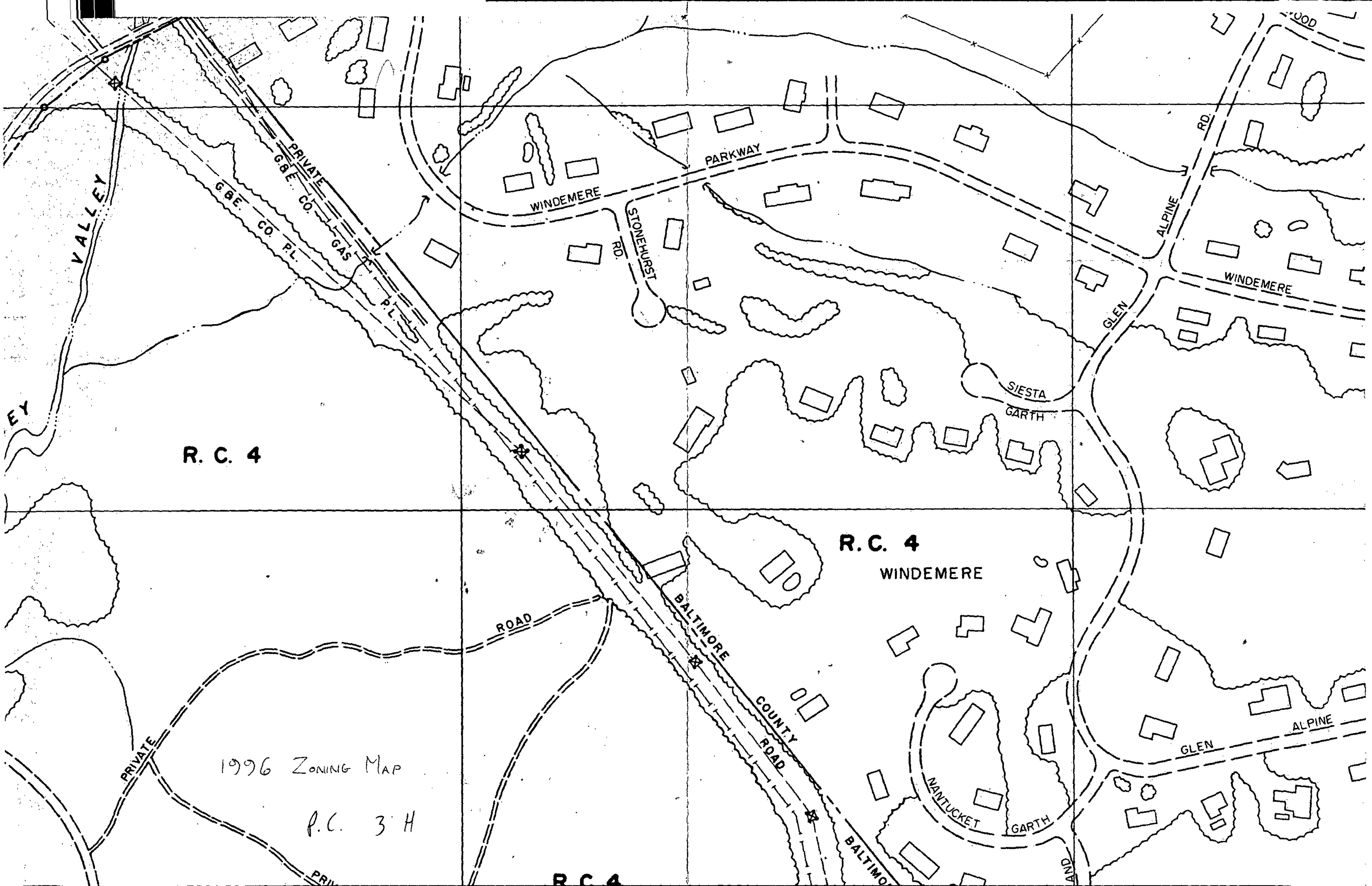
PRIVATE ROAD

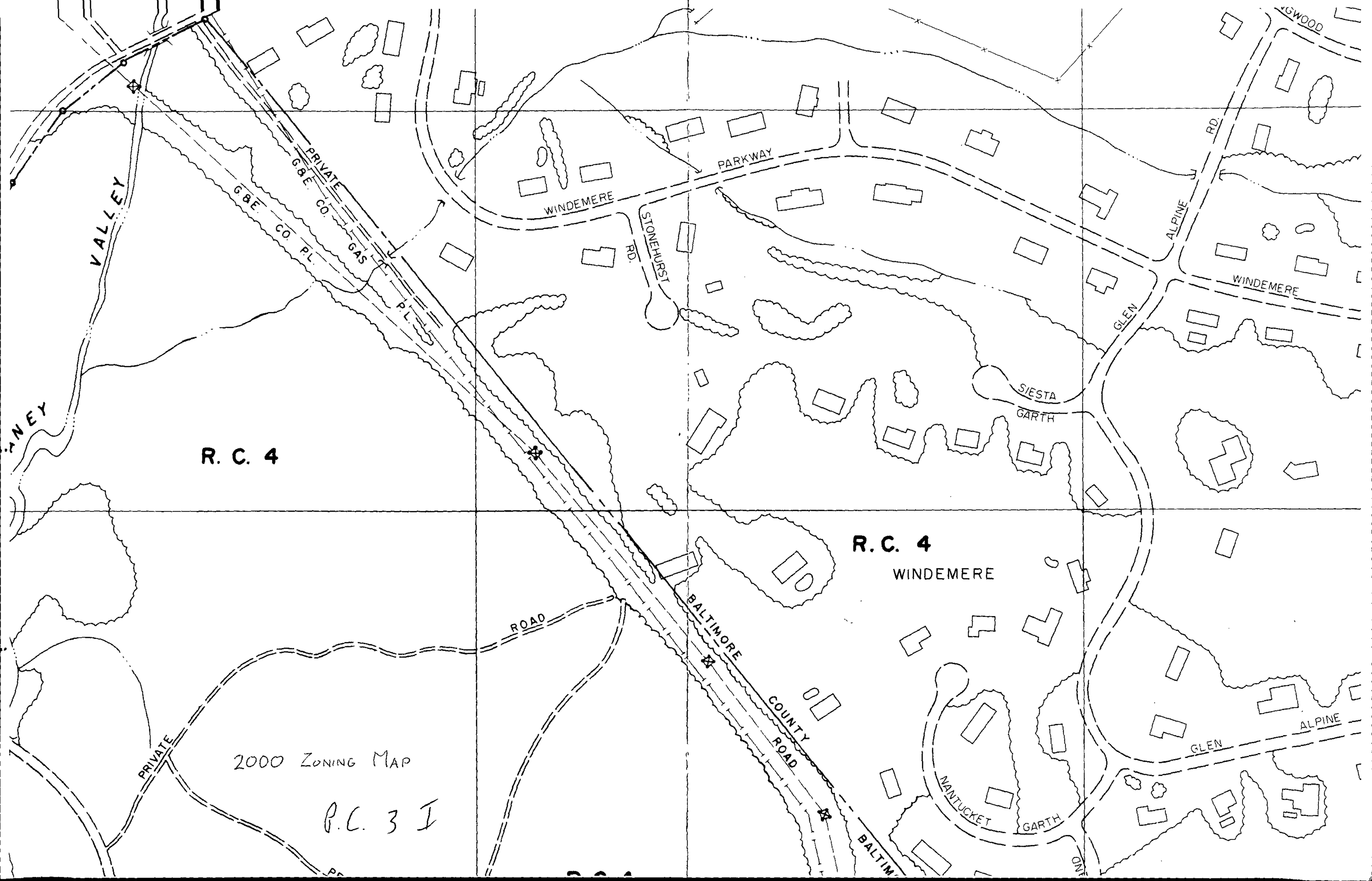
1992 Zoning Map

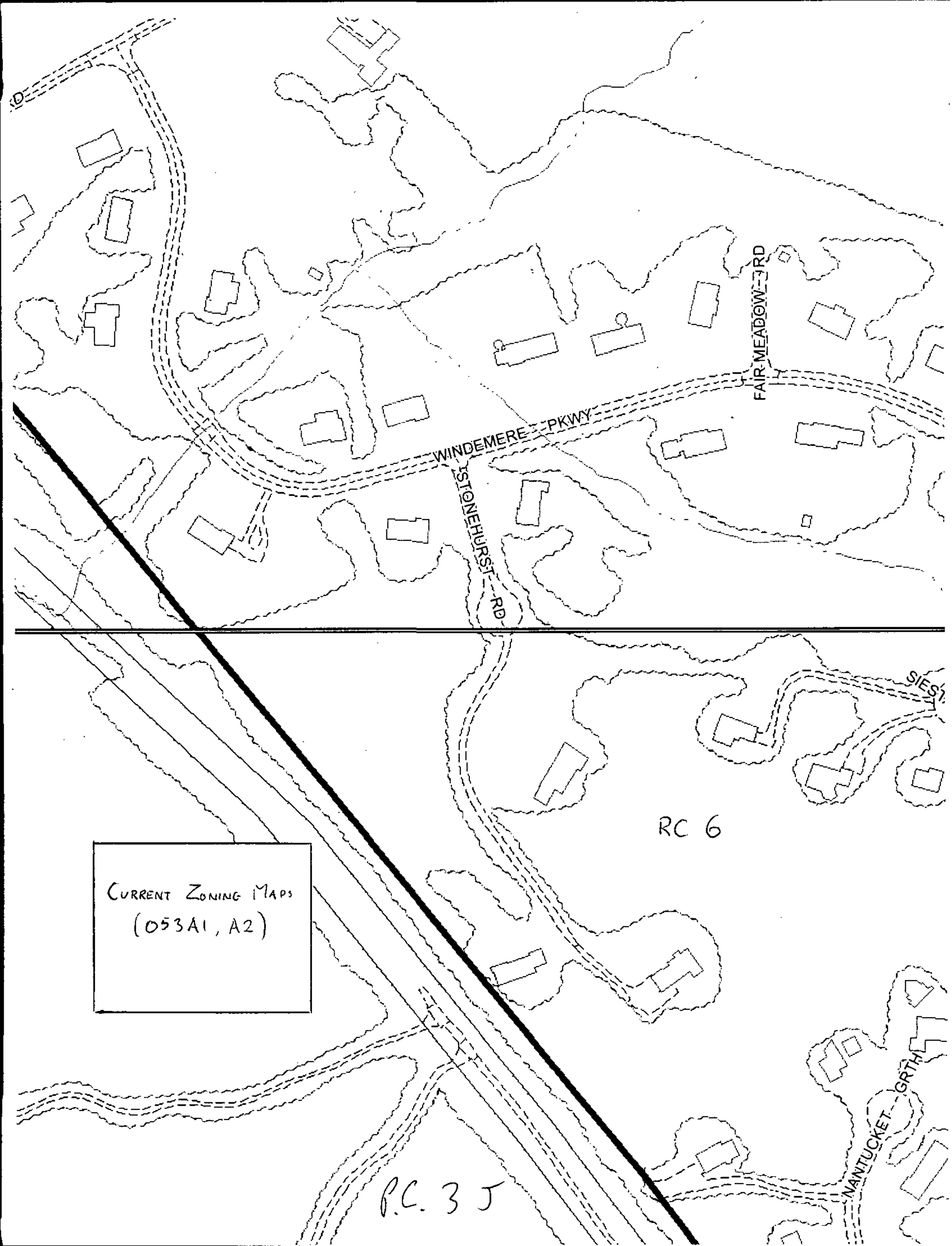
P.C. 36

GLEN ALPINE

NANTUCKET GARTH


VALLEY
EY
PRIVATE
G&E CO.
GAS
P.L.
G&E CO. P.L.
WINDEMERE
PARKWAY
STONEHURST
RD.
ALPINE
RD.
WINDEMERE
GLEN
SIESTA
GARTH
R. C. 4
R. C. 4
WINDEMERE
ROAD
PRIVATE
BALTIMORE
COUNTY
ROAD
BALTIMO
NANTUCKET
GARTH
GLEN
ALPINE
1996 Zoning Map
R.C. 3 H
R.C. 4


PRIVATE G&E CO. GAS P.L.
G&E CO. P.L.
VALLEY
PARKWAY
WINDEMERE
STONEHURST RD.
ALPINE RD.
WINDEMERE
GLEN
SIESTA
GARTH
R. C. 4
R. C. 4
WINDEMERE
ROAD
PRIVATE
BALTIMORE COUNTY ROAD
BALTIM
NANTUCKET
GARTH
GLEN
ALPINE
2000 Zoning Map
R.C. 3 I



CURRENT ZONING MAPS
(053A1, A2)

People's Counsel Sign-In Sheet

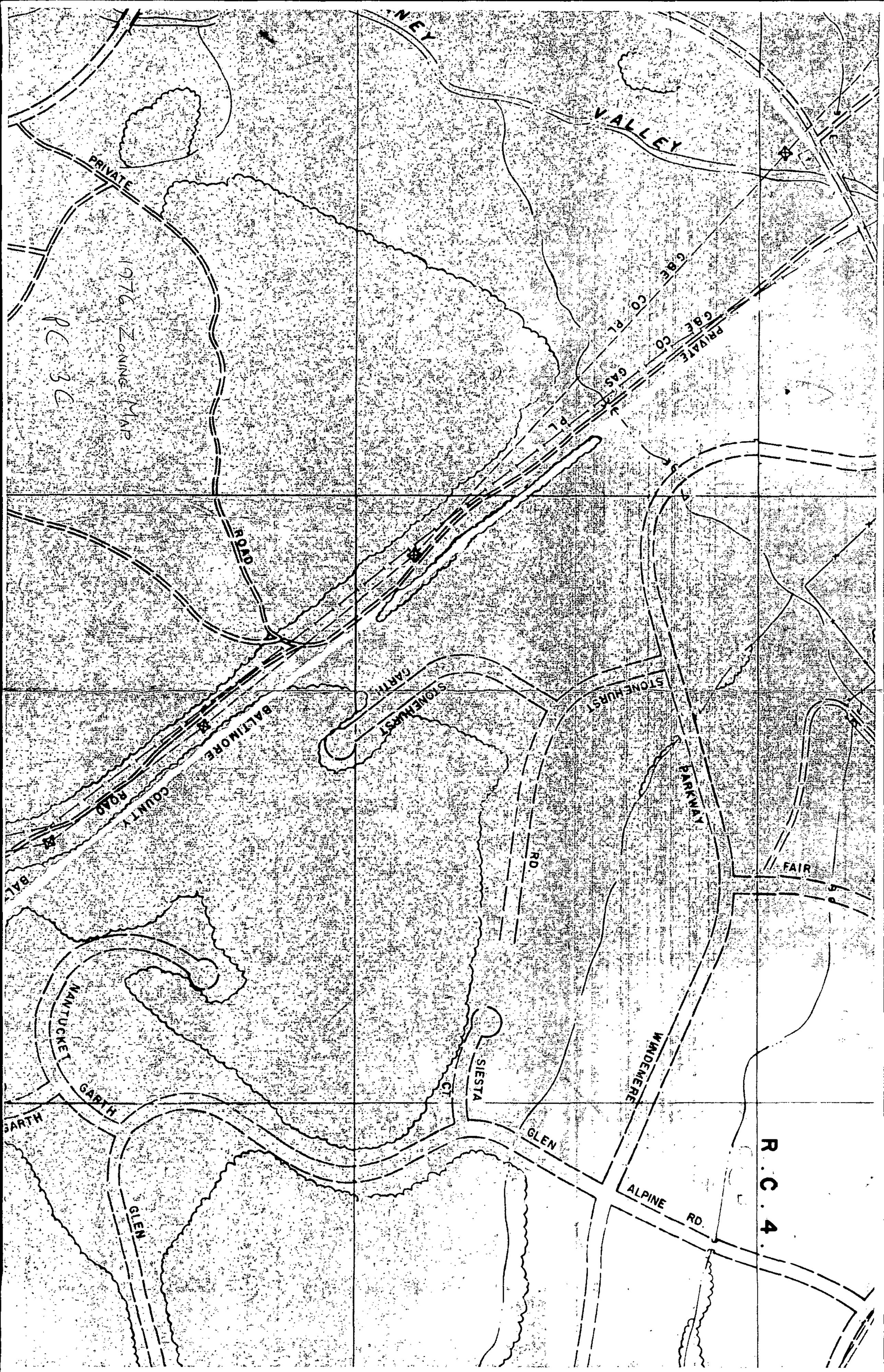
Case Name: Stepcich

Case No.: _____

Date: May 15, 2007

The Office of People's Counsel was created by the County Charter to participate in zoning matters on behalf of the public interest. While it does not actually represent community groups or protestants, it will assist in the presentation of their concerns, whether they have their own attorney or not. If you wish to be assisted by People's Counsel, please sign below.

Check to testify	Name	Address	Phone #	Email	Group you represent	Basis of your concerns
	Eugenio P. Gonzales, MD	300 Stoneridge Rd. Phoenix, MD. 21131	(410) 592-5522		Self + Long Green Valley Assn	Public health issue
	Judith A Gonzales	Same as above	(410) 592-5522		Self	Public Hearing
	Charlotte Pine	607 Baltimore Ave Towson Md 21204	410 823-5200		Long Green Valley	Zoning Compliance


VALLEY
PRIVATE
ROAD
GAS
CO.
PL.
PRIVATE
ROAD
BALTIMORE
COUNTY
ROAD
STONEHURST
CT.
STONEHURST
RD.
PARKWAY
FAIR
WINDEMERE
SIESTA
CT.
GLEN
ALPINE
RD.
R.C.4.
GARTH
GLEN

R . S . C .

VALLEY

PRIVATE G&E CO. GAS P.L.

G&E CO. P.L.

FAIR

PARKWAY

STONEHURST

WINDEMERE

ALPINE RD.

GLEN

RD.

SIESTA

CT

76-125 A
N62475
E21530

84-253A

STONEHURST

GARTH

73-125A
N61,605
E22,475

ROAD

BALTIMORE COUNTY ROAD

PRIVATE

1971 Zoning Map

R.C30B

GLEN

NANTUCKET

GARTH

DULANEYS

LONG

WINDMERE

PARKWAY

STONEHURST RD

4075 X
2627

MANOR

4295
MR

RAVEN

CITY

ROAD

MORGAN

MILL

ROAD

ZONING MAP
1945 + 1960
"A" RESIDENCE ZONE
(LATER R6)

P.C. 3A

Stepich-
Pridgeon

Peoples Counsel

Applicant Exh Stepich 4-24-07

Applicant Exhibits 5.15.07

1. a-b, Zoning Maps
2. Plan titled Windemere (tentative) 1956
3. a-j Zoning Maps over the years
4. Sign In

Stepdad - Pridgeon

Verified 5-15-07

Protestants Exhibits

Unified

Verified 4-24-07

1 - 4 Pictures of Adrienne True Property

2 Rule 8 papers for Mrs Pine

3 Plan from Dr. Gonzales

LONG GREEN VALLEY ASSOCIATION
P.O. Box 91
Baldwin, Maryland 21013

RULE 8

The position of the Long Green Valley Association as adopted by the Board of Directors on the zoning matter known as Stepcich Property Case No. 06-419-SPH; CBA-04-157; CBA-04-159 is that we oppose the application for future subdivision in the aforementioned cases and that the request of the applicants be denied.

As witness our hands and seal this tenth day of January, 2007.

Signed:

Carol Trela, ***Secretary***

Carol Trela

Roger Hayden, ***President***

Roger Hayden

Pro. Ex #2

Resolution

The Long Green Valley Association resolved that at the annual meeting of the Association held on June 14, 2006 it was decided by the association that the responsibility for review and action on all zoning matters for the period of one year shall be placed in the Board of Directors. Any member of the Board of Directors can represent the association.

The Board consists of the members whose names are listed below:

Roger Hayden, President
Carol Trela, Secretary
Steve Preston, Treasurer
Sharon Rohrbaugh, Vice President
Mary Ambrose
Denise McCloskey
Tim Cypull
Pat Garner
Charlotte Pine
Andrew Rose
John Storck
Tom Schneider
Robert Davis

As witness our hands and seal this tenth day of January, 2007.

Signed:

Carol Trela, *Secretary*
Carol Trela

Roger Hayden, *President*
Roger Hayden

Affidavit

State of Maryland
County of Baltimore

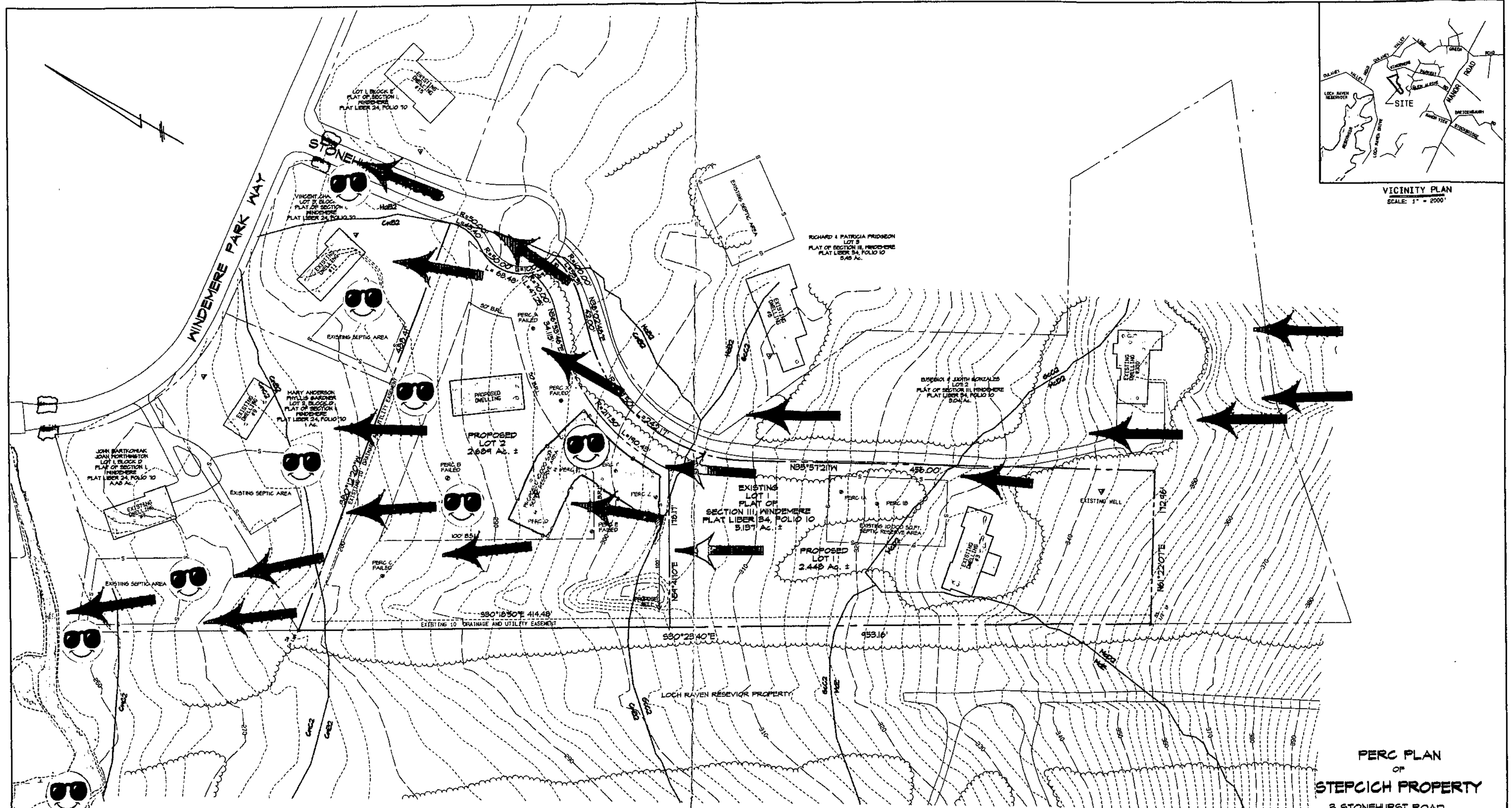
To Wit

I hereby swear upon penalty of perjury that I am currently a duly elected member of the Board of Directors of the Long Green Valley Association.

Signed:

Carol Trela, **Secretary**
Carol Trela

Roger Hayden, **President**
Roger Hayden



NOTES

1. CENSUS TRACT 4112.02 A.D.C. MAP & GRID 20-C-7
   WATERSHED LOCH RAVEN SUBSEWERSHED NONE
   SCHOOL DISTRICT RIDGLEY/DULANEY REGIONAL PLANNING DISTRICT 310
2. THE SUBJECT PROPERTY IS NOT LOCATED IN THE CHESAPEAKE BAY CRITICAL AREA.
3. CONTOURS SHOWN HEREON WERE TAKEN FROM BALTIMORE COUNTY GIS TILE 53-A2.

SOIL TYPES & LIMITATIONS

TYPE	SOIL SERIES	HOMESITES	SEPTIC FILTER FIELDS	STREETS PARKING
McD2, McE	MANOR	SEVERE	SEVERE	SEVERE
GcC2	GLENELG	MODERATE	MODERATE	SEVERE
CwB2	CONESTOGA	SLIGHT	SLIGHT	MODERATE
CwC2	CONESTOGA	MODERATE	MODERATE	SEVERE

GRAPHIC SCALE 1"=50'
0 50 100 150

REVISION	DATE
MOVE WELL LOCATION	05-16-03
REVISE SEPTIC AREA	05-12-03
REVISE SEPTIC AREA	03-04-03
ADD FAILED PERCS AND REVISE SEPTIC AREA	02-02-03

PERC PLAN
OF
STEPCICH PROPERTY
3 STONEHURST ROAD

Deed Ref: S.M. No. 10085 folio 712
Tax Account No.: 1600003598
Zoned RC 4, MAP NE 16-D
Tax Map 53; Grid 8; Parcel 60

11th ELECTION DISTRICT
6th COUNCILMANIC DISTRICT
SCALE: 1"=50' DATE: OCTOBER 10, 2002

BRIAN DIETZ
PROFESSIONAL LAND SURVEYOR #21080
7867 OAKDALE AVENUE
BALTIMORE MD 21237
PH 410-686-1198, FAX 410-682-6021

PLOT DATE: 9/12/2003 | TECHNICIAN: | FILE NAME: C:\BRIAN\STONE\work.pro

Baltimore County Government
Department of Permits and
Development Management

111 West Chesapeake Avenue
Towson, MD 21204

410-887-3335

May 23, 2002

Joseph A. Stepcich
Three Stonehurst Road
Phoenix, MD 21131-2439

RE: Stonehurst Road
Three Stonehurst Road
DRC Number 032502M, Dist. 11C6

Dear Mr. Stepcich:

Pursuant to Article 25A, Section 5(U) of the Annotated Code of Maryland, and as provided in Section 602 (d) of the Baltimore County Charter, and Section 26-132 of the Baltimore County Code, this letter constitutes an administrative order and decision on the request for issuance, renewal, or modification of a license, permit, approval, exemption, waiver, or other form of permission you filed with this department.

Your request has been submitted for careful review and consideration to the Development Review Committee (DRC), which is composed of representatives from each of those departments involved in land-use decisions. These representatives are designees of the directors of these departments. The purpose of the DRC is to ensure compliance with Section 26-171 and Section 26-211 of the Baltimore County Code and to make recommendations to the Director, Department of Permits and Development Management (PDM).

The DRC has, in fact, met in an open meeting on April 29, 2002, and made the following recommendations:

The DRC has determined that your project was originally approved by the Joint Subdivision Planning Committee (JSPC). You may process a plan with changes to the last approved JSPC in compliance with JSPC regulations. To submit a JSPC plan for consideration, please contact this office for a transmittal form. It is also necessary to submit a plan to the Office of Planning for further review. Please forward the plan, along with a copy of this DRC letter, to Room 123, County Office Building; 111 West Chesapeake Avenue; Towson, MD 21204.

PETITIONER'S EXHIBIT 2

I have reviewed the recommendation carefully, and I have determined to adopt the recommendations set forth above. It is this 23rd day of May 2002, ordered and decided that the recommendations of the DRC are hereby adopted.

Should you submit an application for any permits that may be required for this project, your application will be processed subject to the conditions set forth above and any plans, securities, or non-county permits that may be required in accordance with County, State, or Federal regulations.

Sincerely,

Arnold Jablon
Director

AJ:DTR:dak

c: Kristin Weis
File

VENABLE LLP

210 Allegheny Avenue
Post Office Box 5517
Towson, Maryland 21285-5517

Telephone 410-494-6200
Facsimile 410-821-0147

www.venable.com

ARNOLD JABLON
(410) 494-6298

aejablon@venable.com

RECEIVED
MAR 14 2006
DEPT OF PERMITS AND DEVELOPMENT MANAGEMENT

14 March 2006

Mr. Donald Rascoe, Deputy Director
Department of Permits and Development Management
111 West Chesapeake Ave
Towson, Maryland 21204

Re: Stepcich Property
Windemere, Section III
3 Stonehurst Road
J.S.P.C. Material Amendment

Dear Mr. Rascoe:

This office represents Mr. and Mrs. Joseph Stepcich, the owners of the above cited property. The subject property, located at 3 Stonehurst Road, Baltimore, MD., identified as lot "1" on the J.S.P.C. plan and plat known as "Section III, Windemere", which was approved in or about 1969. The property owner desires to resubdivide their lot into 2 lots as shown on the accompanying redlined J.S.P.C. plan.

In early 2002, our clients filed a request to the DRC for approval of the proposed division of their lot into two by amendment to the originally approved J.S.P.C. plan. After review, in 2004, the Office of Planning denied the division due to the change in zoning from that which was in effect when the original plan was approved and that which is in place currently.

With the passage of Bill No. 26-04 by the County Council, we believe it appropriate to file the attached plan. Pursuant to this legislation, my clients' proposal merits endorsement at the very least as being in conformity with the regulations in place at the time of the original plan approval or as a material amendment to the previously approved plan, as shown and in accordance with the development and zoning regulations in effect at the time of the original plan approval.

PETITIONER'S EXHIBIT 7

Please accept this request for filing for a material amendment to a previously approved plan, pursuant to §6, of Bill 26-04.

Sincerely,

Arnold Jablon
AEJ/aj

ACCEPTED FOR FILING BY THE DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT

3-14-06
DATE

By: David T. Rowe
PDM

Baltimore County Government
Department of Permits and
Development Management

111 West Chesapeake Avenue
Towson, MD 21204

410-887-3335

April 12, 2006

Mr. Arnold Jablon
210 Allegheny Avenue
Towson, MD 21204

RE: Stepcich Property
3 Stonehurst Road
DRC Number 040306D, Dist. 11C3

Dear Mr. Jablon:

Pursuant to Article 25A, Section 5 (U) of the Annotated Code of Maryland, and as provided in Section 602 (d) of the Baltimore County Charter, and Sections 32-1-101, 32-3-401, and 32-3-517 of the Baltimore County Code, this letter constitutes an administrative order and decision on the request for issuance, renewal, or modification of a license, permit, approval, exemption, waiver, or other form of permission you filed with this department.

Your request has been submitted for careful review and consideration to the Development Review Committee (DRC), which is composed of representatives from each of those departments involved in land-use decisions. These representatives are designees of the directors of these departments. The purpose of the DRC is to ensure compliance with Section 32-4-106 and Section 32-4-262 of the Baltimore County Code and to make recommendations to the Director, Department of Permits and Development Management (PDM).

The DRC has, in fact, met in an open meeting on April 3, 2006, and has denied your request.

Sincerely,

Timothy Kotroco

Timothy Kotroco
Director

TK:DTR:dak
c: file

Visit the County's Website at **www.baltimorecount**

PETITIONER'S EXHIBIT 8

THIS DECLARATION, made this 2nd day of SEPTEMBER, 1970, by PHILIP O. TILGHMAN REALTY COMPANY, a body corporate of the State of Maryland.

WHEREAS, Philip O. Tilghman Realty Company is the owner of a tract of land situate in the Eleventh Election District of Baltimore County, Maryland, being shown on a Plat entitled "Section III, Windemere", recorded among the land records of Baltimore County in Plat Book O.T.G. No. 34, folio 10; and

WHEREAS, said PHILIP O. TILGHMAN REALTY COMPANY has developed and improved said tract of land by causing it to be subdivided into lots as shown on said Plat, and desires to make said tract of land and all the lots into which it is subdivided subject to a uniform scheme or plan of development by subjecting same to the covenants, agreements, easements, reservations, restrictions and conditions hereinafter set forth; and

NOW, THEREFORE, THIS DECLARATION WITNESSETH: that PHILIP O. TILGHMAN REALTY COMPANY, for itself, its successors and assigns does hereby covenant and declare that all of the lots shown on said Plat shall be and are subject to a uniform scheme or plan of development and to the following covenants, agreements, easements, restrictions, reservations and conditions, viz:

1. The land and each building plot shall be used for residential purposes only, and no structure of any kind whatsoever shall be erected, altered, placed or permitted to remain thereon except detached dwellings for not more than one family, not exceeding 2½ stories in height, a private garage or carport; and on lots of 2½ acres or more in size, one barn is permitted. No provisions contained herein shall operate to exclude or prevent professional persons, such as physicians or dentists, from practicing their professions on said property on a part-time basis when they maintain a regular office elsewhere.

2. Fences shall not be more than five feet high and shall be constructed of wood, aluminum or similar material in the style of split rail, board or ranch fencing or similar thereto. No metal page fence shall be erected along the perimeter of the lot, but same may be used inside the lot. Privacy screens along porches, patios, pools and the like may be solid and more than five (5) feet high.

3. No cows, chickens or livestock of any kind whatsoever may be kept, or maintained, on any lot or in any dwelling or building erected thereon, or any owner or occupant be permitted to keep more than two cats and two dogs on any lot, except that three horses or ponies may be kept on each lot, provided such lot is no less than 2½ acres in size. (Baltimore County may regulate the right to keep horses or ponies).

4. No trailer, basement, tent, shack, garage, barn or other outbuilding erected or maintained on any building plot

PETITIONER'S EXHIBIT 9

shall at any time be used as a residence temporarily or permanently, nor shall any structure of a temporary character be used as a residence.

5. No noxious or offensive trade or activity shall be carried on upon any lot nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

6. No building or other structure shall be commenced, erected or maintained nor shall any addition to or change or alteration therein be made until plans and specifications showing the nature, kind, shape, heights, materials, floor plans, color scheme, location of the structure and grading plan of plot to be built upon shall have been submitted to and approved in writing by Philip O. Tilghman Realty Company or its successors or assigns. Philip O. Tilghman Realty Company shall have the right to refuse to approve any such plans or specifications or plans or grading plan which are not suitable or desirable in its opinion for aesthetic or other reasons, and in so passing upon such plans, specifications and grading plan it shall have the right to take into consideration the suitability of the property, building or other structure and of materials of which it is to be built, to the site upon which it is proposed to erect the same, the harmony thereof with surroundings and effect of buildings or other structure or roadway as planned on outlook from adjacent or neighboring property.

7. No signs for advertising purposes shall be erected or placed on any plot in this subdivision, except a "For Sale" and "For Rent" sign, and the developers' directional or other signs during the course of construction.

8. The minimum size for dwellings to be erected on any lot, as measured from the outside of the exterior walls and excluding garages and carports are as follows:

(a) For a one-story dwelling or rancher, 1500 square feet first floor area.

(b) For a one and one-half story dwelling, 1200 square feet of first floor area, with dormers or other windows on the front of the half story.

(c) For a split-level dwelling, a minimum of 1500 square feet for the completed area of the intermediate and ground levels.

(d) For a two story dwelling, 1000 square feet on both first and second floors. For a total of at least 2000 square feet.

(e) The maximum size for a barn is 1000 square feet on ground level and two stories in height.

On Lot No. 2 on the aforesaid plat no house or other building shall be built in front of (north of) a straight line drawn from the beginning of the N. 28 degrees 37' 53" W. 456 feet line of said lot to the beginning of the N. 28 degrees 37' 53" W. 225 feet line of said lot.

All dwellings must include a two car garage or two car carport.

9. Nothing in these restrictions shall be construed to prohibit future subdivision of any parcel into R-40 residential lots. This means a lot containing at least 40,000 square feet and at least 150 feet wide at the building line.

10. No building shall be located nearer to the front, sides, or rear lot lines than permitted by the requirements of the zoning laws for front yard, side yard and rear yead in an R-40 residential district; even should zoning regulations require less, no building shall be located nearer than fifty feet to the front lot line, nearer than twenty feet to one side lot line and nearer than thirty feet to the other side lot line, and nearer than fifty feet to the rear lot line. No barn shall be nearer than twenty-five feet to any lot line, however no barn shall be built without its location being first approved in writing by Philip O. Tilghman Realty Company.

11. Any failure by any party entitled to enforce any of the covenants, restrictions, conditions, reservations, and agreements herein contained shall in no event be deemed a waiver of the right to do so thereafter as to the same breach, or as to one occurring prior or subsequent thereto.

12. Invalidation of any of these covenants by judgment or court order shall in no wise affect any of the other provisions, which shall remain in full force and effect.

13. It is expressly understood that these restrictions and covenants apply only to the property shown on the Plat of Section III Windemere. These covenants are to run with the land and shall be binding on the parties hereto and all persons claiming by, through or under them, until the first day of January, 1990, at which time said covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument, signed by more than fifty per cent (50%) of the then owners of the lots, (not including mortgagees or ground rent owners) has been recorded agreeing to change said covenants in whole or in part. It shall be lawful for any person, or persons owning any land situate in said Section III, Windemere, to prosecute any proceedings at law or in equity against the person, or persons, violating or attempting to violate any such covenant and either to prevent him, or them, from so doing, or to recover damages or other dues for such violation.

14. Philip O. Tilghman Realty Company, its successors and assigns, retains and reserves the right and power to modify the restrictions contained in Paragraph 2 and ~~4-8-~~ hereof as it deems necessary in its discretion, to adjust to the terrain and to other architectural styles. Any such modification shall be shown by a written instrument recorded among the land records of Baltimore County.

15. Philip O. Tilghman Realty Company further reserves unto itself, its successors and assigns, the right to grant an easement, right-of-way, license or licenses to any persons,

individuals, body corporate or municipality to install and maintain pipe lines and pole lines, with appurtenances necessary thereto, for public utilities, or quasi putlic utilities, or to grant such other licenses or permits as may be deemed necessary for the improvement of said development in, over, through, upon, and across any and all of the streets, and in, over, through, upon, and across each and every lot in the easement areas shown on the plats aforesaid; and in a ten foot wide strip of land along the rear lines of each lot, and electric lines and poles along the side lines of said lots. And further, PHILIP O. TILGHMAN REALTY COMPANY reserves unto itself, its successors and assigns, drainage easements as shown on the aforesaid plat. PHILIP O. TILGHMAN REALTY COMPANY further reserves unto itself, its successors and assigns, the right to dedicate any and all of said roads, streets, etc., to public use.

AS WITNESS the corporate seal of Philip O. Tilghman Realty Company and the signature of Philip O. Tilghman, its President, this 2nd day of SEPTEMBER, 1970.

ATTEST:

PHILIP O. TILGHMAN REALTY COMPANY

Angela M. Phillips

By Philip O. Tilghman

Angela M. Phillips

Philip O. Tilghman, President

STATE OF MARYLAND
BALTIMORE City to wit:

I HEREBY CERTIFY, that on this 2nd day of September, 1970, before me, the subscriber, a Notary Public of the State of Maryland, in and for Baltimore City, personally appeared Philip O. Tilghman who acknowledged himself to be the President of Philip O. Tilghman Realty Company, a corporation, and that he as such President, being authorized to do so, executed the aforesaid instrument for the purposes therein contained, by signing in my presence the name of the corporation by himself as such President.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Angela M. Phillips
Angela M. Phillips Notary Public

My Commission expires:

July 1, 1974

JUN-8-71 2 6225 ****11.00
JUN-8-71 2 6225 ****11.00

TRANSFER TAX NOT REQUIRED
6-8-71
Walter R. Richardson
Director of Finance
Per Alma M Buellner
Authorized Signature

Rec'd for record JUN 8 1971 at 2:16 P.M.
Per Orville T. Cosnell, Clerk
Mail to Philip O. Tilghman Realty Co.
Receipt No. 17-85

Office of Planning

401 Bosley Avenue, Suite 406
Towson, Maryland 21204
Tel: 410-887-3211 • Fax: 410-887-5862
E-mail: planning@co.ba.md.us

Baltimore County

James T. Smith, Jr., County Executive
Arnold F. 'Pat' Keller, III, Director

01/21/2004

MAIORANA JOY L
STEPCICH JOSEPH A
3 STONEHURST RD

PHOENIX MD 21131

Tax Account Number: 11 1600003598

In accordance with Baltimore County Code, 1988, Section 26-123(f), as amended, every four years Baltimore County undergoes a comprehensive zoning process, when any time any property can be requested for a zoning change.

Please be advised that your property, referenced by the Tax Account Number located above, is being considered for a possible zoning change under 2004 CZMP Issue **3-105**. At the of request of **Planning Board**
The description of the property is listed below as well as the existing zoning and requested zoning.

Property Description					
	IMPS5.158 AC				
	3 STONEHURST RD SW				
	WINDEMERE				
	3		STONEHURST	RD	

Existing Zoning		***Requested Zoning***	
RC 4	20,830.81	RC 7	20,830.817
Total	20,830.81	Total	20,830.817

If approved by the County Council, the requested zoning (RC-7) would reduce the rate of residential subdivision to one lot per twenty-five acres. The existing zoning (RC-4) allows residential subdivision at the rate of one lot per five acres. Existing lots in recorded subdivisions would continue to be regulated by the zoning regulations that were in effect at the time the existing lot was created.

The rezoning request was submitted because the sponsoring Planning Board members consider the RC-7 zone to be more effective than the existing RC-4 zone in protecting the County's watersheds.

The Office of Planning is preparing a Log of Issues that lists all zoning requests. A copy of the current Log of Issues is available on the County Web Page at the following address, which can be accessed at the Baltimore County Libraries.
www.baltimorecountyonline.info/go/czmp

The Planning Board will be holding public hearings on all zoning issues in each Councilmanic District during March 2004. Citizens are welcome to attend and present their comments on these issues at the public hearings. If you are unable to attend the meeting in your Councilmanic District, you may send written comments to:

Baltimore County Office of Planning
Attention Coordinator, 2004 CZMP 401
Bosley Avenue, Suite 406
Towson, MD 21204

Please make certain that all correspondence contains the 2004 CZMP Issue Number listed above.

For additional information or questions, please contact the Office of Planning at 410 887-3480.

Visit the County's Website at www.baltimc

Printed on Recycled Paper

PETITIONER'S EXHIBIT 10

Department of Permits and Development Management

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

Arnold's copy

Baltimore County

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

28 May 2004

Hon. Charles Klein, Chairman
Planning Board of Baltimore County
401 Bosley Ave.
Towson, Maryland 21204

Re: proposed amendment to "Section III, Windemere"

Dear Mr. Klein:

Arnold Jablon of Venable, LLP represents Joseph Stepcich, who has submitted to you, as Chairman of the Planning Board, a proposed subdivision of his lot into 2 lots. Mr. Stepcich's lot is part of a previously approved subdivision, known as "Section III, Windemere", that was tentatively approved by the Joint Subdivision Planning Committee (JSPC) in or about 1969 and approved by the Planning Board in 1970, and then vested.

The laws and regulations in effect at the time of an original plan's approval govern approvals of changes to previously approved subdivision plans. The County Code and the Baltimore County Zoning Regulations require the application of the zoning classification and subdivision regulations in effect at the time of the original plan approval when amendments to previously approved plans are proposed. This includes further subdivision of lots that were created by the original plan, and is controlled by the zoning classification then in effect.

The proposed subdivision of Mr. Stepcich's lot within "Section III, Windemere" is therefore governed by the zoning classification and the subdivision regulations in effect in 1969 and 1970 when "Section III, Windemere" was approved.

Sincerely,

Timothy M. Kotroco
Director

PETITIONER'S EXHIBIT 11

032502M

Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
pdmlandacq@co.ba.md.us

February 8, 2002

Ms. Joy Stepcica
3 Stonehurst Road
Phoenix Maryland 21131
Election District 10

Dear Ms. Stepcica:

RE: Zoning Verification of 3 Stonehurst Road

The property on the site plan you have submitted is zoned R.C.-4

The current subdivision regulations for that zone requires a minimum of (6) six acres to subdivide.

However, you are part of a development know as "Windmere" Section III which was approved by the Baltimore County Planning Board on January 19, 1970. During that time property was zoned R.S.C. which permitted (1) one acre lots.

If the properties in the development were vested, infrastructure construction and houses built on lots, the number of lots per acre as permitted when the development was *approved, may possibly be permitted to be used when considering current subdivision.*

To verify if the County considers your property to be vested and to determine whether you may proceed with a Minor Subdivision process, or whether you must amend the record plat and follow the full large tract development process. You must contact the Development Management Office to schedule a review before the Development Review Committee, chaired by Mr. Donald Rascoe.

One of the things they will look at is whether your neighbors within the Development have further subdivided their properties since the original subdivision was created.

I trust that the information set forth in this letter is sufficiently detailed and responsive to the request. If you need further information or have any questions, please do not hesitate to contact me at 410-887-3391.

Sincerely,

John R. Alexander
Planner II
Zoning Review

JRA/rjc

Come visit the County's Website at www.

Printed with Soybean Ink

PETITIONER'S EXHIBIT 12

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 2006, Legislative Day No. 3

Bill No. 24-06

Councilmembers Kamenetz, Bartenfelder, Moxley , McIntire & Olszewski

By the County Council, February 6, 2006

A BILL
ENTITLED

AN ACT concerning

Development

FOR the purpose of requiring previously approved developments to comply with the current law and the current development procedural review process; defining terms; defining the manner of the vesting of a project; clarifying the methodology employed by the Office of Planning in compiling its annual recommendation regarding overcrowded school districts; providing for the extension and expiration of development plan approvals; providing for the application of the Act; providing for the effective date of the Act; and generally relating to the scope of the County's development regulations and the vesting of development plans and plats.

BY repealing and re-enacting, with amendments

Sections 32-4-104, 32-4-261(a) and (b), 32-4-262, 32-4-273(d) and 32-6-103(d)
Article 32 - Planning, Zoning and Subdivision Control
Baltimore County Code 2003

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter stricken from existing law.
~~Strike-out~~ indicates matter stricken from bill.
Underlining indicates amendments to bill.

PETITIONER'S EXHIBIT 13

BY adding

Section 32-4-101(bbb)
Article 32 - Planning, Zoning and Subdivision Control
Baltimore County Code 2003

SECTION 1. BE IT ENACTED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, that Sections 32-4-104, 32-4-261(a) and (b), 32-4-262, 32-4-273(d) and 32-6-103(d) of Article 32, Planning, Zoning and Subdivision Control, of the Baltimore County Code 2003, be and they are hereby repealed and re-enacted, with amendments, to read as follows:

§32-4-104. Scope of Title.

(a) Applicability of title. [Except as provided in subsection (b) of this section, this title shall apply to all development.

(b) Exceptions.

(1) This title does not apply to a development that before the effective date of this article, June 11, 1982:

(i) Received tentative approval of the preliminary plan by the Planning Board;

(ii) Has a valid unexpired building permit;

(iii) Has a current executed public works agreement;

(iv) Received a CRG approval, reclamation plan approval, or was otherwise vested by law; or

(v) Where a CRG plan was accepted for filing by the Department of Public Works before the date of adoption of Bill 1-92.

(2) An exempt development under paragraph (1) of this subsection shall be governed by the subdivision regulation in effect at the time:

(i) Of the preliminary plan approval in the case of a development that received tentative approval by the Planning Board;

(ii) The development received a CRG approval, reclamation plan approval, or was otherwise vested by law;

(iii) The valid unexpired building permit was issued;

(iv) The current public works agreement was executed; and

(v) Of the acceptance for filing in the case of a CRG plan that was accepted for filing by the Department of Public Works before the date of adoption of Bill 1-92.]

THIS TITLE SHALL APPLY TO THE PROCESS OF REVIEW FOR APPROVAL OF ALL DEVELOPMENT.

[(c)] (B) Present zoning classification. Proposed development shall be in compliance with the present zoning classification on the property to be developed.

§32-4-261. *Expiration of Development Plan Approval.*

(a) In general. Unless extended under SUBSECTION (B) OR UNDER §32-4-274(a) of this subtitle, Development Plan approval shall expire [5] 4 years after the date [of] A FINAL, NON-APPEALABLE approval was granted.

(b) Request for extension.

(1) An applicant may make a written request to the Hearing Officer for [an] A ONE YEAR extension of the [5] 4 year Development Plan approval period provided under subsection (a) of this section UPON A SHOWING THAT A COUNTY AGENCY FAILED TO PROPERLY PROCESS AN ESSENTIAL REQUEST NECESSARY TO ACHIEVE VESTING IN A TIMELY FASHION, CAUSING A DELAY BEYOND THE INITIAL FOUR YEARS AFTER THE FINAL, NON-APPEALABLE APPROVAL WAS GRANTED.

(2) THE REQUEST FOR EXTENSION SHALL BE FILED PRIOR TO THE

EXPIRATION OF FOUR YEARS FROM THE DATE OF APPROVAL OF THE DEVELOPMENT PLAN.

[(2)] (3) The Hearing Officer SHALL ACT WITHIN 60 DAYS OF THE FILING OF THE REQUEST AND may grant, in writing, the request for an extension [upon certification by the applicant that the Development Plan meets the development regulations in effect at the time of the requested extension].

[3] (4) The Hearing Officer may not act upon the request for an extension until comments from the applicable agencies are received.

(5) ANY APPEAL OF THE EXTENSION GRANTED UNDER SUBSECTION (B) SHALL BE ON THE RECORD. THE STANDARD OF REVIEW SHALL BE BASED UPON AN ABUSE OF DISCRETION.

§32-4-262. Amendments to Development Plans.

(1) Any material amendment to an approved NON-RESIDENTIAL Development Plan shall be reviewed and approved in the same manner as the original plan.

[(2) Any other material amendment shall be in accordance with the comprehensive manual of administrative policy.]

(2) ANY MATERIAL AMENDMENT TO AN APPROVED RESIDENTIAL DEVELOPMENT PLAN OR PLAT SHALL BE REVIEWED IN ACCORDANCE WITH THIS TITLE, AND WITH RESPECT TO THAT PORTION OF THE ORIGINAL PLAN OR PLAT TO WHICH THE AMENDMENT PERTAINS, THE AMENDMENT SHALL BE REVIEWED FOR COMPLIANCE WITH ALL CURRENT LAW AND REGULATIONS, INCLUDING THE DEVELOPMENT REGULATIONS AND THE ZONING REGULATIONS.

§32-4-273. Time Limit for [Validity of Plats and Plans.] VESTING.

(d) Development. A subdivision or section or parcel of the subdivision is considered [developed and] vested if [any of the following has occurred with respect to the subdivision, section, or parcel:

(1) Building permits have been issued; or

(2) Substantial construction on required public improvements or private improvements has occurred on the subdivision, section, or parcel in accordance with the applicable regulations and requirements of the Department of Public Works.]

~~BUILDING PERMITS HAVE~~ A BUILDING PERMIT HAS BEEN ISSUED FOR ANY LOT IN ACCORDANCE WITH AN APPROVED PLAN OR PLAT, AND INSPECTION BY THE COUNTY CONFIRMS THAT SUBSTANTIAL CONSTRUCTION HAS OCCURRED ~~ON~~ WITHIN THE SUBDIVISION , INCLUDING ANY LOT, TRACT, SECTION, OR PARCEL THEREOF, WITHIN FOUR YEARS AFTER THE DATE OF THE FINAL, NONAPPEALABLE APPROVAL OF THE PLAN OR PLAT OR ANY EXTENSION THEREOF AUTHORIZED UNDER SECTION 32-4-261(A).

Title 6. Adequate Public Facilities

§32-6-103. Overcrowded School Districts.

(d) Recommendation. [The Office of Planning shall make the recommendation of whether a district is an overcrowded school district and whether the proposed Development Plan, in conjunction with any other proposed or approved development plan, would result in the school district becoming an overcrowded school district at the time of the filing date.]

(1) THE OFFICE OF PLANNING SHALL MAKE THE RECOMMENDATION OF WHETHER A DISTRICT IS AN OVERCROWDED SCHOOL

DISTRICT AND WHETHER THE PROPOSED DEVELOPMENT PLAN WOULD RESULT IN THE SCHOOL DISTRICT BECOMING AN OVERCROWDED SCHOOL DISTRICT AT THE TIME OF THE FILING DATE.

(2) IN MAKING ITS RECOMMENDATION ON THE PROPOSED DEVELOPMENT PLAN, THE OFFICE OF PLANNING SHALL CONSIDER THE CUMULATIVE EFFECT OF:

(I) THE SCHOOL IMPACT ANALYSIS FILED UNDER SUBSECTION (G) WITH RESPECT TO THE PROPOSED PLAN;

(II) THE IMPACT OF ANY DEVELOPMENT PLAN, OR PORTION OF A DEVELOPMENT PLAN, APPROVED WITHIN FOUR YEARS PRIOR TO THE FILING DATE; AND

(III) THE IMPACT OF ANY DEVELOPMENT PLAN APPROVED PRIOR TO THE FILING DATE, IF AN EXTENSION WAS GRANTED.

SECTION 2. AND BE IT FURTHER ENACTED, that Section 32-4-101(bbb) be and it is hereby added to Article 32, Planning, Zoning, and Subdivision Control of the Baltimore County Code 2003, to read as follows:

§32-4-101. Definitions.

(BBB) SUBSTANTIAL CONSTRUCTION MEANS ACTUAL CONSTRUCTION ACTIVITY OCCURRING ON THE GROUND OR BUILDING SITE FOR WHICH A ~~*PERMIT IS SOUGHT*~~ DEVELOPMENT PLAN OR PLAT HAS BEEN APPROVED THAT IS DIRECTLY RELATED TO THE ~~FACILITY OR STRUCTURE FOR WHICH THE PERMIT IS SOUGHT~~ APPROVED PLAN OR PLAT AND IS SUFFICIENTLY SUBSTANTIVE AND VISIBLE AND IS BEING PURSUED TO COMPLETION WITH REASONABLE DILIGENCE SO AS TO PUT THE PUBLIC ON NOTICE THAT THE GROUND OR SITE IS BEING DEVOTED TO THE CONSTRUCTION OF A FACILITY

OR STRUCTURE.

SECTION 3. AND BE IT FURTHER ENACTED, that this Act shall apply to any development, subdivision, parcel of land, or plat which received any form of approval from Baltimore County prior to the effective date of this Act as follows: ~~, including approval from the Planning Commission or Baltimore County Planning Board or CRC or DRC, prior to the effective date of this Act.~~

(A) A development plan or plat that vested in accordance with the law in effect prior to the effective date of this Act is subject to the zoning regulations and development regulations in effect at the time the plan or plat was approved, if those regulations were not otherwise subsequently abrogated or superseded by other law; however, with respect to a material amendment to the plan or plat, the provisions of Section 32-4-262 shall apply.

(B) An unexpired development plan or plat that was approved prior to the effective date of this Act, but not yet vested, shall have four years from the effective date of this Act to achieve substantial construction, as defined in this Act. The plan or plat shall be in compliance with the zoning regulations and development regulations in effect at the time of the original approval, or any extension properly granted under Section 32-4-261(b), if those regulations were not otherwise subsequently abrogated or superseded by other law. Upon the failure to achieve substantial construction or to obtain an extension within the four-year period, the plan or plat shall be deemed to be expired.

SECTION 4. AND BE IT FURTHER ENACTED, that this Act is adopted independently of Section 103 of the Baltimore County Zoning Regulations so that it supersedes and abrogates the rights to the vesting of a development that would otherwise accrue from the zoning or development regulations or other County laws.

~~SECTION 5. AND BE IT FURTHER ENACTED, that a development plan that was approved prior to the effective date of this Act, but not yet vested, shall have three years from the effective date of this Act to achieve substantial construction as defined herein. The plan shall be in compliance with the zoning classification in effect on the property at the time of the original approval, or any extension properly granted, as the case may be. Upon the failure to achieve substantial construction or obtain an extension within the three year period, the plan shall be deemed to be expired.~~

SECTION 5. AND BE IT FURTHER ENACTED, that this Act does not apply to any development plan for which a Hearing Officer's hearing was commenced prior to March 17, 2006 or to any request accepted for filing prior to March 17, 2006 for a material amendment to a previously approved plan.

SECTION 6. AND BE IT FURTHER ENACTED, that this Act, having been approved by the affirmative vote of five members of the County Council, shall take effect on March 17, 2006.

b02406.wpd

...artment of Environmental Protection
...nd Resource Management

401 Bosley Avenue, Suite 416
Towson, Maryland 21204

James T. Smith, Jr., County Executive
David A.C. Carroll, Director

Ground Water Management

Baltimore County

One of the Best-Managed Counties in America

410-887-2762
Fax: 410-887-4804

June 3, 2003

Mr. Joseph Stepcich
3 Stonehurst Road
Baltimore, Md. 21131

RE: 3 Stonehurst Road, Stepcich Property, Lots 1 & 2, D-11

Dear Mr. Stepcich,

A representative of this office, Clare M. Brunner, R.S., conducted soil evaluations on 01/10/2003 regarding the above-referenced lot(s).

Based on the evaluations and the master plan dated 05/12/2003, **APPROVAL** will be granted for the installation of a private sewage disposal system. Soil percolation tests will be ***valid for a period of five (5) years from the date of tests, approval letter or record plat, whichever is most recent***. At the expiration of this period of time, the results will become **VOID** without notice to that effect having been given by the Approving Authority.

It should be noted, there is an area designated on the site plan for the sewage disposal system and expansion thereof. Under no circumstances shall any permanent structures above or below ground, be permitted within this area. Also, no underground electric lines, water pipes, gas lines, etc., shall be permitted in the septic reserve area.

The following are comments that concern persons developing property:

- Where water wells are to be used as a source of water supply, the Baltimore County Code, (Title 35, Article 2, Sec. 35-41), requires that a well meeting the minimum recovery rate of one gallon per minute be drilled prior to issuance of a building permit.

- Water well yield test reports shall be valid for a period of three years from the date of the yield test. At the expiration of that period of time, a retest must be performed and the report submitted to this office prior to issuance of a building permit.

PET EXH 14

- In order to subdivide this property, the owner or developer will be required to comply with the subdivision regulations of the State of Maryland and Baltimore County. **PLEASE NOTE**: For subdivisions of 11 or more lots a Water Appropriation Permit application must be submitted for review. This permit must then be issued by the Maryland Department of the Environment, Water Management Administration before final approval of the subdivision. Questions regarding the subdivision process should be directed to Mr. R. Bruce Seeley, R.S., *in the Development* Coordination Section at 410-887-5859.

Attached is a copy of the original soil evaluation data for the above-referenced lots.

If you have any questions regarding this matter, please contact this office between 8:30 - 9:30 a.m.

Sincerely,

J. Robert Powell, R.S.
Soil Evaluation Program

CHESAPEAKE
BAY PARTNER COMMUNITY

1997 Gold Award Recipient

Attachments

J:\PERC LETTERS\2003 PERC LETTERS\Approval Letters\Stonehurst Road, 3, Lots 1&2,6-03-03.doc

Baltimore County Government
Department of Permits and
Development Management

111 West Chesapeake Avenue
Towson, MD 21204

410-887-3335

September 2, 2004

G. W. Stephens, Jr. & Associates, Inc.
David Martin
1020 Cromwell Bridge Road
Towson, MD 21286

RE: Windemere Section III Lot 3 Parcel B
Six Stonehurst Road
DRC Number 082304H, *Dist. 11C3*

Dear Mr. Martin:

Pursuant to Article 25A, Section 5(U) of the Annotated Code of Maryland, and as provided in Section 602 (d) of the Baltimore County Charter, and Sections 32-1-101, 32-3-401, and 32-3-517 of the Baltimore County Code, this letter constitutes an administrative order and decision on the request for issuance, renewal, or modification of a license, permit, approval, exemption, waiver, or other form of permission you filed with this department.

Your request has been submitted for careful review and consideration to the Development Review Committee (DRC), which is composed of representatives from each of those departments involved in land-use decisions. These representatives are designees of the directors of these departments. The purpose of the DRC is to ensure compliance with Section 32-4-106 and Section 32-4-262 of the Baltimore County Code and to make recommendations to the Director, Department of Permits and Development Management (PDM).

The DRC has, in fact, met in an open meeting on August 23, 2004, and made the following recommendations:

The DRC has determined that your project was originally approved by the Joint Subdivision Planning Committee (JSPC). You may process a plan with changes to the last approved JSPC in compliance with JSPC regulations. To submit a JSPC plan for consideration, please contact this office for a transmittal form. It is also necessary to submit a plan to the Office of Planning and the Department of Environmental Protection and Resource Management for further review. Please forward the plans, along with two copies of this DRC letter, to Room 123, County Office Building; 111 West Chesapeake Avenue; Towson, MD 21204.

PETITIONER'S EXHIBIT 17

I have reviewed the recommendation carefully, and I have determined to adopt the recommendations set forth above. It is this 2nd day of September 2004, ordered and decided that the recommendations of the DRC are hereby adopted.

Should you submit an application for any permits that may be required for this project, your application will be processed subject to the conditions set forth above and any plans, securities, or non-county permits that may be required in accordance with County, State, or Federal regulations.

Sincerely,

Timothy Kotroco

Timothy Kotroco
Director

TK:DTR:dak

c: Kristin Weis
File

Office of Planning

401 Bosley Avenue, Suite 406
Towson, Maryland 21204
Tel: 410-887-3211 • Fax: 410-887-5862
E-mail: planning@co.ba.md.us

Baltimore County

James T. Smith, Jr., County Executive
Arnold F. 'Pat' Keller, III, Director

December 3, 2004

RECEIVED
DEC 0 8 2004
GEORGE WILLIAM STEPHENS JR
& ASSOCIATES, INC.

GW Stephens, Jr. And Associates
Mr. David Martin
1020 Cromwell Bridge Road
Towson, MD 21286-3396

Re: *Pridgeon Property, Windemere*
6 Stonehurst Road, Parcel B

Dear Mr. Martin:

Based upon a review of the information provided and analysis conducted, the Joint Subdivision Planning Committee, JSPC, has determined that your client's request for a lot line adjustment for the above-referenced lot and Parcel B has been denied as the property's zoning has changed since the original lot was recorded. The RC 4 zone permitted density does not allow for the reconfiguration of these parcels as the total acreage is ±4.18.

Sincerely,

Jeffrey W. Long
Deputy Director

JWL:kma

c: Jay Liner, County Attorney
Tim Kotroco, Director of Permits and Development Management
Amanda Conn, Assist. County Attorney
Pat Keller, Director, Office of Planning
Jeff Mayhew, Chief, Community Planning
Lynn Lanham, Chief, Development Review

W:\DEVREV\LYNN\Pridgeon Property, Windemere.doc

Printed on Recycled Paper

PETITIONER'S EXHIBIT 18

BALTIMORE COUNTY
DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT

DEVELOPMENT REVIEW COMMITTEE (DRC) APPLICATION

DRC#_____
County Use Only

Filing Date: _____
Stamp in w/PDM date stamp here

This application must be accompanied by the following:

1. **One copy of the completed DRC application form checklist.**
2. **Three copies of this DRC application, completed in full.**
3. **Three copies of a letter of request (attach one to each DRC application).**
4. **Nine copies of the plan folded to 8 ½ x 11 inches.**
5. **$50 fee (check made payable to Baltimore County and non-refundable; do not staple check to request form)**

Project Name: LOT 3 & PARCEL B WINDEMERE, S. III PDM File #: J.S.P.C.

Project Address: 6 STONEHURST RD, BALT Zip Code: 21057 ADC Map #: 20-C-7

Councilmanic District: 3 Election District: 11 Project Acreage: 4.18 +/-

Tax Account No(s): 1600003600, 1600003601 Zoning: RC. 6

Engineer: C.W. STEPHENS & ASSOC. Engineer's Phone No.: 410-825-8120

Applicant: VENABLE - %ARNOLD JABLON Applicant's Phone No.: 410-494-6298

Address: 210 ALLEGHENY AVENUE

TOWSON, MD Zip 21204 Email: ajablon@venable.com

Is this an antenna? __Yes ✓No If "Yes" check one of the following: Cellular ____ (CAC) Water Tower ____ (WTC) MonoPole ____ (CFC)

REQUESTED ACTION (TO BE COMPLETED BY THE APPLICANT)

( ) Limited Exemption under Section ~~26-171~~ 32-4-104.(6).(1).(i) ( ) ( )
(✓) Material Amendment to the plan
( ) Plan Refinement
( ) Waiver of public works standards
( ) Requires a Zoning ( ) Special Hearing; ( ) Special Exception; ( ) Variance
( ) Other _____

This application must be accompanied by a written request. That request must be in the form of a letter, legibly printed or typed, and signed by the applicant. The letter must contain the name, address and telephone number of the applicant and must provide details of the request.

Please note that a DRC application form checklist is available in room 123 of the Baltimore County Office Building and on the Baltimore County web site at www.co.ba.md.us. A copy of that checklist must be completed and included along with this DRC application.

Please see the DRC application form checklist for complete submittal requirements.

c: Council, Planning, DEPRM

2/11/2002

PETITIONER'S EXHIBIT 19

BALTIMORE COUNTY
DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT

Development Review Committee (DRC) Application Form Checklist

All applications to the DRC must include the following:

✓ 1. Three copies of the DRC Application.
✓ 2. Three copies (one attached to each DRC Application) of a letter of request to the DRC containing the following:
- ✓ a. Name, address and phone number of the applicant
- ✓ b. Explanation of the request to the DRC.
- ✓ c. Signature of the applicant.

✓ 3. Nine copies of a plan*** showing the following:
- ✓ a. A plan title box noting "Plan to accompany DRC request."
- ✓ b. North arrow.
- ✓ c. Vicinity map.
- ✓ d. Election district.
- ✓ e. Councilmanic district.
- ✓ f. Property tax account numbers.
- ✓ g. Site property owner's name and address.
- ✓ h. Scale of the drawing.
- ✓ i. Boundaries of the property lines shown in heavy bold lines.
- ✓ j. Lengths of property lines
- ✓ k. Area of project site in square feet and acreage.
- ✓ l. Proposed structures, heights and dimensions.
- ✓ m. Setbacks.
- ✓ n. Location of existing wells and septic systems.
- ✓ o. Zoning information:
  - ✓ 1. Current zoning on the property.
  - N/A 2. Case numbers of any zoning hearings.
  - N/A 3. Dates of zoning orders.
  - N/A 4. Indication of what was granted or denied by the zoning commissioner.
  - N/A 5. Copies of zoning orders attached to the DRC Application.

***Note: For refinements and material changes to previously approved plans you must use copies of the last approved plan to show items 3a-o listed above. Please show all changes in red.

✓ 4. One copy of this checklist completed and signed by the applicant or the consultant.
✓ 5. Check for $50 payable to Baltimore County, MD (do not staple to forms).

I have reviewed the DRC application and plan using this checklist to insure that the application and plan are complete. I understand that an incomplete application or plan may cause the DRC to delay its action on this request.

Signed David L. Martin, LA. 3/13/06
Date

Print Name DAVID L. MARTIN

2/12/2002

VENABLE LLP

210 Allegheny Avenue
Post Office Box 5517
Towson, Maryland 21285-5517

Telephone 410-494-6200
Facsimile 410-821-0147

www.venable.com

ARNOLD JABLON
(410) 494-6298

aejablon@venable.com

RECEIVED
MAR 14 2006
DEPT. OF PERMITS AND DEVELOPMENT MANAGEMENT

13 March 2006

Mr. Donald Rascoe, Deputy Director
Department of Permits and Development Management
111 West Chesapeake Ave
Towson, Maryland 21204

Re: Richard Pridgeon Property
Windemere, Section III, Lot 3
and Parcel B
J.S.P.C. Material Amendment

Dear Mr. Rascoe:

This office represents Mr. Richard Pridgeon, the above cited property owner. The subject property, located at 6 Stonehurst Road, Baltimore, MD., is a lot and parcel on an approved J.S.P.C Plan signed in 1956. The property owner desires to adjust the lot line as shown on the accompanying redlined J.S.P.C. plan.

In August of 2004, our client filed a request to the DRC for approval of a lot line adjustment by amendment to the originally approved J.S.P.C. plan. The plan submitted to the DRC was dated August 3rd, 2004.

Subsequently, by letter dated 2 September 2004, the DRC confirmed that my client's property had been part of a subdivision approved by the J.S.P.C. and that he could process his request for a lot line adjustment as shown on his accompanying plan in compliance with J.S.P.C. regulations. He proceeded to do so. On 3 December, 2004, by letter, Mr. Jeffrey Long, Deputy Director, Office of Planning, stated that the J.S.P.C. had denied my client's request for the lot line adjustment because the property's original zoning had changed. On 27 December, 2004, an appeal from Mr. Long's letter was taken to the Board of Appeals, where it is pending.

With the passage of Bill No. 26-04 by the County Council, we believe it appropriate to file the attached plan. Pursuant to this legislation, my client's proposal merits endorsement at the very

PET EXH 21

least as being in conformity with the regulations in place at the time of the original plan approval or as a material amendment to the previously approved plan, as shown and in accordance with the development and zoning regulations in effect at the time of the original plan approval.

Please accept this request for filing for a material amendment to a previously approved plan, pursuant to §6, of Bill 26-04.

Sincerely,

Arnold Jablon
AEJ/aj

ACCEPTED FOR FILING BY THE DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT

3-14-06
DATE

By: David T. Lasseur
PDM

NOTES:

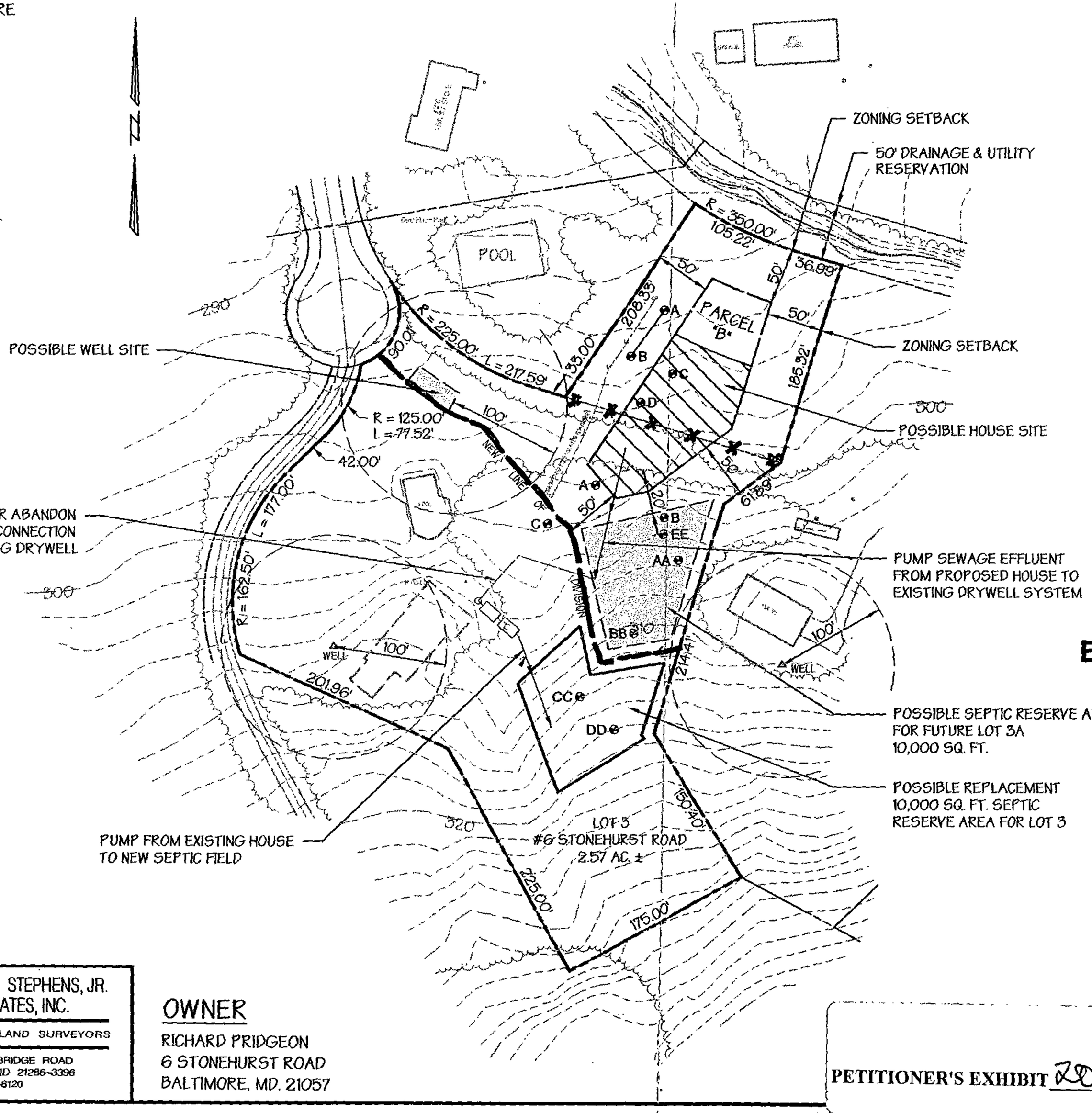
1. SUBDIVISION NAME: WINDEMERE

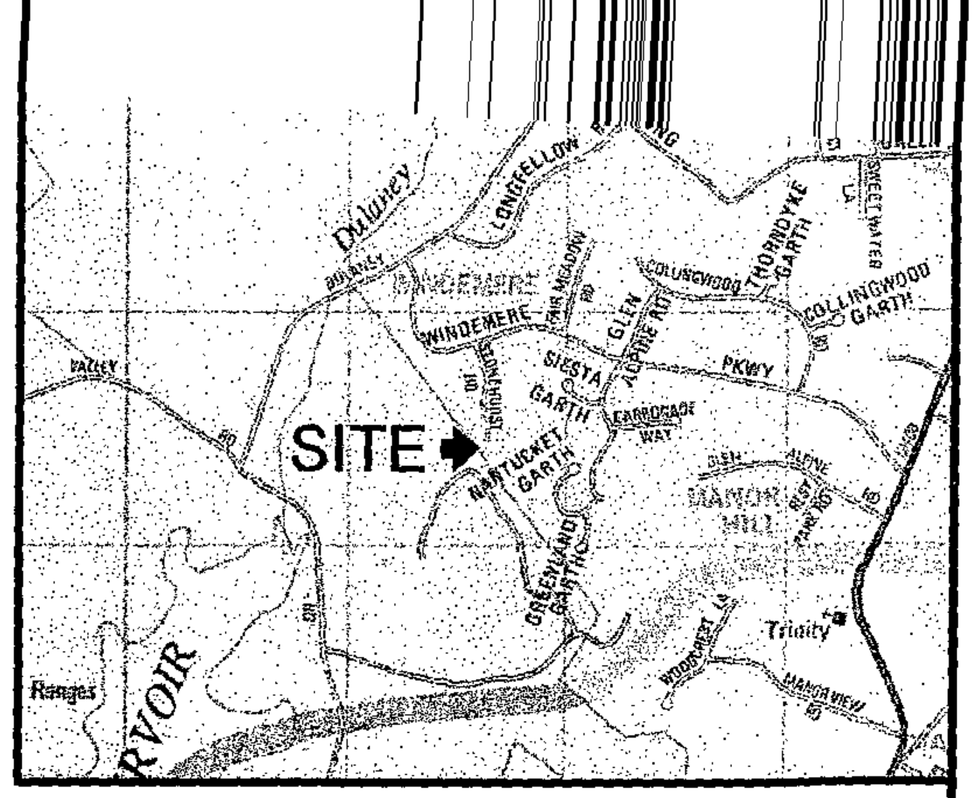
2. OWNER INFORMATION:
   RICHARD PRIDGEON
   6 STONEHURST ROAD
   BALTIMORE, MD 21057

3. ACREAGE:
   EXISTING LOT 3: 3.43 Ac.
   EXISTING PARCEL B: 0.75 Ac.
   PROPOSED LOT 3: 2.57 Ac.
   PROPOSED PARCEL B: 1.61 Ac.

4. TAX MAP: 53; PARCEL 60

5. TAX ACCOUNT NUMBERS
   LOT 3: 1600003600
   PARCEL B: 1600003601





VICINITY MAP
SCALE: 1" = 2000'

EXISTING ZONING: RC 6

GEORGE WILLIAM STEPHENS, JR. AND ASSOCIATES, INC.
CIVIL ENGINEERS & LAND SURVEYORS
1020 CROMWELL BRIDGE ROAD
TOWSON, MARYLAND 21286-3396
(410) 825-6120

OWNER
RICHARD PRIDGEON
6 STONEHURST ROAD
BALTIMORE, MD. 21057

PETITIONER'S EXHIBIT 20

PLAN TO ACCOMPANY
DRC REQUEST
LOT 3 and PARCEL "B"
WINDEMERE, SECTION III

11th ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT
SCALE: 1" = 100'
BALTIMORE COUNTY
MARCH 9, 2006

Baltimore County Government
Department of Permits and
Development Management

111 West Chesapeake Avenue
Towson, MD 21204

410-887-3335

April 12, 2006

Venable, c/o Arnold Jablon
210 Allegheny Avenue
Towson, MD 21204

RE: Lot 3 & Parcel B Windemere, Sec. III
6 Stonehurst Road
DRC Number 040306E, Dist. 11C3

Dear Mr. Jablon:

Pursuant to Article 25A, Section 5 (U) of the Annotated Code of Maryland, and as provided in Section 602 (d) of the Baltimore County Charter, and Sections 32-1-101, 32-3-401, and 32-3-517 of the Baltimore County Code, this letter constitutes an administrative order and decision on the request for issuance, renewal, or modification of a license, permit, approval, exemption, waiver, or other form of permission you filed with this department.

Your request has been submitted for careful review and consideration to the Development Review Committee (DRC), which is composed of representatives from each of those departments involved in land-use decisions. These representatives are designees of the directors of these departments. The purpose of the DRC is to ensure compliance with Section 32-4-106 and Section 32-4-262 of the Baltimore County Code and to make recommendations to the Director, Department of Permits and Development Management (PDM).

The DRC has, in fact, met in an open meeting on April 3, 2006, and has denied your request.

Sincerely,

Timothy Kotroco
Director

TK:DTR:dak
c: file

Visit the County's Website at **www.baltimorecou**

PETITIONER'S EXHIBIT 22

PDM - POLICY NO. I.a

DEVELOPMENT REGULATIONS
COMPREHENSIVE MANUAL OF ADMINISTRATIVE POLICIES
(CMAP)

AMENDMENTS TO APPROVED COUNTY REVIEW GROUP PLAN

I. Material Amendment

A. Under Sections 22-55, Baltimore County Code (BCC), a plan is defined as follows:

"The plan shall set forth an informative, conceptual and schematic representation of the proposed development by means of maps, graphs, charts or other written or drawn documents so as to enable the county and all reviewing agencies an opportunity to make reasonably informed decisions regarding the development."

B. Under Sections 22-63, BCC, "any material amendment to an approved plan shall be reviewed and approved in the same manner as the original plan."

C. An amendment or combination of amendments to any of the plan items set out in Sections 22-55(b), BCC, shall be considered a "material amendment" if it or they:
   1. Represents a fundamental departure from or material alteration of the original county review group (CRG) concept; or
   2. Has a significant effect on neighboring property, or the neighborhood at large, different from the approved plan.

II. Non-Material Amendment

A. Under Sections 22-43, BCC, amendments to an approved plan which do not materially alter the proposed development may be approved by the Baltimore County Planning Board, with a waiver of CRG meeting, if the director of the Office of Planning finds that:
   1. The size, scope, and nature of a proposed development does not justify strict compliance with these regulations; and
   2. A waiver would be within the scope, purpose and intent of these regulations; and
   3. All other county laws, ordinances, and regulations have been complied with.

B. Thus, a "non-material amendment," which may be approved by the Planning Board with a waiver of CRG meeting, would be any change to an approved plan which does NOT:
   1. Materially alter the original plan concept; or
   2. Have any additional and significant impact on neighboring property or the neighborhood at large.

Pet. Ex #26

III. Plan Refinements

A. In order to further clarify the "Plan Amendment Process" it is proposed that slight, minor or insignificant changes to an approved plan, which have no significant impact on the site or on adjacent properties or the neighborhood at large may be considered as "Plan Refinements" fully in keeping with the informative, conceptual and schematic nature of the CRG plan. Plan refinements would not require a CRG meeting or a waiver by the Planning Board. The refinements would include, but not be limited to, minor changes in the following:

1. Number of dwellings.
2. Unit type and location.
3. Square footage or buildings.
4. Location and area of grading.
5. Area, location, and function of open space.
6. Parking and driveways.
7. Location of streets, fire hydrants and streetlights.
8. Location and areas of storm water management facilities.
9. Sewer and water lines and easements.
10. Soil type and location.
11. Location and area of flood plain.

B. Proposed non-material amendments to specific details or elements of an approved plan which were the subject of concern at the original CRG meeting may not be considered plan refinement. They may, however, be approved by the Planning Board with a waiver of CRG meeting. In such a case, the director of the Office of Planning shall mail notice of the date, time, and place of the meeting of the Planning Board at least 15 days prior to the date of such meeting to those persons who provided their names and addresses to the CRG and attended the CRG meeting or submitted written comments on the plan.

IV. Plan Corrections – In most instances, corrections to the following items on a CRG plan would not require a CRG meeting or waiver action by the Planning Board.

A. Address.
B. Lot lines.
C. Ownership.
D. Dimensions.
E. Scale, north arrow, etc.
F. Bearings and distances.
G. Election district, councilmanic district, and census tract.
H. Water and sewer shed.
I. Acreage.

V. Approved Plans

A. All changes to an approved plan, whether amendments, refinements, or corrections, will necessitate an updated, approved (by signature) CRG plan.
B. In the case of refinements and corrections, "red lining" of approved plans will probably be acceptable.

Pursuant to Baltimore County Code, Section 22-49, Rules of Procedure, this policy is adopted as part of the CRG Comprehensive Manual of Administrative Procedures (CMAP).

(Original Signed by Gene Neff) — *5/25/87*
Gene Neff, Acting Director — Date
Department of Public Works

(Original Signed by Norman E. Gerber) — *5/25/87*
Norman E. Gerber, AICP, Director — Date
Office of Planning and Zoning

IN THE MATTER OF: * BEFORE THE

PRIDGEON PROPERTY * COUNTY BOARD OF APPEALS

CASE NO. CBA-04-159 * OF

and * BALTIMORE COUNTY

IN THE MATTER OF: * May 15, 2007

PRIDGEON PROPERTY *

CASE NO. CBA-06-019 *

and *

IN THE MATTER OF *

STEPCICH PROPERTY, SECTION III *

CASE NO. CBA-06-020 and *

IN THE MATTER OF: *

JOSEPH STEPCICH - Petitioner *

CASE NO. 06-419-SPH *

ORIGINAL

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at The Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204, at 10:30 a.m., May 15, 2007.

* * * * *

Reported by: C.E. Peatt

BOARD MEMBERS:

LAWRENCE M. STAHL, Chairman
EDWARD CRIZER, JR.
WENDELL GRIER

APPEARANCES:

ARNOLD E. JABLON, Esquire
On behalf of Property Owners

J. CARROLL HOLZER, Esquire
On behalf of Protestants

NANCY C. WEST, Esquire
Assistant County Attorney
On behalf of Baltimore County

PETER MAX ZIMMERMAN, Esquire
People's Counsel
On behalf of Baltimore County

PROCEEDINGS

* * * * *

THE CHAIRMAN: Good morning, everyone. We're here in the matter this morning of Case CBA-04-159, 06-019, 06-020, 06-419-SPH, regarding the Pridgeon Property, Section VI, Windemere, 6 Stonehurst Road in Phoenix, regarding a JSPC decision which had previously been denied.

This is day three of this matter. For the record, counsel, if you will.

MR. JABLON: Mr. Stahl, Arnold Jablon. There are two petitioners, Mr. Stepcich and Mr. Pridgeon, two separate issues which are before the Board, and I represent both parties.

MR. HOLZER: Good morning. J. Carroll Holzer, 508 Fairmount Avenue, on behalf of the Long Green Valley Association and a number of individuals which have previously been stated.

THE CHAIRMAN: Good morning.

MS. WEST: Good morning. Nancy West, from the County Attorney's office, on behalf of Baltimore County.

THE CHAIRMAN: And Peter Max Zimmerman, last but not least.

MR. ZIMMERMAN: Thank you, Mr. Stahl. I appreciate the courtesy. Peter Max Zimmerman, People's Counsel, for Baltimore County.

THE CHAIRMAN: All right. As memory serves, we have Mr. Long up and ready for this morning. Any other administrative things?

MS. WEST: With all due respect, I have had a conversation with Mr. Holzer prior to the Board convening and, actually, he has a brief witness that he'd like to put on first.

MR. HOLZER: Just two minutes.

MR. JABLON: I object.

MR. HOLZER: Overruled.

MR. JABLON: Withdrawn.

MR. HOLZER: Ms. Charlotte Pine.

CHARLOTTE PINE,

having been called as a witness, was duly sworn, and testified as follows:

THE CHAIRMAN: Ma'am, if you'd keep your voice

way up, we'd appreciate it.

DIRECT EXAMINATION

BY MR. HOLZER:

Q. Ms. Pine, would you state your full name and present address, please.

A. Charlotte Pine. My office is 607 Baltimore Avenue, Towson, Maryland.

Q. Are you involved with the Long Green Valley Association?

A. Yes. I am a member of the board of the Long Green Valley Association and I'm past president for about twenty years.

Q. Is the Long Green Valley Association familiar with the issue involved in today's hearing known as the Stepcich property and the Pridgeon property?

A. Yes, it is.

Q. Did you attend or did any one member of the Long Green Valley Association attend the Zoning Commissioner's hearing, do you recall?

A. I don't recall whether they did or not.

Q. Did there come a time that the association took a

position in regard to this issue?
And I will show you what is marked as a Rule 8, three pages.
A. Yes, I recall Rule 8. This was prepared by Carol Trella, secretary, and signed by Roger Hayden, president of the association.
Q. Were you a member of the board when this resolution was adopted?
A. Yes, I was.
Q. Could you just tell the Board briefly what the Long Green Valley's concern is in regard to this case?
A. Yes. We believe this case is extremely important county-wide because it is a question of resubdivision of an old subdivision and trying to resubdivide under the old zoning regulations.
We believe that all these resubdivisions should be in compliance with current zoning and not the old regulations for the 1950s and 1970s.
We have gotten smarter, certainly hope we have gotten smarter, and we are now more environmentally concerned, and we do not think any of these old

subdivisions should be allowed to resubdivide under the old law.
Q. Thank you.
MR. HOLZER: I would offer the Rule 8, three pages, that were identified by Ms. Pine as a protestants' exhibit.
MR. JABLON: For the record, no objection.
MR. HOLZER: Thank you. I have no further questions.
MR. JABLON: I have one.
MR. ZIMMERMAN: What number are we?
MR. CRIZER: Protestants No. 2.
MR. JABLON: I'm not sure of the process. Does Ms. West and Mr. Zimmerman go before I do?
THE CHAIRMAN: The group from this side, do you have any additional questions?
MS. WEST: No.
THE CHAIRMAN: Do you have any have additional questions, Mr. Zimmerman?
MR. ZIMMERMAN: No.
THE CHAIRMAN: Mr. Jablon.

CROSS EXAMINATION:
BY MR. JABLON:
Q. Is Windemere within the confines of your association?
A. Yes, it is.
MR. JABLON: No further questions.
MR. HOLZER: May Ms. Pine be excused?
THE CHAIRMAN: She may. Thank you, Ms. Pine. Off the record.
(Discussion held off the record.)
THE CHAIRMAN: Okay. Mr. Long, you're next up.
J E F F R E Y L O N G,
having been called as a witness, was duly sworn, and testified as follows:
DIRECT EXAMINATION
BY MS. WEST:
Q. Good morning, Mr. Long.
A. Good morning.
Q. Would you please state your full name for the record, and spell your last name.
A. Jeffrey Long. L-o-n-g.

Q. Mr. Long, you're currently employed by the Baltimore County office of planning as the deputy director, is that correct?
A. I am.
Q. How long have you served in that capacity?
A. Deputy director, over three years.
Q. How long have you been with Baltimore County?
A. Baltimore County, approximately twenty-eight and a half years.
Q. How long have you been employed in the office of planning?
A. Since 1989.
Q. What are your responsibilities as deputy director?
A. My responsibilities as determined being deputy director, I am responsible for the supervision of everyone who works in the office.
I am responsible for the CIP. I'm responsible for our office's operating budget. And I get involved in many other issues at the request of the director.
Q. Are you familiar with the consolidated cases

Page 10

before the Board here today?
A. I am. I have had some involvement in both.
Q. How did the Stepcich property and the Pridgeon property come to your attention?
A. They came to my attention in various ways, the details of which I no longer can exactly recall, but they came across the desk on a number of occasions.
Q. Mr. Long, have you been here throughout the course of some of these proceedings when the Board has convened on day two, is that correct?
A. Yes.
Q. Certainly, you are aware as deputy director of the office of planning, that the office denied the petitioner's request to resubdivide the property?
A. That's correct.
Q. Through the Joint Subdivision Planning Committee?
A. Yes.
Q. Known as the JSPC?
A. That's correct.
Q. Can you tell us why that is?
A. The reasons for that is to --

Page 11

MR. JABLON: I'm going to object at this point, Mr. Chairman. The question was about the JSPC and the office's denial of it.
In fact, that was reversed by this Board in a previous case. That matter is not before the Board, the JSPC denial. The Board reversed Mr. Long.
THE CHAIRMAN: Hang in there a second. I'm just wondering, if the purpose of Mr. Long is to describe what his department's position is, why don't we just rephrase the question and ask him what his department's position is regarding the property.
A. We denied the request to resubdivide this lot because there isn't sufficient density due to the change in the property's zoning classification and action taken by the County Council.
Q. Could you be more specific as to what that change was and how it impacted the property?
A. Initially, it was changed to R.C. 4, and then later to R.C. 6. But under both classifications, the properties could not be resubdivided under current regulations.

Page 12

Q. Well, under the current zoning, does the property have any subdivision potential?
A. It does not. Neither property has any subdivision potential at all.
Q. What impact does the former zoning on the property have on its subdivision potential?
A. In the opinion of the office of planning, absolutely none.
Once the County Council took the action to change the zoning on the property, that zoning under which any resubdivision must comply with, it's the same as the property's zoning classification is increased, and there have been numerous examples where residential subdivisions zoning classification has been increased to allow for additional density.
While it works both ways, if the property is rezoned to reduce the density, or downzone, that means that the zoning that's in place, and that's the zoning under which a property can be subdivided.
We don't go back to the old zoning classification, unless we are considering a record lot

Page 13

that for some reason may not have ever been built upon.
In those instances, it's possible that we would support or at least sign off on a building permit, should one come our way.
But this case is different in that there is a lot that is inconsistent for subdivision purposes with the current zoning of the property and, therefore, cannot be subdivided.
In the minds of planners that I work with, this is really a very simple matter. The zoning has changed, and the property cannot be subdivided.
Q. What is the role of the County Council in the comprehensive zoning map process?
A. The role of the County Council is to approve the final zoning. And then once that takes place, that is the zoning by which all decisions are made.
Q. And what happens after those maps become effective?
A. Well, the maps essentially become official, and those are the maps that county agencies use when they make land use decisions.

Page 14

Q. Is there any reason why the current zoning as enacted by the County Council would not apply to this particular case?

A. I can think of no reason why it wouldn't.

Q. Have you had occasion to review similar cases?

A Yes. And the office of planning has been consistent in its denial of similar requests to consider resubdivision of lots which, today, don't have sufficient density to allow for further subdivision.

Q. So, in particular, what is the impact of Bill No. 24-06 on this particular land as far as your office is concerned?

A. As far as our office is concerned, it transforms Ivory soap from ninety-nine and forty-four one-hundreds to one hundred percent.

Q. The net effect of that would be?

A. That absolutely everything that we have been saying all along about resubdivision is in that Bill, that Bill in no way allows anything to take place before its enactment. I think it only is an acknowledgement of what the county's practice is and what the law is in terms of

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vesting.

MS. WEST: If I could have a minute?

THE CHAIRMAN: Mr. Long, the citation?

THE WITNESS: Bill 24-06.

THE CHAIRMAN: 24-06?

THE WITNESS: Yes.

MS. WEST: I have no further questions.

THE CHAIRMAN: Mr. Holzer?

MR. HOLZER: I have no questions.

MR. ZIMMERMAN: I have a couple.

MR. JABLON: Will you hold him to that?

THE CHAIRMAN: Can you make the weather change?

(Discussion held off the record.)

FURTHER DIRECT EXAMINATION

BY MR. ZIMMERMAN:

Q. Mr. Long, you've had a chance to look at the zoning history of this Windemere area as provided by documents from the zoning records, by the zoning office, did you not?

A. Yes, I did.

MR. ZIMMERMAN: Let me say I provided Mr. Jablon

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this morning a copy of the zoning maps which I will represent were provided to us by David Duval of the zoning office who works for Carl Richards, the zoning supervisor, and to make it easier --

Q. First of all, Mr. Long, did you get a copy of what I'm going to submit to the Board in a moment?

A. Yes, I did.

MR. ZIMMERMAN: To speed things up, Mr. Chairman, so it makes it a little bit easier for Mr. Jablon, I'm going to submit as the next exhibit -- what are we up to?

MR. CRIZER: You're up to No. 3.

MR. ZIMMERMAN: People's Counsel No. 3 -- it will actually be 3-A through J.

MR. JABLON: I'm sorry. The number?

MR. ZIMMERMAN: 3-A to J. And to speed it up, this will show from the zoning office records way back when this area was zoned what was called an "A" residence zone -- "A" -- and later was R.6. -- R period 6 -- until 1971, the inference being that this property, the area, was actually R.6 in or about 1970 when Section III was platted. That will be People's Counsel 3-A.

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Then going in order from 3-B through 3-J, the 1971 map shows the R.S.C. zoning. The 1976 comprehensive zoning map shows the rezoning to R.C. 4, which remained through each of the successive four-year cycles until, in 2004, the R.C. 6 zone was enacted or designated.

So this is fairly similar to what has already been said, although we found R.6 was the applicable zone just prior to 1971, and this verifies when the R.C. 4 zone came into effect, and also goes all the way back to 1945.

I have not yet marked 3-A through J on it. Would the Board prefer I do that?

MR. CRIZER: If they're in order, I will do it.

Q. But in any event, Mr. Long, you have had a chance to look at these?

A. Yes, I have.

Q. Obviously, if in 1970, the zoning was R.6, or whether assuming it had been in R.40 as Mr. David Martin suggested, that would have allowed the subdivision that was platted at that time in 1970, would it not?

A. More than allowed.

Q. For the record, R.40 signifies what as the

minimum lot size?
A. About an acre.
Q. And R.6 would have signified?
A. About an acre or two as well.
Q. Would it be a minimum 6000 square feet?
A. It's a little bit less. It was pretty much was the ability of a property owner to get a perc. That's what drove that issue, the ability to get a perc. So it was an incredible density allowance that, fortunately, never occurred.
Q. And the R.S.C zone which came in, that you may recall, had a minimum one acre, subject to perking?
A. Correct.
Q. Now, do you recall that in the zoning regulations that each of the R. zones was given more or less an equivalent D.R. zone?
A. Yes.
Q. And the equivalent for R.6 would have been what?
A. It was a residence zone. A --
Q. Not to trick you --
A. And "A" residence zone.

Q. Section 100.3.A, if we take a look at the regulations, on page 1-4, that gave the equivalences back in Bill 100-1970, did it not?
A. Yes. So R.C. 6 would be, or R.6 would be D.R. 5.5 and R.A, for example, would be D.R. 16, and R.G. being 10.5.
Q. R.40 would have been?
A. D.R. 1.
Q. And that section actually stated, in general, at least at that time, those areas were re-designated?
A. Correct.
Q. So when the County Council enacted the comprehensive zoning legislation in 1971 or 1976 or 1980, or every time, would you agree that, based on your experience, it had a choice of what classification to put any property in?
A. Any of the zoning classifications contained in the zoning regulations essentially, potentially, could be applied to the property.
And that gets a little tricky with the establishment of the urban rural demarcation line, but

certainly the County Council would have the authority to apply most zoning classifications to any property in the county.
Q. So can you say from your experience whether many properties around the county that were previously zoned R.6 become D.R. 5.5 and stayed D.R. 5.5 for sometime after that?
A. Yes, properties did.
Q. So to analogize what the airline pilots or people tell us every time we fly, that we have a choice on what airlines to choose, the County Council had a choice to make as to what zoning to place on the Windemere area?
A. Yes.
Q. So correct me if I'm wrong, but to your way of thinking then, the choices the County Council made not to place Windemere in D.R. 5.5 or D.R. 1, but rather to place it in R.S.C., and then later R.C. 4, and then R.C. 6, that had some meaning?
MR. JABLON: I'm going to object.
THE CHAIRMAN: I believe that was probably the,most leading question that I've heard in a long time.

Why don't we divide it up and rephrase it?
Q. Let me rephrase it so it's not all leading. In light of the choices that the County Council had to make, what significance, if any, is there in the County Council designating the Windemere area in these very different zones over the years?
MR. JABLON: Objection.
THE CHAIRMAN: I'll let him answer.
A. I think it was an acknowledgment on the part of the County Council that this property was far removed from the more urban, even inter-ring (phonetic) suburban communities than are found elsewhere in the whole of Baltimore County.
So given its location from the Baltimore City line, it was viewed as an area that was appropriate for a lower density classification.
Q. Now, separately -- I think you were here on our second day hearing, but not the first?
A. Parts of the second day.
Q. I believe on the first gay of the hearing, we head one of the neighbors, I always get her name wrong,

but Ms. True --
A. Adrienne True. She's not here today.
Q. Right. Mr. Long, are you familiar, generally, however, with the concerns of Ms. True?
A. I have spoken to Ms. True on several occasions.
Q. Do you know whether or not sometimes over the last five or ten years that Ms. True purchased one of the nearby lots to the lots under consideration?
A. That it my understanding, that relatively within that time frame, she did purchase a lot. I know she did formerly live in Towson, but it's been probably at least ten years since she lived in Towson.
Q. What is your understanding of her concerns about the proposal here?
MR. JABLON: I'm going to object.
MR. ZIMMERMAN: I'm going to connect it up.
THE CHAIRMAN: But I'm going to presume for a moment that the objection is we are now going to hear what her problems are through somebody else,
MR. ZIMMERMAN: No.
MR. JABLON: But that was that was the question.

THE CHAIRMAN: That was the question.
MR. ZIMMERMAN: Maybe I can speed this up.
MR. HOLZER: She was my witness, and she already testified.
THE CHAIRMAN: But she said what she said what she said.
MS. WEST: Maybe he's laying the foundation for something else.
MR. ZIMMERMAN: Then I'll get into it more quickly.
MR. JABLON: I object to counsel giving counsel hints.
THE CHAIRMAN: Basic rule, anybody on that side can help anything on that side.
MS. WEST: You taught me that, Mr. Zablon.
THE CHAIRMAN: Off the record.
(Discussion held off the record.)
Q. Assuming that one of her concerns is the change in subdivision from the way it has existed when she purchased her property, what I want to ask you is, from a planning point of vow, is that a reasonable concern that

when people purchase a lot in a subdivision, that there's a reasonable expectation that the lot configuration, or more narrowly, is not going to change? That's there some reliance when people buy into a subdivision?
MR. JABLON: Mr. Stahl --
Q. Is that a planning concern?
MR. JABLON: I'm going to object.
THE CHAIRMAN: I'm going to sustain it. You just went on and on and on, and you lead, and you edited facts, and you characterized things.
He's not even an expert yet, no one has made him an expert yet, so we can't really assume anything about anything.
MR. ZIMMERMAN: Based on Mr. Long's experience, if necessary, we'll spend some more time on it.
THE CHAIRMAN: I'm saying, you're assuming that, assuming this, and he's not an expert witness.
MR. ZIMMERMAN: I assume he's an expert planner. If there's any question about that, we can go through some more of his background.
THE CHAIRMAN: Well, it's your decision. He's

not your witness, so hang in there.
MS. WEST: We'll certainly proffer him as an expert. He's been in front of the Board many, many times.
MR. JABLON: I have no objection to him being an expert.
THE CHAIRMAN: Ms. West, we made a note that nobody has made him an expert, and we're going through a lot of questions assuming that and what your opinion is.
MR. JABLON: I have no objection.
THE CHAIRMAN: You have absolutely no objection?
MR. JABLON: But that being said --
THE CHAIRMAN: An expert in what? Let's have you guys tell me that he's an expert in what. You phase it so he has an opportunity to object. What is Mr. Long an expert in, Ms. West? A proffer.
MS. WEST: Well, in his capacity as a planner, certainly, for many years, he has expertise on the impact of the Master Plan on future development and the comprehensive zoning map process, he can certainly speak to that, as to development in Baltimore County.

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THE CHAIRMAN: Development and planning in Baltimore County?
MS. WEST: The zoning regulations, the Baltimore County code interpretation.
MR. JABLON: I have no objection.
THE CHAIRMAN: I just wanted it for the record.
MR. JABLON: Jeff is an expert in the zoning regulations, expert in the planning regulations, and he's a great guy, to boot.
MR. HOLZER: Was that a commercial?
THE CHAIRMAN: I was waiting for them to say he's a hell of a second baseman.
THE WITNESS: That would be true.
MR. JABLON: But with all that said, Mr. Stahl, I still object to the question he asked.
THE CHAIRMAN: I still sustain your objection. Try again.
MR. ZIMMERMAN: All right.
Q. Mr. Long, in the course of your -- you've also had experience in the zoning office before you went to the planning office?

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A. I was actually hired by Mr. Jablon.
Q. You have had occasion to deal with subdivisions in the course of your work, have you not?
A. I have.
Q. Do planners deal, among other things, with subdivision issues?
A. We do.
Q. Why? Why is that part of planning?
A. Because we have a development review section and we also sit on the DRC, so any requests to subdivide a property in Baltimore County comes before the office of planning.
Q. Do you have occasion, do you not, to become familiar with the process involving amendments to subdivision plans?
A. Yes, I do.
Q. What I'm asking you, from a planning point of view, generally, is one of -- well, what are some of the -- less leading, Mr. Chairman -- what are some of the concerns that factor into amendments to subdivision plans?
Take it from the point of view of the people who

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have already bought into the subdivision and live nearby the properties making the request?
A. Having worked as a community planner, you get in touch with the concerns that people have. And prior to becoming deputy director, I served as chief of our community planning section after serving as section chief of our development review section.
And in the course of our business day, as planners, we occasionally field questions from prospective purchasers of lots in Baltimore County.
Folks typically want to know how the Master Plan will impact their future and what the lay of the land might look like five, ten, fifteen years down the road.
So we get into issues like public buildings that might be included in the CIP We get into issues such as the extension of major roads, even the improvements of roads that aren't considered by anyone to be major.
And when someone comes in, we will actually pull the development plan and take a look at it, and talk about properties that are in the vicinity.
We'll actually even talk about properties within

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the development that the citizen desires to make his or her purchase. And, typically, we talk about subdivision potentials.
Q. Talking about subdivision potential, what factors, if any, does the existing approved subdivision plan play in that review?
A. Using the Windemere property as an example, if I was fielding questions today from a prospective property owner, I would take a look at the lot sizes in the development and I would undoubtedly inform the prospective purchaser that those lots cannot be resubdivided.
That would be my advice to the potential property owner, and that would be the advice of anyone that works in the planning office to a potential property purchaser in that type of situation where the zoning has changed.
Q. Separately, I was intrigued by your observation with reference to Bill 24-06, and your comment that -- something to the effect of ivory soap becoming a hundred percent pure, or I can't say it as well as you said it, but would you an elaborate a little bit on what you really meant when you talked about that?

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THE CHAIRMAN: I'm going to stop you. He asked and answered. He said it was a re-acknowledgment of what he felt was county policy anyway.

Q The policy being what?

A. The zoning that is in place today is what governs the potential for resubdivision.

MR. ZIMMERMAN: Give me one moment, Mr. Chairman.

Q. Mr. Long, I will just say, in order to be helpful to the Board of Appeals in its deliberation of this case, is there anything else you feel important to tell them, based on your review?

A. I think the facts are simple, and there is really no need to elaborate at all on very simple issues. That's the matter at hand.

MR. ZIMMERMAN: Thank you, Mr. Chairman.

THE CHAIRMAN: Anything else from this side? Okay. Mr. Jablon, cross.

CROSS EXAMINATION

BY MR. JABLON:

Q. Mr. Long --

A Yes, sir.

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Q. -- we have two matters here before the Board. Are you familiar with the Stepcich property?

A. I am.

Q. Could you briefly describe for the Board what your understanding is of what Mr. Stepcich is requesting?

A. Mr. Stepcich wishes to resubdivide an existing record lot to create another lot.

MR. JABLON: Mr. Crizer, may I have Exhibit 1, the site plan.

Q. You know how big Mr. Stepcich's lot is, that he wishes to resubdivide?

A. I'd like to take a look at the plan to refresh my memory.

Q. I'm just going to put it up here on the board. I am referring to Petitioner's Exhibit No. 1 Stand over here. Section III, Windemere.

A. I can come over and look at it, if you'd like.

THE CHAIRMAN: Do me a favor, if you both would stand on that side so we can see.

Q. Which is Mr. Stepcich's lot? It wasn't a trick question. I don't mean to trick you. Do you know which one is his?

A. I'm trying to refresh my memory. I haven't taken a look at the plan in awhile.

MS. WEST: Mr. Chairman, rather than ask the question, why doesn't he just point it out?

A. I believe it's the highlighted area.

Q. When was the last time you actually looked?

A. It's probably been a couple years.

Q. Since you've looked at any of the information presented to the Board?

A. At least a couple years.

Q. When was the last time?

A. I looked briefly at some exhibits today, but didn't really focus on this particular exhibit.

Q. How familiar are you then with the Stepcich property, other than in a general way, of what Mr. Stepcich is trying to do? For instance, do you know big his lot is?

A. I believe, from memory,it was around five acres.

Q. Do you remember Mr. Pridgeon's property?

A. Mr. Pridgeon's property consisted of a lot and a

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parcel.

Q. Do you remember how big each was?

A. No, I don't specifically recall.

Q. In fact, I presume that you had these discussions prior to testimony today with Ms. West?

A. We actually talked about what I believe to be the matter at hand and, really, quite frankly, Mr. Jablon, didn't get into many of the details.

Q. So, in fact -- if I am wrong, correct me -- it would appear to me that your discussions with counsel were based more on the planning office's general theory on the issue of vesting, rather than on the specifics of Mr. Pridgeon's and Mr. Stepcich's property?

A. Yes.

MS. WEST: I'm going to object. This is attorney/client privilege. He doesn't have a right to inquire into discussions that I've had with my client.

THE CHAIRMAN: Other than preparation, why aren't conversations --

MR. JABLON: They're not privileged. He's a witness presented by Ms. West as an expert witness. He's

not a client anymore.

THE CHAIRMAN: Theoretically, Ms. West, if you went over his whole testimony, he couldn't ask about any of that because it's always as a result of privilege.

MS. WEST: I think the questions Mr. that Jablon is focusing on do deal with attorney/client privilege, What your attorney said.

THE CHAIRMAN: Why is that work product? That's what he did to prepare himself for today. Doesn't that go to his credibility?

MS. WEST: Yes, but it may well be strategy as to what we think are to be salient points of the case, what we think is critical.

THE CHAIRMAN: Okay. You can't ask about strategy. You can't ask about any instructions she gave him as to the characterization as to whether it would make it more credible, less credible.

Now,if he wants to ask about the subject covered, then I have no problem with that.

MS. WEST: I object.

THE CHAIRMAN: Okay. Within those bounds.

MR. JABLON: I agree. I'm not asking for strategy. I'm asking him -- I can't even remember he question I asked anymore.

Q. But, basically, my question was -- and is -- your testimony today is not focused on the particular facts of Mr. Stepcich's or Mr. Pridgeon's properties, but, rather, on the general philosophy of what constitutes vesting?

MR. HOLZER: Objection. That's not what he testified to.

MR. JABLON: Well, that's my question.

THE CHAIRMAN: Let him answer the question.

A. My original denial was based on facts. My testimony today here is based not only on theory, but on what we know the law to be.

Q. You know what the law is?

A. Yes.

Q. Well, okay. Are you familiar with -- if I can find it here in a sec -- was there ever a time prior to your testimony today -- I will rephrase the question.

Was there ever a time when the office of planning

approved potential redivision of the property where zoning has changed from the least restrictive zoning to a more restrictive zoning and allowed the resubdivision under the least restrictive zoning?

A. Sure. Where the density is available in a least restrictive zoning, I am sure, hypothetically, we would do that. But can I recall a specific example? No.

Q. Did there ever come a time, do you know, whether or not you allowed a resubdivision of a property where a property was zoned an R. zone, R.S.C. R.4, sixty, whatever the R. zone was, when it was later rezoned to an R.C. zone?

MR. ZIMMERMAN: Objection.

MR. HOLZER: Objection. This is a specific issue. I mean, are we going to try every previous case in Baltimore County?

THE CHAIRMAN: But he did say it's their basic policy, and they have done this before. This is standard advice to people.

He spoke about a lot of generalities and positions they take, so if he wants to go into a little

detail about what's behind those statements, I have no problem with that. Go ahead, Mr. Jablon.

Q. Let me show you a letter from Joe Merrey, a planner, to zoning review, and it involves a memo to a Lori Stafford, re: zoning verification Long Shadow Estates RDP, 5th Election District, and ask you to take a look at that.

MR. HOLZER: Objection. We could sit here for a week and talk about individual cases that the county has taken a position on, and it's irrelevant to the specifics involved in this case. I object to any further line of questioning like that.

MR. ZIMMERMAN: And I think Mr. Joseph Merrey is actually in the zoning office, even that he may have a designation of planner two, and I'm sure that Mr. Long is not involved in every piece of correspondence or every communication that the county zoning office has had with people in the last twenty or thirty years.

THE CHAIRMAN: I agree with you completely, Mr. Zimmerman. But the point is, I think once counsel or once the witness says, This is what we tell people because this

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is the way we believe it should be, and this is the way we always do it, and the way we always recommend, and the way it also happens, and I understand why you would present him to say that, because that the premise you wish us to accept.

But Mr. Jablon is simply trying to point out, whether successfully or not, we don't know yet, in fact, that statement isn't nearly as absolute as he says it is.

Now, if you want to ask Mr. Long on cross-examination whether, in fact, he's willing to adjust his previous statement, that, in fact, it was not what happened all the time and there are situations where this occurs or doesn't occur, and he wants to answer it inasmuch of a generalized response as he did the others, then there's no need to go back through this.

But as long as he takes the position he takes, he's testing whether Mr. Long's description of that policy and position is, in fact, reflective of what happens and what they do.

MR. HOLZER: How many cases and how many years?

THE CHAIRMAN: Until Mr. Jablon feels he's made

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the point sufficiently, if in fact, he's making the point, I don't know that he's made the point yet, but I am going to give him that leeway unless the witness is going to adjust what he said previously.

MR. ZIMMERMAN: Thank you, Mr. Chairman.

THE CHAIRMAN: Just out of curiosity, Mr. Jablon, since you're starting to give him some examples, maybe you want to ask the general question first.

MR. JABLON: I think I'm getting there. If I may?

Unfortunately -- I have copies of the letter I just gave copies of the letter to Mr. Long, but I only have one copy of this site plan.

Q. Let me show you a site plan --

MR. JABLON: I will show it to counsel first --

Q. -- which relates to Mr. Merrey's letter, a site plan showing Long Shadow, and you'll see his name in the signature and that of Lynn Lanhan.

MR. ZIMMERMAN: Do you have a date on that?

MR. JABLON: 2001.

MR. HOLZER: Again, I'm going to have a

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continuing objection to this whole line of questioning.

So it's clear, we could bring in a thousand other examples of what Mr. Long testified as the general policy.

THE CHAIRMAN: That gets us nowhere. I will certainly accept your objection and I'll overrule it, but we'll recognize it as a continuing objection.

MR. ZIMMERMAN: Ultimately, it's going to be a question of law.

THE CHAIRMAN: That's kind of what I think.

MR. JABLON: Absolutely. There's no doubt.

THE CHAIRMAN: It's always a question of how we look at the law. You're telling us to look at the law in a particular way, he's telling us to look at the law in a particular way, and we have to determine what we think the law says and how it affects this situation one way or the other. That's what this Board always does.

MR. JABLON: Mr. Stahl, I did not present Mr. Long. Ms. West and Mr. Zimmerman have directly asked Mr. Long his interpretation of, quote, the law.

THE CHAIRMAN: I've already ruled and told you to go ahead.

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Q. This is the site plan of Long Shadow?

A. Yes.

MR. HOLZER: Objection. May I ask the Board's permission to, if that line of questioning is permitted, then we have a recess after Mr. Jablon is finished and we can go to the planning office and the zoning office and scour every case where the opposite has occurred and present all that evidence to the Board.

THE CHAIRMAN: Here's what --

MR. HOLZER: Does that show how ludicrous this is?

THE CHAIRMAN: It's as if you didn't hear what I just said. I will do it again, for the record.

When someone make a generalization and says, We always do it this way, this is the way we rule, then the only way to test that on cross examination is to show examples.

Mr. Zimmerman has done it any number of times when people say other people are always allowed to do this, then Mr. Zimmerman trots out ten or fifteen situations where it's happened, and we let it in.

When someone makes a generalization, the only way

to test a generalization is to see if there are specifics behind the generalization that support it.

Now, I have no doubt, you're going to say me that there are situations where they approve it, and there are just as many situations you find where they deny it.

My answer would be, Well, then, aren't we really saying it sort of kind of depends, that there is no one standard opinion? But that's not the position the witness is taking.

MR. HOLZER: No. My position is I would like the ability to go back and check as far back as Mr. Jablon is going to determine how many times they applied the rule that the witness testified to.

Because in the end result, you may well end up with one or two or three or four of Mr. Jablon cases that have factual relevance not even to this particular case, and you may end up with a thousand cases where Mr. Long's comment is correct.

THE CHAIRMAN: And you know how you deal with that? When he's finished what he's doing -- and I can't even believe I'm having to say this -- you ask him, Is

that usual? Does it happen once in awhile? A hundred cases?

He's deputy director. He's been there twenty-eight years. He can characterize whether it's a lot or a little, whether it's something that happens rarely, not rarely.

You can go back on redirect and deal with that whole issue.

MR. HOLZER: But that's a generality, and you've allowed him to enter specific cases.

THE CHAIRMAN: Because that's the only way he can test the generality.

Stop for a second. I hear where everybody is going.

Mr. Witness, I will ask the question, and we'll go from there. It's a very simple issue.

You made a statement that this is the generalities, this is the policy of your office, this is what you tell people when they ask you.

Mr. Jablon has begun, to this point, of showing some examples otherwise.

Counsel has characterized that as maybe exceptions to the rule, not often happening.

Given that, how would you characterize the frequency of each situation?

A. Mr. Chairman, I think everyone has taken a leap at this point. This plan does not indicate what the current zoning is.

I only know that it was at one time RDP. But there's no zoning classification on here, so I can't tell whether or not my colleague might have acted in a manner that's contrary to the direction that's set by the director of planning and myself.

THE CHAIRMAN: That's not my question. My question is, given your experience as an expert, and given your experience in your department, you have told us what you think the department's policy is?

THE WITNESS: Right.

THE CHAIRMAN: Are you aware of the fact that sometimes these things are done to the opposite way?

THE WITNESS: No, I'm not.

THE CHAIRMAN: Having done that, it makes it

even more important for him to be allowed to say, Well, there are and there are not.

You know what? I don't know that you're coming back with a thousand other things showing that it happens this way and that way, establishes anything else other than it happens both ways.

I have no problem with that. We have been here three days. We can be here five days, if you want to be.

But as long as he says it doesn't happen and he doesn't know of any times when it happens, just as Mr. Zimmerman has done it, I'm going to allow Mr. Jablon to say, Well, I'm going to test what you just said.

And then if you want to come back on redirect and test it the other way, you have every right in the world to do it.

MR. HOLZER: I would like the permission of the Board to come back and go through the county records.

THE CHAIRMAN: Absolutely.

MR. JABLON: Mr. Stahl, wait a minute. No, no. Time out. May I object to that?

First of all, we have been at this now for four

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and a half years, if I have done my homework. Why should you allow Mr. Holzer's negligence --

THE CHAIRMAN: I'm not --

MR. JABLON: He had the same opportunity I had.

MR. HOLZER: No. You didn't raise the issue until today.

THE CHAIRMAN: Both of you stop.

MR. HOLZER: I object to the comment.

MR. JABLON: I'll withdrew it. I apologize for it.

THE CHAIRMAN: Mr. Holzer's point is well taken. There's a direct. There's a cross examination. And then, because of what happens in cross examination, sometimes you have to do things.

I am going to allow, if he feels that is helpful to his case -- whether it is or not being a question we'll have to determine -- but I see no reason why, based on what he sees happening here, he shouldn't be given a reasonable opportunity to do otherwise if he feels that's going to help his case.

MR. JABLON: So what the Board is saying is, that

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in middle of testimony, if counsel wants to do more research, he has the opportunity to postpone it?

THE CHAIRMAN: You're going to finish your thing. He's going to do his redirect. And then at some point, he may ask me to do something, and I may or may not allow him to do so.

MR. JABLON: I will reserve my argument to that point.

MR. ZIMMERMAN: I don't know if this is Mr. Zimmerman's rules of cross examination, but I think in this particular case, you may find it's ultimately much to do about nothing, because it's going to be a legal issue.

And whether some staff member of the zoning office did X, Y, the real question is, is Mr. Long's opinion correct as a matter of law, which I happen to think it is. We can spend five day getting examples.

THE CHAIRMAN: What each side does relative to witnesses is what each side does in its own determination, one way or the other.

MR. JABLON: Now, is that going to be true also when we do our memos? If I present cases to the Board of

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other decisions of the Board in support of my petition, then Mr. Zimmerman and Mr. Holzer and Ms. West present their cases to the Board in support of their position from the Board, that we each are going to have time to counter it? The answer is no.

THE CHAIRMAN: And that's not what --

MR. HOLZER: That's not what I'm --

THE CHAIRMAN: That's not what this conversation is about. This conversation is about whether something which is a generialization is true or not true.

And the Board will make its own determination as to that based on what we hear. Why don't we pick it up from where you were?

Q. On that site plan, whose signature is on it?

A. Lynn Lanhan.

Q. Where does she work?

A. She works in the office of planning.

Q. What date is on the plan?

A. August 4, '04.

Q. Who was deputy director in the office of planning in 2004?

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A. I was.

Q. Who was planning director in 2004, do you remember?

A. Pat Keller.

Q. What was the zoning of the subdivision when it was approved?

A. RDP.

MR. ZIMMERMAN: I object. I think it's distracting.

THE CHAIRMAN: Doesn't bother me. I think these two have had conversations before, over the years.

THE WITNESS: Usually when he points, he yells at me, but he's cleaning it up a little bit this morning.

Q. Is RDP in existence in 2004?

A. No, it's not.

Q. So, in fact, the office of planning sign off on this, correct?

A. I wish they hadn't, but, yes.

MR. JABLON: I'm going to introduce this as an exhibit. I don't know what number it is.

MR. CRIZER: No. 25.

MR. HOLZER: Again, I object.
THE CHAIRMAN: Because it's part of the continuing objection?
MR. HOLZER: Yes.
THE CHAIRMAN: So noted.
MR. HOLZER: Can we make these letters as an exhibit?
MR. JABLON: I'm not going to make the amendment an exhibit. Is that twenty-five or twenty-three?
MR. CRIZER: What's it called? Long Shadow?
MR. JABLON: Long Shadow subdivision.
MR. CRIZER: Twenty-five.
MR. JABLON: Now, if I may have a copy of Petitioner's exhibit -- I believe it's going to be No. 11.
MR. CRIZER: You're currently holding No. 3, right?
MR. JABLON: Yes. I'm going to give that back.
Q. Let me show you what's been marked and introduced into evidence as Petitioners No. 3 --
MR. CRIZER: Eleven.
Q. No. 11 -- I just gave three back -- and ask you

if you can recognize that?
A. Yes.
Q. Now, you have seen this before, this Exhibit 11 before?
A. Yes.
Q. When did you see it?
A. Probably around the time it was written.
Q. This is from Mr. Kotroco to the director of the Department of Permits and Development Management?
A. Not under my supervision.
Q. How would you can characterize -- let me rephrase the question.
Mr. Kotroco's position is directly contradictory to yours?
A. That's a nice way of saying it, yes.
Q. Are you familiar with Bill 24-06?
A. I am.
Q. That's the shorthand version of saying legislation which was adopted by the County Council dealing with vesting, and I believe the bill took effect on March 17, 2006?

A. Correct.
Q. I believe, if I might, that Bill 24-06 as introduced and accepted into evidence as Petitioner's No. 13, let me show you page four of that bill that I have taken the liberty of marking and ask you to read that for a second.
A. Yes.
MR. JABLON: If I might take the liberty of reading this for the record, This is Section 32-4-262, Amendments to Development Plans, Subsection II.
Any material amendment to an approved residential development plan or plat shall be reviewed in accordance with this title, and with respect to that portion of the original plan or plat to which the amendment pertains, the amendment shall be reviewed for compliance with all current laws and regulations including the development regulations and the zoning regulations. Are you familiar with that provision?
A. I am.
Q. Now, what happens, in your opinion -- since you have been knowledgeable about the bill and you've

testified that you know about it -- what happens if a decision is made that a particular amendment to a previously approved plan is a refinement or not a material change, other than a material change, what is your office's position?
A. Our office's position -- we took a look at that originally -- we don't see any distinction in the context that term was used between material change and a refinement, that any change to an approved plan would have to be reviewed under the current zoning regulations.
Q. Is there a policy that's been adopted by your office pursuant to the Code of Baltimore County Regulations that has adopted that position?
A. Which position?
Q. That you just enunciated.
A. No.
Q. There is a policy, is there not, that's part of the development management policy manual that's been adopted pursuant to the Code of Baltimore County Regulations that, in fact, defines what a material change is and what a refinement is?

A. Yes.
Q. Let me show you a copy of that policy.
A. Is there a particular section of this?
A. Are you familiar with the policy?
A. Yes.
Q. Is there a term called material amendment?
A. Yes.
Q. Is that correct?
A. That is correct.
Q. There is also a term called refinement?
A. That is correct.
Q. If you go to the last page of the policy, page three, it has two department heads who have signed off on that policy?
A. 1987, yes.
Q. Who were the department heads?
A. Gene Neff, who was acting director of public works and Norman Gerber who was then the director of the office of planning and zoning.
Q. So this policy was, in fact, originally adopted by those two departments in 1987, is that correct?

A. Correct, and spoke to the CRG process.
Q. But it is, in fact, part now of the development -- is that correct?
A. Yes.
Q. And this has also been adopted pursuant to the Code of Baltimore County Regulations?
A. Correct.
Q. Is it not true that the policy that I was just referring to has been applied to not just the CRG, but to the development regulations that are currently in place?
A. Yes.
Q. Correct?
A. Yes.
Q. So you would agree then that this policy is what you would look at when you're interpreting Bill 24-06?
MR. ZIMMERMAN: Objection.
A. I would look at something that was actually created in 2007 before I would really focus on something that's as old as this.
Again, as I stated earlier, 24-06 confirms what the office of planning -- I understand, I think we all

understand -- that the office of planning and the zoning office or PDM over the years have not been able to reconcile their philosophical differences that we have with respect to vesting as it applies to zoning, although I think, today, we are together in terms of our position on that.
THE CHAIRMAN: Both offices are as a matter of policy?
THE WITNESS: Both.
Q. Let's talk simply a policy that's been adopted pursuant to the Baltimore County Code Of Regulations that says that.
A. I don't think I have to show you a policy. We can look to the law for direction on the laws of vesting.
Q. Let's look at Bill 24-06, to the paragraph I just read. It uses the words "material amendment. "
Would you not agree that in order to interpret, to define "material amendment," that you would go to the adopted policy in place?
A. No. 24-06, we're happy it was adopted, but in terms of how we apply our position with regard to vesting,

particularly with respect to zoning, 24-06 is great, but entirely unnecessary as far as we're concerned. It's icing on the cake.
Q. I understand. Let's assume for the moment though -- and I recognize you're an expert witness -- let's throw out there for a moment, a hypothetical.
A. Okay.
Q. Assuming for the moment that the development management policy manual is, in fact, in effect for the purposes of Bill 24-06, and further that the definition of material change as set forth in that policy manual is the term of art that we would apply.
A. I'm not so sure it's the same term of art that was applied in the legislation as is what's found in the policy manual, Mr. Jablon.
Q. Is there a definition of material change in Bill 24-06?
A. I'd have to refresh my memory.
MR. ZIMMERMAN: Is Bill 24-06 an exhibit?
MR. JABLON: It's thirteen.
A. I'm sorry. I'm not finding it upon review.

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Q. If you can't find it, can we assume for the purposes of the hypothetical that there is no definition in the Bill?
A. That may be so.
Q. So if there is no definition in the Bill, and if we apply the hypothetical -- I know you disagree with it, the hypothetical -- but if the only definition is found in the development management policy manual, would you not agree, therefore, that there is a difference between a material change and something other than a material change?
MR. HOLZER: Objection. He's asked that question twice. Mr. Long answered it twice. And each time, he answered it consistently.
MR. JABLON: But he's looking at it in terms of the policy that they haven't adopted.
I am asking, based on my hypothetical of the policy manual that has been adopted. The policy manual does, in fact, this exhibit I've introduced, differentiates --
THE CHAIRMAN: Well, as a hypothetical, if you're

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asking him to use that as the only basis for whatever value that hypothetical is, he can answer.
MR. HOLZER: Well, I object to that, because that's a misleading question and answer when the witness has already twice answered and given his rationale.
THE CHAIRMAN: And I think we would be much more worried about that if this were a jury of lay people.
MR. HOLZER: But there would be a record in this case that goes to the Court of Special Appeals.
THE CHAIRMAN: Who are likewise not lay people.
MR. HOLZER: The Court of Special Appeals, the Court of Appeals will be reading this, and I don't want an explanation creeping in that isn't what his answer was on two prior occasions.
THE CHAIRMAN: I don't think anyone is arguing that. My remembrance of what he said, a change was a change. Mr. Jablon, for whatever value he thinks it has, has set arbitrary hypothetical conditions for which he'll give an arbitrary hypothetical answers based on that set of facts and circumstances.
I don't think anybody looking at the record here

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or higher than that will see it as anything else.
MR. HOLZER: I think you have adequately resolved my concerns.
MR. JABLON: May I?
THE CHAIRMAN: Yes.
Q. If, in fact, the policy manual's definition of material change and refinement -- for the purpose of my hypothetical -- would you agree that for the purpose of Bill 24-06, the use of the term material change was referring to or could have been referring to or should be referring to the differences between what the policy manual calls material change and refinement?
MR. HOLZER: Objection.
THE CHAIRMAN: I'll let him answer.
A. That's an impossible question to answer, really, because there's too many "should haves," "could haves," and you have taken the hypothetical to the extreme.
Q. I am the one asking the question.
A. I understand.
Q. Do you have an answer?
A. I am attempting to answer it. I can't give you a

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sufficient answer to the question as you've presented it.
Q. If, in fact, the term refinement as used if the policy manual is applicable to Bill 24-06 -- if it were -- I know you're not going to agree -- but if it were --
MR. HOLZER: Objection.
Q. -- if it were, would you not agree that if a change to a previously approved plan were to be considered a refinement, then the old zoning regulations and the old development regulations are applicable?
MR. HOLZER: Objection. That's four time we have asked the same question.
MR. JABLON: I may ask it a fifth time.
THE CHAIRMAN: Mr. Long, can you answer the question?
THE WITNESS: I can answer it.
THE CHAIRMAN: Go ahead.
A. The distinction between a refinement and material amendment would have no bearing whatsoever on whether a property for zoning purposes was considered vested.
MR. ZIMMERMAN: Let the record show I did not object to the question because I knew there would be an

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excellent answer.
THE CHAIRMAN: Thank you for that observation, Mr. Zimmerman.
MR. JABLON: Coming from Mr. Zimmerman, that just emphasizes my point.
THE CHAIRMAN: Off the record for a minute.
(Discussion held off the record.)
THE CHAIRMAN: Okay. Back on. Mr. Jablon.
MR. JABLON: May I see the Exhibit No. 10, Petitioner's 10? Thank you.
Q. Can you identify this exhibit?
A. Yes, I can identify this exhibit.
Q. Bet you can. What is this?
A. This went to every property owner who was the subject of a zoning reclassification action during the 2004 comprehensive zoning map process.
MR. JABLON: Just for the record, to identify Petitioner's No. 10, this is a letter to Mr. Stepcich dated January 21, 2004, from the office of planning.
This is a form letter during the comprehensive zoning map process in 2004.

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Q. There's an arrow that has been drawn on that letter. Can you read that paragraph?
MR. ZIMMERMAN: Do we know who drew the arrow?
MR. JABLON: I don't know.
A. Out loud, or to myself?
Q. No. Out loud. Please.
MR. ZIMMERMAN: The letter speaks for itself.
Q. You can read it to yourself.
THE CHAIRMAN: There is obviously a highlighted portion, so read the highlighted portion.
A. If approved by the County Council, the requested R.C. 7 would reduce the rate of residential subdivision to one lot per twenty-five acres.
The existing zoning R.C. 4 allows residential subdivision at the rate of one lot per five acres. Existing lots in recorded subdivisions will continue to be regulated by the zoning regulations that were in effect at the time the existing lot was created.
Q. I presume that you're familiar with the fact that Section III Windemere was created back in 1969, 1970?
A. I am.

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Q. This was sent out by the office of planning?
A. It was.
MS. WEST: Excuse me, Mr. Jablon.
(Discussion held off the record.)
MR. JABLON: I know No. 25 was the site plan of Long Shadow. I don't know if I have introduced actually the policy manual.
MR. HOLZER: You had.
MR. JABLON: I had. But I will introduce it in a moment, or now, Exhibit 26.
That's the policy manual indicating the difference between material and refinement.
Q. Let me show you a letter which I believe has been introduced -- if I can find it here -- exhibit number -- Exhibit No. 8 --
MR. HOLZER: The April 12th letter?
MR. JABLON: yes.
Q. I ask you to take a look and read this to yourself.
A. Yes.
Q. What does it say?

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A. It says that Mr. Kotroco has denied the request, Mr. Stepcich's request.
Q. Do you know what the request is for?
A. I would imagine to resubdivide his lot.
Q. But the letter itself doesn't say?
A. No, it doesn't.
Q. There is an attachment to that exhibit, which is a letter from me?
A. Right.
Q. Which is Exhibit No. 7?
A. Right.
Q. I believe --
A. The property owner desires to resubdivide into two lots as shown on the accompanying red lines JSPC plan.
Q. Do you have page two? If I can ask you to read my letter to the DRC, the last sentence page two.
A. Please accept this request for filing for a material amendment to a previously approved plan pursuant to Section 6, Bill No. 26-04.
MR. ZIMMERMAN: A moment ago, it was referred to as Bill 26-04.

MR. JABLON: It's Bill 24-06.
MR. ZIMMERMAN: I believe Mr. Jablon misstated it in his question, the number of the bill.
MR. JABLON: If I did, then I juxtaposed it.
MR. ZIMMERMAN: The letter says 24-06. That's Mr. Jablon's statement, not anyone else's.
MR. JABLON: The Bill is 24-06.
THE CHAIRMAN: It's the same bill that we're all talking about.
MR. ZIMMERMAN: Sometimes the record gets confusing when you see all of a sudden you see "26-04." That's one of the things I did hear. I do actually listen.
MR. JABLON: If I may have another moment, I think that might be it. Thank you. I have no further questions.
THE CHAIRMAN: Let's do redirect and work our way over.
MR. HOLZER: I'm going to stay out of the way.
MS. WEST: I don't have any questions.
THE CHAIRMAN: Mr. Zimmerman?

MR. ZIMMERMAN: yes.

REDIRECT EXAMINATION

BY MR. ZIMMERMAN:

Q. First of all, with Petitioner's Exhibit 25, that's the Long Shadow, Mr. Long, were you personally involved in the review of that subdivision plan?

A. As far as I can recall, this is the first time I've seen it.

Q. So whether or not approval of that subdivision is consistent or inconsistent with the views expressed here today, you had no involvement?

A. I can't tell you. There are not enough facts on this for me to make that judgment. It doesn't show the existing zoning.

Q. And, for example, if the zoning happened to be R.C. 5 today, then the proposed six lots on twenty-eight acres would have been consistent with the current zoning?

A. It could work, yes.

Q. So even if the engineer purported to present the plan as grandfathered under the RDP, it would have also been consistent with the current zoning if the current

zoning were R.C. 5, or at the time?

A. Although I noted on the plan it's showing a conservancy area, so it's more than likely that it's not R.C. 5. I don't know what the zoning classification is.

Q. In any event, to the extent that the engineer suggested in his notes a grandfathering of the RDP zoning, that's not something you personally were involved in?

A. I was not involved in this case at all.

Q. With reference to Petitioner's Exhibit 10, as far as the form correspondence that goes out in reference to the comprehensive zoning process --

MR. ZIMMERMAN: May I see that, Mr. Crizer?

MR. CRIZER: Which exhibit?

MR. ZIMMERMAN: Petitioner's No. 10.

Q. Mr. Jablon, in cross examination, directed you to the paragraph that has the arrow next to it. I won't re-read it.

A. Correct.

Q. Can you explain one way or the other, what your understanding of that, or the meaning of that and how it relates, if at all, to your observation here today that

you go by the current zoning?

A. We have talked about this in the office and agreed almost immediately -- unfortunately, after the notices went out -- that it's inartfully written.

I did not personally review the language of this letter before it went out. I can tell you that the director and I believe the intent of this was to indicate that in terms of --

MR. JABLON: Objection. I didn't ask that question on direct. That's all I had him do, was read it. I didn't ask him for his interpretation. He's going way beyond what, plus the fact of what his interpretation is. The word speaks for itself.

THE CHAIRMAN: If he had nothing to do with the letter, he can say that and, therefore, he can ask whether it agrees with what he thinks it should be.

MR. ZIMMERMAN: He's just in the middle of testifying about the letter based on what his experience was and what he did in the office. He's just talking about that. Cross examination can be expansive.

THE CHAIRMAN: Rephrase your question. Try to

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narrow your inquiry just a little bit.
Q. What involvement before or after did you have in reference to the part of the letter that deals with the applicability of the existing zoning regulations?
MR. JABLON: I'm going to object.
THE CHAIRMAN: He's asking what part he had in that part of the letter. He's already answered that he had no part in any part of the letter.
MR. ZIMMERMAN: He said, afterwards, they were reviewing the letter in the office, and he was beginning to explain that, then he got interrupted.
MR. JABLON: That's my point.
THE CHAIRMAN: What do you want him to say? What he said in the conversation with the other person about reviewing it?
MR. ZIMMERMAN: He's explaining his observation. He began to say that the letter was inartfully written, and I don't want to go any further because he hadn't get to say what it is.
I can infer what was coming next, but I don't want to say that. But he was talking about why that

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letter was apparently not something that he would have written if he had had involvement with it in advance.
THE CHAIRMAN: Why don't you just ask him that?
Q. Mr. Long, you heard Mr. Stahl's rephrasing of my question. Is that enough to allow you to give a sufficient answer?
A. Yes. If you read the last sentence, it says existing lots in recorded subdivisions will continue to be regulated by the zoning regulations that were in effect at the time the existing lot was created. I think you have to focus on two things here.
MR. JABLON: This is where I'm going too object.
THE CHAIRMAN: He's giving his opinion on what he finds difficult with that letter, problematic with that letter, and why.
MR. JABLON: Mr. Stahl, the letter was sent out by the office of planning, via the deputy director of the office of planning. He's going to contradict his own letter?
THE CHAIRMAN: If that's what he wants to do, whatever effect it has on his credibility and testimony,

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it does.
MR. ZIMMERMAN: The weight is for the Board.
MR. JABLON: You're absolutely right. The language speaks for itself and the weight is for the Board.
THE CHAIRMAN: But this has nothing to do with the language in the letter.
It's a question of is that letter something that he would have said in that way? And if not, why?
I have no problem with that. And if he winds up attacking his own department, then he attacks his own department.
THE WITNESS: I get to answer the question?
THE CHAIRMAN: Yes.
THE WITNESS: Thank you.
A. I think that first paragraph is informational and I think a lot of people have read a lot into it.
Could it have been written better? Absolutely, yes. I think it's giving two pieces of information. There are two separate densities that are allowed in the R.C. 7 -- I'm sorry -- one for R.C. 7, one for R.C. 4.

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However, if you have an existing lot of record that is zoned R.C. 4, the regulations that are in place, that were in place in 2007, would apply with respect to setbacks and other things like that, but not -- certainly not to re-subdivision. We would never say that.
Q. When you say the regulations were in place in 2007, did do mean in 2004?
A. 2004.
MR. JABLON: I renew my objection. I object. I'm not objecting to your second question. I want the latter part of his answer stricken. He said, We would not have said that.
Well, that's a matter of interpretation. That's for the Board to decide, and the words speak for themselves.
Therefore, I am moving to strike the last sentence that Mr. Long indicated.
MR. ZIMMERMAN: This is an extension explanation of various opinions --
THE CHAIRMAN: Hold on one second, Mr. Zimmerman. Let's just clarify the point.

These are your opinions of and your position where you are as to whether or not you agree with what's in that letter, correct?

THE WITNESS: Mr. Chairman, I don't think that I am really -- and this is a fine point -- disagreeing with what's said in the letter as much as I am critiquing the message that it conveyed.

I'm saying that the message would be the same, but it could have been conveyed in a clearer manner so that the person who received this would know what it means.

THE CHAIRMAN: Go on from there, but keep it in the "I" form. These letters speak for themselves. If you find fault, issue, question with any of this, fine. You can tell us that, but tell us about it from your point of view.

A. I think the statement is unclear. I think it means to say that if you have a recorded lot in an R.C. 4 zone, you can put a house on that lot.

We are not going to suddenly say since the zoning changed to R.C. 7, you can't do that anymore because of

other regulations that apply.

So if you are in a subdivision and you own a record lot, and that record lot has not been improved with a house, you can do that.

But I think, in my opinion, it's reading a lot into this to say that the R.C. 7, if applied, would have no consequence whatsoever over the R.C. 4. It does not say that.

Q. It does not say that, in your opinion?

A. In my opinion, yes, sir.

MR. JABLON: Objection.

THE CHAIRMAN: I'll overrule your objection.

Q. To illustrate, if Mr. Stepcich, having bought his lot in 1970, for whatever reason, had never put a house on it, and it sat there as a lot all those years, you would not say now that he was prohibited from putting one house on it?

A. Bring me a permit. I'd sign it right here.

Q. But that's different from resubdividing?

A. Correct.

Q. Separately, in reference to your observations, in

answer to Mr. Jablon's question about Bill 24-06, icing on the cake, am I correct?

A. Yes.

Q. That's one of the comparisons that you made?

A. Yes.

Q. I'd like to show you a section of the zoning law and ask you whether it's consistent or inconsistent with your opinion.

THE CHAIRMAN: While you're looking, Mr. Zimmerman, off the record for a second.

(Discussion held off the record.)

THE CHAIRMAN: Okay.

Q. By way of introduction, I'm going to refer you first of all to Section 1A00.4, okay, and it's not that long, so why don't you read that?

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

Q. Then I'm going to turn to the last sentence of

1B01.3.B.2, beginning being with the words, It is the intent.

A. It is the intent of these regulations --

Q. Zoning regulations.

A. It is the intent of these zoning regulations to prohibit subdivision or resubdivision of portions of a tract in a D.R. zone in a manner so as to exceed the total number of dwellings for density units allowed under the applicable D.R. zone -- parenthesis -- asked for the entire tract.

MS. WEST: What was that reference, again?

MR. ZIMMERMAN: 1B01.3.B.2.

Q. I guess the question is, that section. Assuming it came from Bill 100-1970, would that be a factor in your observation of Bill 24-06 is --

MR. JABLON: Objection. That's not only leading, but it's asking for a conclusion.

THE CHAIRMAN: He's just presenting it as simply part of the code, so I will overrule your objection. It would have come in any way.

MR. ZIMMERMAN: Thank you, Mr. Chairman. I

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appreciate that.
A. Yes, it gives direction with respect to this case.
MR. JABLON: Now, that's the point.
MR. ZIMMERMAN: I'm done.
THE CHAIRMAN: He could have submitted it in his memo and said it gives direction.
MR. JABLON: That's fine, but that's not Mr. Long's responsibility.
THE CHAIRMAN: It's much to do about nothing. Let's go on.

REDIRECT EXAMINATION

BY MR. JABLON:
Q. Mr. Long, are you familiar with Mr. Pridgeon's property?
A. Yes.
Q. You know Mr. Pridgeon has two lots that are the subject of Mr. Pridgeon's request?
A. No.
Q. No?
A. A lot and a parcel.

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Q. Excuse me. A lot and a parcel.
MR. ZIMMERMAN: I think --
THE CHAIRMAN: He already said it was a lot and a parcel.
MR. ZIMMERMAN: The proposal is for two different lots.
THE CHAIRMAN: The proposal is what the proposal is. He's testified twice already it's a lot and a parcel.
MR. ZIMMERMAN: He said the existing small parcel and lot. The proposal was two different lots.
THE CHAIRMAN: I think we know what the proposal is.
Q. There are two distinct metes and bounds descriptions that Mr. Pridgeon owns, is that correct?
A. One for a lot and one for a parcel.
Q. Do you know whether or not Mr. Pridgeon would like to put a house on his parcel?
A. I don't know that.
Q. Are you familiar with his request?
A. Yes.
Q. What was his request?

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A. It was originally requesting a lot line adjustment to re-create two lots, as I recall.
Q. Is a lot line adjustment a subdivision?
A. Is a lot line adjustment a subdivision? A lot line adjustment for density purposes can be problematic.
Q. If, in fact, Mr. Pridgeon's parcel satisfies the R.6. -- Mr. Zimmerman pointed out -- R.6 lot area requirements in 1970, based on your testimony of a few minutes ago, would not Mr. Pridgeon have a right to put a house on that parcel?
MR. ZIMMERMAN: Objection. That's a mischaracterization.
THE CHAIRMAN: Then let the witness answer the question and see what the witness says.
A. The determination would have to be made by the director of permits and development management with respect to whether a parcel could be considered for building purposes, a lot.
Q. You're deferring to the director?
A. Yes.
Q. Meanwhile, we have a letter from the director

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that you've already testified to that he says you go back to the original zoning and the original development regulations, but you disagree with him?
A. Which is contradicted later by what he said.
Q. When did he say that? Do you have any evidence where he contradicted that letter as involved Mr. Stepcich?
A. The facts of both cases are very, very, very, very similar and --
Q. Not my question, Mr. Long. My question is, do you have any evidence --
MR. ZIMMERMAN: Objection.
THE CHAIRMAN: Hold it. Wait. First of all, don't object. It's the situation between the two of them, and I'll deal with it.
You ask a question. You answer it. You let him ask his question before you talk. You let him do his answer before you talk. Otherwise, she's not going to be able to do anything.
THE WITNESS: Mr. Chairman, with all due respect, I had not finished my answer to his question.

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THE CHAIRMAN: That's what I'm saying, that makes it impossible for the reporter to do anything.

THE WITNESS: I apologize on my part for that. So finish your answer, or wait, and we'll have him ask another question.

A. I believe that I was saying that the facts are relatively similar in both cases.

And that for Mr. Kotroco to rule in one way on Stepcich and another way with respect to Pridgeon would be a contradiction, would not be a logical progression, in my mind.

Q. Mr. Pridgeon owns two separately distinctly defined lots of record, call it a parcel, or call it a lot, they are separately and distinctly defined and recorded, is that correct?

MR. ZIMMERMAN: Objection.

A. I don't agree.

Q. What's wrong with my comment?

A. The fact that you're using the term lot and parcel interchangeably.

Q. He has one lot that's separately defined and

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recorded and he has one parcel that's separately defined and recorded, is that correct?

A. Correct.

Q. Now, you also just testified that whether or not Mr. Pridgeon could put a house on his parcel would be up to Mr. Kotroco?

A. Correct.

Q. Is that correct?

A. Correct.

Q. Mr. Kotroco, in the evidence already, has a letter submitted to Mr. Klein of the planning board in which he says in 2004 that, in his opinion, and also his recommendation was, that the law in place and the zoning regulations in place at the time of the original subdivision are applicable, isn't that correct?

A. He's not correct.

Q. Is it correct that he said that in his letter? Not that you agree or disagree.

MR. ZIMMERMAN: Objection.

THE CHAIRMAN: Mr. Zimmerman. It's cross examination, or it's recross, and he's got to get there.

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Because you don't like the question, it's not an objection. It's something that may bring you back to ask another question. The letter says what it says.

Q. Now, Mr. Stepcich, on the one hand, wants to literally resubdivide and create two lots to build a second house, is that your understanding?

A. Yes.

Q. And Mr. Pridgeon came in for a lot line adjustment?

A. Correct.

Q. What is a lot line adjustment under the current development regulations?

MR. ZIMMERMAN: Objection. This calls for a legal conclusion.

MR. JABLON: He's the expert.

THE CHAIRMAN: He can tell us as an expert what he thinks a lot line adjustment is.

A. It can qualify as a limited exemption.

Q. As a limited exemption then, it is not a resubdivision? It is an exemption from the subdivision process, isn't that correct, if it's a lot line

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adjustment?

A. "If" is a big word here, Mr. Jablon.

Q. If it is a lot line adjustment?

A. If I can answer the question, not conceding the appropriateness of the term "if" --,

THE CHAIRMAN: Answer the question any way you want to.

THE WITNESS: I can't.

A. You know, if the lot line adjustment would be for density purposes, in all likelihood, the limited exemption would not be granted.

Q. Assume that to be true. Mr. Pridgeon's parcel, do you know whether or not it meets the R. 6 lot size requirements for density?

A. If doesn't matter to me because I make a distinction between a lot and a parcel.

Q. What's the difference?

A. Lots are meant for development. Parcels can be created for a myriad of reasons.

Parcels can be created on land that's undevelopable, for example.

Q. If, in fact, Mr. Pridgeon's parcel -- let me rephrase the question -- whether or not it's developable, is that something -- define that term.

A. "Developable," meaning that it meets all the zoning and development regulations.

Q. If it meets -- if that parcel meets the R. 6 zoning regulations -- just looking at that, not DEPRM, not environmental, nothing else, just the zoning regulations -- if it satisfies the R.6 or R. 40 or R.S.C., could Mr. Pridgeon build a house on it?

MR. ZIMMERMAN: Objection. There's no foundation for that assumption. We've already heard in the petitioner's case that the parcel was set aside not for development.

MR. JABLON: Who said that?

MR. ZIMMERMAN: I believe Mr. Martin said that.

MR. JABLON: I don't believe so.

THE CHAIRMAN: Again, set it up as a hypothetical.

Q. Mr. Long, based on your own testimony, assuming for the moment that the parcel Mr. Pridgeon owns-- which

does not have a current house on it -- was zoned R. 6 or R. 40, or R.S.C in 1970, and it meets the zoning regulations as to those zones. Could Mr. Pridgeon come in and put a house on it?

A. No.

Q. Why not?

A. No, because it wasn't designated as a lot at the time that the plan was recorded.

Q. What is your difference now? Why do you say that, or reach that conclusion?

MR. ZIMMERMAN: Objection. We are getting into repetitive argument.

THE CHAIRMAN: No, no. They're reaching a point, and he's trying to get him to defend himself as he goes along.

MR. JABLON: He just contradicted himself.

MR. ZIMMERMAN: No, he did not.

MR. JABLON: Yes, he did.

THE CHAIRMAN: Mr. Zimmerman, you and I have had this discussion. Objections are not because you don't like the question or the answer or the information being

bought.

Objections are for technically structurally things that should not occur.

What he's doing is he's taking him step by step, whether effectively or not, he's doing the cross examination, you don't like the information coming out, then ask --

MR. ZIMMERMAN: Mr. Chairman, Mr. Jablon was making a statement. That was my concern. Not the question.

THE CHAIRMAN: Well, there's been a lot of that going on back and forth. Let's just get through it.

MR. ZIMMERMAN: I understand the Chairman's point.

Q. A few moments ago -- I don't even know what I asked, but I'll rephrase it -- a few moments ago, you testified one could put a house on an existing parcel, that was Mr. Kotroco's call, that the only thing you would look at, whether it was developable. That's what you said. If it were developeable.

And I asked you what you meant bu that. And you

subdivided that into zoning and into development. That's what you said. Am I wrong?

A. Well, I think you have taken several answers to some of your questions a little bit out of context, Mr. Jablon.

Q. Then correct me.

A. My correct statement would be that --- and I believe we started out with this -- that it would not be appropriate in the position of the office of planning, my position, to allow for a house to be constructed on Pridgeon, because it's a parcel.

I think I later said that if it had been designated a lot, we wouldn't be here today on Pridgeon.

But at the time the Windemere plat was recorded, this was identified as a parcel and not as a lot. And parcels are not always developable tracts of land.

So, therefore, a parcel that was recorded as part of a former zoning classification would not be treated the same as a lot under a newer zoning classification.

And the lot line adjustment further complicates it because it needs additional land in order to make it

work.

So we are taking essentially a non-conforming situation in order to comply with a regulation that is over three decades old, which is ludicrous.

Q. Maybe. The law is often ludicrous.

MR. HOLZER: Objection.

THE CHAIRMAN: Sustained.

MR. JABLON: Second.

MR. HOLZER: The law is reasonable.

Q. Reading the definition -- this is from the Baltimore County zoning regulations, Section 101 of the definition, could you please read the definition of lot of record?

A. Sure. A parcel of land with boundaries as recorded in the Land Records of Baltimore County on the same date as the effective date of the zoning regulations which governs the use, subdivision or condition thereof.

Q. Mr. Pridgeon's parcel, do you know, if it was recorded in the Land Records of Baltimore County with boundaries, do you know? If you don't know?

A. I don't know.

Q. You said a lot or record, parcel of land. Now, assuming for the moment that Mr. Pridgeon's parcel that you have described meets the zoning requirements as they were, zoning only, in 1970 when Windemere Section III was done, no other considerations, could he put a house on that parcel?

A. Today?

Q. Based on the zoning.

MR. ZIMMERMAN: Objection.

THE CHAIRMAN: overruled.

A. No.

Q. You said a few moments ago -- I just want to point out the contradiction here, maybe you can correct it for me -- I believe that you said that if a lot of record was created in 1970, as here -- I may be adding the term, the year -- previously approved lot of record approved under old subdivision, somebody came in, wanted to put a house on it, based on the zoning in place at the time it was approved, they could do it?

A. Correct.

MR. HOLZER: Objection. This is not redirect of

Mr. Zimmerman's cross examination. This is going back to very --

THE CHAIRMAN: Frankly, I expected you to object because this has already been asked and answered.

MR. HOLZER: I have been enjoying myself so much, but clearly this goes beyond the subject matter of cross.

MR. ZIMMERMAN: That's what I was trying to say.

MR. JABLON: I'll go on. I have no further questions.

THE CHAIRMAN: Mr. Holzer?

MR. HOLZER: No.

THE CHAIRMAN: Ms. West?

MS. WEST: I wouldn't dare.

THE CHAIRMAN: Mr. Zimmerman.

MR. ZIMMERMAN: No. Thank you, Mr. Chairman.

THE CHAIRMAN: Thank you, Mr. Long.

THE WITNESS: Thank you.

MR. HOLZER: I have Dr. Gonzales, who is an adjacent property owner who would like to say a few words. That would be --

THE CHAIRMAN: Do you have any other witnesses?

MR. JABLON: No.

THE CHAIRMAN: Let's not make the good doctor have to wait until after lunch.

MR. JABLON: I will introduce exhibit 25 and twenty-six, if I haven't already.

MR. ZIMMERMAN: I will object on the grounds of relevance.

THE CHAIRMAN: Overruled.

MR. HOLZER: For the purpose of the record, I objected previously to the one exhibit.

THE CHAIRMAN: Which one?

MR. HOLZER: Long Shadow.

THE CHAIRMAN: You have objected to the whole line of questioning of bringing Long Shadow in?

MR. HOLZER: Exactly, but now that he's introduced it formally, I want to renew my objection.

THE CHAIRMAN: I understand that, and consider it part of the ongoing objection.

MR. HOLZER: Dr. Gonzales, please take the witness stand.

EUSEBIO P. GONZALES, M.D.,

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having been called as a witness, was duly sworn, and testified as follows:

DIRECT EXAMINATION

BY MR. HOLZER:

Q. Dr. Gonzales, could you state your full name and present living address, please.

A. I'm Dr. Eusebio Gonzales.

Q. Your present address?

A. I live at 300 Stonehurst Road, adjacent to the property, Mr. Stepcich.

Q. So you are adjacent to Mr. Stepcich's property?

A. Yes. Northwest.

Q. How long have you resided in Windemere?

A. Twenty-seven years.

Q. Were you one of the original people that bought the property?

A. Yes, sir.

Q. You were?

A. Yes, sir.

Q. I know that you have written a lot of letters to the planning office, et cetera, zoning office, but we're

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interested here today just to determine what your concerns are relative to Mr. Pridgeon and Mr. Stepcich subdividing their property?

A. Right. Again, well, I'm here as a health care professional. I think it's most important in my opinion, probably the most compelling issue from my own prospective -- and I will address that more clearly when I get to the things I want to tell you -- I'm glad I was given the opportunity to talk about this now before lunch because it may not be too palatable after that.

Q. What are your concerns in regard to the creation of additional lots on either Mr. Stepcich's or Mr. Pridgeon's property?

A. Well, my immediate concern is a threat or a potential threat to the public health, safety.

Q. Now, sir, you have an environmental concern. That's one issue?

A. Yes.

Q. Do you have any other issues? When you acquired your property, your house, the property, and built your house back -- what did you say, twenty-seven years ago?

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A. Longer. I actually bought the lot four years before we built it in '79, so we bought it in 1973, '74.

Q. When you bought your lot, did you have reason to expect or to know how many houses would be around you?

A. We were told by the real estate company Tilghman Real Estate Company who sold us the property that there's restrictions, local restrictions, that we cannot build any other house within that same Section III where we have 3.1 acres or so.

And the same with the rest of the immediate neighbors in the cul-de-sac.

So we were told right from the beginning that this is it. You cannot build anymore. And we love the place because we love the privacy, like everybody else.

Q. So if one were to permit the two properties to be subdivided, that would concern you in regard to what you expected when you bought your lot?

A. Yes.

Q. Are there any other concerns other than the environmental issues, and also the fact that you didn't believe there would be a lot permitted to be subdivided?

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A. Well, it's not a lot of rocket science for a lot of people. This is common sense in a lot of ways. You need to be familiar with what I call here as Exhibit 3-A -- just happens to be a number I assigned to this -- the topography is quite simple.

The hill at the top of the middle area of Section III is about ninety feet above the area where the proposed septic area is going to be, or was supposed to be.

And, essentially, the house -- this is interesting because this is quite simple, but needs to be addressed -- the house that was proposed is about 280 feet level elevation. The septic area is about 290 feet elevation.

So right there is about a ten foot grade between the house itself and the septic area, plus the basement, you're talking about a good twenty feet of gradient, so they need a pump.

So essentially, if there's a storm, theoretically would be approximately a ninety foot drop from elevation four hundred to about three-ten, somewhere in there, three hundred, and the water will rush down, and then whatever

will be eroded and carried down the stream and contaminate, or potentially contaminate all this adjacent property downslope, seven, nine and eleven of Windemere Parkway, and then straight down to Loch Raven Reservoir.

MR. HOLZER: I will offer this as Protestants' No. 3.

THE CHAIRMAN: Just for the record, the exhibit was prepared by you?

THE WITNESS: Yes, sir.

MR. CRIZER: Exhibit 3.

Q. Dr. Gonzales --

MR. JABLON: Mr. Dietz just brought to my attention that the plan that's been submitted as Mr. Dietz' plan has been doctored up.

It was not done with Mr. Dietz' permission. Mr. Dietz would like me to say that.

MR. ZIMMERMAN: Maybe we can get Mr. Dietz's exhibit on the board and we can spend a half hour and have Dr. Gonzales --

THE CHAIRMAN: Why don't we ask the question, sir?

MR. JABLON: I don't object to it. I told Mr. Holzer I did not object. I don't object to it being introduced, but I do want to put that on the record.

Q. All those colors, and all those smiley faces, that was put on there by you?

A. Yes.

Q. You took the perc plan of the Stepcich property that was prepared by Mr. Dietz, which was part of the public record?

A. Yes, it was part of the public record.

Q. Now, Doctor, I don't want you to get into all this scientific discussion about slopes, et cetera. Just what are your concerns? As a result of the physical layout, where you believe these houses will be located and how close you are to the Loch Raven Reservoir, what are the concerns that you have?

You can articulate them without being very definite in terms of plats and exhibits.

A. Again, as I point out, basically, there's an immediate threat or a potential threat to the public health because we are so close to the Loch Raven

Reservoir.

We are only about, from the septic area to the Loch Raven Reservoir and the Dulaney Valley Branch, it's about one-quarter of a mile, which is 1,220 feet, and if raw sewage gets down in the same immediate area, which includes all this -- I will call this Exhibit No. 6 -- it can contaminate --

Q. With all due respect, Doctor, that's what I was trying to avoid. We don't need you pulling out all of these exhibits.

Just articulate for the Board your verbal concerns, without going into all those definitions.

A. Well, as I said, Mr. Holzer, raw sewage can potentially contaminate adjacent properties downslope, and then immediately after that, the Loch Raven Reservoir, because there's a stream right next in this same vicinity.

Q. Are you concerned at all about your well as a result of this proposal?

A. No, sir. Our own water seeks it's own level. Our well is well above the immediate area.

Q. Are there other people in Windemere III that have

wells that would be below grade of their septic area?

A. Not in Section III, per se, but as I said, downslope, seven, nine and eleven Windemere.

Q. How close is your property and the Stepcich property to the Loch Raven Reservoir property itself?

A. About a quarter mile.

Q. Are you adjacent to the Loch Raven Reservoir, or do you abut that, the Loch Raven property?

A. Yes. Well, we are -- the property, the Section III Windemere is the one that's adjacent to the Loch Raven Reservoir by the power lines, and Mr. Stepcich's power is away from that, a couple hundred feet away.

Q. So Mr. Stepcich's property is actually abutting the Loch Raven reservoir land?

A. Correct.

Q. So you have those environmental concerns. Do you have concerns in regard to seeing additional houses in the subdivision from a privacy standpoint?

Are there any other concerns you have? Any other areas of concerns?

A. There are other areas, but I think I probably

should hold back on telling. This is my main area of expertise I believe which I can give you feedback, being a health care professional, in the best way I know.

Q. I explained to you, did I not, that the Board is sitting here not to determine environmental issues, but certainly to listen to your concerns, but we were not going to get into all the details that you would have articulated to the planning board?

A. Yes, sir.

Q. Is there anything else that you'd like to say before we conclude?

A. Well, the only other thing I can say is it's unfortunate that the three neighbors that share the same driveway -- and we are stakeholders in this proposal -- we pay taxes and maintain that driveway, and it's unfortunate that now we're at odds with each other and having problems like this.

Q. If these two properties were permitted to subdivide, would that increase the traffic on the private road that you maintain?

A. Some, definitely.

Q. Any other further concerns?

A. No. I think I am okay. Thank you. Thank you, members of the Board.

THE CHAIRMAN: Anything on the cross examination side?

FURTHER DIRECT EXAMINATION

BY MR. ZIMMERMAN:

Q. What is your background?

A. I am a pediatrician. I have been practicing in Towson, Maryland, for the last thirty-five years. I am board certified and I have a practice at St. Joe's and GBMC.

Q. You have a public health background as well?

A. Yes

Q. What is that?

A. I also worked part-time for the Department of Health and Mental Hygiene for twenty-two years, until my retirement in 1999.

Q. The State Department of Health and Mental Hygiene?

A. Yes, sir.

Q. In what capacity?

A. Medical consultant, physician, administrator, and medical consultant in.

Q. I think there's an aerial photo, Petitioner's No. 3?

THE CHAIRMAN: He's already described where he lives.

MR. ZIMMERMAN: I know. I understand.

Q. Dr. Gonzales, I put on the easel, Petitioners' Exhibit No. 3. Could you point out where you live in reference to the Stepcich property?

A. Yes. Our property is right here, and this is Mr. Stepcich's property, and Mr. Pridgeon's property. And this is the private driveway I was talking about earlier, the cul de sac.

Q. Does the private driveway extend beyond Stonehurst Road?

A. Right.

Q. Your house is to the east of Mr. Stepcich?

A. Northeast, sort of. That's Mr. Stepcich right here.

Q. The watershed area that you expressed concerns about is where?

A. Right about here.

Q. West, southwest?

A. West, southwest, correct.

Q. The slope slopes downward in that direction?

A. Well, there's a big hill up here.

Q. Where's the hill you were talking about?

A. Way up here, in this particular area, this particular area here. And the water, again, will seek its own level and go down whichever way from about four hundred elevation to where the septic area is proposed two hundred ninety elevation, and I made a calculation, and based on my information from the Internet, that if that septic area gets eroded by the raw sewage, it will go down to the stream area, and straight to the Loch Raven Reservoir.

THE CHAIRMAN: Again, Doctor, Mr. Zimmerman, the idea was not to go through the technical.

Q. And the homes on Windemere Parkway are in the path that you were referring to?

A. Seven, nine and eleven.
Q. They are on the northwest boundary of Mr. Stepcich's property?
A. Due west.
Q. Is there anything else you wanted to ask, that the photo will help illustrate?
A. No. I think I covered most of it.
MR. ZIMMERMAN: That's all I have, Mr. Chairman.
THE CHAIRMAN: Mr. Jablon.

CROSS EXAMINATION

BY MR. JABLON:
Q. Would it surprise you, Dr. Gonzales, to know that the Baltimore County Department of Environmental Protection and Resource Management has approved the perc plan submitted of Mr. Stepcich?
MR. ZIMMERMAN: Objection.
A. Yes.
THE CHAIRMAN: Why? He just told us how bad it was going to be, all the dangers.
He's asking if he knew it. It's perfectly relevant.

Q. Petitioner's No. 15, please. So do you know that DEPRM had approved the perc plan?
A. I heard about it. I don't have any documentation.
MR. JABLON: No further questions.
THE CHAIRMAN: Okay.
MR. HOLZER: Nothing further.
MS. WEST: Nothing.
MR. ZIMMERMAN: Nothing further.
THE CHAIRMAN: Thank you, sir.
THE WITNESS: Thank you.
THE CHAIRMAN: All right. Do we have anymore witnesses?
MR. JABLON: I have a busload outside, but they have elected not to come in.
THE CHAIRMAN: You're a great American, Mr. Jablon. Nothing else from anyone?
Okay. I believe after two and a half'ish days, we have finished the testimony.
MR. JABLON: Could I just ask one question? What case is not before the Board?

THE CHAIRMAN: There's no need, because once you said something, I'm going to let them say something, and I'd just as soon you make the points in the memo.
MR. JABLON: No, no. I'm not making argument.
MR. HOLZER: Because of the failure of the notice in one case, there was one case we weren't considering.
THE CHAIRMAN: I apologize gentlemen. Go right ahead.
MR. JABLON: I don't know. I know we can clearly say that the decision of the Zoning Commissioner in Case No. 06-419, that's before the Board.
Now, I get a little confused. I think I can also safely say that the appeal from the DRC in 2006 -- I guess I can make this a little bit easier.
The last notice that I received came out, there were four matters on this. I'm just totally unclear as to which was one was left off.
THE CHAIRMAN: Actually, four.
MR. JABLON: So we know the Zoning Commissioner's decision. We have three matters from the

DRC. We have two matters, 06-019 and 06-020, which are the appeals from the DRC of Mr. Pridgeon and Mr. Stepcich in 2006.
MR. HOLZER: My notes here from January 10th says that the Pridgeon DRC lot line adjustment, not notice, so part of the process, whichever number that was.
MR. JABLON: That would be 04-159.
MS. WEST: The first case stated on the hearing notice --
MR. HOLZER: In other words, back on January 10th, we indicated that the Pridgeon DRC lot line adjustment case, which was denied, did not receive notice, so that wasn't a part of this hearing.
So, therefore, I would move to strike all the testimony related to that which came out.
MR. JABLON: Actually, there, you're wrong, because the bottom line is that I presented testimony from Mr. Pridgeon based on the appeal from 2006.
Mr. Holzer objected then, because we all thought that might have been the one that did not receive notice.
Mr. Stahl, you allowed it all in. That's why I

am raising it today, because I do believe that it was the first appeal from the DRC from Mr. Pridgeon in 2004, and there has really been no testimony --

MR. HOLZER: What number is that?

MR. JABLON: That one up here.

MR. HOLZER: The 159?

MR. JABLON: Right. There's been no testimony about the lot line adjustment, other than Mr. Long and the hypotheticals, so there's been no discussion and no introduction of evidence on that.

MR. HOLZER: I think he might be right.

THE CHAIRMAN: So that's 159?

MR. JABLON: 04-159.

MR. HOLZER: So we were not trying that case, and in effect, whenever we were talking about the DRC, we were trying 06-019.

MR. JABLON: That's correct. I really didn't intend seriously to object. I just wanted clarification.

THE CHAIRMAN: Okay. The testimony is completed. We are done.

It will come as no shock to anyone that we'll

take memos on this case. Let's go off the record.

(Discussion held off the record.)

THE CHAIRMAN: They want sixty days. Today is June 15th. July 15th is a Sunday, so why don't we make it the 16th, would be sixty-one days.

MR. ZIMMERMAN: I filed a pre-hearing memorandum. If the Board wishes to peruse it, I would not object.

THE CHAIRMAN: You know what? Just as a suggestion, if you won't have any objection to you making mention in your brief, just to remind us there's a pre-brief that was filed. July 16th, Monday. Thank you all very much.

MR. HOLZER: I'm sorry. These were people that signed in.

THE CHAIRMAN: We'll just give it your next number.

MR. CRIZER: Protestants' or People's Counsel's No. 4.

THE CHAIRMAN: Thank you all very, very much.

(Hearing concluded.)

* * * * *

I N D E X

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Jeffrey Long	8	30	67	78
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IN THE MATTER OF: * BEFORE THE

PRIDGEON PROPERTY * COUNTY BOARD OF APPEALS

CASE NO. CBA-04-159 * OF

and * BALTIMORE COUNTY

IN THE MATTER OF: * April 24, 2007

PRIDGEON PROPERTY *

CASE NO. CBA-06-019 *

and *

IN THE MATTER OF *

STEPCICH PROPERTY, SECTION III *

CASE NO. CBA-06-020 and *

IN THE MATTER OF: *

JOSEPH STEPCICH - Petitioner *

CASE NO. 06-419-SPH *

ORIGINAL

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at The Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204, at 10 o'clock a.m., April 24, 2007.

* * * * *

Reported by: C.E. Peatt

BOARD MEMBERS:

LAWRENCE M. STAHL, Chairman
EDWARD CRIZER, JR.
WENDELL GRIER

APPEARANCES:

ARNOLD E. JABLON, Esquire
On behalf of Property Owners

J. CARROLL HOLZER, Esquire
On behalf of Protestants

NANCY C. WEST, Esquire
Assistant County Attorney
On behalf of Baltimore County

PETER MAX ZIMMERMAN, Esquire
People's Counsel
On behalf of Baltimore County

PROCEEDINGS

* * * * *

THE CHAIRMAN: Good morning, everyone. We are here at the regular meeting of the Baltimore County Board of Appeals for Tuesday, April 24, 2007.

We are here in a number of numbers, so I am going to read them all. CBA-04-159, CBA-06-019, CBA-06-020, and 06-419-SPH.

This is day two from January 10th. Generally, this is the matter of the Pridgeon property, 6 Stonehurst Road in Phoenix, 11th Election District, 3rd Councilmanic District, relative to a JSPC decision previously which was denied, and another one in the Pridgeon property, denial of a request to reconfigure figure lots into two buildable lot by the DRC, the last two numbers in regard to the Stepcich property, which is 3 Stonehurst Road in Phoenix, again the 11th Election District, 3rd Councilmanic District, denial to reconfigure again from the DRC, and the second one, special hearing, which was granted in part and yet denied in part as it relates to future subdivision.

We've got a big plate. Counsel, if you will, for the record.

MR. JABLON: Arnold Jablon, Venable, LLP, representing both Mr. Pridgeon and Mr. Stepcich.

MR. HOLZER: J. Carroll Holzer, 508 Fairmount Avenue, on behalf of the Long Green Valley Association.

THE CHAIRMAN: Good morning.

MS. WEST: Good morning. Nancy West, with an incredible cold from the County Attorney's Office, Baltimore County, Maryland.

THE CHAIRMAN: Good morning. You have something to drink, Ms. West?

MR. ZIMMERMAN: Peter Max zimmerman, People's Counsel.

THE CHAIRMAN: All right. Where are we? Off the record for a second.

(Discussion held off the record.)

THE CHAIRMAN: Back on the record. Mr. Jablon, we are with you.

MR. JABLON: All right. I have on the bulletin board, People's Counsel Exhibit 2, which was the JSPC. I

call David Martin to the stand.

DAVID L. MARTIN,

having been called as a witness, was duly sworn, and testified as follows.

THE CHAIRMAN: Sir, your full name, if you will, and spell your last name.

THE WITNESS: Okay. My name is David L. Martin. M-a-r-t-i-n. I'm a principle of Martin and Phillips Design Associates.

It's a planning and civil engineering firm here in Towson, 222 Bosley Avenue, Suite B1, 21204.

DIRECT EXAMINATION

BY MR. JABLON:

Q. Mr. Martin --

A. Yes.

Q. -- with whom are you associated?

A. Martin and Phillips Design Associates.

Q. What is your profession?

A. I'm a landscape architect, licensed in Maryland and Pennsylvania.

MR. JABLON: At this point, will counsel

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stipulate to Mr. Martin's expertise as an expert witness in the Baltimore County development regulations and Baltimore County zoning regulations?

MR. HOLZER: I will.

THE CHAIRMAN: You will.

MR. ZIMMERMAN: Subject to the caveat that any legal conclusions are for the Board to decide.

MR. JABLON: I knew exactly Mr. Zimmerman would say that.

THE CHAIRMAN: Why don't we make it easy, because we have been down the road before.

Expert witnesses give opinions, anything they want to give their opinions, including what they say a law says or doesn't say.

It doesn't mean we have to give it cognizance, credibility, and can't question it ourselves.

But can they opine? Of course, they can opine. That's why they're expert witnesses.

MR. JABLON: As a matter of fact, Mr. Stahl, just to short circuit some of this, Mr. Long is going to testify, and I'm sure that Ms. West will be asking Mr.

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Long's interpretation of the zoning and development regulations, and I'm not going to object.

MR. HOLZER: That's big of you.

MR. JABLON: I know it's big of me.

THE CHAIRMAN: But if you want to protect the record, be my guest. Go ahead. So what is he --

MR. JABLON: He's going to be qualified as an expert in the Baltimore County development regulations and in the Baltimore County zoning regulations.

THE CHAIRMAN: Okay.

Q. Do you have the authority to seal?

A. Yes, that's correct.

Q. You have testified --

A. Many times.

THE CHAIRMAN: And the Board is familiar with Mr. Martin.

Q. Have you prepared plans for residential development before?

A. Yes.

Q. Have you, in fact, been involved in the preparation of a plan for Mr. Pridgeon?

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A. Yes.

Q. How did you get involved and what did you do for Mr. Pridgeon?

A. At the time that I was involved personally with it, I was employed by G.W. Stevens and Associates, and Mr. Pridgeon had requested that his current property holding at the subdivison of Windemere, that he was seeking a lot line adjustment specifically as it's sort of identified in the County Code, because he owned actually a platted lot in, I believe it's parcel B as it was shown on the record plat, for Section III of Windemere.

And based upon that request and as is customary to do something like that, procedurally, G.W. Stevens, under my direction, prepared for Mr. Pridgeon a DRC application and the plat to accompany that DRC application that, in red, illustrated the proposed lot line adjustment for relocation of the current line of division between parcel B and his lot number that would illustrate to the DRC committee that we were seeking, in fact, a lot line adjustment, and what it was all about.

That's pretty customary to their requirements,

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and the check list and what have you were also completed and submitted.

Q. Let me show you what I have marked for identification purposes as Petitioner's No. 16,

MR. JABLON: Mr. Crizer, I believe we were at fifteen?

MR. CRIZER: Yes.

A. This is the plan that was prepared under my supervision when I was at G.W. Stevens and Associates for the DRC.

Q. When was this? When did you submit this?

A. I believe it was August -- well, the plan is dated the 3rd of August.

I don't know exactly what particular DRC date it was, but it had to be somewhere within a week's time of this August 3rd date.

It was on the schedule, I don't know exactly, nineteen days after the submission date when it was actually heard.

Q. At the time that you submitted the DRC application, what was the zoning then in place?

A. R.C. 4.
Q. You have R.C. 5 here?
A. Well, that's G.W. Stevens had that on there. That was incorrect.
Q. Did there come a time that the zoning then changed?
A. Yes. With this date of 2004, it landed on what I will call the cusp of the comprehensive zoning cycle, and this particular area was all subject of a comprehensive zoning issue.
But at the time the DRC request was filed, the property still had an R.C. 4 zoning classification on it.
Q. Did the maps change that?
A. Subsequent to this date, yes.
Q. What did it become?
A. I believe it's now R.C. 6.
Q. That's also shown?
A. Yes.
Q. Now, who made these corrections?
A. I don't recall, because I left G.W. Stevens at the end of August last year, 2006.

Q. But the time this was done, you were still with G.W. Stevens?
A. Yes.
Q. Can you describe, by looking at that site plan and the site plan that's on the board, to the Board exactly what you're requesting and the reasons for the request?
MR. JABLON: And I have an extra copy for the Board to look at. Would you like another one?
MR. ZIMMERMAN: Off the record.
(Discussion held off the record.)
MR. JABLON: Actually, just for informational purposes, the one I'm going to give is exactly what's on the board and what I've given to counsel, except for the cross-out of the R.C. 5 to the R.C. 6. Everything else is the same.
MR. ZIMMERMAN: Off the record.
(Discussion held off the record.)
MR. JABLON: All those plans, sometimes it gets so difficult to read, I understand and appreciate that, so I tried to make some extra copies for you.

THE CHAIRMAN: Appreciate it.
Q. Mr. Martin, can you just describe what it is you're proposing here and describe what is shown on the plan itself.
A. Well, the plan was a very simplistic request, again, of moving the line of division as it existed on the record plat at the time between what's labeled on the plan as parcel B and lot three, which is Mr. Pridgeon's lot where he currently has a dwelling, to show in red the new line of division with the old line with red X's on it.
Q. So the X's show deletion?
A. Correct.
Q. The interrupted red line shows the new lot line?
A. Yes.
Q. Now, what is the purpose for these lot line adjustments, or what were the purposes?
A. The purpose of the lot line adjustment was to essentially exchange some land from Mr. Pridgeon's lot three to parcel B that would afford a more sizeable compatible lot for an additional dwelling on lot B as well as a combination of a currently tested septic reserve area

and a new well location.
Q. Were both of these lots B -- and what was Mr. Pridgeon's lot?
A. No. 3
Q. When were they created?
A. I believe in 1970, the record plat for this area was in 1970.
Q. I believe that would be shown on the plat of Windemere 1970, which has been introduced as Exhibit No. 1?
A. Yes.
Q. Now, does Mr. Pridgeon own, or does he still own these two particular lots?
A. Yes.
Q. Do you know when he first purchased them?
A. I do not.
Q. But he owned them at least as of the time that you prepared the plan?
A. Yes.
Q. Is that correct?
A. Yes.

Q. So what was the specific request that you made to the DRC?

A. I believe it was for -- I don't know even remember if we were using the old codification numbers, I guess we were, but it was basically for a lot line adjustment as one of the limited exemptions spelled out under the twenty-four section of the old codification number system. I don't have it committed to memory.

Q. Let me show you an exhibit which I have marked as Petitioner's Exhibit 17, and ask you to identify that?

A. This is a letter dated September 2, 2004, to me when I was at G.W. Stevens.

The letter is acknowledging that we had submitted a request for review by the DRC and, in fact, it was using the new codification code system, and what we were seeking via the lot line adjustment was an amendment or a refinement to the original JSPC plan for Windemere, which is also noted in the last paragraph on the first page of the letter, the JSPC being the Joint Subdivision Planning Committee. That's how this subdivision was originally approved.

And this, in fact, says that the refinement should be granted, the recommendations of the DRC are hereby adopted.

Q. Signed by whom?

A. Tim Kotroco, director of PDM.

Q. Naturally, it looks like a stamp?

A. It does look like a stamp. Somebody's initials possibly beside the stamp.

Q. Who's down below, just above the cc?

A. It looks like it's Don Rascoe's initials.

MR. HOLZER: Has that been marked?

Q. Let me show you what's being marked as Exhibit No. 18 and ask you to identify that.

A. This is a letter to me at G.W. Stevens when I was still there, dated December 3, 2004, from Jeffrey Long, deputy director of the office of planning.

And in simplistic terms, Based upon a review of the information provided and analysis conducted, the JSPC has determined that your client's request for a lot line adjustment for the above-referenced lot and parcel B has been denied as the property's zoning has changed since the

original lot was recorded.

The R.C. 4 zone permitted density does not allow for the reconfiguration of these parcels as the total acreage is 4.18.

Q. Now, just going back to your testimony for a moment, this letter confirms the zoning had been R.C. 4 rather than R.C. 5, but it does not confirm that the maps had taken place, but your testimony is the maps had taken place and adopted prior to December 3, 2004?

A. Yes. And I believe the actual vote was October.

Q. And changed it to D.R. 6?

A. Yes.

Q. Subsequently, did there come a time when you, on behalf of Mr. Pridgeon, re-applied to the DRC?

A Uh-huh.

THE CHAIRMAN: Excuse me. Off the record a minute.

(Discussion held off the record.)

THE CHAIRMAN: Let's go back on the record.

MR. JABLON: We're set.

THE CHAIRMAN: All right.

Q. I have given you what I labeled as Petitioner's Exhibit No. 19?

A. No, you haven't.

Q. I haven't?

A. Okay.

Q. Can you identify it?

A. This is a development review committee, DRC, application that is my handwriting when I was at G.W. Stevens.

It is a completed application describing, among other things, the project name, and in this case, lot three and parcel B of Windemere Section III, a PDM file number, with a JSPC, et cetera, and all the other pertinent information including tax account i.d., so on, so forth.

Q. That's the DRC application. That was filed what date?

A. The filing date actually isn't on here.

MR. HOLZER: If that's on nineteen.

A. Oh, I'm sorry. It is on the back, bit not the front. 3-13-07.

THE WITNESS: Thank you.
Q. Let me show you what I have labeled as Petitioner's No. 20 and ask you to identify this?
A. This is an another plan to accompany the DRC request. It is virtually the same plan.
Actually, it is the same plan, except it was hand red-lined, again with X's through the old line of division between parcel B and lot three for No. 6 Stonehurst Road.
Q. Is that plan similar to the Petitioner's Exhibit No. 16?
A. Not only is it similar, it's exactly the same as far as the line of division.
Q. So the request, was there any difference in the request made to the DRC in March of 2006 than the request which was made to the DRC in 2004?
A. Yes, but not from a plan perspective, but as to the actual language for the application itself, there is a difference, yes.
Q. I believe this is twenty-one. I show you a letter marked as Petitioner's No. 21. Can you identify that letter?

A. This is a letter prepared by Venable, signed by you, that I believe accompanied the DRC application as is customary and required, that we just spoke about, which was the application to the DRC, 2006, 3-13-2006.
Your letter is also dated 13 March 2006. This is directed to Mr. Donald Rascoe of PDM. And this letter was an explanation letter that accompanied the DRC request at that time, specifically asking, as did the application itself, that the DRC consider the proposed refinement as shown on the site plan, the plan to accompany the DRC request, that it be a material amendment to the previously approved JSPC plan.
Q. Correct me if I'm wrong. The first request to the DRC in 2004 was for a lot line adjustment to a previously approved JSPC plan?
A. That is correct.
Q. This request is for determination -- the same request to move the lot line if it's a material change?
A. Correct.
Q. Let me show you an exhibit I have marked for identification as Exhibit No. 22, and ask you to identify

that?
A. There is this letter directed to you at Venable, dated April 12, 2006.
Dear Mr. Jablon. Standard sort of words at the beginning, referring to the sections of the code.
This is subject, re: lot three, parcel B of Windemere, DRC number 040306E, District 11, C three, and the definitive paragraph is number two.
Your request has been submitted for careful review and consideration to the DRC, composed of staff members of the appropriate department.
And the last paragraph says, The DRC has, in effect, met in an open meeting on April 3rd and has denied your request, that request being a material amendment to that JSPC.
MR. JABLON: Mr. Crizer, can I see Petitioner's Exhibit No. 8, please?
Q. Let me show you what has been introduced as Petitioner's Exhibit 8 and ask you to review that.
A. This is a letter to you, again at Venable, dated April 12, 2006, same as the previously mentioned Exhibit

22.
Dear Mr. Jablon. Same reference to the code. Same substantial paragraph regarding the code and the DRC meeting, and the last sentence of the paragraph, The DRC has, in fact, met in open meeting on April 3, 2006, and has denied your request.
Q. Do you know whether or not what my request was in that particular matter?
A. I was in attendance at the DRC meeting --
MR. HOLZER: Objection. This the one where we said there was no notice of this, so he should not be testifying in regard to that aspect,
MR. JABLON: No, no, I didn't say that. We never agreed to that. I said it wasn't subject to the appeal, but I think it's all relevant to get to the main point which I think is the only issue in this case.
THE CHAIRMAN: Talking about something for chronological or historical?
MR. JABLON: Exactly.
THE CHAIRMAN: I don't know what you gentlemen are talking about yet.

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MR. HOLZER: You had ruled there was one appeal that had not been properly noticed, therefore, it wasn't the subject of this hearing, which is what he's talking about now.

THE CHAIRMAN: Well, there's a lot of things that have happened that we didn't do in this matter that, for historical context alone, nothing substantive, are mentioned of the whole history.

If it's not offered for any substantive proof of something in the case and it's done for historical context, we understand the context to which it's done, subject to cross, for that limited purpose.

MR. JABLON: Mr. Stahl, the issue is one matter involving Mr. Stepcich and Mr. Pridgeon. A lot of appeals were taken.

One of the five was not properly posted, so we agreed that that matter was not subject to the appeal here.

However, the facts that relate to the properties of Mr. Pridgeon and Mr. Stepcich include the historical perspective that's occurred from step one through the

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final step. I'm not asking for the Board to review and overrule that DRC decision.

I'm only introducing it to show -- which I will connect in terms of the main issue -- what zoning should be applicable.

THE CHAIRMAN: Well, in the historical context, I have no problem with that.

A. Repeat the question.

Q. Are you familiar with --

MR. JABLON: Mr. Crizer, can I have Petitioner's Exhibit No. 7?

Q. Will you please look at this letter dated March 14, 2006 from me to Don Rascoe, and take a look at it.

A. Again, it's a letter, as you stated, accompanying the Stepcich property, the JSCP material request to the DRC to ask for their consideration that the proposed line of division is, in fact, a material amendment.

Q. And the letter, subsequent letter from Mr. Kotroco to me?

A. Dated April 12, 2006. It's virtually the same exact letter. It is the same exact letter. It's subject

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to the different properties. The DRC denied a request for a material amendment.

Q. Now, are you familiar with Bill No. 24-06?

A. Yes.

MR. JABLON: Mr. Crizer, may I have Exhibit No. 13?

Q. Let me show you Bill 24-06, copies of which I think all counsel have. If I might turn your attention to page four?

A. Yes.

Q. I'm going to draw your attention to Section 32-4-262, amendments to development plans, Subsection 2.

A. Yes.

Q. Will you read that, please?

A. Any material amendment to an approved residential development plan or plat shall be reviewed in accordance with this Title and with respect to that portion of the original plan or plat to which the amendment pertains, the amendment shall be reviewed for compliance with all current law and regulations, including the development regulations and the zoning regulations.

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Q. Now, the letters from Mr. Kotroco to me denying the request for a material change, do you have an opinion as to why they denied -- I will rephrase.

Is there any reason given in those letters for the denial?

MR. ZIMMERMAN: Objection. The letters speak for themselves.

THE CHAIRMAN: He can give his expert evaluation of the letters. Again, I mean, if we are going to -- you can took about the letters and the decision that is the basis for this appeal, he's going to tell us what he thinks of it and why he thinks it's good or bad, or Ms. West will tell us why it's good and not bad and correct.

We'll hear all of that. And then it's up to us to decide what we think, and if anything any of those experts said help us one way or the other.

MR. ZIMMERMAN: It's purely legal argument at this point.

THE CHAIRMAN: No, it's not. Go ahead.

A. As a recipient of DRC letters similar to this all the time for clients, upon receipt of a letter that in

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fact says that the DRC denied my request or a joint request on a client's behalf for a material amendment, I would draw, as a land planner and as a representative of that client, no other conclusion then it is a refinement to that plan, not a material amendment.

MR. ZIMMERMAN: Move to strike. Absolutely no foundation for such a comment.

THE CHAIRMAN: His foundation is his expertise in these processes.

MR. ZIMMERMAN: It's pure speculation.

THE CHAIRMAN: Sure. And expert witness speculates all the time based upon their review of the situation, circumstance and the statutes upon which they base those determinations.

If you want Mr. Jablon to have him recite for us all the sections of the code that bear on this so we have a foundation when he's an expert, I presume he's got a foundation of law.

If you don't think so, then show us on cross examination why we shouldn't listen or give any credence at all to anything he said.

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MR. ZIMMERMAN: I think it's his burden to show a foundation for that opinion. There's no foundation for that particular opinion.

THE CHAIRMAN: Go ahead, Mr. Jablon.

Q. Now, Mr. Martin, going back -- if I might --

MR. JABLON: And I'm going to now move at this point to introduce all my exhibits that I have so far marked for introduction today, which I believe are Exhibits 16 through 22, as evidence.

THE CHAIRMAN: Any questions?

MR. ZIMMERMAN: Off the record.

(Discussion held off the record.)

THE CHAIRMAN: Back on the record.

Q. Let me draw your attention to People's Counsel Exhibit 2.

A. Yes.

Q. You were here for the first day of testimony, were you not, back in January, 2007?

A. Yes, I was.

Q. You heard Mr. Zimmerman ask Mr. Dietz a couple of questions, did you not, dealing with the zoning that was

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in place in 1969, 1970?

A. Yes.

Q. Did you do any research in terms of determining whether or not what zoning was, in fact, in place at the time that Windemere Section III was approved in 1969?

A. Yes. When I was at G.W. Stevens, we actually, as a firm, were able to obtain a copy from Baltimore County records of the exhibit that's on the board, which is the original approved Joint Subdivision Planning Commission plan that was signed and sealed by Baltimore County.

And subsequent to receiving that, we had the ability at G.W. Stevens to go back and look at the date on the plan and correspond that date with the old zoning book that existed at the time, and that discovery indicated to me that the property was zoned R-40.

Q. At what point?

A. When the JSPC was originally approved.

Q. And did there ever come a time when, as far as you know, that the zoning was changed?

A. It's been changed several times in its life since that point in time.

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Q. Well, you heard Mr. Zimmerman question Mr. Dietz about the application of the R.C.S. zoning?

A. Yes.

Q. I just ask you just address that concern for a moment.

A. The classifications of zoning throughout the history of Baltimore County since 1955 has often changed nomenclature, you know, amongst other things.

However, in this instance, the R-40 area requirements are, in fact, 40,000 square feet lot sizes and, for instance, if you had a hundred acres, you could conceivably get a hundred lots. That's the density determination for the R-40.

The R.S.C. was, in fact, the same 40,000 square foot lot requirement, and the density was calculated.

Q. How many square feet is one acre?

A. 43,560.

Q. Now, did you have occasion to do an analysis about Windemere Section III, how it relates to the Windemere subdivision as approved in 1956?

MR. ZIMMERMAN: Objection. I don't think the

1956 subdivision is the one that was ultimately approved in Windemere Section III. I don't think it matches up.

MR. JABLON: I just asked the witness did he have occasion to do an evaluation of Windemere Section III as relates to this JSPC plan. That was my question.

MR. ZIMMERMAN: All right.

THE CHAIRMAN: Go ahead. Answer.

A. Yes.

Q. Did you, in fact, prepare an exhibit for today to show that analysis, and what you did and how did you it?

A. Yes.

Q. Do you have a copy of it?

A. Yes.

Q. Where is it?

A. It's in the folder there. There's a copy of the very same exhibit underneath it, the JSPC which we had obtained from Baltimore County records when I was at G.W. Stevens.

It actually has my handwritten notes on it from when we obtained it, and I did come some quick calculations as to the density that was permitted at the

time based on the acreage and the lot requirement of 40,000 square feet.

We took the time to count all the lots that were actually shown on the JSPC, accordingly. But for the purposes -- to answer Mr. Jablon's question -- what I did was take the record plat that exists for Section III and laid it over top of the JSPC plan and highlighted the common divisory line between the various sections, which is here, but as I trace my finger from the bottom of the sheet to the top, it's highlighted in yellow.

So that area shown actually represents the very similar line of division between Section III and the other sections as they were platted in Windemere.

Q. Continue.

A. Okay. There were changes made to -- when the record plat was actually done and the actual land development occurred, obviously, the number of lots was one.

But, for example, Stonehurst Barth and Stonehurst Road was cut off and terminated in a cul-de-sac, much shorter than what was shown on the JSPC, and the JSPC

within that area of what is now Section III, if I counted right, contained seventeen or depicted seventeen lots when it was approved by the JSPC.

MR. ZIMMERMAN: Objection. The ultimate approval shown in the subdivision plat, the lots are quite different.

And we know from the previous day's testimony that the surveyor was unable to find the final approved JSPC plan.

THE CHAIRMAN: Okay. He's describing -- and I'm not questioning anything you said, obviously -- he's telling us what he did on this particular exhibit.

When your cross examination comes, you can point out to him does this match another plan? You were here for previous testimony. Did you hear he couldn't find that? How do you match the two?

Again, Mr. Zimmerman, an objection isn't because you have something that detracts from what the witness is doing, or counters what the witness is doing. That's what cross examination is for. Not objections. Go ahead.

Q. How many -- now that Mr. Zimmerman asks, I will

ask -- how many JSPC plans are there for all of Windemere?

A. One.

Q. That would be what?

A. The one that's on the board here.

Q. People's Counsel Exhibit 2 that he introduced?

A. I believe that's the number, yes.

Q. When you did your overlay --

A. Yes.

Q. -- I think your testimony is you took the plat as recorded in Windemere Section III, and literally placed it onto People's Exhibit No. 2, is that correct?

A. Yes. Can I demonstrate that?

Q. And you lined up what is there now with what was then proposed, correct?

A. That is correct. What I did was take a mylar transparency of the record plat and superimpose it on top of the JSPC plan, and it very closely corresponds to the highlighted line of division between this section and other sections that I've highlighted on the JSPC plan.

Q. Now, if I remember correctly -- let me rephrase the question. Do you remember Mr. Dietz's testimony?

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A. Yes.
Q. Do you remember Mr. Zimmerman's cross examination?
A. Yes.
Q. Do you remember Mr. Zimmerman asking how many lots there were in Windemere Section III today?
A. Yes.
Q. Lots?
A. Yes.
Q. One of the questions I believe he asked -- correct me if I'm wrong, your memory, if you remember -- did he ask if, at that time, also what was originally contemplated by Windemere in its entirety and specifically in the area that become Section III?
A. I do recall that.
Q. How many lots did you find after your analysis that were originally contemplated for this particular area as bounded, the parameters of which are now Windemere Section III?
A. Seventeen.
Q. How many times lots are actually there now?

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A. Four, and two parcels, A and B.
Q. So there are six platted lots?
A. Yes.
Q. Call them what you will, lots or parcels?
A. That is correct.
Q. So, in fact -- I'll rephrase the question. In all of Windemere, when you did your original examination, how many density units under the R-40, which was in place in 1956, would have been permitted?
MR. HOLZER: Objection. That doesn't necessarily mean that's lawfully permitted. You're admitting that there was some county agency that refined the proposal.
MR. JABLON: My question simply is, how many density units gross would have been permitted under the R-40.
MR. HOLZER: From a density standpoint, yes, but not in terms of appropriate development standpoint.
MR. JABLON: No. That wasn't my question.
THE CHAIRMAN: His question is from a density standpoint.
MR. HOLZER: I just didn't want him to go into

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unchartered waters.
MR. JABLON: You don't want me to go into unchartered waters, that's correct.
Q. How many density units would have been permitted gross?
A. Okay. in simplistic terms, there were 38.16 acres on the entire tract, which times 43,560 gets you a certain number of 40,000 square foot lots.
And my handwritten notes, on both exhibits actually, one of these came from a DRC file, was that there were 239 permissible by density at the time this JSPC was reviewed or approved, and the plan actually showed on the approval, 183.
Q. So there were 183 lots taken into account what is shown on this plan as approved on June 14, 1956, which has the stamped box to the left on this plan?
A. That is correct.
Q. And you also have on this, two other numbers, handwritten notes, 112 lots, and then it looks like a total or subtotal of fifty-six. What did you mean by that?

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A. I don't recall the 112 lots. That's not my handwriting. But the below lettering, the 239 was what I calculated would have been permissible at the time by density. A hundred eighty-three is what we counted. The fifty-six is the difference between those two numbers.
Q. Again, based on this overlay and based on your analysis, using Windemere Section III, the plat, the only contemplated plan called for in excess of six lots?
A. Yes.
Q. And how many lots are we proposing for Windemere plat, Section III plat, with the request for Mr. Stepcich and Mr. Pridgeon? How many additional lots?
A. We are actually -- it would be one additional new lot and a reconfiguration of a line of division between parcel B and lot three.
Q. Now, you also, if you remember, did Mr. Zimmerman ask a question of Mr. Dietz about the definition or the difference between parcel and lot?
MR. ZIMMERMAN: Objection.
THE CHAIRMAN: He's asking the witness of his own memory. Whether he does or doesn't, you can go back and

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get the transcript.
MR. HOLZER: I would object on a different basis. That is, is he trying to impeach the testimony of his prior witness? If that's what he's doing --
THE CHAIRMAN: Not yet.
MR. HOLZER: I suspect that's what he's doing.
MR. JABLON: You suspect in error, Mr. Holzer. You would like that to occur, but that's not occurring.
MR. HOLZER: Well, we'll see.
THE CHAIRMAN: Stay tuned.
Q. Do you recall the question?
A. I recall the question, yes.
Q. When Mr. Pridgeon, his lot, parcel B, that's labeled parcel?
A. Yes.
Q. Do you have any idea or any concept of why lots are labeled differently on plats such as this or on the JSPC plan such as this, that is, parcel vis-a-vis lot?
MR. HOLZER: Objection.
MR. ZIMMERMAN: Objection.
MR. JABLON: Does he know or doesn't he know.

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THE CHAIRMAN: He's questioning a definition of terms.
MR. HOLZER: He's asking does he have an opinion, not the definition. I wouldn't have objected to that question.
THE CHAIRMAN: How about re-ask your question?
Q. Do you have a definition for plot and parcel?
MR. ZIMMERMAN: Objection. He's asking --
THE CHAIRMAN: He's asking a expert witness about a definition of a land term. Let him define the land terms. If you disagree with the definition -- we can go around and around -- if you disagree with the definition, then show me something different on paper, do it to him in cross examination, or have somebody else say what it is.
It's a definition of a term we hear all the time, and he's asked his witness what that definition is. It's more time than it's worth doing.
MR. JABLON: Absolutely. I'll withdraw the question. It doesn't matter anymore. The whole thing gets bogged down.
Q. Do you know or not Mr. Pridgeon's parcel B perked

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or not perked? do you know?
MR. HOLZER: Objection.
A. I do not Pridgeon, because --
MR. HOLZER: Objection. What relevance does that have to this hearing?
THE CHAIRMAN: First of all, you just asked him a question out of nowhere. Why don't we have some kind of basis?
MR. JABLON: Well, I was going to about the definition of parcel and lot.
THE CHAIRMAN: Well, I told you, you could go ahead.
MR. JABLON: Then I will. I just wanted to speed this up.
THE CHAIRMAN: I know.
MR. JABLON: If everything is going to be objected to, which can be done later when Mr. Long testified, too, and I'm just trying to speed things up.
Q. That was my question. My absolute original question was, do you know, or do you have what the definitions were of parcel and lot in 1956 when the JSPC

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plan was approved?
A. I do not.
Q. So you don't know?
A. No.
Q. Fine. Do you know what the definitions of parcel and lot are today, 2007?
MR. HOLZER: Objection.
THE CHAIRMAN: Overruled. Same reason I overruled him.
A. On a recorded plat, a parcel is typically a non-buildable area or reserved area of land that is set aside.
A lot would be to accommodate a piece of land to accommodate for building permit.
Q. Now, do you know, does that term, that definition, apply to Mr. Pridgeon's parcel B, lot number three?
MR. HOLZER: Objection. Now what he's doing, he's trying to have him testify as to the definition today.
He's trying to determine why in 1969 they put parcel on there which indicated it was not a developable

or buildable lot.

Now he's trying to say, well, it can perk or you can put a well on it. Well, that's irrelevant. That is not appropriate for this hearing.

THE CHAIRMAN: If it's not relevant -- first of all, the relevance of the information is what we say it is, understandably, but if he wants to ask him how this applies to the definitions today, if those definitions are not the basis upon which we should be making our decision, then I don't think the Board will utilize it to make its decision, because I'm sure everybody will point that out.

But it just seems to me we are going around and around and around, and if we are going to have to do this piece by piece by piece, we'll do it piece by piece by piece.

MR. HOLZER: It's not going around and around. The point of the matter is that he's trying to determine that -- I would assume the answer is going to be yes, it's perkable, it's buildable.

Well, that undermines what was determined in 1969 by identifying it as a parcel.

MR. JABLON: That is absolutely not correct.

THE CHAIRMAN: But even if it is percable now, the basis upon which this Board makes its decision is not whether or not the parcel perks, is it?

MR. HOLZER: That's why I objected the first time, but you overruled me.

THE CHAIRMAN: Okay. What I'm saying is, let's get the information in. Then our job is, after you take the information apart on cross examination, is to sift through it and decide what we think is relevant or not and what we think is probative or not.

That's what we do here, and I'd like to get to that.

MR. JABLON: My point is this, when Mr. Holzer --

THE CHAIRMAN: I don't want to argue this.

MR. JABLON: I'm not. He missed one point. What Mr. Holzer's just done was to contradict Mr. Zimmerman's entire cross examination of Mr. Dietz, because it was Mr. Zimmerman who raised the issue, not me, on cross. With that, I'll let it go.

THE CHAIRMAN: Once again, that's --

MR. ZIMMERMAN: This is all confusing to characterize my questioning. That's not the issue.

THE CHAIRMAN: But let's stop for a second. That's exactly my point. Now we are no longer talking about the specific question that was asked.

Now we are getting into all kinds of issues including what you may or may not have said in your cross examination.

I don't want to go there. I want him to ask the witness the question, I want to get through this witness, and I want to find out what this expert says in his expert opinion, which may be worth much, which may be worth nothing, but I want to get through it.

MR. HOLZER: That's fine. And if you would rule that way, then you would preclude Mr. Jablon from asking questions relative to Mr. Zimmerman's testimony.

Just ask the witness what he wants in regard to the current issue, not in regard to what Mr. Zimmerman --

MR. JABLON: I did, and you objected.

THE CHAIRMAN: Well, you tried to explain yourself, and that's how you got in trouble. Off the

record for a second.

(Discussion held off the record.)

THE CHAIRMAN: Back on.

Q. Now, are you familiar with both Mr. Stepcich's property and Mr. Pridgeon's property?

A. Yes.

Q. How long have you been practicing, doing land use, zoning, planning in Baltimore County?

A. Twenty years.

Q. Are you familiar with the process by which vesting occurs in Baltimore County?

A. Yes.

Q. Have you ever submitted or applied for or made a request to Baltimore County for changes to previously approved plans?

A. Yes. Frequently.

Q. What was that? How did you go about doing that, and what requests generally did you make?

MR. ZIMMERMAN: Objection.

MR. HOLZER: Objection.

THE CHAIRMAN: What kinds of requests, in broad

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general terms, I assume he's setting a foundation for something. Go ahead.

A. They could be similar to this case, a historical review of the record of a particular project, residential, commercial, industrial. Was there a plan previously approved by Baltimore County at some point in its history, albeit a JSPC, more commonly a CRG, or even the current standard which is the development plan, regarding any amendment.

That would be the first basis, and it's always been the first basis for refinements prior to Bill 24-06 of any refinement made to a plan.

You go find the old one, you apply the DRC for that request of a refinement to the plan, and that's what you fix, with the new, whatever it is you're doing.

Q. Did you have opportunities or times when you submitted requests for specific projects where the zoning had changed from the time the original plan was approved to the time that you made your request?

A. Yes.

MR. ZIMMERMAN: Objection.

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THE CHAIRMAN: Overruled.

Q. Did you have, in those instances, what was your request vis-a-vis the zoning?

MR. ZIMMERMAN: Objection.

Q. In terms of the applicability?-

MR. ZIMMERMAN: We are talking about this case today.

THE CHAIRMAN: He's laying a foundation. We are finding out what kinds of tasks he's done in general terms.

He's not telling us individual projects, he's not telling A to B. He's telling us in broad terms, the kinds of things he's familiar with and has done before.

A. Okay. It's not uncommon in my profession to have a request to modify a previously approved and partially built or completely built-out subdivision, industrial park, commercial shopping center, or something like that, a land development project whereby we have been requested to modify it in some fashion.

It has always been my experience in doing so, at the DRC, that when a plan like that has actually been

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either substantially constructed or partially constructed phase or whatever, utilities, a BWA executed with Baltimore County, some of the utilities, some of the streets are in, that at that point, the county has always, in my experience in Baltimore County, deemed that project to be vested and that the refinement that a client might be seeking from the DRC to determine that it's a refinement would be utilizing the rules of zoning, development regulations, that existed at the time that the original project was approved.

MR. ZIMMERMAN: Move to strike.

THE CHAIRMAN: Overruled.

Q. Mr. Martin, in both these cases, the applications you have made, under what zoning were the requests being made under?

A. Under the original R-40.

Q. Under R-40, R.S.C -- either one which would have been in place in 1970 --

A. Yes.

Q. -- would the request for both Mr. Stepcich in dividing his lot into two for the lot line adjustment of

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Mr. Pridgeon by moving his lot line over to gain more land was under the zoning in place in 1970, would these requests comply with that zoning designation?

A. As long as you can meet the 40,000 square feet lot requirement, the diametrical dimensions that were called for, I believe 150 feet, and the setbacks that existed under that zoning, yes.

Q. And in these cases, both Mr. Stepcich and Mr. Pridgeon, do the requests meet those requirements?

A. Yes, they do.

Q. Now, in fact, if the R.C. 6 zone were applicable, would they be able to meet the R.C. 6 standards?

A. No. I don't know how you could apply the R.C. 6 standards to two lot that exist in a subdivision like that.

Q. If the lot lines were to be approved, how large would both of Mr. Pridgeon's lots become?

A. Well, they would both -- I think he owns about four acres, so they're just about two acres each, roughly.

Q. What is the size of his lot where the house is located? You can look at the plan.

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A. I don't have it. The existing lot three is shown as 3.43 acres and parcel B is three-quarters of an acre.
Q. Say again?
A. The existing lot three, 3.43 acres, and the parcel B is shown as .75 acres, or three-quarters of an acre.
Q. How large would parcel B become at the expense of lot three?
A. Parcel B would then become as shown on the DRC plan, plat accompanying the DRC, of 1.61 acres and lot three would go from 3.43 down to 2.57.
Q. Based on our analysis of the zoning then in place in 1970, does either request, Mr. Stepcich's or Mr. Pridgeon's, violate the density then permitted?
A. No.
Q. Have houses been built in Windemere Section III?
A. Yes.
Q. Have roads been laid out and utilized in Windemere Section III?
A. Yes.
Q. Does Mr. Pridgeon live in Windemere Section III?

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A. Yes, he does.
Q. Where does he live?
A. On lot three.
Q. Does Mr. Stepcich live in Windemere?
A. Yes.
MR. JABLON: If I might have a moment?
Q. Did you also happen to do an analysis whether or not there were any other changes to lots within Windemere Section III over the years?
A. Yes.
Q. What did you find?
A. Well, the Maryland records for Baltimore County on plats indicate, as I counted, five resubdivisions of some fashion.
Some of them, apparently, are either old enough or they couldn't find a scan, so I couldn't get a picture of it, but they are described. If you call the plat reference up for Windemere, they appear to be five labeled resubs, or resubdivision.
Q. Since when, what time?
MR. ZIMMERMAN: Objection.

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A. Since 1970.
THE CHAIRMAN: What's your objection?
MR. ZIMMERMAN: It's irrelevant to the case.
THE CHAIRMAN: Okay.
A. Since 1970 through today.
Q. So you have found a total of five, is that correct?
A. Yes.
MR. JABLON: I think that's all the questions that I have.
THE CHAIRMAN: Off the record.
(Discussion held off the record.)
THE CHAIRMAN: Back on the record.
MR. JABLON: I'm going to introduce the mylar as Petitioner's Exhibit No. 23.
MR. ZIMMERMAN: Are you done?
MR. JABLON: I'm done.
THE CHAIRMAN: Pass. Mr. Zimmerman.

CROSS EXAMINATION

BY MR. ZIMMERMAN:
Q. Mr. Martin, are you an attorney?

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A. No.
Q. Have you gone to law school?
A. No.
Q. What is your academic training?
A. I'm a licensed landscape architect. I graduated from Penn State University.
Q. With reference to the original 1956 plan that's on the easel, People's Counsel's Exhibit 2 --
MR. JABLON: Underneath that one. I'm going to make this Petitioner's Exhibit 24.
THE CHAIRMAN: What's that exactly?
MR. JABLON: This is the original JSPC plan dated 1956, which is the same as People's Counsel 2, but it has Mr. Martin's highlighting overlay onto it, and you can see the black lines.
Q. Mr. Martin, as a matter of fact, we'll use Petitioner's Exhibit 24, the one where you made the markings, for several questions.
First of all, your marking s undertake to divide the sections as originally contemplated in 1956, or what you claim the black lines --

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A. Well, the black lines were on the original JSPC. The only line I put on there was the highlighted yellow line that corresponds to the current plat.
Q. How many acres were in the original plan?
A. I think I testified 293.
Q. Come on up here. Gross residential acreage, 280?
A. Total acreage, 220, I believe. Two thirty-eight, sixteen with the gross acreage of the tract.
Q. Gross residential acreage, 230. Then total acreage, you subtract 238. And that's why you said the maximum number of lots would have been approximately 238?
A. 239.
Q. And the actual number of lots is 183, according to the 1956 plan, correct?
A. Yes.
Q. Now, normally, subdivision plats are supposed to be consistent with approved development plans, correct? The lots shown on a subdivsion plats are supposed to match up with the approved plans?
A. Currently, they do.
Q. Do you know some period in history when they

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weren't supposed to?
A. Right here. In practice, that's not been what I've seen. The bookkeeping -- I'll call it bookkeeping as a term of art -- going back, as plans are amended, whatever, prior to 1991 -- in what I will call the formal DRC establishment we see it today -- it was very common not to go back and amend the CRG as a record plat might have changed something, adjusted a line. It was very common not to have to do that.
Q. All right. How many lots have, in fact, been laid out in residential use in the entire Windemere's 238 acres? I am not talking about the plan. I'm talking about on the ground now, in terms of actual platted lots?
A. In the whole subdivision.
Q. In the whole subdivision.
A. I don't recall that number. I'm not sure I ever even counted the plats, to be honest.
Q. You did count the current Section III?
A. Yes.
Q. You said there are six or seven lots platted now?
A. Four lots on parcel A and B.

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Q. How many houses in the current Section III?
A. I don't recall. I think there's four houses.
Q. Would you like to look at the aerial?
A. Yes, I would, to answer the question accurately.
MS. WEST: Exhibit 3.
MR. JABLON: Can we stipulate?
MR. ZIMMERMAN: I just want to get right, whatever it is.
A. Within the area defined as Section III, I count one, two, three, four -- actually, five homes.
Q. You pointed out that in the equivalent area under the 1956 plan, there were seventeen?
A. That is correct.
Q. Homes?
A. Yes.
Q. That tells you that there was a change, there was some sort of change from the time the 1956 plan was approved and the plat was laid out?
A. Certainly. They don't match.
Q. In fact, the Section III as platted does not match up with Section III on the 1956 plan, do you agree

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with me?
A. That's correct.
Q. How many acres are in the platted Section III?
A. I believe it's about nineteen.
Q. How many acres in Section III as originally shown?
A. I have no idea.
Q. Can you give us an approximation?
A. Not really.
Q. Almost one-half? One-third to one-half of the entire area?
A. Of Section III?
Q. Well, how many sections are shown on the entire 1956 plan?
A. It does appear that's actually designated as Sections I, II and III, but they were subdivided into blocks also on this plan.
Q. But would you agree that Section III, as of 1956 -- with the mylar that you showed, can you put the mylar on the appropriate location?
A. (Indicating.)

Q. I mean, it looks like the original 1956 Section III was three or four times as large as what Section III ultimately became?

A. At least.

Q. If we take either Mr. Stepcich ended up with what was described as lot one -- correct me if I'm wrong --

A. I believe that's correct.

Q. What does that lot one match up with on the original 1956 plan? How many lots are in that area of lot one, that became lot one?

A. One, two, three, four, five.

Q. And how many lots were in the area that became Mr. Pridgeon's lot three and parcel B?

A. Well, that's not as easily defined because they overlap in all kinds of strange juxtapositions, but part of one, two, three, for sure. Part of another lot. So those two together would make five, maybe six.

Q. Clearly, something happened between 1956 and 1970 that caused a modification of the original plan, do you agree with that?

A. Well, sure. I mean, the plan is different.

Q. And you don't know whether or not there was some amended JSPC plan filed between 1956 and 1969 or 1970 that simply is not available or known to us now?

A. Obviously, because if we had, we would have used that plan to prepare our DRC application.

Q. It's possible that that plan got lost or the records are no longer kept and we just happen to have a copy of the 1956 plan?

A. It's as possible to assume that as it's possible to assume it was never amended.

Q. Now, did you say there were about nineteen acres in the current Section III?

A. Yes.

Q. If your thought process is correct, that as long as one meets the original R-40 zoning, then further subdivision, whether it's called lot line adjustment, reconfiguration, whatever you want to call it, as long as it meets the R-40, it's acceptable? Is that basically your approach?

A. No, I did not say that. What I did say, from a density calculation perspective, that's how you would

calculate the permitted density.

Q. Subject to meeting the perks and any other --

A. Any other development issues that might impact.

Q. And would the development issues be measured as of 2006 regulations, or 1956 or 1969 regulations?

A. That's sort of a cherry-picking event in my experience because there are other COMAR laws. For example, perk tests have a life span of five years. Perk testing methods and procedures that were done in 1956 are not what they are today.

And so there are some things that Baltimore County, by COMAR, or other standards, must do in the way, or redo, I should say, on an amendment.

Q. You don't foresee you're cherry picking, suggesting the 1956 density standards should apply in 2007?

A. No, not for density.

Q. If you're correct, then Section III, currently having nineteen acres as platted, could potentially go from four houses to seventeen or eighteen or nineteen houses, correct? Everyone could subdivide up to the point

where you have one acre lots, basically?

A. Well, that's an impractical assumption today, because I think I said there are already six or seven houses there.

Are you assuming that we are going to knock all the stuff down and start over?

Q. If one knocked them down?

A. From a density perspective, yes.

Q. Even if one didn't knock down the current houses, there could be multiple further subdivision?

A. There could be some.

Q. And on the 239 acres, you don't know how many houses there are now?

A. No.

Q. Not even close?

A. No

Q. But if the same pattern -- I mean, right now, if there are four houses, that's less than -- well, that's less than one-quarter of the potential number of houses based on the original R-40 zoning, correct?

A. From a numerical perspective, yes.

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Q. So that same pattern holds true for the other sections of Windemere? Your approach would allow a tripling or quadrupling of the number of houses in Windemere today?
A. I don't know if it's triple or quadruple, because I don't know how many houses exist, but from a pure mathematical game, yes.
Q. Subject to some practical considerations as to where the houses are located?
A. Well, of course.
Q. So you would agree that the implication of your approach are far broader than the additional two houses that Mr. Stepcich and Mr. Pridgeon want to create?
A. No, I wouldn't say that. I am saying from just a pure mathematical density calculation, I said what I said.
You do the math. I'm not saying you can actually create triple the number or whatever the number is out here in multiple subdivisions. That's impractical.
Q. But if other lot owners in Windemere came in and asked you if they could subdivide, you'd take a look at their lots in the same way that you looked at the Pridgeon

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and Stepcich lot?
A. Yes. Individually.
Q. But you haven't done the analysis to see what the implications are for the entire subdivision?
A. No.
Q. What is the subdivision lot density allowed in the R.C. 6 zone?
A. Honestly, Mr. Zimmerman, I don't even know how you would calculate that subject to actually having a piece of property to start with, because, as I recall -- and I don't have it committed to memory --
Q. I'm sorry. Did you finish your answer?
A. Well, there's two conservancy zones and you've got to calculate the density, as I remember, removing one of the conservancy zones.
Q. Does the R. 6 have a density standard?
A. Yes.
Q. Do you know what it is?
A. I don't know off the top of my head.
Q. Would it surprise you if it were .2?
A. No.

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Q. Assuming that I'm correct about that, that doesn't concern you, because you didn't think R.C. 6 applied?
A. Yes.
Q. That's why you didn't even bother?
A. That's correct.
Q. Do you know when the R.C. 6 zone came into effect in this area?
A. The last comprehensive zoning.
Q. In 2004?
A. Yes.
Q. Do you know when previous to that, Windmere was classified to the R.C. 4 watershed protection zone?
A. No. Sometime before then.
Q. Do you know what the density has been and is in the R.C. 4 zone?
A. It can be calculated one of two ways, but it's .2 with the conservancy zone.
Q. Do you know when the R.C. 4 zone was created?
A. I don't know off-hand.
Q. If I told you it was Bill 98-75, first mapped in

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1876, would that refresh your recollection?
A. That sounds about the right time frame, yes
Q. If a .2 density were applied to Section III, what would the permitted number of houses be. Four? Three?
A. It would be one-tenth of twenty acres, or two-tenths.
Q. And if one applied it to the entire Windemere subdivision, 230 acres, or 238 acres?
A. I think it's 238, roughly.
Q. So there would be what, a little less than fifty houses, fifty lots allowed? Forty-seven?
A. Correct.
Q. Would you agree that there are more than forty-seven houses now in the entire Windemere subdivision?
A. I don't know that.
Q. Do you know whether the R.C. 6 zone or the R.C. 4 zone of four acre lots can be subdivided, a lot that's already been approved?
A. In a subdivision, no.
Q. Having considered my previous questions, would

you agree that there's a reasonable inference, whether on paper or in fact, the original 1956 plan was amended in some fashion so that the very different subdivision plat was recorded in 1969 or 1970?

MR. JABLON: I'm going to object.

THE CHAIRMAN: I'm not quite sure of the question. I'll ask you to rephrase it. I couldn't follow it.

Q. Isn't it clear that the original subdivision plan, the JSPC plan, Petitioner's Exhibit 24, the 1956 plan, was in some fashion amended by the time the subdivision plat of 1970, Petitioner's Exhibit 1, was recorded?

A. I don't like the word "inference." All I can tell you is there's no record of that.

Q. There's no resemblance, is there, between the 1970 subdivision plat, Petitioner's Exhibit 1, and the original 1956 plan, you agree with that, don't you?

A. Yes. Well, let rephrase my answer. No resemblance? There are some resemblances.

Q. No resemblance as to density?

A. Okay.

Q. You agree with that?

A. I do agree with that.

Q. No resemblance in terms of where precisely the lots are situated? Do you agree with that?

A. In some instances. I think we just had that testimony on Mr. Stepcich's lot. The configuration was he just essentially assembled what was shown on the JSPC as five lots.

MR. ZIMMERMAN: Objection.

THE CHAIRMAN: You asked the question.

MR. JABLON: He's objecting to his own question.

Q. Do you have any record that Mr. Stepcich assembled any lots?

A. What I'm saying, if you lay the current plat on top of the JSPC, the configuration of his current lot is similar albeit minus the lines of division that were shown on the JSPC that illustrated five versus now one.

Q. So he had one lot plotted in 1970 where there were five lots on the original 1956 plan?

A. Yes.

Q. So would you agree there's no resemblance between one and five?

A. As to the disappearance and the number of lots, yes.

Q. And When you got to the Pridgeon situation, there was no resemblance even between any kind of configuration? It was all mixed up, right?

A. Yes.

Q. So there was no resemblance there either?

A. Didn't appear to be.

Q. Would you like to go through every of the other lots --

A. No, I would not.

Q. -- to see if there's resemblance? You would agree there's no resemblance on any of the lots platted in Section III versus the original 1956?

MR. JABLON: I'm going to object.

THE CHAIRMAN: Let him answer.

MR. JABLON: He already answered.

THE CHAIRMAN: That would be his answer, he's already answered.

MR. ZIMMERMAN: He didn't answer.

MR. JABLON: Mr. Zimmerman is trying to get Mr. Martin to agree. He's not going to agree. No matter times he asks the same question, Mr. Martin will not agree.

MR. ZIMMERMAN: He did agree.

THE CHAIRMAN: He hasn't hit my threshold yet of repeating and repeating.

Q. On any of the other lots in Section III, do they match up with the lots on the original 1956 plan in size and location, precisely?

A. Precisely, the only thing I would say, the boundary line that I highlighted on the plan appears to be coincidental to the rear lot lines or some lot lines on the JSPC.

That's why I could actually easily lay it on there, so there are some minuscule similarities generally and structure or skeletal framework of where the roads were, but there's also obviously dissimilarities in where the lot line is.

Q Is there any single lot in the approved platted

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Section III that matches up with any lot on the original 1956 plan?
A. Honestly, I don't know. I'd have to look at it.
Q. Go ahead. We've already gone through Mr. Stepcich's and Mr. Pridgeon's, so that just leaves lot two and lot four of the platted 1970 subdivision.
A. Parcel A is the same. Parcel B looks to be the same as what was originally one and two.
Q. But they changed from being called a lot to be called a parcel?
A. That is correct. Other than that, the rest of the lots have either assimilated or accumulated what was shown on the JSPC likeness of --
Q. Do they exactly assimilate or are they mixed up? You said Mr. Stepcich's lot looks more or less like an assimilation, but Mr. Pridgeon doesn't.
A. Well, it does actually fairly closely match up.
Q. Which one?
A. Mr. Stepcich.
Q. Well, we said that. Mr. Pridgeon's is more a crossover?

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A Yes.
Q. What about the other two?
A. Lot two is a crossover.
Q. And lot four?
A. Lot four is the same, an accumulation of what was three lots.
Q. And that's consistent with the point previously made that where there were original seventeen lots proposed and approved in 1956, we ended up with four lots and the two parcels which functionally became part of residential lots, correct. There was no building on the parcel?
A. Correct.
Q. Mr. Pridgeon's sold lot three and parcel B, apparently?
A. Yes
Q. But one house built?
A. Yes.
Q. Do you have any documentation with you on other resubdivisions you claim may have occurred since 1970 at Windemere?

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A. I actually brought two that I actually pulled off the plats off the internet.
Q. Any Board of Appeals' decisions on those?
A. I didn't research that.
Q. Were they in Windemere Section III?
A. One of them was.
Q. When was that?
A. I'd have to look at it. I just got it yesterday, and I'd have to look at the plan.
Q. It didn't go to any hearing, apparently?
A. I don't know.
Q. Has there been an additional house based on that subdivision, are you saying?
A. I don't know that, either. I'd have to do a little more research.
Q. In the course of your practice in Baltimore County, are you familiar with a process called amendments to a final development plan process?
A. Yes.
Q. Have you from time to time worked with property owners or developers in connection with zoning petitions

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to get approval of amendments of a final development plan?
MR. JABLON: I'm going to object here. I need clarification. As Mr. Zimmerman well knows, there has been a conflict in terminology.
I presume he's talking about what is euphemistically is called the FDP, as opposed to a development plan which has been approved by the Hearing Officer.
But both are, in fact, called, in many instances, development plans. So I would just like Mr. Zimmerman to clarify which plan he's referring and the type of amendment that he's referring to.
THE CHAIRMAN: Just rephrase your question and make it clear.
Q. I am simply asking whether -- Mr. Martin, you have worked with property owners and/or developers and attorneys in connection with petitions for amendments of final development plans filed with the Zoning Commissioner?
A. You're speaking of the FDP as it's known in the zoning office?

Q. FDP, under the zoning law.
A. Okay. Yes.
Q. Now, one way or another, what's being requested here involves an amendment of, certainly, the subdivision plat that was filed in 1970, do you agree with that?
A. I believe -- would have to be amended? Yes. But I believe the application, as I testified, were actually to amend the JSPC, not the plat.
Q. Well, the JSPC approved plan is a form of development plan, is it not?
A. Yes.
Q. And we have already seen that the 1956 plan, while approved at that time, is not what was ultimately platted, correct?
A. Yes.
Q. We don't know for sure if there was another document filed between 1956 and 1970 that was approved by the JSPC?
A. Unable to find one. Doesn't appear to be.
Q. What would your logical -- as an expert -- what would your logical inference be as to whether there should

have been or probably was another plan filed?
MR. JABLON: Again, I object to the phrase as probably was.
MR. ZIMMERMAN: Well, if he knows.
THE CHAIRMAN: Well, ask if he's aware of any.
A. I stated we cannot find in Baltimore County records, the existence of an amended JSPC.
I also testified earlier -- and it's been my experience over twenty years -- that it is very often the case in old, old plans like this, that the bookkeeping -- and I use that term -- of amending old plans to bring them in conformance with whatever may have changed on a new resubdivision, a section change in a subdivision, et cetera, it is common to find that that has not been amended.
Q. So you're saying it's plausible that the plat ultimately was quite different from the approved plan without the necessity, perhaps, of a different document showing an amendment, a formal amendment to the plan?
A. Sure.
Q. Of course, in this case, the ultimate plat was

far reduced in density from the original plan, so it would not have posed any zoning problems from a density point of view, correct?
A. From a density perspective, correct.
Q. But in any event, the current request clearly involves an amendment of whatever development plan we think is pertinent to this Windemere subdivision, wouldn't you agree with that?
A. Yes. That's why we applied to the DRC, which is that same.
Q. When you say "we" were you kind of the driving -- in other words, when an application was made, were you the one who basically coordinated that?
A. Yes.
Q. My question is, do you agree that it's also necessary to file a petition to get approval of a final development plan amendment from the Zoning Commissioner?
MR. JABLON: I object to the question. Talk about foundation. There's been no question whether or not an FDP is even required or was required for the period that we are discussing.

THE CHAIRMAN: Lay the foundation.
Q. Is there a provision in the zoning law relating to amendments of final development plans?
MR. JABLON: Objection. Which zoning regulations?
MR. ZIMMERMAN: Baltimore County.
MR. JABLON: What year? 1955 or current?
Q. The current zoning regulations, is there a provision?
A. There is a amend the FDP in the current regulations.
Q. Do you know where that provision is located?
A. Not off the top of my head.
Q. If I told you --
A. I believe it's in the D.R. zone section.
Q. 1B01.3? You can check me on that.
A. Yes.
Q. Do you know when that law was passed, what Bill created that?
A. Bill 100, I believe.
Q. Bill 100-1970?

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A. Yes.
Q. It's a well-known major zoning law in Baltimore County?
A. Yes.
Q. Isn't it obvious that we're dealing with an amendment to a final development plan in this situation from a zoning point of view?
MR. JABLON: Objection.
THE CHAIRMAN: He's asking him to give his opinion as to whether or not -- you're asking him whether or not, in his opinion, is this equal to that?
MR. JABLON: I object to the use the word "obvious." Obvious to whom? Mr. Zimmerman, maybe.
THE CHAIRMAN: Why don't we simply rephrase the question to ask the witness whether he agrees with you.
Q. Do you agree that, in this situation, we are dealing with an amendment to a final development plan from a zoning point of view?
A. No.
THE CHAIRMAN: Are you going to ask him why not?
Q. Well, are we dealing with a situation involving

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an amendment, do you agree with that?
A. The JSPC, yes.
Q. You wanted it called a material amendment, for whatever reason?
A. Well, the second time we did.
Q. You know we are dealing with an amendment, right?
A. Yes.
Q. We know that sometime way back in 1956, there was a development plan?
A. A JSPC plan.
Q. Isn't a JSPC a form of a development plan?
A. You can call it that, but I'd be cautious to call it that, because there is a current term of art called a development plan. It's approved by the Hearing Officer. This was not approved by the Hearing Officer. It's a plan, a JSPC plan.
Q. It was approved by county authority?
A. Yes.
Q. And what was approved was a residential development?
A. That's correct.

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Q. So in terms of the English language, in common sense --
MR. JABLON: We can do away with the --
THE CHAIRMAN: All right. Let's move on, everybody.
Q. Isn't it true it's a development plan approved in 1956? Haven't you called it that?
A. Actually, it's called a preliminary plan back then.
Q. So there's no final plan?
A. There could be. I don't exactly remember when FDPs came into existence. That's a zoning plan.
Q. If it was just preliminary plan, then we don't know if that 1956 plan has any bearing, really?
A. It's --
Q. It was approved as a preliminary plan according to what you just said? Was it preliminary or final?
MR. JABLON: Let him answer the question. I object.
THE CHAIRMAN Let's go back to that first question you asked.

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Q. Is it a preliminary or final approved in 1956?
A. It was known as a term of art as a preliminary plan, joint subdivision plan, JSPC. The term of art as a developed plan, it's the foundation for the development that occurred here.
Q. What was the final approved plan for Windemere, if there ever was one?
A. In what fashion?
Q. Can you identify whether there was ever any final approved plan for Windemere?
A. Well, I would say that this is it.
Q. The 1956 plan, you're saying, was the final plan, as far as you know?
A. That's correct.
Q. Since you couldn't find any other?
A. That's correct.
Q. Yet, you also agree what was submitted was quite different?
A. Yes.
Q. So if, indeed, the 1956 plan, or the finally approved plan, would you agree that it is a plan which

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approves residential development?
A. Yes.
Q. And in terms of the English language, at least, wouldn't it be reasonable to say that it's a form of development plan?
A. Small -- little d -- yes.
Q. So are you saying that you have a definite opinion that the zoning law which requires the commissioner to review amendments to final development plans is not germane to the current situation with Mr. Pridgeon and Mr. stepcich?
A. Can we use the term "development plan small d?" Yes.
Q. Are you telling us that the zoning law -- and I can show you the zoning law, if you'd like to see it. 1B01.3.
A. Yes, I would like to see it.
Q. You can take a few minutes to look at it.
MR. JABLON: Mr. Stahl, he's already asked that question.
THE CHAIRMAN: The witness has asked to see the

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thing. I'm going to let Mr. Zimmerman go there.
MR. JABLON: I would also ask that Mr. Zimmerman, again -- again -- to point out when this law went into effect.
MR. ZIMMERMAN: Bill 100-1970, I think Mr. Martin has said, and I agree with him, that's when this law came into effect.
And I think there's a reference to Bill 100 in the zoning regulations which I have just shown to Mr. Martin.
A. Yes. I mean, I would agree that this is the section that calls out that procedure.
Q. Did you consider, prior to today, the specific question of whether the zoning law which requires a petitioner to review amendments to final development plans applies to Mr. Pridgeon's and Mr. Stepcich's application?
A. I didn't consider it because we never got this far in the process, to be honest.
I mean, if you want me to describe the process, we can start with in this lower echelon plan, FDP. An FDP, as I know an FDP, is a zoning plan that's kept on

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record in the zoning office, and that's what this, in practice, talks about.
Q. So now are you saying today either that you don't have to go for an amendment before the Zoning Commissioner or that, in your contemplation, it would occur at a future time?
A. I would say -- I would answer your question this way. If there, in fact, ever existed a final development plan -- capital F -- on this subdivision, then you have two choices.
You either get the current residences within three hundred feet of that change, the proposed change, to sign the FDP amendment, or you have a provision to go before the Zoning Commissioner for a special hearing to do just that.
Q. Are you saying that, in your opinion, you're not sure whether the 1956 plan is a development plan for those purposes, or you're sure that it's not?
A. In my opinion and my practice, I would say it's not an FDP. Capital FDP.
Q. Do you have any case law or Board of Appeals'

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rulings to support that?
A. I'm not a lawyer. I think we've established that.
Q. What about the subdivision plat that was filed in 1970? That's petitioner Exhibit 1 for Section III.
A. Yes.
Q. Do I have the date right? I don't want to misspeak. The number of approval dates -- I'm showing you Petitioner's Exhibit 1 -- what date can we give to this? It looks like the engineer prepared it in 1969, but it was approved --
A. It was actually signed by the director of the planning board, George Gavrelis, in February of 1970.
Q. That was recorded --
A. Recorded February -- the end of February, 24th, 1970
Q. Is it fair to say that this is a subdivision plat?
A. It is a subdivision plat.
Q. So we at lease agree that Mr. Stepcich and Mr. Pridgeon's request involved some amendment to the lines

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shown in that subdivision plat?
A. Yes.
Q. They also involved an increase in the number of residents, one each for Mr. Pridgeon and Mr. Stepcich?
A. I don't believe the DRC plan actually showed any additional building. I might be wrong.
Q. Isn't that what they want?
A. I don't know.
Q. You don't know?
A. I don't know.
Q. You have no idea?
A. I suspect that's what they want, but I don't believe they were shown, footprints of buildings.
Q. Are you suggesting that the purpose of creating a new lot for Mr. Stepcich is to do nothing?
MR. JABLON: Objection.
THE CHAIRMAN: He already answered.
A. I'm not saying that.
Q. Again, isn't it a reasonable inference and isn't there some documentation in the case that they want to build another house?

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MR. JABLON: Objection. He's already answered. He doesn't know. How many different ways can you ask the question?
THE CHAIRMAN: He's already told you he doesn't know what their plans are.
MR. ZIMMERMAN: I guess we'll have to call Mr. Stepcich.
Q. Are you suggesting that -- you have spoken to Mr. Pridgeon and is Mr. Stepcich also your client, or just --
MR. JABLON: Objection. Irrelevant.
MR. ZIMMERMAN: It's not irrelevant.
MR. JABLON: It is irrelevant.
THE CHAIRMAN: If you're going to ask him to tell us what other people told him, why don't you just call them instead of having this witness tell us about a conversation that he had with somebody else.
MR. ZIMMERMAN: Mr. Pridgeon isn't here today.
THE CHAIRMAN: Well, okay. You've still got a case to put on.
Q. Why did you --
MR. JABLON: Can I just short circuit this? I'll

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make it simple.
Yes. Halelujah. The purposes of these two lots is to have two houses.
MR. ZIMMERMAN: Thank you. Took half an hour to get there.
THE CHAIRMAN: We'll presume that's in the form of a stipulation. Let the record reflect that.
Q. Are you aware of any zoning law which addresses how amendments to subdivision plats are addressed under the zoning law?
A. How subdivision --
Q. Is there any zoning law which addresses amendments to approve subdivision plats?
A. There is lots of zoning laws that apply to plats.
Q. Did you any about whether or not one of them might, or one or more of them might apply to this case?
A. Okay. Yes. Specifically, I don't know the section of the law off the top head again, but there is in the zoning book, a reference to the R.C. zones prior when we filed the original request, when the property was zoned R.C. 4.

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It specifically says that amendments to that yield to the density that existed at the time. That's my recollection.
Q. Are you familiar with Section 1A00.4?
A. If I can see it, I can answer that question.
Q. It's fairly short. Could you like to read it?
MR. JABLON: Can I ask what page? Not section, but page.
MR. ZIMMERMAN: 1A-3.
A. You want me to read it?
Q. Yes.
A. 1A00.4, plans and plats, development plans and final subdivision plats shall be required in the manner prescribed under Section 1B01.3, and for the purpose of this section, all references to D.R. zones shall include the R.Z. zone.
Q. Does that section come into your mind when you were dealing with this case?
A. No.
Q. Let's go to 1B01.3.
MR. ZIMMERMAN: I will give Mr. Jablon the page

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number.

MR. JABLON: That's all right. I'm familiar with it.

Q. Sub B.2, page 1B-20, and you can look at the whole section, or subsection, Mr. Martin, but I want to direct your attention to the last sentence, and I'll read it quickly.

Quote. It is the intent of these zoning regulations to prohibit subdivision or resubdivision of portions of a tract in a D.R. zone in a manner so as to exceed the total number of dwelling or density units allowed under the applicable D.R. zones for the entire track, period, unquote. My question, did you consider that?

A. No.

Q. What is the entire tract here? Do we call it Section III or do we call it the entire Windemere subdivision?

A. I would call it the entire subdivision.

MR. JABLON: I'm confused now. I'm not sure what that question referred to.

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Q. What is the entire tract of the Windemere subdivision?

A. 238 acres as it's denoted on the plan.

Q. What is the current density, or what's the current number of houses? You don't know that either?

A. Under a what?

Q. What's the current number of houses on the 238 acres?

A. I don't know.

Q. In terms of Section III, we know if R.C. 6 or R.C. 4 density were applied, it's already over density?

MR. JABLON: Wait a minute. That's a statement and not a question.

THE CHAIRMAN: Are you asking him -- do you want to rephrase the question?

Q. Haven't we already agreed that for Section III alone, we've got four houses on nineteen acres?

A. Yes.

Q. And if the current zoning density is applied of .2, then it's already over density?

MR. JABLON: Is that a question or a statement,

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again?

Q. Do you agree with that? You need twenty acres in order to have four houses under the current zoning regulation?

A. I would agree.

Q. And there's only nineteen acres in Section III. Plus, as you pointed out, there's conservancy area standards for the current R.C. 6, and there were under the R.C. 4 also for many years, do you agree with that?

A. Yes.

Q. And, clearly, the way this subdivision has been laid out, it didn't take into the conservancy standards, they were not there in 1956?

A. That is correct.

Q. And conservancy basically means at least seventy percent of the tract has to be devoted to conservancy purposes, correct?

A. In the R.C, 4 yes.

Q. The bottom line is, if the current zoning applies, then Mr. Stepcich and Mr. Pridgeon can't do what they want to do, but if you apply the R-40 zone, if the

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R-40 were still in effect, then there's a good chance, certainly from a density point of view, they could do what they want to do?

A. I would agree with you.

Q. And you also agree that Mr. Stepcich and Mr. Pridgeon, two of the four unit owners -- lot owners, excuse me -- are in Section III?

A. Yes.

Q. And it's logical to infer that if they can do this, then there are many, many other lot owners in Windmere and arguably in other subdivisions around the county that may be in similar situations who can resubdivide?

A. I am sure they exist, yes.

Q. Now, you appear at the Board of Appeals from time to time?

A. Yes.

Q. Not in every case, obviously?

A. Thank you.

Q. But do you know of any Board of Appeals' case or decision where this specific issue has come up?

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A. Specific -- a resubdivision?
Q. I mean, if you want to say, to back up your belief that R-40 zoning should apply, do you have any cases at the Board of Appeals that you want to show us?
A. Merryman's Farms.
Q. Any court decisions?
A. Merryman's Farms.
Q. Court decision?
A. I thought that was a Merryman's Farms court decision.
Q. Do you have any documents with you?
A. No, I do not.
MR. ZIMMERMAN: Thank you, Mr. chairman. Thank you, Mr. Martin.
THE CHAIRMAN: Before we go to you, did any of that generate anything that either you or Mr. Holzer or Ms. West wants to inquire?
MR. HOLZER: No.
THE CHAIRMAN: Redirect.
MR. JABLON: Very brief. I do have some questions.

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REDIRECT EXAMINATION
BY MR. JABLON:
Q. I ask you to read on page -- let me identify it before I give it to you. Bill No. 100, which unfortunately I do not have enough copies to introduce, but since it's legislation, I ask you to read it and identify what I'm giving to you.
I'll point out Section 21 on page 106, and read it.
A. Section 21, Be it further enacted that this Act shall take effect forty-five days after it's been enacted.
Q. And then go to the beginning of right above which would be the last Section 20, beginning on page 105.
A. Section 20. Be it further enacted that any amendment herein, or any new zoning classification provided for in this Bill shall not be promulgated as to any existing zoning maps. It shall be effective only upon the adoption by the County Council of any new zoning map on or before March 31, 1971.
Q. When was the People's Counsel Exhibit 2, when was this JSPC plan approved?

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A. 1956.
Q. When was the Section III Windemere approved?
A. February of 1970.
Q. Or actually, let's look at that for a moment. There were a number of signatures and dates on it, correct? This is Petitioner's Exhibit 1?
A. Yes.
Q. We have a number of dates. Can you just identify the dates?
A. Starting in the lower left corner, the county health officer, dated 12-5-1969.
Q. You testified about Mr. Gavrelis?
A. Mr. Gavrelis was February of 1970. The land surveyor was Leo Raider, signed November 17, 1969. The owner signed it on November 19, 1969. The road engineer at the time signed it in December 1969.
Q. So if all those dates were certainly prior to -- if my math is correct -- certainly way before March 31, 1971, or forty-five days after the effective date of this Bill 100 amendment, since it was -- the date -- let me see it I can find when the date was -- actually, there's no

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date when it was enacted on this Bill, but the date it was introduced, as you have indicated, was July 6, 1970, is that correct?
A. Yes.
Q. All which can occurred prior to. And far as you know -- and I can show you the 1963 zoning regulations which were in effect in 1969.
Can you find anything in there that refers to the FDP, the zoning plan?
A. My recollection is they don't exist in this book, little book.
MR. ZIMMERMAN: We agree it came from Bill 100.
MS. WEST: Mr. Chairman, are you taking judicial notice of that?
MR. JABLON: I'm not introducing it. You can take judicial notice of Bill 100.
THE CHAIRMAN: And to the extent you folks want to attach it or quote from it in your memos, that's fine.
MR. JABLON: I have no further questions.
MR. ZIMMERMAN: I have just a couple more.
RECROSS EXAMINATION

BY MR. ZIMMERMAN:

Q. You agree that Mr. Stepcich and Mr. Pridgeon's application for various approvals came in what year, 2004, 2006?

A. 2004, I think, was the first DRC.

Q. And that's more than forty-five days after the enactment of Bill 100?

A. Yes.

Q. And the zoning classification of R.C. 4 and R.C. 6 were enacted subsequent to Bill 100 of 1970, were they not?

A. I believe so for R.C. 4. Certainly R.C. 6, yes.

Q. And in the course of all your work in zoning and development, have you ever had occasion to read or to hear about some of the Court of Appeals' cases on vested rights?

A. Yes.

MR. JABLON: Objection. It was not subject to my redirect.

THE CHAIRMAN: Yes. Now we've narrowed it down, your recross.

MR. ZIMMERMAN: All right. I will leave it at that. Thank you.

THE CHAIRMAN: Okay. Let's go off the record.

(Discussion held off the record.)

THE CHAIRMAN: Okay. There being no other business, we are adjourned.

(Hearing adjourned.)

* * * * *

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IN THE MATTER OF: * BEFORE THE

PRIDGEON PROPERTY * COUNTY BOARD OF APPEALS

CASE NO. CBA-04-159 * OF

and * BALTIMORE COUNTY

IN THE MATTER OF: * January 10, 2007

STEPCICH PROPERTY, SECTION III *

CASE NO. CBA-04-157 *

and *

IN THE MATTER OF: *

JOSEPH STEPCICH - Petitioner * ORIGINAL

CASE NO. 06-419-SPH *

*

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at The Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204, at 10 o'clock a.m., January 10, 2007.

* * * * *

Reported by:

C.E. Peatt

BOARD MEMBERS:

LAWRENCE M. STAHL, Chairman
EDWARD CRIZER, JR.
WENDELL GRIER

APPEARANCES:

ARNOLD E. JABLON, Esquire
On behalf of Property Owners

J. CARROLL HOLZER, Esquire
On behalf of Protestants

NANCY C. WEST, Esquire
Assistant County Attorney
On behalf of Baltimore County

PETER MAX ZIMMERMAN, Esquire
People's Counsel
On behalf of Baltimore County

PROCEEDINGS

* * * * *

THE CHAIRMAN: Good morning, everyone. We're here for the regular meeting Baltimore County Board of Appeals for today, January 10, 2007.

We are here in multiple matters regarding the matter of the Stepcich property, Joseph Stepcich, Petitioner, Section III, and the Pridgeon property.

First is Case No. 06-419-SPH, 3 Stonehurst Road, in the 11th Election District and 3rd Councilmanic District, arising out of a 5-16-06 Zoning Commissioner's order in which petition for special hearing was granted in part and quote, yet denied in part as it relates to any future subdivision, unquote.

Case No. 04-157 Windemere, 3 Stonehurst in Phoenix, again, the 11th Election and 3rd Councilmanic District, regarding a JSPC decision, denial of a proposed resubdivision amended to the JSPC subdivision plan, also known as the Section III Windemere, which was denied in that matter.

Case CBA-04-159, the Pridgeon property, Section 6

of Windemere, 6 Stonehurst Road, again the 11th and 3rd, regarding a JSPC decision, denial of the same one, denial of proposed lot line adjustment/amendment to JSPC subdivision plan, also known as Section III of Windemere, which was also denied below.

All right. Let's do counsel first. Will counsel state their appearances, for the record.

MR. JABLON: There is one case missing. There should be four cases.

THE CHAIRMAN: I only show three on the notice, and I've got one, two, three folders.

MR. JABLON: Let me just very briefly describe them. Maybe they are merged into one of those three that you have.

THE CHAIRMAN: Well, I would rather do this. For purposes of being as objective as we normally try to be in a hearing, we haven't really gone through any of this, so I wouldn't be able to tell you if your description is correct. Does everyone agree that there may be four files?

MR. ZIMMERMAN: I was going by the Board's notice

with three files.

THE CHAIRMAN: Mr. Holzer? Ms. West?

MR. WEST: That was my understanding. I'm certainly not going to object.

THE CHAIRMAN: Why don't we take two seconds and why don't take these files and see if there are --

MR. JABLON: I did not hear you say anything about appeals from the DRC.

THE CHAIRMAN: You're right, because there is nothing here that says anything about an appeal from the DRC.

MR. JABLON: The Stepcich matter on the JSPC appeal, the denial of the JSPC, it has already been ruled on by this Board, so that's not before you.

THE CHAIRMAN: Okay.

MR. JABLON: In that sense.

THE CHAIRMAN: I'm not sure if --

MR. ZIMMERMAN: I don't agree with any of that.

THE CHAIRMAN: Well, wait a minute. Let's do first things first.

MR. JABLON: Arnold Jablon, and I represent the

petitioners Pridgeon and Stepcich.

THE CHAIRMAN: Good morning.

MS. WEST: Good morning. Nancy West, from the Law Office, on behalf of Baltimore County.

MR. HOLZER: Good morning, members of the Board. J. Carroll Holzer, 508 Fairmount Avenue, on behalf of the Long Green Community Association and Adrienne True and Dr. Gonzales who are two adjacent property owners.

MR. ZIMMERMAN: Peter Max Zimmerman, People's Counsel, for Baltimore County. Good morning.

THE CHAIRMAN: Okay. So much for the easy stuff.

MR. JABLON: Now, if I might --

THE CHAIRMAN: We only have three folders, three notices, and I can't tell you anything more than that. So if you think there is more than that, then you either have to look through the files that we have here or we'll take five minutes and you can talk to Ms. Bianco and see what's supposed to be on the docket, and then we'll come back and do business.

MR. JABLON: Let me do that, talk to Kathi.

THE CHAIRMAN: We'll take five minutes.

MR. ZIMMERMAN: Can I file a memorandum which I provided?

THE CHAIRMAN: I just want to figure out where we are and how many cases we have and then we'll do all that. Let's take five minutes, folks, if you want to take a break.

(A recess was taken.)

THE CHAIRMAN: Okay. We're back on the record. Counsel has entered their appearance.

First order of business. Mr. Zimmerman -- before we get to that, Mr. Zimmerman, I understand you had a pre-hearing something you wanted to give us?

MR. ZIMMERMAN: I have a memorandum which I've already provided copies this morning to Mr. Jablon, Ms. West and Mr. Holzer.

I have three copies. I suppose -- actually, I have more than three for the Board, but I'd like one in each folder.

THE CHAIRMAN: Now, Lady and gentlemen, let me ask another question. We've got three different folders. Mr. Zimmerman is giving me one document for each.

Are we going to have to three sets for each thing or are we just going to work out of the main one?

MR. JABLON: I would suggest working out of the main one.

MS. WEST: I think it would be onerous to do otherwise.

MR. ZIMMERMAN: In other words, the Board will consolidate the three cases and keep one current folder?

THE CHAIRMAN: Right. One page of exhibits for each side.

MR. ZIMMERMAN: Which will apply to all three cases? I don't have a problem with that, in any event, I want to make sure each panel member has a copy.

MR. HOLZER: Mr. Chairman, why don't we just make a joint motion of all counsel that all these cases currently on the docket be consolidated for purposes of testimony and evidentiary exhibits today?

THE CHAIRMAN: Okay.

MR. HOLZER: I believe they all sort of overlap.

THE CHAIRMAN: Does anyone have any objection to that procedure?

MR. JABLON: No.

THE CHAIRMAN: We'll do -- since 06-419 seems to be the largest file with the most things in it, we'll make that one the one that everything goes into, physically.

Okay. Obviously, we'll hold these subject to the memos that we receive at the end and read through everything that you folks gives us. Now, what's next? Mr. Jablon?

MR. JABLON: There are actually four matters, one of which is not before the Board today.

But just to put it into context, I will mention -- and there will be no argument on it, there was no posting on it, notice provided, so there will be no argument as to it. But, again, just for chronological context, in 2002, and there were two, as I said, petitioners here, Mr. Pridgeon and Mr. Stepcich.

Mr Stepcich filed in 2002 a request for a minor subdivision. That request was ultimately denied by the office of planning, and that was an appeal taken to this Board.

This Board issued an order in that case remanding

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it to the planning board for a final decision to be made by both the director of public works and the planning board.

That particular matter is not before you. I did not go back to the planning board on behalf of Mr. Stepcich. That decision was rendered in 2005.

Subsequent to the Board's decision and based on conversations and a memo that Mr. Zimmerman submitted to you, this Board, and two members of this Board sat on the original Stepcich matter, Mr. Zimmerman introduced a letter memorandum to the Board indicating that in his opinion the planning board did not have the authority to determine what applicable zoning was to the Stepcich property.

Instead of going back to the planning board, I did not necessarily disagree with Mr. Zimmerman, so I filed a petition for special hearing for the Zoning Commissioner to determine what zoning was applicable, that is, the zoning in place at the time of the original approval, or the current zoning.

Mr. Wiseman the Zoning Commissioner issued an

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order from which both Mr. Zimmerman and I took appeals, so that case is pending before you.

That is the petition for special hearing to confirm what zoning was in place, or is applicable.

THE CHAIRMAN: Mr. Wiseman ruled how?

MR. JABLON: A split decision. I'm not quite sure what it meant, quite frankly.

Now, Pridgeon filed a request with the DRC back in 2004 for a lot line adjustment on his property.

Now, both properties Mr. Pridgeon's and Mr Stepcich's are in the same subdivision which is Windemere Section III.

Both are neighbors. Each is a neighbor of the other. He filed a request for a lot line adjustment. That ultimately was denied in a very similar letter from the deputy director of planning to David Martin, who is the engineer who was then representing Mr. Pridgeon.

That letter, that denial, was appealed to this Board and has been held in abeyance and has not been scheduled.

That is the matter I was referring to a few

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moments ago that did not receive notice today and therefore will not be argued.

So that appeal from the director of planning, the office of planning's denial is there, but will not be argued or discussed today in terms of the merits of that.

Subsequently to all of this, back in early spring, in March of 2006, on behalf of both Mr. Pridgeon and Mr Stepcich, I filed a request to the DRC to have each of my clients' properties and request, that is, the minor sub, which was to create two lots out of one, and the lot line adjustment, which was to allow for a shift of a lot line to allow Mr. Pridgeon to have a little bit more room on one of his two lots, for it to be determined a material change.

The DRC in both the Pridgeon request and the Stepcich request, denied them, so I took an appeal, appeals were taken from both. So it's before you, and the file --

THE CHAIRMAN: That's 157 and 159?

MR. JABLON: That's right. They're not appeals from the JSPC denial. They are appeals from the DRC

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denial for a request of a material change.

THE CHAIRMAN: Just for my edification, why or how did the JSPC get into this in terms of what's on the notice? That's what it was originally?

MR. JABLON: I presume so. And the argument in the special hearing case is going to be JSPC. I mean, the essential argument here, the reason for the appeals from the DRC in the spring was because of the adoption of a bill by the County Council, euphemistically called 24-06, but the essential battle between my clients and the county evolves around the JSPC and the process in place in 1969 and 1970 when the original Windemere Section III was approved. I presume that's the reason.

Now, I have got to admit, I seem to have the world against me here, three of the top lawyers in Maryland, if not the United States --

MR. HOLZER: He said that with a straight face.

MR. JABLON: And I didn't even cough.

MR. ZIMMERMAN: Can we all go home?

THE CHAIRMAN: We can get to vote.

MR. JABLON: My point is, please don't let this

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be a plebiscite. So that's the chronological order in which we are going to be operating.

THE CHAIRMAN: Okay. And yoo have some witnesses?

MR. JABLON: I've got one witness for each, for Mr. Stepcich and for Mr. Pridgeon. I've got Brian Dietz the surveyor who prepared the work for Mr. Stepcich. I've got Mr. Martin who prepared the work for Mr. Pridgeon.

There is overlap simply because both properties are in exactly the same subdivision and both are impacted by the same issue here today, same everything.

THE CHAIRMAN: Ms. West, is there something you want to tell us in opening?

MS. WEST: No, sir. Mr. Zimmerman has, I think once again, brilliantly briefed the issues, which are many in this case.

Ultimately, the way the county sees it, this is an attempt to usurp the authority of the County Council who, in fact, legislatively zoned in that matter. There are issues of vested right, questions of whether or not they're grandfathered in under the Baltimore County zoning

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regulations, particularly 103.3 which grandfathers the existing subdivisions that were approved prior to the zoning classification.

We submit that this doesn't extend this protection to any kind of amendment to a subdivision. What it gets down to, potentially, the subdivision regulations are very different from zoning law, and they cannot and should not be used to circumvent the zoning or to create vested rights for new uses or density.

Clearly, the County Council reclassified this property to a more restrictive voting classification. We submit that property owners can't come in after the fact and just make a decision they want to expand and subdivide the lot in a way that's prohibited by the new law, the new classification, and the density control.

I could go on at great length about this, but once again, People's Counsel has very eloquently and with a lot of clarity briefed the issues in this matter, and we are going to adopt that and submit on that, and we'll be heard in closing or any kind of additional submittals the Board would find necessary.

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MR. HOLZER: With great pleasure, I can announce that I'm sort of the third chair today, so with the county taking the lead and Mr. Zimmerman taking a primary role, I am going to have very little to say.

However, I would say, having said that, I represent the Long Green Valley Community Association, which is extremely concerned about this case.

In addition, the two property owners Dr. Gonzales and Ms. Adrienne True, who are adjacent property owners who are directly impacted, are sort of under the wing of the Long Green Valley Community Association, so I'm representing them as well.

The Long Green's concern is that if this is permitted, if this subdivision is permitted under the law, it will produce a substantial number of additional requests for subdivision, contrary to the current zoning that's in place in much of the northern part of the county, so it could have a relatively devastating effects on the ability of the county to try to become more restrictive in what is developed.

I would also disagree with Mr. Jablon -- which

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is, again, not unusual -- but in his comment that the Zoning Commissioner really, he really didn't understand what the Zoning Commissioner said, since the Board hasn't had the opportunity to review that, the Zoning Commissioner did, in fact, find that this minor subdivision should not be approved.

He didn't agree necessarily with the way the county initially presented their argument. And just for your understanding, and Mr. Zimmerman can follow up with a lot more detail, apparently at the time that Windemere was created -- and I am familiar with Windemere because I used to live in that subdivision when I got out of the army -- when it was created, there was a rural suburban conservation, or the R.S.C. zoning in place at the time in the 1969-seventy time frame.

The current zoning out there is R.C. 6. The simple question that was phrased by the Zoning Commissioner was if the R.S.C. zone was to be applied, Mr. Jablon's clients would be permitted to resubdivide their property. If, as People's Counsel and the county contended, if the R.C. 6 regulations apply, they cannot.

So it's a question, and I believe Mr. Long is here from the county who had authored a number of planning reports, planning staff reports, that concluded that it was not appropriate to subdivide these Windemere lots.

So that was the ultimate decision of the Zoning Commissioner, which is why Mr. Jablon obviously took this appeal.

He cited in his decision a number of code sections which indicated that the current zoning on the property should apply, and if R.C. 6 applies, it's clear they don't have enough, or they can't meet the criteria of R.C. 6.

He also indicated in his opinion that Bill 24-06, which was just passed by the County Council, reiterated and supported his conclusion that they were -- his conclusion was that the lots in 1970 and those lots as they existed then were vested, he said they were vested, but whether or not one of them could be resubdivided under the old law was not appropriate. It would have to comply with the new law.

So, in effect, the Zoning Commissioner pretty

much adopted the position that Long Green has taken, and I think he also concluded that this really was a matter of law.

And, obviously, lawyers could disagree over the interpretation, but he concluded that it was an issue of a matter of law.

So having said that, I intend to be third string at this point and let the county and Mr. Zimmerman adequately handle the case, but I'll be here.

THE CHAIRMAN: Mr. Zimmerman, everybody seems to be waiting for you.

MR. ZIMMERMAN: I have filed a memorandum. I'm not going to repeat everything in the pre-hearing memorandum, but let me try to highlight a few points.

Fist of all, our reading of the Zoning Commissioner's decision essentially was that he denied the Stepcich request to resubdivide their property.

But since we weren't a hundred percent sure what he granted in his order, we didn't want that open to ambiguity, we also filed an appeal just to make sure that we hadn't overlooked something.

But we are here de novo. It is nice to be in a case where we essentially, although not necessarily for all the same reasons, agree with the Zoning Commissioner's main decision.

But one of the comparisons I made in my pre-hearing memorandum, or phrases, were time machine, and while that is great for science fiction, H.G. Wells book was made into a nice movie years ago, it doesn't work for zoning, the zoning law.

We don't, in 2006, or 2007 -- Happy New Year -- go back to 1969 or seventy to determine and apply the zoning law for resubdivision, or for a subdivision that happened to be approved back in those days under a different zoning classification.

And, parenthetically, I will say that while we are told that the old Windemere subdivision was approved under the R.S.C. zone, which I think was rural suburban conservation, I have not been able to verify that zone was in place at the time.

So whatever the zone or whatever was involved back in 1969 or 1970, It was relatively liberal and

relaxed in terms of the density. The R.S.C. zones basically allowed one lot per acre subject to meeting the percolation tests.

And from my reading of the Windemere, old Windemere subdivision, the density overall was originally anticipated at about .83.

Now, by 1976, Windemere was zoned in one of the resource conservation zones or the new zones that were mapped in 1976 based on a 1975 law. The R.C. 4 zone watershed protection was in place for many years on the Windemere subdivision from 1976 to 2004 and essentially that had a .2 density.

There's no way that Windemere could have been developed in the R.C. 4 zone if it were new, if it were to come in anew, and the R.C. 4 zone also had a conservancy area,another standard.

In 2004, the R.C. 6 zone, which has some comparisons, some differences from the R.C. 4 zone, so-called rural conservation and residential zones. That also has a .2 density and conservancy area and other performance standards.

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There is no way that the Windemere subdivision or these lots could satisfy the R.C. 6 zoning.

So what the petitioner basically wants to do is take us into a time machine and go back and somehow argue that these lots could be approved back in 1969 or 1970.

Well, apart from the fact that who knows what could have happened in 1969 or 1970, you know, that's history. Those years no longer exist, as much as we might like them to.

The point here is, and I think it's a little -- basically, the petitioner's case is based on what I view as confusion.

And in contrast to one of my favorite songs, which keeps running through my mind, All along the Watchtower, was a famous line by Bob Dylan, There's too much confusion. I can't get no relief.

In zoning cases, frequently, the way to get relief is to create confusion. Maybe that's true in a lot of areas of law, but I think what has helped contribute to some of the confusion in this case, or allowed the creation of some confusion, in my opinion, is that for a

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number of years, we had this procedural pattern in Baltimore County where if a subdivision were approved in the 1960s or seventies under an old so-called JSPC process, which actually lead to the planning board, which I think is one of the reasons that the Board remanded the earlier case to the planning board, the planning board operated until 1982 to approve subdivisions. Then from 1982 to '92, there was a County Review Group. Then from 1992 on, we had a Hearing Officer Process.

And it's been the practice and it's been recognized in some important Board decisions that when a property owner came in for amendment of the subdivision, and if it started out as planning board, we would sort of re-constitute the planning board as an approving agency; if it went to the CRG, we would reconstitute the CRG as an approving agency.

Even though these institutions really don't exist anymore, I was probably the only person that thought this was an absurd practice, but, nevertheless, there it was.

And I think the fact that that sort of time machine went into operation has contributed to a very

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different argument, which was never accepted by anyone as far as I know, and that is that you go back to the zoning over thirty years ago, or the zoning of fifteen years ago, and there's a big difference between what you do in terms of subdivision procedure versus zoning law and substance.

And in the many years that I have been looking at zoning cases, and we see special exceptions come in, we see all sorts of requests, whenever there's a request for a new use -- and a resubdivision is essentially a new use -- it always has to comply with current zoning as far as I know.

But in any event, the law is, when we are talking about vested rights, okay, the law in Maryland for fifty years or more has been basically that you must have an approved building permit and substantial above ground construction, enough that the public is aware, before you have what we call visited rights that would immunize or protect a property owner from a change in the law that otherwise would prohibit that use or redevelopment.

And the reason for the vested rights provision is the idea of equity, that you're far along enough in

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building, not just spending money and making plans, but actually getting a valid permit and building, that you're vested enough that you shouldn't be affected by a change in law.

So for that reason, for example, if the Pridgeon house were built in 1969, other than when it was, then it would be protected. Nobody is trying to take away the homes that are there now.

And for awhile, Baltimore County also had for a long time a law that said if you had a building permit, then you were vested, a little bit more lenient than the basic Maryland vested rights law.

But it's never been the case that you're vested or that vesting means that it's used as a launching pad for resubdivision of more lots. It's not consistent with the concept of vested rights. It's not appropriate in terms of equity.

It's always been the law that the current, in Maryland, that current zoning applies unless you fall into this narrow exceptional category which typically means substantial construction, although in Baltimore County,

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for awhile, it was building permits, and it was a recent Bill 24-06 that kind of restored Maryland to the Maryland Court of Appeals pattern and added "substantial construction" as a requirement.

But even before that Bill, you had to have a valid plat and a building permit.

So it may be the Zoning Commissioner was ruling that the existing homes are vested, but you can't resubdivide. So it's a total distortion of the vesting concept to suggest that because there is an existing subdivision, that vesting means that they can go ahead and resubdivide it as if the old zoning were in place.

There is no Maryland case that would support that, there's no code provision anywhere that supports that, and we attempted to point that out in our memo.

And I'd also like to say the English language in zoning gets stretched in a way that very often contributes to confusion.

So when you hear words like lot line adjustment, reconfiguration, these typically are euphemisms, maybe not always, but often they are euphemisms for resubdivision.

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A lot line adjustment, configuration, it sounds nice, it sounds minor, it sounds innocuous, but we are really talking about resubdivision.

And, finally, in reference to the fact that despite the County Board of Appeals' remand to the planning board in the earlier case, which we call Stepcich One in our memo, we appreciate the fact that the petitioner did go to the Zoning Commissioner, because if a zoning ruling were to be made, the zoning process, the special hearing, ultimately the Board of Appeals, that's a better way to go.

But I think what we also suggested, and what I am certainly saying now, is that we are also dealing with what amounts to a special hearing to amend the final development plan.

And if that is not what the petitioner is conceived of, then, really, I think it wasn't stated in the petition for special hearing, really, the petition is incomplete, because what we really are dealing with is an amendment to a final development plan.

And, you know, it doesn't matter whether the old

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subdivision plan says JSPC plan, CRG plan, it's still a development plan.

And when you are dealing with an amendment to a final development plan, not only do you have the basic law that the current zoning applies, but you have several sections of the zoning regulations that we quoted in our memo, basically 1B01.3 of the zoning regulations, which originally was enacted in Bill 100-1970 for density residential zones.

That was extended to the DRC zones by Section 1A00.4, and there are certain standards in that law, including the special exception standards, including standards of consistency with the original subdivision, and then there's a very specific provision at the end of that whole section 1B01.3.B.2, and that says that basically you cannot amend a subdivision plat in such a way as to exceed the maximum density for the entire tract.

And we read that under the current zoning. Windemere is already over density for the current zoning, every section of it.

It doesn't have performance standards, so on, so

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there is just no way under current zoning law that this can be done.

And the attempt to go back in what I call the time machine, I'm sure you will see from what I have read of Mr. Jablon's memo, and they are references to the 1968 code, to the various subdivision provisions, in my humble opinion, right, they have nothing to do with this case but generate confusion.

Obviously, not everyone agrees on that. I've tried to actually keep my desk relative clean. I have just a couple pieces of paper on my desk, and the goal in this case is to somehow get to keep our minds clear and on the ball and not to be distracted.

And while I have given somewhat of a lengthy opening statement, this is not a usual special exception or variance case, and while they are not necessarily simple either, the Board of Appeals already has in mind what the legal standards are.

But in this case, you're dealing with this time machine issue, so I think it's important to give a preview so the Board has some sense of what's going on before we

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hear a lot of ancient history that, in my view, really doesn't have any legal significance.

I'm also pleased to say that my sense of it is that the planning office and the deputy planning director, in this case -- I think Mr. Long is in the room -- I think Mr. Long also has tremendous experience, but I believe the planning office and our positions are consistent in this case, which is certainly something we are pleased with.

So I think, unless the Board has any other questions, I think that gives the Board a sense of our position. Thank you.

THE CHAIRMAN: Mr. Jablon?

MR. JABLON: I've got to admit, it's always interesting to listen and hear Mr. Zimmerman expound on his theory of the case.

If there's any obfuscations to be made, I think he just gave the Board all that needs to be said. Bottom line, it's a simple issue.

And he's right in one respect. I am arguing the law, the zoning in place in 1970 is the law that's governing today. That's the question for the Board.

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He's absolutely correct, if it's R.C. or 4, R.C. 6 or R.C. 10, if this was an R.C. 10 -- which there may be some day -- bottom line, they cannot do, my clients, what they hope to do, what they want to do. Probably Mr. Zimmerman's argument is --

THE CHAIRMAN: Are we going back and forth? I mean, I don't want to essentially argue the case at this point.

MR. JABLON: Well, Mr. Zimmerman just did, so I just would like to --

THE CHAIRMAN: I'm going to give you a brief one, then go ahead and call your first witness.

MR. JABLON: My point is this. Mr. Zimmerman is dead wrong when he says that there is no history in Baltimore County at looking at the zoning in place at the time of the original approval that governs.

That has been the law in Baltimore County since 1955. And even if you read 24-06, it's the law today. Parenthetically, 24-06 is not applicable to this case, which I will explain to you in a minute.

But I want to make clear, we have a statutory

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provision. We've always had a statutory provision which trumps the common law provisions that exists for substantial core vesting.

In the law, it's been consistent. It has said, as Mr. Zimmerman said -- but he left out key phrases -- a subdivision, section or parcel thereof is hereby defined as developed if any of the following has occurred with respect to such subdivision, section or parcel.

Building permits have been issued for substantial construction. That's been the law. Has always been the law.

Windemere permits were issued. Not only that, but construction took place. My clients live there. It doesn't say on every lot, a permit has to be issued. It says subdivision, section or parcel.

Now, if this Board determines that I'm wrong, that it's the current R.C. 6 that governs, well, it's going to change the law as this Board has viewed it in the past, and we'll get to that as I go through and present my various testimony.

And with that, I just hope that the Board doesn't

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get caught up in this concept that the office of planning seems to have, which is contrary to the view of the Department of Permits and Development Management, totally contrary to that view, and that is if you allow my client to do what they want, Oh, my God. The floodgates will open and every property owner in Baltimore County is going to want to come in and subdivide. Oh, we can't allow that.

Please. Please. We are here on two lots, one to create two out of one, and one just to move the lot line.

It is not the end of Baltimore County if you should rule in my clients' favor. And with that, I will call my first witness.

MR. HOLZER: Could I ask that Mr. Long be excused, Mr. Chairman? I just want to put on the record I summonsed him and his office responded to me and indicated that he was available for basically ten to twelve, and then at some time after three, if he got back into the office.

Of course, we have another day. I don't have any objection for him leaving now, and I just didn't want to

get caught in the switches that all of a sudden we were over and I wanted to put Mr. Long on, and I couldn't.

THE CHAIRMAN: So we could, in fact, face a situation where we finish everything else, and have to come back a second day for Mr. Long?

MR. HOLZER: Exactly. Thank you, Mr. Long.

MR. LONG: Thank you.

MR. HOLZER: Thank you, Mr. Chairman.

THE CHAIRMAN: Mr. Jablon.

MR. JABLON: Mr. Dietz.

B R I A N D I E T Z,

having been called as a witness, was duly sworn and testified as follows:

THE CHAIRMAN: Sir, your name and address, and spell your last name.

THE WITNESS: I am Brian Dietz. D-i-e-t-z. My address is 7867 Oakdale Avenue, Baltimore, Maryland 21237.

THE CHAIRMAN: Thank you, sir.

DIRECT EXAMINATION

BY MR. JABLON:

Q. Mr. Dietz, with whom are you associated?

A. Myself, Dietz Surveying.

Q. What is your profession?

A. I'm a land surveyor.

Q. How long have you been a practicing professional land surveyor?

A. Over twenty years.

Q. Can you describe for the Board what you do?

A. We specialize in residential surveying for lot line adjustments, minor subdivisions, things of that nature.

Q. Are you licensed?

A. Yes. By the State of Maryland.

Q. What is the license called?

A. Professional land surveying license.

Q. Do you have any experience in the preparation of maps, plats, surveys, or other documents drawn to scale?

A. Yes.

Q. What experience do you have in doing so have you?

A. I've prepared numerous minor subdivisions, zoning plans, lot line adjustment plans, plans for the Zoning Commissioner.

Q. In doing so, what is your normal practice and custom in preparing the plan itself? What do you look for and what do you do?

A. We take measurements on site, obviously. We met with the county agencies to review code and regulations applicable, and prepare the plans accordingly.

Q. You check the zoning?

A. Yes.

Q. Check for zoning?

A. Yes.

Q. How do you do that?

A. Going to the zoning counter at the department of zoning.

Q. What happens when you get to the counter? Do uou go back and look at the zoning maps themselves?

A. Yes.

Q. You're experienced with those zoning maps?

A. Yes.

Q. Have you ever testified before?

A. Yes.

Q. Before whom?

A. The Zoning Commissioner and Assistant Zoning Commissioner, Deputy Zoning Commissioner.

Q. What types of matters have you testified in?

A. Special hearings, variances, special exceptions.

Q. What about minor subs?

A. I've never had to testify for a minor sub. It's all gone through.

Q. Have you appeared before the Development Review Committee?

A. Yes.

Q. What kind of matters have you presented to the Development Review Committee?

A. Lot line adjustments, mostly.

Q. Minor subs?

A. Yes.

Q. Approximately how many minor subdivisions have you processed in Baltimore County in your twenty years?

A. Fifty, maybe.

Q. Have you prepared plans for residential development?

A. Yes.

Q. Are you familiar with the laws, the development regulations, zoning regulations, of Baltimore County?

A. Yes.

MR. JABLON: I'd like to submit him as qualified in the fields of preparing plot plans, surveys and minor subdivision plans for Baltimore County, in Baltimore County.

THE CHAIRMAN: Voir dire? Ms. West, let's start with you. Any voir dire?

MS. WEST: I'll going to let my counsel here.

THE CHAIRMAN: Mr. Holzer, voir dire?

MR. HOLZER: I was supposed to be third.

THE CHAIRMAN: Okay. Relax. Mr. Zimmerman. Voir dire?

VOIR DIRE

BY MR. ZIMMERMAN:

Q. Mr. Dietz, what's your educational background?

A. I've got an A.A. in engineering from Catonsville Community College.

Q. What's an A.A?

A. Associates of arts.

Q. What did you major in there?

A. General engineering.

Q Obviously, you're not an attorney?

A. No.

Q. Have you taken any continuing education on planning and zoning?

A. I have taken continuing education as mandatory by the state that we do twenty-four CBCs for every two years to renew our license.

Q. Surveying license?

A. Surveying license. I have not taken any of those in regards to planning and zoning specifically in Baltimore County, because none of those have ever been actually offered, to my knowledge.

Q. Do you assume that whatever you are told by the Department of Development and Management is correct, is that part of your view of planning and zoning?

A. As long as they can show it to me in the code, yes.

MR. ZIMMERMAN: I have nothing else at the time. I think, as with all, or many experts, let us say, any

planning and zoning opinions of the law are subject to the Board's review.

But I think this witness is potentially a surveyor, and I would suggest that any planning and zoning opinions would not really be within his purview.

THE CHAIRMAN: Well, that's sort of a broad statement. Let's make sure we are all talking about the same thing.

Mr. Jablon, your words exactly were preparing plats and minor subdivisions in Baltimore County, were the words you used.

MR. JABLON: That is correct.

THE CHAIRMAN: Are you going to ask him any questions about his opinion as to the zoning regulations?

MR. JABLON: No.

MR. HOLZER: Well, if that's the case, I just want to ask one question.

Q. (MR. HOLZER) So, basically, you started in 1987, correct, around that time?

A. I started surveying right out of high school. I graduated in 1986. I started September 12, 1986.

Q. Did you get your license, surveying license then, or did you have to serve an apprenticeship?

A. We had to have -- I had to show fifteen years experience, or twelve years experience, and I just got licensed in 2000.

Q. In the year 2000?

A. Yes. I have been in the surveying industry for over twenty years, only been licensed for the last seven.

Q. And before 1987, did you have any understanding of the zoning regulations or the subdivision process?

A. No.

Q. The answer was no?

A. No.

MR. HOLZER: I have no further questions.

Q. (MS. WEST) Mr. Dietz, have you been accepted as an expert in other proceedings?

A. No.

Q. Have you ever qualified as an expert?

A. Other than the Zoning Commission and Deputy Zoning Commissioner, and the courts. I had a couple civil cases.

Q. Would that be the Baltimore County Zoning Commissioner, sir?
A. Yes.
Q. How many times were you accepted as an expert?
A. Over the last six years, I'd say twenty, some twenty-plus times.
Q. You say you also testified before the Circuit Court?
A. Yes.
Q. Have you been accepted as an expert?
A. Yes.
Q. And that would be in the area of land surveying?
A. Yes.
THE CHAIRMAN: Is that the Baltimore County Circuit Court?
THE WITNESS: Yes.
MS. WEST: If the Chairman indicates that, in fact, the testimony is going to be limited to land surveying, we wouldn't have an objection.
THE CHAIRMAN: My actual comment was, was he going to ask him any questions as to zoning, and his

answer was --
MR. JABLON: If I was going to ask him any opinions as to zoning. He's going to testify about zoning in terms of preparation of the plan.
THE CHAIRMAN: But he's not going to ask him any expert opinions as that he thinks about zoning.
MS. WEST: With that understanding, I have no objection.
THE CHAIRMAN: Okay. You now have your first time as an expert before the County Board of Appeals development. Go right ahead.

CONTINUED DIRECT EXAMINATION

BY MR. JABLON:

Q. Mr. Dietz, you're familiar with Mr. Joseph Stepcich?
A. Yes.
Q. Could you describe how you began your relationship with him and in what capacity?
A. In 2002, Mr. Stepcich contracted with me to -- he want before the DRC and got approval to do this subdivision, and he brought to me the letter stating the

approval to subdivide the property, and asked me to proceed with it, and that's what we did.
Q. What subdivision does Mr. Stepcich live in?
A. Windemere Section III.
MR. JABLON: I'm going to put up here on the bulletin board a copy of which I had given to Mr. Zimmerman, and I have given a copy to Mr. Holzer and Ms. West. I'm going to mark this as Petitioner's Exhibit 1.
Q. I ask you to identify that.
A. That is the record plat for Section III, Windemere.
Q. How did you become familiar with this?
MR. ZIMMERMAN: What's the date on that?
MR. JABLON: Excuse me?
MR. ZIMMERMAN: The date on that?
MR. JABLON: I'm sorry. The plat is dated, signed by the road engineer, December 5, 1969, by the health director, December 5, '69, and by the director of planning, February 19, 1990.
MR. ZIMMERMAN: Excuse me, Arnold. You said 1990. You mean 1970?

MR. JABLON: I meant 1970. Thank you. You're right. I appreciate that.
Q. You're familiar with this plat, is that correct?
A. Yes.
Q. How did you find it? How did you locate it?
A. It's recorded in the Land Records' office of plats.
Q. And this is the section in which Mr Stepcich lives?
A. Mr. Stepcich's deed refers to that. He owns lot one, Section III, Windemere.
Q. Can you come over and point out to the Board where the Stepcich property is located on this record plat?
THE CHAIRMAN: Sir, would you work from the side Mr. Jablon is on so we can see much better?
THE WITNESS: Oh. Excuse me.
A. Lot one is right here. I will trace it with my fingers. It's this large lot.
THE CHAIRMAN: "This," on the lower left-hand side?

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Q. Stay up there one second. Just draw the line where his lot is.
A. This is lot one here. Is it appropriate to highlight it?
THE CHAIRMAN: You're highlighting in yellow, the subject lot.
Q. You testified a moment ago that Mr. Stepcich came to you after he had been before the Development Review Committee, is that correct?
A. Yes.
Q. What year was that?
A. 2002.
Q. Let me show you a letter dated May 23, 2002, and ask you if this is the letter to which you're referring?
A. Yes, this is the letter.
Q. What does the letter say? Don't read the whole letter. I'm only interested in knowing the last paragraph.
MR. ZIMMERMAN: Objection. The letter speaks for itself.
THE CHAIRMAN: He highlighted one small

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paragraph.
A. The DRC has, in fact, met in open meeting on April 29, 2002, and made the following recommendations.
The DRC has determined that the project was originally approved by the Joint Subdivision Planning Committee, JSPC.
You may process a plan with changes to the last approved JSPC in compliance with JSPC regulations. To submit the JSCP plan for consideration, please contact this office for a transmittal form.
It is also necessary to submit a plan to the office of planning for further review. Please forward the plan along with a copy of this DRC letter to room 123.
MR. JABLON: I will mark this as Petitioner's No. 2, and introduce this.
MR. HOLZER: I have an objection. Let me state my objection, which might be different than other people's objections.
This letter was signed by Mr. Jablon when he was the director of the department. To me, that raises an issue in regard to a potential conflict of interest

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relative to his representation of this individual or these individuals in this case.
I would add, I didn't have anything planned, and I didn't plan to do this, but it just dawned on me that I have another similar case in which -- and let me just say this up front -- Mr. Jablon, I am not contending he is doing anything wrong from the standpoint of the county ethics code.
THE CHAIRMAN: Because when he signed that letter, he didn't represent Mr. Stepcich.
MR. HOLZER: Not only that, but he's been out of the county for enough years to satisfy the county ethics code which says you have a wait a year or whatever time frame it is before you can get involved in dealing with the county.
What I'm saying is that Mr. Jablon's letter of 2002 when he was the director in this case puts him in a position of introducing this document now as Petitioner's Exhibit No. 2, puts him in a position of then subsequently resigning from the county, and arguing on behalf of his client that he, in effect, was correct in 2002 when he

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permitted this project to proceed, when, from an appearance standpoint, the department, by rejecting or denying the subsequent plan that we're here on, and by the Zoning Commissioners decision, which we are here on appeal, it indicates to me that there is an impropriety, not a violation of the county ethics law, but an appearance of impropriety from the standpoint of representing this individual, these individuals, on an issue that the county as, at least below, has determined to be improper.
And it presents the appearance of his having an inside analysis, or presents an appearance that somehow the Board may give greater weight to his argument than the arguments of Mr. Zimmerman or myself or Ms. West.
In other words, you're in that rare situation where someone does something on behalf of the county, then comes back after he leaves the county, and is arguing that he's correct.
And I think that presents an improper appearance. I don't have any documentation other than what's been submitted to support that position, and I'm certainly not

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accusing Mr. Jablon, because he and I have been friends, so forth, for a long time --

THE CHAIRMAN: But you want to make it for the record.

MR. HOLZER: I want to make it not only for the record, but I believe there's going to be another case that's going to be coming before this Board in which a similar situation exists in which a Zoning Commissioner made a ruling which now is being subsequently attacked.

And it just presents the appearance that because of what he did in 2002, while he was a member of the county staff, has some more significance than if he had been representing somebody and he hadn't been involved in this case.

So that's my concern. And based upon the fact that this document is now being introduced before the Board, I think it raises that issue, whereas up to now, we didn't have that issue raised.

THE CHAIRMAN: Does anyone else want to be heard on the issue?

MR. ZIMMERMAN: I have a different issue. Well,

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let me just say I'm not going to comment on Mr. Holzer's thoughts on that.

But to avoid any confusion, very briefly, my objection, or observation, would be as to relevance.

The correspondence suggesting or instructing Mr. Stepcich to submit a JSCP plan for consideration has nothing to do with zoning.

The JSPC, frankly, is not in even under any statute, but it was an informal committee set up years ago to process development plans during the planning board era.

And telling someone to go process under JSPC has nothing to do with an indication that the plan does or does not comply with zoning.

Also, I'm not sure that anyone at this point can find exactly what the JSPC regulations are. I don't know that there's any document, certainly nothing in the County Code says JSPC regulations.

And I don't want to repeat. I expect that this type of objection or concern is going to relate to a lot of the exhibits that the petitioner produces, so I don't

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want to unduly lengthen this hearing, but I would just ask the Board to keep in mind our point of view, that whatever instructions were given to process in the JSPC or to submit in accordance with subdivision review law that was in effect in 1969 and '70, as far as we are concerned, that's all immaterial.

MS. WEST: I was going to further and say there is another problem. Given the fact that this is documentary evidence in which Mr. Jablon is the author of this letter, in fact, injects himself as a potential fact witness, and he's serving as counsel on behalf of Mr. Stepcich and Mr. Pridgeon. I think that's a problem in and of itself.

THE CHAIRMAN: Everyone, just two seconds before I even ask Mr. Jablon the same thing.

(Discussion at the Bench, off the record.)

THE CHAIRMAN: Mr. Jablon, I'm not going to ask you to say anything.

Here's the position that the Board is going to take. Mr. Jablon has had a long and distinguished career working for Baltimore County in which he probably signed

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more documents and letters than anyone can probably imagine.

There are some issues -- and they haven't come up in front of this Board yet -- there are some issues where he could conceivably be called as a fact witness.

And then, how do you exam yourself or cross examine yourself? There are some professional issues in that, certainly.

But beyond that kind of scenario where he would be testifying as a witness, first of all, as to relevance -- let's do them one at a time -- as to relevance, it's part of the history, it's part of what was down, and the letter was brought to him. That's why he got started.

So I think the words in this letter, the communication in this letter is relevant to the extent it goes.

As far as whether or not it puts him in any difficulty or raises any issues, short of the inherent issues if he were to be called as a witness in a matter that he was also counsel, the mere fact that he signed the

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document as the responsible county official is simply part of the file, is simply part of the record.

He carried out his function, and that function may or may not have had an effect on everything else that occurred.

To say that anything that has his name on it raises an issue as to whether he can become involved in any litigation regarding something in which something signed by him may have come in, I think is a stretch that this Board is not prepared to take.

And I agree with Mr. Holzer, there are no professional responsibility issues or violations or anything, and this is really not a question of that.

I think this Board's position, at least this panel's position, is going to be that when part of the history and background of the case includes a document which may have been signed, either authorized or on behalf of or by Mr. Jablon, that they are simply that, part of the record, part of the history of the file, that they come in, and we don't see any issues or any difficulty regarding Mr. Jablon.

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Having said that, if Mr. Jablon ever in the future gets called as a fact witness, he's going to have to deal with the issue of asking some other counsel sitting at the table with him do all the things that happen from time to time when lawyers have become part of the witness list of the case.

So with that, I thank Mr. Holzer for his comments. I think this is an issue, given, frankly, Mr. Jablon's background and history, that the Board has to address, but I think at this level of inquiry for this type of issue that we are talking about, the Board is satisfied that there are no difficulties or problems.

MR. JABLON: Thank you.

THE CHAIRMAN: By the way, we entered that as an exhibit.

MR. JABLON: I am also moving to introduce Petitioner's Exhibit No. 1, the Windemere Section III plat.

THE CHAIRMAN: Any objection, folks?

MR. ZIMMERMAN: No. I'd just appreciate an approximate date being given by some witness.

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MR. JABLON: I haven't gotten there yet. This is just the plat.

THE CHAIRMAN: He numbered it, but didn't actually introduce it. No. 2 is the letter, and that's it.

MR. JABLON: And No. 3, which I will get to, Pete, is an aerial which I have labeled as Petitioner's 3.

Q. Mr. Dietz, are you familiar with the aerial?

A. Yes.

Q. Did you actually produce this?

A. Yes.

Q. There's no date on it. When did you take this and when was it prepared?

A. I acquired it from the Baltimore County GIS department. This is flown by Baltimore County, and it's available for sale.

I went and purchased the photo from them and printed it out on my office plotter.

Q. Do you know what year that this would represent?

A. The last photos were flown approximately 2000.

Q. Now, I think --

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MR. ZIMMERMAN: Of course, there is some markings on the aerial. Can the witness explain that? There are some plat divisions.

Q. Can you come up to the board and describe for the Board of Appeals -- from this side-- there are some, as Mr. Zimmerman has indicated, there are some markings in black.

Can you use the yellow marker to go around and describe, but before you do so, did you add those markings?

A. Yes. I took the record plat of Section III Windemere and I superimposed it on the photo so everybody could see where the properties relate on the photo.

Q. Just take the yellow marker and highlight that.

A. Mr. Stepcich's property in highlighter is not going to turn out real good on the color photo. (Indicating.)

Q. Are there any other lines on there? Did you write in the road, so forth?

A. I put the street names there so everybody can get oriented.

q. You have here Windemere Parkway and then perpendicular, you have Stonehurst Road?
A. That is correct.
Q. You added that?
A. Yes.
Q. Where does Windemere Parkway exit to?
A. This is Dulaney Valley Road.
Q. And then you come back down to Windemere Parkway and then down into the subject property?
A. Yes.
Q. After you submitted, or after the DRC issued its letter, which has been introduced into evidence, Mr. Stepcich approached you and retained you. What did he retain you to do?
A. To proceed with the subdivision in accordance with that letter which was to prepare an amended JSPC plan.
Q. How did you go about doing that?
A. Supposed to find one on record and just revise it to meet your revisions you're preparing.
I went to the Department of Permits and

Development Management. They looked for the old JSPC plan, and it was apparently missing, or misfiled, so they asked me to just recreate it.
Q. Who asked you?
A. Donald Rascoe, Mr. Donald Rascoe told me to just recreate it.
Q. How did you go about recreating it?
THE CHAIRMAN: Can we do Mr. Rascoe's job title?
MR. JABLON: Deputy director of Permits and Development Management.
Q. How do you go about recreating a JSPC plan?
MR. ZIMMERMAN: I have to object. I don't think anyone has the authority to recreate a plan.
THE CHAIRMAN: You can ask him that on cross examination. He's telling us what happened.
Q. How do you go about recreating at the request of Mr. Rascoe?
A. You look at the record plat from Section Nine, apply the criteria from that record plat.
That's basically it. And then superimpose what revisions you're making on it.

Q. Were you able to find a JSPC plan?
A. No.
Q. How did you go about trying to find one?
A. I checked with the Department of Permits and Development Management, asked them to look in their files for it. They came back with nothing.
Q. For whom did you prepare -- after your discussion with Mr. Rascoe -- for whom did you prepare this JSPC plan? To whom was it supposed to be submitted to?
A. The department of planning was one of them. We had to submit several copies to circulate for review to county agencies.
MR. JABLON: I'm going to make this Petitioner's Exhibit No. 4.
THE CHAIRMAN: The aerial was three.
MR. JABLON: Three? The aerial was three?
MR. ZIMMERMAN: The aerial was three.
MR. JABLON: That's correct. I'm going to make this Exhibit 4.
Q. Now, would you describe what this is?
A. This is the amended JSPC plan that I prepared.

THE CHAIRMAN: What's the date on that, sir?
THE WITNESS: October 10, 2003. Do you want me to go ahead and highlight the property?
MR. JABLON: Yes.
Q. Now, this is the plan that you submitted to the county at the request of Mr. Rascoe?
A. Correct.
Q. What information did you supply on this plan, which is titled Amended JSPC Plan of Section III Windmere, plat liber 34, folio 10, what information did you put on this?
A. This is the outline of the record plat, Section III, the four lots and two parcels.
I went ahead and applied the density calculations in regards to the zoning at that time. To compute how much density was available --
Q. Stop right there. How did you determine what the zoning was at this time when Windemere Section III was approved?
MR. ZIMMERMAN: Objection.
THE CHAIRMAN: Overruled.

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Q. Go ahead.
A. I went to the zoning department and researched it back to 1970.
Q. What did you find?
A. I found it was R.S.C. at that time.
Q. What is the zoning calculations for R.S.C.?
A. One acre lots or 40,000 square feet per lot.
Q. So what information, based on that density calculation, did you find?
A. The gross area of the Section III was nineteen acres and change, which gave a potential for nineteen lots, and the record plat of Section III Windemere showed four lots and two parcels, a remaining density of thirteen units.
Q. You have some other notes up here, you have census tract and so forth. Where did you get all this information from?
A. That is current information that you get from the department of planning.
Q. You testified a few moments ago that you also looked or got the information off the record plat that you

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have introduced as Exhibit 1?
A. Correct.
Q. Now, there's going to be some question about whether or not the zoning was R.S.C. or some other zoning on it.
THE CHAIRMAN: When?
Q. In 1970. Again, you found, based on your investigation within the office of zoning, is that correct?
A. Correct.
Q. What's the current zoning on the property?
A. It's R.C. 6.
MR. JABLON: I move to introduce this as Exhibit No. 4.
MR. ZIMMERMAN: I object. First of all, it's fiction, because he's amending a plan that no longer exists, and nobody can find.
So the whole thing is fiction. But I also need to repeat -- without repeating it again and again -- so far as Mr. Dietz expressing an opinion as to what is permitted or that an old zoning was applicable, obviously,

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we are reserving our legal points. We don't agree with that.
MR. HOLZER: I also object. I mean, I just can't see how you can permit someone to come in, in 2005 or six, or 2003, he came in to prepare a plan, and it purports to be what was supposed to have existed in the county's file.
I mean, there could have be notes on this file that -- I mean, he's guessing as to what notes should be on the file relative to the census tract or relative to other information.
But even the density calculations, I just am appalled that you could create a document that is supposed to be an official county record, and then permit this thing to come in that way.
I don't know, in 19 -- when was the date the JSPC plan was supposed to have been prepared, back in 1969, 1970?
Did we have the Chesapeake Bay Critical area information on it at that time? Was there information relative to other criteria that had been reviewed by the county that decided that additional density was not

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permitted?
For instance, I can suggest that because of environmental concerns, even in 1969 and 1970, the reason that Section III was limited to only three lots was because of environmental considerations.
Where are the notes relative to that on this plan? I mean, they are not here.
To me, this is the first time in all the years I've been practicing before this Board that someone has attempted to recreate an official county document and then get it in as an amended JSPC plan, and I look forward to hearing Mr. Rascoe's analysis of how he could permit that.
But, nevertheless, at this point, even if he says he requested it -- which I'm taking the witness at his word -- I think it's totally improper, and I would strongly object to that.
Otherwise, we are going to have people recreating documents that they can't find in the county in many other cases, and I think it's potentially a very dangerous, slippery slope for this Board to accept.
MS. WEST: I would concur with my brother counsel

and just add that it's predicated upon the assumptions that certain basic editia of reliability and trustworthiness, because there's a foundation that has to be laid, because it's been a matter, it's been in the file, it's an institutional record, memory, if you will, a memorialization of what is and what was, and as we move forward, if we're just guessing, we're clairvoyant, we're going to take a guess as to what has been on this plan, I would concur with what Mr. Holzer and Mr. Zimmerman said, that it's inappropriate.

THE CHAIRMAN: Question for you, Mr. Jablon, before you say anything.

Are you submitting this as now the substantive county record, or are you submitting this as something this witness prepared and under what circumstances.

MR. JABLON: Definitely the latter.

THE CHAIRMAN: That's what I thought. That's all we need to hear from you.

This is not a county record. I agree with you, it should not be treated as a county record.

It has all the difficulties and issues that all

three of you have put on the record, that we don't know if there are additional notes, we don't know if there were additional considerations, we don't know about the critical areas, all of those things are absolutely true.

They may be there, they may not be there, but if they can't find it, we don't know.

What we do know is that after some conversation, this witness prepared a document. That document purports to be that which they used to support their request for an amendment.

Now, that's going to be subject to cross examination by all three of you, and it stands for exactly what it is, his possibly incomplete, possibly inaccurate, possibly questionable, piece of paper upon which some portion of the petitioner's case may be based.

Now, to what extent and degree we believe that it's accurate, appropriate, dispositive, controlling, interesting or not interesting, is like any exhibit, something that this Board will determine after hearing the witness and hearing, I'm sure, incisive cross examinations as to the difficulties the document has.

And that will affect whether or not the document prepared by this individual has some, a lot, a little, evidentiary importance to us.

We agree. We are not accepting it as a county record. We are not accepting it as a replacement county record.

I'd also like to hear Mr. Rascoe's rationale as to what it could be and what it couldn't be, but we're not accepting it as anything belonging to Mr. Rascoe or the department.

We are accepting it for exactly what it is, and under these circumstance, we'll accept it and I'll overrule the objections. Mr. Jablon, go ahead.

Q. Did you submit this to the various county agencies?

A. Yes.

Q. Did you submit it to the office of planning?

A. Yes.

Q. Did there come a time that you prepared a plan to accompany a petition for special hearing to the Zoning Commissioner?

A. Yes.

Q. I ask you to identify that.

A. That's the plan to accompany the zoning special hearing that I prepared. Do you want me to highlight the property?

Q. Yes. Did you appear and testify before the Zoning Commissioner in this matter?

A Yes.

Q. You prepared this plan, is that correct?

A. Yes.

Q. On the site plan you have just outlined, you again show Windemere Parkway, perpendicular Stonehurst Road leading down to the subject property?

A. Correct.

Q. Can you describe for the Board what it is exactly that you're proposing?

A. Two lots-- taking the one lot, dividing it into two.

Q. How big is the one lot, currently?

A. 5.13 acres.

Q. What are you proposing to create?

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A. Two new lots, one being two acres and change and the other one being 2.6 acres.
Q. More naturally, 2.448 acres and one 2.689 acres, is that correct?
A. Correct.
Q. Now, where does Mr Stepcich live?
A. He lives on the proposed lot one on that plan.
Q. That's says existing dwelling, is that correct?
A. Correct.
Q. So the proposed property lot is going to be up towards Windemere Parkway?
A. Yes.
Q. And how is access going to be to the two lots?
A. Off of Stonehurst Road.
Q. It would be an access point, an access road coming back into serve the existing house?
A. Yes.
Q. With direct access leading to the proposed lot two?
A. Correct.
MR. JABLON: I will mark this as I believe

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Exhibit 5, and I would move this into evidence.
THE CHAIRMAN: Is there a date on that, Mr. Jablon?
MS. WEST: February 3, 2006.
MR. JABLON: Yes.
THE CHAIRMAN: Thank you.
Q. I ask you to identify this. This is just the Zoning Commissioner's decision?
A. This is the --
MR. ZIMMERMAN: This is de novo.
MR. JABLON: I understand that.
THE CHAIRMAN: We are going to mark this -- this is the Zoning Commissioner's decision in this case?
THE WITNESS: Yes.
MR. JABLON: I'll mark this as Petitioner's No. 6. I know you have it in your record, but I am submitting it into evidence.
MR. ZIMMERMAN: I need to comment since we are here on a de novo appeal, technically, it's as if nothing happened at the Zoning Commissioner's level.
THE CHAIRMAN: So noted.

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MR. JABLON: I would also point out, however, Mr. Zimmerman spent twelve and a half minutes discussing this, this morning. I timed it.
MR ZIMMERMAN: That's not correct. And Mr. Jablon referenced it in his opening.
THE CHAIRMAN: How about we make this easy. The Board going to accept it, whoever presented it.
MR. JABLON: Now, if I may have just take a moment, I prepared a letter on behalf of my client to the DRC dated March 2006.
I can submit it into evidence through Mr. Dietz or introduce it as part of -- it's hearsay, obviously -- but it's prepared by counsel to the DRC.
THE CHAIRMAN: We have accepted counsel's letters to government agencies before on both sides. I think, literally, from each one of you before.
MR. ZIMMERMAN: I mean, it's part of the record. I guess it's equivalent to the petition for special hearing. It's the application in one of the files.
THE CHAIRMAN: I don't see any objection.
MR. ZIMMERMAN: It is part of the history.

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MR. JABLON: I am going to submit this as Petitioner's Exhibit No. 7.
THE CHAIRMAN: The date on that letter?
MR. JABLON: March 14, 2006.
MR. ZIMMERMAN: Authored by --
MR. JABLON: By me. As counsel. I guess this will be No. 8. This is, again, a letter.
Q. Let me just have you identify the letter. This should be in the file, also, but just in case it's not.
This is a letter to me from Mr. Kotroco dated April 12, 2006. If you just can go to the last line.
A. The DRC has, in effect, met in open meeting April 3, 2006, and has denied your request.
Q. Thank you.
MR. JABLON: Introduce this as Exhibit No. 8. One of the appeals was taken was directly from this letter. The other appeal taken was from the Zoning Commissioner's order that was introduced as Exhibit No. 6.
Q. Did there come a time when you were asked to pull, research, the deed to Mr. Stepcich's property?
A. Yes.

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Q. Let me show you copy of a deed and ask you if you can identify this?
A. Yes.
Q. Specifically turn to page three, paragraph nine.
A. Do you want me to read it?
Q. Well, did you pull this deed?
A. Yes.
Q. The dead is entitled, Liber 5191, page 243, et ux, and it is dated September 2, 1970, is that correct?
A. Correct.
Q. And the party is, it's a declaration dated September 2, 1070, by Tilghman Realty Company, a body corporate, is that correct?
A. Correct.
THE CHAIRMAN: Are you moving that?
MR. JABLON: I will in one second.
Q. Now, just go to paragraph nine, and if you can read that?
A. Nothing in these restrictions shall be construed to prohibit future subdivision of any parcel into R 40 residential lots.

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This means a lot containing at least 40,000 square feet and at least one hundred fifty feet wide at the building line.
MR. JABLON: Move this into evidence.
MR. ZIMMERMAN: Objection.
MR. JABLON: No. 9.
THE CHAIRMAN: Let him move this first. You're moving this as No. 9?
MR. JABLON: Yes.
MR. ZIMMERMAN: I object in this respect. To the extent it's part of history and it shows the lot was sold -- excuse me -- this is just a declaration. This is not the deed to Mr Stepcich.
To the extent that this is a private declaration signed by the developer, it has no bearing on the zoning law.
THE CHAIRMAN: To the extent it may or may not have an effect on the zoning law, I agree, is a matter for you folks to take the position one way or the other.
This is what it is. It's something that was in the Land Records that he pulled that he's asking be put

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into the record because it relates in some way to this property.
Whether it's relevant, whether it changes anything, whether it makes anybody's case or breaks anybody's case is an entirely different issue.
MR. ZIMMERMAN: I am on the record. It's another source of confusion.
THE CHAIRMAN: But that's argument, Mr. Zimmerman. It's not an objection as to the admission of something from the Land Records kept in the normal course of business, pulled by this witness.
MR. ZIMMERMAN: But the emphasis on that paragraph --
THE CHAIRMAN: Whether or not it causes confusion, whether it adds or detracts, is the reason why everybody in this case has a lawyer.
Therefore, we'll look to you folks to deal with those issues.
The only issue we are dealing with at this moment, should this piece of paper be made part of the record for whatever importance or reason or effect it will

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ultimately have.
MR. ZIMMERMAN: For the record, we think it shouldn't, and it's obvious.
THE CHAIRMAN: For the record, and for the reasons I have already stated, and only to that extent, we will accept it as part of the record.
MR. HOLZER: I also object to it, and I also object to it not necessarily on the same basis.
This is nothing but a restrictive covenant agreement executed between the developer and the property owner relating to specifically paragraph nine as to what he might be restricted to.
THE CHAIRMAN: I don't disagree with you.
MR. HOLZER: If one were to introduce this document in another zoning case, the Board would say that we're not in the position of enforcing private restrictive covenants.
So if that would be the Board's analysis in that situation, I am suggesting, therefore, it's irrelevant, period, per se, ab initio, and as a result, does not belong in here, because it has no substantive value to

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indicate anything about this project relative to this special hearing.

THE CHAIRMAN: Once again, the value of it is something to be determined and discussed and cross-examined and argued.

I am simply accepting it for what it is, something he took out of the Land Records that relates in some way to this property whether it's a way this helps this Board, hurts this Board's decision, makes it easier, makes it difficult, or has no effect on it one way or the other.

MR. HOLZER: Just for the record, the rules of evidence, although they are relaxed in administrative proceedings, there are rules which permit the denial of documents being entered into the record because they are so obviously irrelevant.

THE CHAIRMAN: I'm not prepared to make -- before I hear anything else, before we hear anything else about it, right now, we are making a ruling based upon exactly what we know, that this was on liber 5191, page 243, and the date it was put in, and this witness took it from the

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Land Records.

That's all I am being asked to rule on now, and that's all I'm ruling on now.

If we go further than that and we're asked to rule on other things later on regarding it, at that time, we will face that.

MS. WEST: For the record, we respect the Chair's ruling.

THE CHAIRMAN: So far, for now, I'm denying Mr. Zimmerman and I'm denying Mr. Holzer.

MS. WEST: Well, I'm sure you're going to deny me as well, but I would like to state for the record that we don't have a gold seal, it's not a certified copy to meet the public record exception to the hearsay rule, so we shouldn't even have this discussion, but we're on the record, and I acknowledge the Chair's ruling.

THE CHAIRMAN: I certainly appreciate that comment, and we'll overrule you on under the circumstances. Mr. Jablon.

MR. JABLON: Thank you. Now, there are two other exhibits which I'd like to introduce.

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I can do this the easy way or the hard way. I can wait for Mr. Long to testify or I can introduce them now through this witness, though he's not a party to them, per se.

THE CHAIRMAN: Before we get into that, are you saying that Mr. Long would be a better person to put them in through?

MR. HOLZER: But Mr. Long is my witness. I don't know if I am going to call him.

MR. JABLON: I will make sure he's here.

MR. HOLZER: I --

MR. JABLON: Bottom line --

THE CHAIRMAN: First of all, this nice lady up front can't possibly keep track of all this going on.

MR. ZIMMERMAN: Tell us what it is.

THE CHAIRMAN: Why don't you make a proffer?

MR. JABLON: One, it's a letter from Mr. Kotroco to Mr. Klein, planning board chairman, dated May 28, 2004, in which Mr. Kotroco indicates that the law in place at the time of the original approval, including the zoning regulations and the development regulations, are

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applicable. That's one.

Another is a notice from the office of planning to property owners during the 2004 map process, dated January 21, 2004, in which there was a sentence to all property owners including Mr. Stepcich -- and this is to Mr. and Mr. Stepcich -- quote -- Existing lots in recorded subdivisions will continue to be regulated by the zoning regulations that were in effect at the time the existing lot was created.

So these are two exhibits that I would like to introduce.

MR. HOLZER: If he would share them with me, I'd be glad to take a look, because I am the only one that has Mr. Long under subpoena now. I may well allow you to put them in.

MR. JABLON: This is the letter from Kotroco. This is the zoning letter.

MR. ZIMMERMAN: Mr. Chairman, my position --

THE CHAIRMAN: Before you tell us your position, let's wait first and see what Mr. Holzer is going to do.

MR. ZIMMERMAN: Let him go first.

MR. HOLZER: I have no objection to the fact that the first letter from Mr. Kotroco to Mr. Klein, chairman of the planning board, dated May of 2004, is Mr. Kotroco's opinion, and it's a document that appears to be written to him.

And so, therefore, as far as the county document goes, I would not object to it for that reason.

As far as the second document, directed to Mr. Stepcich, it is what it is. It's a letter sent out by the office of planning, almost appearing to be a form letter, indicating whatever it indicates.

So for whatever value there is, I personally have no objection, and I may well use these letters before this Board very shortly in another case.

THE CHAIRMAN: In the spirit of cooperation.

MR. JABLON: Well, I don't think it will be that.

MR. ZIMMERMAN: My opinion is slightly different. Assuming the documents are authentic and copies of authentic county records, as they appear to be, we generally don't try to hide anything, you know, from the Board of Appeals, so the Board of Appeals can look at

them.

But, clearly, I object insofar as, or disagree with the conclusion of law expressed in the letter dated May 28, 2004, from Timothy Kotroco to Charles Klein of the planning board, relating particularly to the idea of future, further subdivision of other lots created in the JSPC era are controlled by the zoning classification then in effect, end quote.

That's obviously a key issue in this whole case. We don't agree with Mr. Kotroco. He didn't state any reason or legal rationale.

To the extent -- I'm not sure the other form letter, January 21, 2004, really states the same thing, but if it's interpreted as implying that, obviously, we disagree with that.

THE CHAIRMAN: Well, the implications of what it may or may not mean to particular representatives of your particular clients in this matter is what you're all here to do.

I think Mr. Holzer's comment is probably the salient one. It says what it says and it is what it is.

MR. ZIMMERMAN: Well, I have to say, obviously, this is a legal conclusion expressed by the director of permits and development management.

THE CHAIRMAN: Which is only his opinion.

MR. ZIMMERMAN: It's obviously opposite of our point of view. But I don't mind, you know, it's a county record.

THE CHAIRMAN: Ms. West?

MS. WEST: I just want to say, given the appearance of authenticity, we are not going to argue about laying a foundation here.

We are going to have the opportunity, I assume, either through this witness or some other witness, to cross examine.

MR. ZIMMERMAN: I suppose we can insist on Mr. Kotroco coming in and we can cross examine him to demonstrate that there's no legal basis, but that would just extend the hearing.

THE CHAIRMAN: With the comments of counsel, we're going to mark this as -- Mr. Crizer, ten or eleven?

MR. CRIZER: It's No. 10.

MR. JABLON: I will mark these as No. 10. Ten will be the office of planning letter dated, January 21, 2004, and No. 11 will be the Kotroco letter, dated May 28, 2004.

MR. ZIMMERMAN: And if I may, part of my objection is there is absolutely no foundation for the opinions expressed in this letter.

THE CHAIRMAN: Well, that may or may not be. We are not even getting to that question at this point. Go ahead.

MS. WEST: What is nine?

THE CHAIRMAN: Nine is the declaration.

MS. WEST: I thought that was eight.

MR. HOLZER: These are ten and eleven.

THE CHAIRMAN: Eight was the denial letter of 4-12-06.

MR. ZIMMERMAN: Which one is ten?

THE CHAIRMAN: Ten is 1-21-04.

MR. JABLON: And eleven is Kotroco's letter. And, again, I've got one more letter. I've got plenty of letters.

This one is to Mr. Stepcich, dated February of 2002, and, of course, he can testify he received it, but I ask to just introduce this now.

This is from John Alexander of the zoning office, so I'd like to introduce this as Exhibit 12. It's dated February 8, 2002.

THE CHAIRMAN: From Mr. Alexander?

MR. JABLON: John Alexander to Mister -- actually, to Mrs. Stepcich. Now, finally --

MR. ZIMMERMAN: I would --

THE CHAIRMAN: You want to interpose the same objection?

MR. ZIMMERMAN: Any legal conclusions are for the Board to decide, and there is really nothing to support any conclusions given in this letter.

THE CHAIRMAN: So noted.

MR. JABLON: Now I know that I don't -- if I can find it. I've made copies of Bill 24-06, and I know it's the law, so it doesn't really have to be introduced into evidence, but I am going to introduce it.

THE CHAIRMAN: And we have made this comment to

members of the Board before. Mr. Zimmerman actually does this quite a bit.

Even though, true, all statutes are part of the law, the Board does appreciate when copies are provided of what counsel thinks are relevant issues in the case.

MR. JABLON: I've provided three copies to the Board. That's Bill 24-06, and I guess I can introduce it.

THE CHAIRMAN: Are you going to actually enter this as an exhibit?

MR. JABLON: Yes, I think so.

MS. WEST: You can take judicial notice of it. I don't have any objection to it coming in. It's probably good to have it in.

THE CHAIRMAN: The most recent comment by the counsel. So we're going to make it thirteen.

MR. JABLON: Thirteen, Mr. Crizer, is that correct?

MR. CRIZER: Yes.

MR. JABLON: Now, the only other -- that's all the questions I have for this witness.

THE CHAIRMAN: Okay. Folks, before we begin

cross examination, I note time passes when you're having fun.

It's twenty-five after twelve. Why don't we take an hour, 1:30, and we'll pick up with cross examination at that point.

(Luncheon recess.)

* * * * *

AFTERNOON SESSION

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THE CHAIRMAN: We are back on the record. Mr. Witness, you're back here with us again, and obviously the oath you took previously is still binding upon you.

B R I A N D I E T Z,

having previously been sworn, resumed, and testified further as follows:

THE CHAIRMAN: Mr. Jablon, you've completed your direct examination, if memory serves, correct?

MR. JABLON: Correct.

THE CHAIRMAN: In what order are we going?

MR. ZIMMERMAN: Peter Zimmerman here, beginning the cross examination.

THE CHAIRMAN: Go for it.

CROSS EXAMINATION

BY MR. ZIMMERMAN:

Q. Mr. Dietz, you observed that the current zoning classification for the Windemere area is R.C. 6, correct?

A. Correct.

Q. How did you find that out?
A. The department of zoning.
Q. I have a copy of the 2004 zoning map, sheets 053A1 and 053A2. We're going to introduce this in a moment as People's Counsel Exhibit 1.
I am going to ask you to take a look at these two sheets. I guess we'll call them 1A and 1B in a moment, and tell me if the Windemere Section III and/or Windemere subdivision would be located on this pair of zoning maps?
We'll put it up on the easel in a moment. Can you find Stonehurst Road?
A. Yes.
Q. Let me put this on the board for a moment just so we know what we are talking about. Off the record.
(Discussion held off the record.
THE CHAIRMAN: Back on the record.
Q. Mr. Dietz, with your help, I'm going to try to line up the pair of zoning maps, and you'll tell me if you want to make a correction.
THE CHAIRMAN: Before you ask him questions, Mr. Zimmerman, how about we actually put them in? If you'd be

kind enough to put the notation on there?
MR. ZIMMERMAN: People's Counsel Exhibit 1A is plan sheet 053A1, and 1B is plan sheet 053A2.
THE CHAIRMAN: Mr. Jablon, any objection?
MR. JABLON: No. I presume these are the 2004 --
MR. ZIMMERMAN: 2004. This map represents the actions of the Baltimore County Council on August 31, 2004. Printed right on there.
MR. JABLON: No objection.
Q. Mr. Dietz, with a magic marker, could you show us on this map, Windemere Section III and the Stepcich property?
A. Uh-huh.
Q. We'll use a yellow magic marker. Obviously, the line you draw will be close as possible.
A (Indicating.)
Q. What have you just drawn, Section III?
A. Well, Mr. Stepcich's property.
MR. ZIMMERMAN: Do we usually have some other color magic marker? We have a dark green.
Q. The yellow magic marker is Mr Stepcich's

property. Would you like to mark an "S" on the side with a pen?
A. (Indicating.)
Q. Then with a green magic marker, give us the approximate boundaries of Windemere Section III.
A. If I could look at the record plat, it would help me, which I think is still up here.
This overlaps. About there.
Q. Maybe with the same colored magic marker, why don't you put SEC III in the center of what you have indicated?
A. (Indicating.)
Q. While we're at it, do you know the boundaries of the entire Windemere subdivision?
A. I do not.
Q. But for the Board's information, can you point out where Dulaney Valley Road is on this zoning map?
A. Right in here.
Q. Is that the main collector, or whether you call it arterial or collector, is that the main road in the area to get into the Windemere subdivision?

A. Yes.
Q. This is not far from the Lock Raven Reservoir, correct?
A. Correct.
Q. Clearly, the map does show that Section III is entirely in the R.C. 6 zone as denoted on the map?
A. Correct.
Q. And that's a rather large area of R.C. 6 zoning, is it not?
A. Yes.
Q. The only other zone shown on the map -- correct me if I am wrong -- a large area of R.C. 7 across, really, just bordering Section III, correct?
A. Correct.
Q. Then a little bit of commercial zoning down where the old Pearce's Plantation -- see that B.L. zoning, do you know if that is the old Pierce's Plantation?
A. I believe so.
Q. That's a restaurant that used to be very popular?
A. Uh-huh.
MS. WEST: Excuse me, Mr Zimmerman. Just so the

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record is clear, if you're going to note these landmarks for the purpose of testimony, can you note them on the actual exhibit?

Q. Why don't you mark in yellow -- there is only one --

MR. JABLON: If you're talking about Pierce's Plantation, it's closed.

MR. ZIMMERMAN: I said there used to be.

Q. There is just that spot of B.L. zoning on Dulaney Valley Road that I was just referring to. Would you mark that in yellow?

A. (Indicating.)

Q. That's the only commercial zoning on this entire pair of zoning maps of one inch to 200 feet scale?

A. Yes.

Q. Can you find any other commercial zoning?

A. No.

Q. So predominately R.C. 6 and R.C. 7 in the area, correct?

A. And a little bit of R.C. 4.

Q. A touch of R.C. 4 at the southeast corner of the

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map?

A. Correct.

Q. Just to clarify, Section III, the plat you found, I think it's in evidence, approved in 1970 --

MR. ZIMMERMAN: Is that Petitioner's Exhibit 1?

MR. CRIER: Yes.

Q. 1970, approved by the planning board, right?

A. Yes.

Q. It says four lots and two parcels, correct, on nineteen acres?

A. Correct.

Q. What is the acreage to the entire Windemere subdivision?

A. You mean just for Section III?

Q. No, no. All the sections.

A. That, I don't know.

Q. Similarly, you don't know how many lots were platted in the entire Windemere subdivision?

A. I do not know, correct.

Q. When you were doing whatever research or review you did, did you check whether there is in the county

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records or on file an approved plan, tentative plan, JSPC plan, planning board approved plan, whatever you want to call it, approved by whomever, for the entire Windemere subdivision proposal?

A. I checked with the Department of Permits and Development Management for the approved JSPC plan. They said it was archived away, they would have to go to the warehouse and look for it.

I got a notification from them approximately two weeks later saying that they couldn't find it.

Q. Were you asking them for Windemere Section III, or Windemere generally?

A. I did that back in 2002. I don't recall if I specifically said Windemere or Windemere Section III.

They did have a card catalogue file up there with a Windemere record plat on it which had a number, I assume it was a JSPC number, which I gave them to, I had to give to give them to look for that box of material.

Q. Mr. Dietz, I'm going to show you a plan that our office came across in our research for this case and show it to you and show it to Mr. Jablon.

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MR. JABLON: What is this?

MR. ZIMMERMAN: It's the original plan for Windemere.

MR. JABLON: Okay.

MR. ZIMMERMAN: We are going to ask this be People's Counsel 2, at least for identification.

THE CHAIRMAN: What are you calling it?

MR. ZIMMERMAN: This is a plan entitled Windemere -- it has tentatively revised and/or approved dates through the office of planning and the JSPC in the year 1956.

THE CHAIRMAN: Let me just follow up. This is, for the record, this is a plat?

MR. ZIMMERMAN: A plan. It's not a plat. Tentatively approved plan dated 1956. Which includes a Joint Subdivision Planning Committee. The plan speaks for itself.

THE CHAIRMAN: Was that a plan adopted?

MR. ZIMMERMAN: It's a plan that has some tentative approval signatures in 1956.

THE CHAIRMAN: For whatever else?

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MR. ZIMMERMAN: Whatever else happened to it, I don't know at this point, but it's a plan we came across, okay, when we have our investigative staff trying to get documents and copy documents, I should say, and I am going to mark P.C. Exhibit 2.

Q. Without my necessarily tacking this on the easel, Mr. Deitz, can you see this document?

A. Yes.

THE CHAIRMAN: Off the record.

(Discussion held off the record.).

Q. Mr. Dietz, have you ever seen this document?

A. No. This is the first time.

Q. Did you do any research to try to figure out what, or do you know whether or not Windemere was in somebody's mind back in the 1950s?

A. No.

Q. Now, you don't know whether there were any other revisions of this plan after 1956, correct?

A. Correct.

Q. Just so there's no confusion or misleading anyone as to this document, tell us, as a surveyor, one of the

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things you do is read plans?

A. Yes.

Q. Tell us how many lots are shown in Section III?

A. Section III is awful large.

Q. Aren't there numbers? One, two, three. Can't you tell?

A. They have got different blocks, block O, block S, block Q, block R, block P, all in Section III.

Q. Take a look and compare --

THE CHAIRMAN: Mr. Zimmerman, so we don't spend a lot of time doing this, do you have a number to suggest so we don't take a whole lot of time?

MR. ZIMMERMAN: No, I don't have a number to suggest. I want him to tell me, because he's the surveyor.

Q. Mr. Dietz, take what is currently second Section III, which you're familiar with, and just overlay in your mind that section on this map.

A. The sections are entirely different. What's shown here is entirely different than what got recorded in the record plat, to answer your question.

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Section III's record plat is only about this big, and Section III on here is about this big. So I venture to say they did something drastic in there.

Q. There were a lot of revisions clearly since 1956, correct?

A. Obviously.

MR. ZIMMERMAN: I would introduce that as People's Counsel No. 2.

THE CHAIRMAN: It's going to be No. 2.

Q. Okay. Now, we'll take what I call our time machine and we'll go back to 1970 when the subdivision plat was filed that you found and made Petitioner's No. 1.

Now, first of all, as far as the zoning, is there any zoning classification reference on Petitioner's No. 1?

A. No.

Q. It was recorded February 24, 1970, yes?

A. Yes.

Q. And you said in your direct testimony that you thought the zoning at that time was R.S.C., correct?

A. Correct.

Q. By virtue of what zoning regulations was the

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R.S.C zone established in Baltimore County, and when?

A. I do not know.

Q. Have you seen any zoning map dated by February 24, 1970, that shows the Windemere area zoned as R.S.C?

A. In searching the zoning back, I looked at the prior zoning maps up in the zoning department, and that's what I came across.

Q. My question is, do you know or can you remember definitely that there was a zoning map dated February 24, 1970, or earlier, that showed this property as R.S.C?

A. Yes. To my knowledge, yes, I believe I saw a zoning map dated 1970 with the R.S.C. on it.

Q. Do you have it with you?

A. No.

Q. Did you make a copy?

A. No.

Q. Would it surprise you if the R.S.C. zone was established by Bill 111-1970, subsequent to the recording of the Windemere Section III subdivision?

A. What was the question? Would it surprise me?

Q. Yeah. Do you know anything about Bill 111?

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Excuse me. I misspoke. Bill 100, have you heard of Bill 100-1970

A. No.

Q. Do you know whether Bill 100 had anything to do with the establishment of the R.S.C zone?

THE CHAIRMAN: He just told you he doesn't know anything about Bill 100, so how can he answer the question?

Q. Do you have any documents here today to show, on any plans for the Windemere subdivision prior to 1970, there's any reference to the R.S.C. zone?

A. No.

Q. Let's assume for a moment that the R.S.C. zone was in effect or there was some zoning that allowed one lot per acre subject to percolation, at least that was the zone regulation at that time. All right?

According to your direct testimony, potentially nineteen lots could have been approved in 1970 in Section III, correct?

A. Correct.

Q. You're not saying that because you are a

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surveyor, you're just doing simple arithmetic based on the assumption that one lot per acre was allowed?

A. Correct.

Q. Subject to perk tests?

A. Correct.

Q. And you're indicating that four lots and two parcels were approved.

Does that really mean six residential lots? Are you counting parcels as lots, or do you know?

A. The definition of a parcel is different than the definition of a lot.

Q. Do you have any knowledge one way or the other whether the two parcels were considered to be open space, residential lots, not sure? What is the significance, do you know?

A. I can tell you the definition of a parcel. It's a non-buildable lot. As it applies to this record plat, I do not know what its purpose was.

Q. Are parcels always non-buildable? Aren't there parcels that are built upon?

A. In regards to a record plat, a parcel is a

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non-buildable lot.

Q. So if your observation is true, then the four lots were approved in 1970 on that plat, when nineteen, on paper, in theory, potentially could have been requested or approved, correct?

A. Nineteen, yes.

Q. Wouldn't you agree with me that there's a reasonable inference that there's some problems with that area in 1970 and that a developer was not allowed to build, was not allowed to plat more than four lots for one reason or another?

MR. JABLON: Objection.

THE CHAIRMAN: Your question again, is he aware of the fact that that situation occurred?

MR. ZIMMERMAN: No, that's not what I asked. I asked, isn't it a reasonable inference that there were reasons why only four lots were approved, rather than the nineteen that Mr. Dietz has speculated or said could have been approved by virtue if you take the literal restriction of the R.S.C. zone. That's my question.

MR. JABLON: I'm objecting.

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THE CHAIRMAN: Wouldn't it be simply easier to simply ask him, does he know why only four and two were done?

MR. ZIMMERMAN: That's another question I can ask.

THE CHAIRMAN: But if he can answer that question --

Q. Do you know, or do you have any personal knowledge as to why only four lots plus two parcels were platted, rather than what you said, if you said nineteen could have been approved?

A. I do not know why.

Q. And have you found any documents to indicate why less than what you said was the potential were approved?

A. No.

Q. Have you found any other preliminary subdivision plats for Section III that were either not approved or discarded, or approved but then approved tentatively, but not finalized, any other phase of subdivision plat that may exist for Windemere Section III?

A. No. This is the only one that I came across.

Q. Now, in light of all that, and in light of, among other things, the original 1956 plan which evidently did not go forward, wouldn't you agree that your testimony that nineteen lots could have been approved is pure speculation?

MR. JABLON: Objection. First or all, he never that said nineteen lots could have been approved.

There has been no questioning about the development process of 1970. The only testimony is there are nineteen acres which would permit under the then-zoning, nineteen lots.

THE CHAIRMAN: Presuming it meets all the other qualifications. He simply testified, I took it as simply there was a capability under the right circumstances for as much as that.

Q. Mr. Dietz, are you or are you not suggesting by implication that you were told or under the assumption that you can treat this request for resubdivision as if you were dealing with the regulations in place in 1970?

THE CHAIRMAN: Do you want to clean that up? I'm not quite sure what you asked.

Q. You prepared your plat to facilitate Mr. Stepcich's resubdividing his lot on the assumption that the zoning regulations and subdivision regulations in place in 1970 are applicable, correct?

A. I was asked to amend the JSPC plan under the current regulations in effect at that time, 1970, yes.

If that answers your question. If that was the question.

Q. And was that verbal at that time? I mean --

A. It happened in writing from the DRC.

Q. When you originally -- were you basing it on a particular letter? Were you basing it on Mr. Kotroco's letter?

A. I based it on the written letter from the DRC.

Q. Which letter?

A. The very first one that says proceed with an amended JSPC plan. And, subsequently, I met with Don Rascoe.

Q. Can you tell me which letter exactly you're referring to? The May 23, 2002 letter?

A. Yes.

Q. Petitioner's Exhibit 2?

A. Yes.

Q. The letter from Arnold Jablon?

A. Yes.

MR. JABLON: Can I just clarify something? The letter is not from me. It's from Walt Smith.

MR. ZIMMERMAN: Excuse me. It has Arnold Jablon's typed name.

MR. JABLON: Yes. But who signed it?

MR. ZIMMERMAN: Excuse me --

MR. JABLON: No. You excuse me. Who signed it?

MR. ZIMMERMAN: I have a hard time reading your writing, frankly.

MR. JABLON: I just wanted to get that clear.

MR. ZIMMERMAN: Now that Mr. Jablon is telling us that it's Walter Smith, I can now see Walter Smith.

But when I first saw the handwriting, frankly, it looked like gibberish to me. All I saw was the typed name Arnold Jablon.

I assumed when Arnold Jablon's typed name is on the letter, that it's either from him, or he authorized

it. But I was not the one making an issue about whether Mr. Jablon was involved. Okay?

THE CHAIRMAN: Let's move on.

Q. All this letter says -- do you have it handy, Mr. Dietz?

MR. ZIMMERMAN: Does the Board have it?

THE CHAIRMAN: We just gave him our copy.

Q. The last paragraph on page one, are you referring to the second sentence of the last paragraph? You may process a plan with changes to the last approved JSPC in compliance with JSPC regulations. Period, end quote.

MR. ZIMMERMAN: I'll show my copy to the Board.

Q. Is that the sentence you're talking about?

A. Yes.

A. Where are there in writing any JSPC regulations that you looked at?

A. That's a good question.

Q. Tell me a JSPC regulation.

A. I met with Don Rascoe on this to get a copy of the JSPC regulations, and he said they don't exist anymore.

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He then directed me to just take the record plat and prepare what I did prepare.
Q. So you proceeded on something that doesn't exist, namely, the JSPC regulations, if this letter is to be given any significance?
MR. JABLON: I do object to the way he phrased it.
THE CHAIRMAN: Rephrase the question because I don't think that's what he said.
Q. To summarize your previous answer, you were asked in Petitioner's Exhibit 2, the May 23, 2002 letter from Mr. Jablon, typewritten, but not signed by him, to process a plan -- I am excerpting now -- in compliance with the JSPC regulations, which you subsequently found did not exist?
MR. JABLON: I object. He said he was told they don't exist.
Q. You were told they didn't exist?-
THE CHAIRMAN: well, Mr. Jablon made a comment. I want to deal with that.
MR. JABLON: What I'm saying is, Mr. Dietz did

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not testify to that.
He testified he was told they don't exist. His testimony is Mr. Rascoe told him they don't exist.
THE CHAIRMAN: That a copy does not presently exist.
Q Did you take that as face value, as being probably true?
A. If Mr. Rascoe could not provide me with a copy of them, I don't know who else could at that point. All I did was ask to have a copy of them.
I don't recall exactly his exact words, if they he said they don't exist, but he could not provide me with a copy.
Q. Assuming that any JSPC regulations existed, did you assume that they equated to the zoning regulations?
A. Could you rephrase that?
Q. Do you have any idea what the JSPC regulations were? Might have been? Are?
A. No.
Q. Did you attempt to find out whether four lots ended up on the Windemere Section III based on whatever

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county regulations there were at that time, it was found that that nineteen acres could not support more than three or four lots?
MR. JABLON: Objection.
THE CHAIRMAN: He already said he doesn't know or have any basis why the nineteen or not the nineteen, so you're asking him to come to the same conclusion.
MR. ZIMMERMAN: Not really. I'm asking him, did he try to find out.
THE CHAIRMAN: If the question is did he try to found out anything different than he already knew --
MR. ZIMMERMAN: Well, he said he doesn't now. My question is, did he even try to find out?
THE CHAIRMAN: Okay. And you object to that?
MR. JABLON: No, I don't object to that.
THE CHAIRMAN: Did you even try to find out?
THE WITNESS: No.
THE CHAIRMAN: Okay.
Q. How many houses are there currently in the Windemere Section III subdivision?
A. Four.

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Q. Are those on the four lots, not the two parcels?
A. Correct.
Q. Since 1970, have any lots in Windemere Section III shown on that plat, Petitioner's 1, been subdivided?
A. No.
Q. Do you know if any lots in the entire -- first of all, do you know if Windemere was actually platted with more than one section? Do you know if the other sections exist, one, two, four, so on?
A. Yes.
Q. They do exist?
A. Yes.
Q. How do you know?
A. They surround it. There's a section right next door to Mr. Stepcich's lot.
Q. You just don't know the boundaries of all these sections?
A. Correct.
Q. To the best of your knowledge, has any lot in the Windemere plat approved around 1970, if any of the sections of the Windemere subdivision have ever been

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resubdivided after the original plats were filed?
A. For the whole subdivision, no, I do not know that answer.
Q. But as far as you know, unless information comes to your attention on the other sections, this may be the first attempt in thirty-six years, or thirty-two years if you go back to 2002, the first attempt to resubdivide any lot in the Windemere subdivision?
A. Could be.
Q. Are you familiar with the standards in the R.C. 6 zone?
A. A little bit. They're pretty complicated.
Q. You're certainly aware the Windemere Section III does not comply with the current R.C. 6 zone standards, correct?
A. Correct.
Q. Do you know what the density standard is in R.C. 6?
A. It's pretty complicated with conservancy areas, conservancy one and two.
Q. But it has to be a conservancy area?

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A. Right.
Q. Obviously, Windemere Section III, was not designed with a conservancy area?
A. Not to my knowledge.
Q. And if the density is .2, along with -- you wouldn't disagree with me on that, whatever the zoning says?
A. Right.
Q. And there are other performance standards in the R.C. 6 zone, correct?
A. Performance standards?
Q. Performance standards. Do you know what I am talking about?
A. In regards to?
Q. Various items. Have you reviewed the R.C. 6 zone standards?
A. I've read hem. I don't know them off the top of my head.
THE CHAIRMAN: Remember, he's not being called as a zoning expert.
A. You're talking about setback lines?

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THE CHAIRMAN: Specifically, he's not being called as a zoning expert, so you're only confirming what he's admitted, he doesn't know much about zoning.
MR. ZIMMERMAN: Mr. Chairman, that's all I have. Thank you.
THE CHAIRMAN: Mr. Holzer?
MR. HOLZER: Yes.

FURTHER CROSS EXAMINATION

BY MR. HOLZER:
Q. Mr. Dietz, how many times have you visited the Windemere development since you have been retained to do this?
A. About ten times.
Q. Did you, as you leave Dulaney Valley Road and head up Windemere Parkway, have you ever gone all the way up to the top of the hill to Long Green Pike?
A. Yes.
Q. And all those homes are developed along both sides of Windemere Parkway, are they not?
A. Yes.
Q. And did you ever go beyond Stonehurst Court, say

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the Siesta Garth, which would be to the south side of the subject site?
A. No.
Q. You've never been back in there where Mr. Zimmerman's site plan showed a very large Section III of Windemere? You've never been back in that area?
A. No.
Q. What about did you ever go around the corner to Collingwood Garth, or Thorndike Garth, or Collingwood Road, have you ever been to the north side of the proposed site?
A. No.
Q. So your knowledge then is limited mostly to the proposed site and Section III as you know it?
A. Yes.
Q. I think you answered Mr. Zimmerman's questions that all the lots on Windemere Section III have been developed into single family homes?
A. Yes.
Q. In regard to Mr. Rascoe, when he told you -- I wasn't quite clear as to what he told you.

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Did he tell you there were no JSPC regulations, or that he didn't have a copy of the JSPC regulations?
A. I think this was five years ago now, almost, four and a half.
I asked for where I could obtain a copy of them. He could not provide me with them, for whatever reason.
Q. So he didn't say there are no regulations, to your knowledge, he just couldn't provide you with a copy of them?
A. Correct.
Q. You took that and then proceeded, to the best of your ability, to try to recreate what has been marked as Petitioner's Exhibit No. 4, which was the amended JSCP plan?
A. Correct.
Q. And just to make sure -- although I have made this argument before -- did you try to examine the record or the files to determine whether there were any documents which could shed light on what was the original JSPC plan for Section III of Windemere?
A. I asked PDM to pull their files on it. They said

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it was archived away. They came back, said they had nothing on it.
Q. And after you received that information, did you make any further effort to explore what may have, what could have been, what should have been on a site plan that was a JSPC plan that was passed or approved in 1970?
A. The other department I looked at was the E.I.R. to see if they had one on file with them. They did not.
Q. They did not?
A. No.
Q. Did you check in what is now the Department of the Environment, DEPRM, to determine whether or not there were any files which indicated why Section III of Windemere had not been developed by more than the four lots?
A. I did check with them for a plan. They had none. I left it at that. They had no information on it. I took that at face value.
Q. Am I fair when I say that, as of today, you have no knowledge what was on the original JSPC plan for Section III of Windemere?

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A. Correct.
Q. So you have no knowledge whether there were any environmental notes, any density notes to that effect, you just don't know?
A. Correct.
Q. And I guess it's fair to say, based on what Mr. Zimmerman said -- and this will be my last question -- that you made no effort to obtain information about all the Windemere sections in your preparation of this site plan and your preparation to testify today?
A. I was instructed that only Section III was what I needed to address.
Q. But your ten site visits over the years to some extent provided you with the ability to say, to your knowledge, there are homes built on the vast majority of the Windemere Sections, I, II, IV -- III and IV?
A. Yes.
MR. HOLZER: Okay. I think that's all the questions I have.
THE CHAIRMAN: Ms. West?
MS. WEST: One or two questions.

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FURTHER CROSS EXAMINATION
BY MS. WEST:
Q. Mr. Dietz, Exhibit 4, which you prepared, Petitioner's Exhibit 4, the information that's contained on that plan, where did you obtain that information? Who denoted the actual outline?
A. The bulk -- the bulk of it, I created. The notes are the notes that are put on, the basic notes that are required for a plan of this nature from the county.
Q. That would be the notes with regard to environmental, how the property is not subject to critical areas? Why don't you take a look at it? I apologize. Here, I'll slow it to you.
A. What was the note you were asking me?
Q. Note 2.
A. The property is not located in the Chesapeake Bay critical area.
Q. This wasn't based on any information you obtained from Mr. Rascoe as far as your conversation concerning JSPC regulations or anything?
THE CHAIRMAN: Counsel, is that all the notes or

just note two?
MS. WEST: As to anything that's on here.
A. The notes were not something that Mr. Rascoe -- well, repeat the question.
Q. What I am trying to determine -- let me back up again and see if I can rephrase the question.
I'm trying to determine what is the basis of your information or knowledge for actually creating what's been called an amended JSPC plan? Where did you get this information?
A. Mr. Rascoe, I asked Mr. Rascoe how to prepare a plan if I had no rules to follow, and he said take the record plat, compute the density for it, show what's left over. That was it.
Q. In fact, with regard to note two, the reference to the Chesapeake Bay critical area, was that even in effect at the time of the original Windemere subdivision approval?
A. No.
Q. The other notes, note three, with regard to roads and building, it was taken from the GIS county map, and

note four was just an acknowledgment that the Windemere Section III was originally approved by the county planning board and the date?
A. Yes.
MS. WEST: I have no further questions.
THE CHAIRMAN: Mr. Jablon, any redirect?
MR. JABLON: Yes, I do.
REDIRECT EXAMINATION
BY MR. JABLON:
Q. Mr. Dietz, in fact, you did submit a plan to DEPRM, did you not?
A. A perc plan, yes.
Q. What's the purpose of a perc plan?
A. A percolation plan. Two-fold. It goes along with a percolation application. It shows the county where to take perk tests for a viable septic field.
Q. What was the point of it?
A. In preparation for lot two, you have to have a viable septic field.
Q. So a plan that you prepared, you submitted to the Department of Environment showing the second lot proposed?

A. Yes.
Q. And asking for what?
A. Perk tests to be done, to establish a septic area for it.
Q. Did you get a response from DEPRM after its review?
A. Yes. They scheduled the perk tests. We did them.
Q. Did they approve it?
A. It was approved.
MS. WEST: Can we have a time frame?
Q. What time frame?
A. I have a copy of the perc plan with me,
Q. I didn't ask you that. What time period did you submit the perk tests to them let start with the application? When did you submit the application?
A. Probably the fall of 2002.
Q. And when did you get a response? As a matter of fact, let me show you a letter and ask you to identify the letter.
A. Yes. This is the response from the Department of

Environmental Protection.
Q. When was that?
A. June 3, 2003.
Q. What does it say?
A. A representative of this office, Claire M. Brunner, conducted soil evaluations on January 10, 2003.
Based on the evaluations and the master plan dated 5-12-03, approval will be granted for the installation of a private sewage disposal system.
Soil percolation tests will be valid for a period of five years from the date of the tests, approval letter or record plat, whichever is most recent.
Q. And that was done based on a plan you had submitted?
A. Correct.
MR. ZIMMERMAN: Can we have that as an exhibit? I will make it an exhibit if you don't.
MR. JABLON: I'm going to make it an exhibit. I just don't have copies of it. I believe that's going to be Petitioner's 15?
MR. CRIZER: Fourteen.

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MR. JABLON: Fourteen.
Q. And the plan that you submitted for the perk tests, you said you have a copy of it?
A. Yes.
Q. Can you get it?
MR. ZIMMERMAN: Off the record.
(Discussion held off the record.
Q. Can you identify the plan --
THE CHAIRMAN: So you're submitting this letter?
MR. JABLON: Yes.
THE CHAIRMAN: As No. 14?
MR. JABLON: Yes.
Q. You submitted this plan to DEPRM, is that correct?
A. Correct.
Q. The plan is dated October 10, 2002?
A. Correct.
Q. It's the perc plan of the Stepcich property, 3 Stonehurst Road?
A. Yes.
Q. Now, is this plan very similar to the site plan

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that's already been introduced into evidence?
A. Yes.
Q. It shows in yellow markings, orange markings, if you will, the outline of what?
A. That's the proposed lot two that's in orange.
Q. And that's what you submitted and the request?
A. Yes.
Q. A perk test was, in fact, done?
A. Yes.
Q. DEPRM came back, and then the letter speaks for itself, is that correct?
A. Correct.
Q. Did DEPRM ask you for any specific information to be placed on the plan, or was it normally required for a perk test to be conducted?
A. Perc applications, of course, yes, a plan has to be submitted because they do have design criteria for where a septic field can go, it has to be X-number feet of feet away from adjoining fields, has to be X-number of feet away from adjoining wells, X-number of feet away from existing buildings and property lines.

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MR. JABLON: No further questions.
THE CHAIRMAN: Same order, to keep the record state.
MR. ZIMMERMAN: Just a few.
RECROSS EXAMINATION
BY MR. ZIMMERMAN:
A. Mr. Dietz, just to clarify, both your original site plan or the petition for special hearing and your plan that you submitted to the DRC have references to the Chesapeake Bay critical area requirements, and this plan is not subject to them.
Am I understanding you correctly? Have I got it right? Do you have any references that the critical area requirement don't apply?
A. Yes. The Chesapeake Bay critical area only is required if you're withing 1000 feet of the bay.
Q. You know, don't you, those requirements, there were no Chesapeake Bay critical area requirements until 1985, do you know that?
A. Now, I do.
Q. But in any event, you were relating that part of

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your site plan to current requirements, correct?
A. Yes.
Q. Current critical area requirements,you're saying you're not subject to?
A. Correct.
Q. Now, with reference to your perc plan, you related it to -- and I'm looking at Petitioner's 15 -- you related it to the Loch Raven sub-sewer shed, is that correct?
A. The water shed that it is here, yes.
Q. What is the date of the relevant sub-sewer shed map that you looked at?
A. That, I do not know.
Q. Did you go back and look at the 1960 sub-sewer shed map?
A. No. Did not.
Q. Do you know if they even exist?
A. No.
Q. Did you try to relate it to the current sub-sewer shed?
A. That was my --

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Q. That's note one on Petitioner's Exhibit 15, right?
A. Yes.
Q. Relating to that sub-sewer shed?
A. Yes.
Q. Again, note two relates to the Chesapeake Bay critical area. We just talked about that. And the contours, note three on Petitioner's Exhibit 15, they are taken from -- I'm quoting your notes -- from Baltimore County GIS Tile 53-82, unquote. Yes?
A. Yes.
Q. That's a current tile?
A. Right.
Q. The contours are current?
A. Correct.
Q. They are not 1970 contours?
A. Correct.
Q. All right. Is it part of your job as a surveyor to have some knowledge about septic system requirements or do you just locate the system in a place that you think is probably okay and let DEPRM check it out?

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A. We work with DEPRM on each location. We show the limiting factors such as adjoining wells and septic systems and show areas that meet their requirements as to where the septic system could be placed, and they work with us on establishing the best place for that.
Q. You have enough information to know you don't put a septic system right on a well?
A. Correct.
Q. Now, looking at Petitioner's Exhibit 14, there's a reference to Title 35. Looking towards the bottom of the letter from Claire Brunner -- excuse me -- from J. Robert Powell, dated June 3, 2003 -- that discusses Ms. Brunner's soil evaluation. So the soil evaluations were done in 2003, correct?
A. Yes.
Q. And Title 35 that's referred to, towards the bottom of the letter, do you see that reference?
A. Yes.
Q. That's the current law, isn't it, or the laws of 2003 that she's referring to?
A. Yes.

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Q. Do you know whether or not DEPRM was reviewing the perk tests for compliance with the current regulations?
A. Yes, they were.
Q. There's no correspondence indicating that we are not worried about whether you comply with the current regulations, we are going to try to figure out what the regulations were in 1970?
A. The health department makes everything come in compliance with today's health code
Q. So forgive me, Mr. Dietz, but it looks like you're -- whether or not you intended -- you're kind of mixing and matching.
Were you're going to comply with the current regulations, you tell everyone proudly that you comply with the current regulations, but where you can't comply with the zoning regulations, you say, Oh, well, we'll go back thirty-five years and try to say that we're in compliance with the regulations thirty-five years ago. Do you see some irony in that?
MR. JABLON: Objection.

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THE CHAIRMAN: Tell you what. I know it's cross examination, and I know you can lead a witness, but that's sort of a whole kind speech.
How about you break it down and you ask him if he has a position as to what rules apply and did he use more than one set of rules and why did he use more than one set of rules? Make them questions, and let's see what he says.
MR. ZIMMERMAN: All right. Let me rephrase. I don't want to protract this, Mr. Chairman, really.
Q. At least we have seen in the last few minutes, in the documents that you submitted, the perc plan or the plan you submitted to the DRC for the special hearing, you purported or indicate it was not necessary to comply with the current Chesapeake Bay critical area requirements, currently, the sub-sewer shed, to the extent it should be identified currently, the contours that are current on the Baltimore County GIS tile, the current septic system regulations, everything is being reviewed for compliance with the current regulations, except for one thing from your point of view, the zoning.

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MR. JABLON: That's not a question. That's a statement.
MR. ZIMMERMAN: Let me finish.
Q. I am asking you, isn't that true?
THE CHAIRMAN: Is what true? You went on in at least five different things, Mr. Zimmerman.
MR. ZIMMERMAN: I didn't think it was that complicated.
THE CHAIRMAN: Tell you what. Maybe I can make things easier for you, and we'll get past this point.
Was there anything from the prior regulations that you were trying to satisfy?
Was there anything in the new regulations that you were trying to satisfy?
Which of those things were you using the old regulations? Which of those thing were you using the new regulations? If you can answer that.
THE WITNESS: On which plan?
THE CHAIRMAN: Mr. Zimmerman, pick a plan.
Q. On your plan for resubdivision that you submitted to the Development Review Committee, your plans submitted

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for -- I mean, your plans to resubdivide this property.
THE CHAIRMAN: Okay. Your plan to resubdivide the property.
A. The amended JSPC plan I prepared?
Q. Take that one.
A. That one, I combined -- you're right -- I combined the density calculations based on the zoning in place in 1970, and the notes address current data.
Q. Current regulations?
A. Current regulations.
THE CHAIRMAN: Does that answer your question?
Q. You couldn't figure out what regulations even existed back in 1970, correct?
A. Correct.
Q. In fact, now that it's been brought to your attention, you don't even have with you today a zoning map that shows whether or not the R.S.P. zone was in effect in 1970 on this property?
MR. JABLON: Objection. He doesn't have a zoning map, correct.
THE CHAIRMAN: He did testify that he

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investigated, and based on his investigation, that's what it was. If you want to bring in somebody that says it's not true, that's fine.
MR. ZIMMERMAN: All right. We'll have to do that. All right. I think that's all I have.
THE CHAIRMAN: Mr. Holzer?
MR. HOLZER: Yes.
FURTHER CROSS EXAMINATION
BY MR. HOLZER:
A. Mr. Dietz, isn't it fair to say you were just told that the zoning that existed in 1970, you were told by somebody in planning that that was the zone that existed, and you accepted it, isn't this correct?
A. No.
Q. Are you telling me that you actually saw a plan, a zoning map, that showed that this property at that time frame had the R.S.C. zone on it?
If you did, then tell me. I'll go either way with it. Either you saw it or on a plan or on a zoning map or somebody told you what it was and you accepted that. Which one?

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MR. JABLON: He testified to that three times.
MR. HOLZER: I'm sorry?
THE CHAIRMAN: I thought he said he looked at the zoning maps and that's what he saw, is what my notes say.
Q. Is that correct?
A. That is correct. I went to the zoning office and --
Q. You have answered the question. Now, on this exhibit, Petitioner's No. 15, the perc plan, I have two different questions to ask you that Mr. Zimmerman did not.
Is it fair to say that when I look at the perks that failed, you have five perks that failed and five that passed?
A. One, two, three, four, five, yes, five that failed and five that passed, correct.
Q. And the other thing that I just want to make sure I understand, on Petitioner's Exhibit 14, they are permitting a private sewage disposal system.
Does this, or do you know whether or not this is a sand mound system that they are permitting here?
A. It is not a sand mound system.

Q. They are permitting an in-ground regular system?
A. Correct.
MR. HOLZER: That's all I wanted to know. Thank you.
THE CHAIRMAN: Ms. West?
MS. WEST: Mercifully, no.
THE CHAIRMAN Mr. Jablon, do you have anything else for this witness?
MR. JABLON: No.
THE CHAIRMAN: Thank you, sir. Mr. Jablon,
MR. JABLON: Do you want to continue? It's up to you.
THE CHAIRMAN: Who do you have?
MR. JABLON: I have Mr. Martin. We plan to have Mr. Martin for at least forty-five minutes.
MR. HOLZER: There's no way, based on this gentleman that doesn't know anything, that we will be able to complete --
THE CHAIRMAN: Let's go off the record.
(Discussion held off the record.)
THE CHAIRMAN: Mr. Holzer?

MR. HOLZER: I've got a lady that might like to testify at this point.
THE CHAIRMAN: Mr. Jablon, do you have any problem jumping over to Mr. Holzer's case?
MR. JABLON: Not at all.
MR. ZIMMERMAN: At some point for informational purposes, could Mr. Jablon either produce Mr. Stepcich or indicate how long he's lived there so we can have some idea?
MR. JABLON: I can proffer that.
THE CHAIRMAN: Now?
MR. JABLON: Mr. Stepcich is the original owner. He's been there since 1970, lived in the same houses.
MR. ZIMMERMAN: I thought that would be helpful.
MR. JABLON: Let me proffer this also.
THE CHAIRMAN: Just one second. Mr. Zimmerman asked a couple basic questions about Mr Stepcich.
Mr. Jablon has proferred that Mr. Stepcich is the original owner of the property from 1970.
MR. JABLON: And he's lived there, and built his house there, ever since.

MR. HOLZER: I mean, if he's here, let him take the stand.
THE CHAIRMAN: Mr. Zimmerman asked could he just proffer it, and he answered.
MR. ZIMMERMAN: Mr. Holzer might want to cross examine.
THE CHAIRMAN: If you don't want to accept the proffer --
MR. HOLZER: If he's going to put on anything, I'd like for the applicant to testify. I have questions to ask him.
THE CHAIRMAN: Then I will allow you to withdraw the proffer and you do what you want later. Thank you, Mr. Zimmerman, for the attempt.
MR. HOLZER: Well, if you're not going to put him on, nothing comes in. If you're putting him on, I can cross examine. That's the rules.
THE CHAIRMAN: Mr. Holzer -- Mr. Jablon, just a second.
MR. HOLZER: I didn't expect to have her go on this quickly, so in order to give the Board some time, at

least to take some testimony --
MR. ZIMMERMAN: Maybe a three-minute recess?
MR. HOLZER: Since she's the only witness we are going to get to, we'll take three minutes?
THE CHAIRMAN: No problem.
(A recess was taken.)
THE CHAIRMAN: We're back on the record.
MR. HOLZER: Thank you.
THE CHAIRMAN: With Mr. Jablon's acquiescence as well as other counsel, we'll take a witness of order.
MR. HOLZER: Thank you very much. This is Adrienne True.

ADRIENNE TRUE,

having been called as a witness, was duly sworn, and testified as follows:
THE CHAIRMAN: Ma'am, your name, and tell us your address.
THE WITNESS: My name is Adrienne -- A-d-r-i-e-n-n-e-- last name is True -- T-r-u-e.
THE CHAIRMAN: Great name for a witness.
THE WITNESS: My address is 11 Windemere Parkway,

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Phoenix 21131.

THE CHAIRMAN: Mr. Holzer.

MR. HOLZER: Thank you, Mr. Chairman.

DIRECT EXAMINATION

BY MR. HOLZER:

Q. Ms. True, first of all, looking here at Petitioner's No. 15 which was the perc plan, for purposes of designating where your house is, am I correct where I indicate that it's the existing dwelling Number 11?

A. Yes, you are.

Q. You're at the corner of Windemere Parkway and Stonehurst Road, is that correct?

A. Right.

Q. While the site plan shows Vincent Chanski (phonetic), that's a predecessor of yours?

A. He's the gentleman I purchased it from, and I am the third owner. Mr. Dunkin the first one, first owner and builder.

Q. So there was a Mr. Dunkin, there was a Mr. Chanski, and yourself?

A. Right, along with my co-owner Kim Ward, of the

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Baltimore County Police Department

THE CHAIRMAN: Mr. Holzer, since there's a lot of other names here, can you mark that with her name so we know.

MR. HOLZER: I will X out, with permission from everybody, with the permission of everyone, on Petitioner's Exhibit No. 15, the word Vincent Chanski, I will cross that out and put A-d-r-i-a-n--

A. A-d-r-i-e-n-n-e.

Q. True?

A. T-r-u-e --

A. And Kim Ward.

Q. K-i-m?

A. Yes.

Q. Ward?

A. W-a-r-d. We're co-owners.

Q. When did you acquire the property, Ms. True?

A. February of 2003.

Q 2003?

A. Yes.

Q. What brought you to purchase this particular

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piece of property?

A. The first was that in the early sixties, approximately 1953, actually, when I was born, my parents purchased the property on the corner of Dulaney Valley Road and Long Green, and so that was the area with which I grew up. So it was always my dream to get back out to the same area.

Q. So were you familiar with -- I'm going to rephrase the question.

Are you familiar from your experience living in the neighborhood about the Windemere development and how it was developed to some extent?

A. When I was a child, it was developed, and I have actually been a resident of Baltimore County for about twenty years in a wonderful rowhouse community in Baltimore, in Towson, called Stoneridge.

And what made me actually decide to purchase this particular property was based on the knowledge that Windemere itself, knowing my past history from living out there, seeing it developed, that was my desire and goal to move into a property, into an area, that was very, very

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stable, that wouldn't be subdivided or developed, and I had some assurances that that was the case, just so you know the history.

Q. So from your standpoint, because Windemere had existed for a number of years, in terms of the open space on each of the lots, you decided that that's where you wanted to live, is that a fair statement?

A. Yes. I took a long time. I probably looked at fifty homes in Baltimore County, and decided upon this one.

And one of the questions that I asked the property owner, it was actually the Chanski's daughter, because he had passed away, the property had gone over to the children and they were selling it, and Mrs. Chanski -- I specifically said, Are those woods behind my property, are they -- is that Loch Raven? And she said, No, that's private property, so it can't be developed.

Q. Now, when you acquired your home -- you have given me some pictures and I will show them to Mr. Jablon first, which I'm sure you're familiar with.

THE CHAIRMAN: Off the record.

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(Discussion held off the record.)
Q. I'll hand you a packet of a number of photographs, can you identify -- first of all, tell us, did you take these pictures?
A. I did.
Q. Can you tell us approximately when you took them?
A. I believe I took them within the last two years.
THE CHAIRMAN: Are we going to put them in, Mr. Holzer?
MR. HOLZER: Yes.
THE CHAIRMAN: Can we mark them first and then she can describe them in whatever order you want.
MR. HOLZER: This is Protestants' No. 1, Protestants' No. 1A through -- well -- Protestants's No. 1B. Protestants' No. 1C. Protestants' No. 1D. Protestants' No. 1E, and Protestants' No. 1F.
Q. I have marked them 1A through F. Could you describe Protestants' 1A? Is that what it looked like when you acquired the property?
A. Generally. I had, you know, done some repairs and things from water damage.

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But generally -- as a matter of fact, I believe this was after I had done the repairs.
Q. Protestants' No. 1, when you acquired the property, I see there was some sort of wall that's depicted in the photographs. Can you tell us something about that wall?
A. I don't know the measurements, but it is a long retaining wall that goes from one end of the property in the rear all the way to the other, from a high to a low point.
And above the property, it's flat. Beyond that, it adjoins the Stepcich property. And below that is my lower portion of my back yard where both my dry wells are.
Q. Did you do an investigation to determine what purpose that wall serves?
A. Well, at first, I thought it was simply decorative, but I couldn't believe anyone would have gone to the expense to put a flagstone retaining wall in.
And subsequently to that, I had done some research and found the document explaining the purpose of the wall.

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Q. Which was what?
A. This was from Mr. Dunkin, the first owner of the property, and that was from 1962, June 8 of 1962, when he was developing the property. And because of the configuration of the land at the time, the water from the current Stepcich step property -- I don't believe Mr. Stepcich was there at the time -- but at that point, the water would come down, and there was no lower and upper level on my property, and twice, as it says or states in the letter, the dry wells washed out.
And so it was at great expense to Mr. Dunkin as opposed to the builder, he had to create an upper and lower level, put a very expensive retaining wall in.
And so that's what shows from left to right in the first, second, third and fourth pictures down to the section where there is no more retaining wall.
And at that point, I can show you some, where during a rain, actually what still occurs.
Q. Just so the Board can understand -- these are in order -- so Protestants' 1 starts at the left, Protestants' 2 extends to the right, Protestants' 3 and

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Protestants' 4.
Could you tell me approximately where the proposed dwelling for this lot will be to, the best of your knowledge?
A. To the best of my knowledge, it would be directly right off of my property, behind -- probably somewhere behind picture three.
Q. Which is the picture that has the steps from the lower level to the upper level?
A. Correct. May I add one another thing?
Q. Sure. Go ahead.
A. Since I certainly walk my property every day, it's a beautiful piece of property, consistently for the last four years when I walk that upper level, it is still always damp.
And my major concern, although I realize that this may or may in fact not be the proper zoning venue for this, but my major current on a personal basis are two.
Number one, I didn't think that anything could be developed because of the Baltimore County regulations and zoning laws that are currently in place.

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And number two, I am very concerned, that I would never be able to afford, should a property be there with runoff, sidewalks and roofs and all of that, the swale that's there currently doesn't protect my property, and it always remains damp.

Q. You do have two pictures, two remaining pictures. What do they depict?

A. That's where the retaining wall ends, where, water runoff still occurs. That would be to the right of the other pictures.

Q. I'm going to have you draw where the retaining wall is on this plan in a second, but let's take Protestants' 1F, which is the last picture. Is that a shed or something of yours?

A. Yes.

Q. That's near the water?

A. Yes. And this is property number nine Windemere right behind there.

MR. HOLZER: Just so the Board had some understanding.

Q. Now, if you could, because the Board can see the

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pictures and see the retaining wall, but we don't know exactly where it's located on this Petitioner's Exhibit No. 15, do you think you could take this yellow marker and just sort of -- I understand you're not an engineer -- but sort of draw where you believe it is from the high to low side.

A. Okay. Well, this is incorrect because -- oh, no, it's not. That is where the septic is.

The well is over here. So it would be from here down to approximately here, from high to low.

Q. If I can, I will put the "H" in ink, and the low, so the "H" means high retaining wall, the "L" means the low.

So it runs from the south corner to the west corner of your rear of your property, or rear of your house?

A. I'm not great on south, north, but --

Q. Here's the north arrow. So this is north?

A. Yes.

Q. So this is the southern rear part of the house? It curves around to the western rear of the house?

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A. Yes, or -- yes. Okay.

Q. Actually, Cloverland Farms is over here, so Cloverland is west of where you live?

A. Well, Cloverland -- this is Windemere. Then it goes out to Dulaney. Really, Cloverland is here, because that's where I grew up, right across the street from Cloverland.

Q. But you described where the retaining wall is. So one of your walls is the potential runoff from the proposed, new proposed lot, and the other was, as you indicated that you're concerned about, resubdivision of the lot, is that correct?

A. It's a major concern because when one purchases a property in Baltimore County, understanding that there are regulations in place to protect you, I mean, these laws weren't put on the books for no reason.

They were put on the books to retain a quality of life and somewhat of a, in certain places, a rural atmosphere that I am very lucky to say that I could afford, and I have lived in an urban environment for twenty years in Towson. It's a lovely community.

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It's not where I wanted to continue to live for many reasons. I chose this property with great research, and I believe the county should be protecting these laws that are currently on the books.

Q. You did testify when you bought the property, did you not?

A. Yes, I did. It was February of 2003, closer to four years ago.

Q. Do you have any concerns regarding the location of the proposed house on the proposed new lot?

A. Yes. I mean, even if this had been a recorded lot -- which it wasn't -- what occurs is -- and I make this statement because I was at another hearing where one of the gentlemen on the panel hearing the discussion on this had actually made the statement, he said, Well, I don't understand what the big deal is for subdevelopment because I drove out there and it's a nice big piece of property and you would never be able to see this house.

Well, that's really not the case according to the plans that are proposed, because there is a problem with this property in that even if it was 2.4 acres that was

subdivided, it's not like the house would be able to be in the center of the property.

This would be right next to my property, in between, I think, mine and number nine.

And the reason that they can't is because the house would have to be first and then above that a pumped-up septic system I believe, and then above that, the well. And that's because, historically, that whole area had problems, and that's why it was never developed into more than three or four, whatever it is, lots, and that's the reason.

Q. This is the opportunity for you to make any other comments that you would in regard to this proposal. Is it fair to say that you oppose the resubdivision?

A. It is quite fair to say that. The only thing I would particularly like to add is that I do not begrudge my neighbors. They are very nice people.

But the fact is that the proposed subdivision of their property would negatively affect any original purpose of moving to an open rural area, supposedly protected by the Baltimore County regulations and by

Baltimore County laws.

MR. HOLZER: Thank you. I have no further questions.

THE CHAIRMAN: Before we go to cross, I am not going to have you go back and forth. Let's stay on this side for direct questions. First, Mr. Zimmerman.

FURTHER DIRECT EXAMINATION

BY MR. ZIMMERMAN:

Q. Your house, if one were to look at all the plats, you're not in actually Section III?

A. No, sir. I'm in Section I. I'm one of the original stone houses that were developed, I believe, based on the plan, as kind of copying the Hampton community in Baltimore County.

Q. About how many houses are in Section I, do you know?

A. I'm sorry, I do not know that.

Q. Just to clarify, when you go out to your home, there are no signs that say you're now leaving Section I and entering Section III?

A. That would be correct.

Q. You don't have to show -- I mean, Windmere is really one community?

A. Windemere is one community. It was only -- well, I'm not an expert in this. It was just the developers, you know, I guess when developers purchased a whole area, they only develop it one section at a time.

Q. And you said you grew up in the area?

A. I did. I grew up in the white house on the corner of Dulaney Valley and Long Green, which would be approximately, if it's a half mile away.

Q. I mean, what years were those?

A. That was 1953 through 1968.

Q. But you still had friends and you did see people in the area?

A. We did. We knew the Willomains, the big house on the corner, and subsequent to that, I knew some other members of the community.

Q. Bernie Willomain?

A. Yes, and his children.

MR. HOLER: Just for the record, that's on Petitioner's No. 15. That's really not shown on here?

THE WITNESS: Right.

MR. HOLZER: It's at the entrance of Windemere Parkway and Dulaney Valley Road?

THE WITNESS: Right.

MR. HOLZER: On the north side?

THE WITNESS: Yes, it is. And I don't know that that was part of Windemere. That was an original older home.

Q. (MR. ZIMMERMAN) To the best of your knowledge, is this the first request by anyone to resubdivide one of the platted Windemere lots?

A. From Section III, yes. There have been, for example, there was a number nine was developed, but that was -- that was an original lot.

Q. That was the original lot, but doing what Mr. Stepcich is trying to do, as far as you know?

A. No, sir, I'm not aware of anything like that.

Q. For the record, what is your educational background?

A. Towson High School, Towson State, and I have been a pharmaceutical sales representative for approximately

twenty-seven years.
Q. You previously owned property in Towson?
A. I did. For twenty years, I lived at 959 Fairmount Avenue.
Most people know it from the development that's across the street called Towson Park, but we had a hundred fourteen homes.
I was president of that community association for many years, and that was called Stoneridge.
MR. ZIMMERMAN: Thank you very much.
THE CHAIRMAN: Ms. West?
MS. WEST: No questions.
THE CHAIRMAN: Cross.

CROSS EXAMINATION

BY MR. JABLON:
A. How big is your lot?
A. My lot is approximately three-quarters of an acre from Windemere Section I.
MR. JABLON: I have no further questions.
THE CHAIRMAN: Thank you, ma'am.
THE WITNESS: Thank you.

THE CHAIRMAN: Okay.
MR. HOLZER: Dr. Gonzales would be another property owner who would be another person I would be putting on.
THE CHAIRMAN: Since we're going to a second day, you talked to him about that?
MR. HOLZER: Exactly?
THE CHAIRMAN: I believe that's as far as we are going to get today. We are set in again for February 1st.
(Discussion held off the record.)
MR. JABLON: I'd like to get a copy of the original 1956 plan, if I could take that now?
THE CHAIRMAN: Any objection from anybody if he goes ahead and does that?
MR. HOLZER: No. I trust Mr. Jablon.
MR. JABLON: Off the record.
(Discussion held off the record.)
THE CHAIRMAN: Anything else administratively for today or in anticipation of the next time before we come back?
All right. That being the case, thank you all very much. We stand adjourned.
(Hearing adjourned.)
* * * * *

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DRAFTED LOTS
RC
§ 103.3
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IN THE MATTER OF THE THE APPLICATION OF JEFFREY L. KIRCHER, ET UX FOR A SPECIAL HEARING ON PROPERTY LOCATED ON THE NORTH-EAST SIDE BERNOUDY ROAD, 1750' SOUTHEAST OF C/L OF WEISBERG ROAD (1012 BERNOUDY ROAD) 7TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 96-405-SPH

* * * * * * * * *

O P I N I O N

This case comes before the Board on appeals filed by David Boyd, Marion Runkles, Ted Merchant, and the Weisburg Community Association, Protestants, and the Office of People's Counsel from the June 3, 1996 Order of the Deputy Zoning Commissioner in which the subject Petition for Special Hearing was granted. This case involves a special hearing in which the Board is being requested to approve the use of an existing undersized lot of record on which the Petitioner desires to construct a single-family dwelling, and an exemption of the compatibility review requirement on undersized lots.

Mr. James McKee testified on behalf of the Petitioners. He has been performing engineering and surveying services for approximately 23 years; and is a registered land surveyor. He indicated that he was familiar with the Baltimore County Zoning Regulations; however, after an extensive voire dire, the Chairman agreed that this witness could only testify as an expert on civil engineering matters and site planning, and, further, provide an opinion on the particular site plan which had been prepared. Petitioner's Exhibit No. 1 was admitted into evidence and described as the site plan prepared by Mr. McKee. He stated that there were

EXH 23

two lots involved, one of which was improved on approximately one acre, and the other lot was unimproved containing approximately 1.7 acres. Mr. McKee testified that the two lots have not been subdivided since 1955; and appeared to have been taxed separately, and were separate and independent of each other. The unimproved lot was heavily wooded and was about 200 feet away from any nearby dwelling. The subject property was serviced by private well and sewerage. Mr. McKee indicated that one of the properties fronts on Bernoudy Road with a dwelling; and the second lot parcel has a right-of-way to Bernoudy Road. He related to other homes generally in the area and of their varying lot sizes.

Additionally, he reviewed the zoning history of the property; and stated that none of the adjoining property owners were protesting the petition. He again reiterated his position that the two lots were clearly two separate and distinct parcels of land with no supportive systems between them. He opined that the parcels had always been owned by the same person, and that there had been no lot line adjustments; and that the tax records, Petitioner's Exhibit No. 3, reflected the properties as separate entities. A series of photographs (Petitioner's Exhibits No. 4A through 4G) were admitted into evidence and briefly described by Mr. McKee. The Petitioner did not testify, and that basically concluded the Petitioner's case-in-chief.

Mr. David Boyd, 1120 Bernoudy Road, testified in opposition to the Petition for Special Hearing. He submitted the customary Rule 8 papers required by this Board. Mr. Boyd opined that he lived

within 1,000 feet of the Kircher property. He has been president of the Weisburg Community Association for approximately 3 years. He testified that the community association had considered the request for the special hearing; and was opposed on the basis that if the exception were granted it would create a precedent in that others in the area would also request exceptions where smaller lots or undersized lots were concerned.

People's Counsel's Exhibit No. 2 was admitted into evidence which represented the 1,000 scale Baltimore County Zoning Map, 1996. Mr. Boyd stated that the area is essentially zoned R.C. 4; and is semi-rural in nature with a number of older homes in the area existing on less than 3 acres. The newer homes being constructed he believed to be on at least a minimum of 3 acres. He stated that there are heavily wooded areas in the community and that these are common in the area, and that the community association firmly believed that the development of the subject lot would be out of character and harmony with the rest of the area.

Marion Runkles, residing at 18200 York Road, also testified in opposition to the special hearing. The witness is secretary of the Weisburg Community Association and was authorized to speak against the proposal on the basis that approval of the exception would be detrimental to the general area of the membership, and the establishment of a precedent for smaller lot owners to build on undeveloped lots. The witness had owned a residence in the area since 1962 and, while admitting the presence of some older residences on smaller lots, stated that primarily most of the homes

were situated on larger parcels of land containing 3 or more acres. This concluded People's Counsel's case, and in lieu of oral arguments, the Chairman requested both attorneys to submit briefs by January 30, 1997 for the Board's review.

At issue in this case is whether or not the Petitioners can construct a single-family dwelling on an undersized lot, and that said lot is exempt from Section 304.2 of the Baltimore County Zoning Regulations which relate to compatibility requirements. The unimproved property itself consists of 1.7 acres (more or less), is zoned R.C. 4, is heavily wooded, and is approximately 200 feet from any nearby dwelling. In addition to the property in question, the Petitioners also own an adjacent lot fronting on Bernoudy Road. The parcel to be developed is located to the rear of the 1-acre developed property. If the unimproved lot is developed, access is to be provided along a 12-foot wide panhandle right-of-way easement, running along the south side of the lot fronting on Bernoudy Road.

While there is currently only one address (1010 Bernoudy Road) for both lots, testimony reflected that the Petitioners' lots were recorded as two lots of record in the 1950s; and have been taxed as separate entities. Based on testimony, the lots do appear to be separate and distinct entities, with no supported assistance between the two. The property is served by private well and sewerage. When the lots were recorded, a 1.75-acre parcel was an lot size area on which to erect an acceptable residential dwelling. In 1976, however, the zoning was changed to R.C. 4, which mandated

a lot size of no less than 3 acres. At issue, therefore, is the general applicability of a lot size in a current R.C. 4 zone. Protestants and People's Counsel have argued that any development currently proposed must follow 1A03.1 requirements as to the size of lot and density relating to the R.C. 4 development zones. Baltimore County Zoning Regulations Section 1A03.4B.1 recites:

> "A tract to be developed in an R.C. 4 zone with a gross area of less than 6 acres may not be subdivided, and a tract to be developed with a gross area of at least 6 acres but not more than 10 acres may not be subdivided into more than 2 lots (total), each of which must be at least 3 acres, except as otherwise provided in Subsection 103.3 or in paragraph 4 below."

People's Counsel argues that the County Council specifically limits development in such zones to provide an adequate septic area and wells on lots near the Baltimore County vital water resources. Therefore, a tract of less than 6 acres cannot be subdivided; and a tract between 6 and 10 acres can be subdivided into no more than two lots, each of which must be a minimum of at least 3 acres. Tracts of over 10 acres have .2 density per acre, with 3-acre minimum (unless clustering is elected). Therefore, with no evidence that the undeveloped parcels are legal lots, the 2.75 acres is a tract less than 6 acres and cannot be subdivided, and all development must follow the standards provided for in the Baltimore County Zoning Regulations. Sections 103.3 and 1A03.4B.4 also provide for two exceptions from area requirements for development in an R.C. 4 zone. People's Counsel and the Protestants argue that the subdivision does not meet the requirements for either exception and that the 1.75-acre and 1-acre

lots were created illegally because the site was not part of a recorded subdivision plat, and such deeds must contain language recognizing Planning Office approval, and to grant an illegal subdivision an exemption from current regulations is a violation of both the spirit and intent of the zoning regulations. Essentially, because the Petitioner does own less than 6 acres, they must be guided by the current regulations.

This Board in reaching its conclusions is drawn primarily to the legal issues present in this matter, since the factual aspects do not appear to be in controversy. Clearly the Rural Conservation zones initially came about in 1975 and were a definitive attempt on the part of the Baltimore County Council to protect the rural areas of the County, along with agricultural and watershed concerns. Factually, the R.C. 4 zones do contain the largest minimum acreage requirements when compared to all the other R.C. zones, and state quite clearly under BCZR Section 1A03.1 that a tract less than 6 acres cannot be subdivided.

The question before the Board is whether or not the lots in question fall under the R.C. 4 zone requirement or do R.C. 4 zones only have minimum lot sizes based on subdivision approval after the R.C. 4 zones took effect. As Counsel for the Petitioner has argued, the R.C. 4 zones do not have a minimum lot size requirement in the same manner as do the D.R. zones. D.R. regulations specifically state the square footage that may be contained within various zones for single lots (BCZR Section 1B02.3C.1). The R.C. zones only have minimum lot sizes based on subdivision approval

after the R.C. zones took effect.

It is the conclusion of the Board based on the testimony and evidence produced at the hearing that the Petitioners do own two (2) lots of record. Baltimore County Zoning Regulations state that a lot having an area or width less than that required by the area regulations may have a dwelling erected if the lot is duly recorded by deed prior to March 30, 1955, that all other height and area regulations are complied with, and that the owner of the lot does not own sufficient adjoining land to conform to the width and area requirements. This Board concurs with the Petitioner that nowhere in Section 1A03.4, which pertains to height and area regulations within the R.C. 4 zone, is there a minimum lot size specified for a lot of record such as the minimum lot size which exists in the D.R. zones. Clearly the intent of Section 103.3 of the Baltimore County Zoning Regulations, which apply only to R.C. zones, was to grandfather existing subdivisions against the density, open area and yard requirements of the various R.C. zones. There is no mention of a "lot area" minimum. Therefore, an existing lot of record would presumptively be buildable in the absence of the need for some variance from either setback or height requirements. The Board concludes that the adoption of the R.C. 4 legislation was not designed to penalize those lot owners who retained their properties open. Additionally, Section 1A03.4B.4 required that any lot or parcel with boundaries recorded with the approval of the Baltimore County Office of Planning & Zoning on or before December 22, 1975, and not part of an approved subdivision, may be approved for

subdivision in accordance with the regulations in force at the time of the recordation of the boundaries. The Board agrees that the subject parcel qualified under Section 1A03.4B.4 except that there was no explicit approval of the boundaries by the Office of Planning & Zoning. This section clearly does not pertain to record lots from subdivisions, but rather parcels and lots of record similar to the lot in question. Clearly, therefore, if a parcel was established without the legal approval of the County, given only by the Office of Planning & Zoning after the office was established, then such parcel would be without the benefit of the legal protection offered by this section. If, however, the parcel was established prior to the operation of the office or to review by the office of such parcels, it was by its very nature legal and should not be deprived of the protection of this section's provision because the County had not gotten around to establishing this particular office.

The Board also concludes that Section 304 of the Baltimore County Zoning Regulations is also applicable to this case as it relates to an undersized lot. There is no doubt but that the lot was recorded by deed prior to March 30, 1955, and that the suggested development of the undersized lot complies with all the other height and area requirements, and that the property owner by only owning 2.7 acres in total area cannot comply with enough adjacent property to conform to the present area requirements. In this case, the property owner does own adjacent property, but the size of the parcel would not meet, if combined, a 3-acre minimum

lot size. We do not agree with People's Counsel that the Petition should be denied. The wording of Section 304.2 clearly restricts only one kind of adjoining property that would otherwise legitimize the parcel and not make the undersized parcel properly sized. The Board concludes that a minimum lot size of three (3) acres is applicable to the parcel, and, therefore, the parcel does meet the conditions imposed by Section 304, and must be considered an undersized lot. Additionally, the Board believes that the compatibility requirements of Section 304 have been satisfied since any dwelling constructed on the lot would be difficult to see from neighboring properties, coupled with the fact that the adjoining smaller parcels are buffeted by a substantial number of trees located on the parcel. It is evident to the Board that compatibility provisions of Section 304 were designed primarily to address smaller lots in residential subdivisions where new dwellings would be substantially abutting right against adjacent properties. The Board will, however, impose certain restrictions in its Order.

O R D E R

IT IS THEREFORE this 12th day of May, 1997 by the County Board of Appeals of Baltimore County

ORDERED that the Petition for Special Hearing to approve the use of an existing undersized lot of record for the construction of a single family dwelling be and is hereby **GRANTED**; and it is further

ORDERED that said undersized lot of record is exempt from the

compatibility requirements of Section 304.2 of the Baltimore County Zoning Regulations, and as such, the Petition for Special Hearing is hereby GRANTED, subject to the following restrictions:

1. Prior to the issuance of any permits, the Petitioners will be required to set aside an additional 8-foot wide easement along the existing 12-foot wide easement located on the south side property line of 1010 Bernoudy Road to provide the minimum required 20-foot wide panhandle access to the subject lot; and

2. When applying for a building permit, the site plan filed must reference the restrictions of this Order.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence M. Stahl, Acting Chairman

Margaret Worrall

Charles L. Marks

MRP SUB
GRADING PERMIT
§ 26-216(C)
VESTING

IN THE MATTER OF RIDGE VIEW /PDM VII-687 WORTHINGTON HEIGHTS ORGANIZATION, INC. -DEVELOPER W/END OF PRIVATE DRIVE, WEST OF WORTHINGTON HEIGHTS PARKWAY 8TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT RE: MINOR SUBDIVISION APPROVAL	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 96-136-M

* * * * * * * * *

O P I N I O N

This case comes to the Baltimore County Board of Appeals based on an appeal of the approval of a minor subdivision plan known as Ridge View. The minor subdivision approval was granted to Worthington Heights Organization, Inc., by Donald T. Rascoe, Development Manager, Baltimore County Department of Permits & Development Management (PDM), by letter dated December 2, 1996. The Appellants filed a timely appeal to this Board on December 22, 1996. A hearing was conducted by the Board on June 26, 1997.

Mr. Douglas Carroll appeared pro se representing the interests of the Appellants. G. Scott Barhight, Esquire, represented the Developer. Both parties made brief opening statements. Mr. Barhight initially offered a "Motion to Dismiss" based on Section 26-215(e) of the Baltimore County Code, which states: "No appeal shall be allowed from plat approval." Mr. Barhight asserted that the subject property was a minor subdivision that had been properly approved, that the deeds were recorded, and grading permits had been obtained. He argued that, not only was the subdivision recorded, but it was also vested. The Board took the Motion under advisement, until the conclusion of the hearing.

Mr. Carroll stated that he was representing himself and the four other appellants. He initially attacked the Developer's request for dismissal on the basis that Section 26-215(e) refers to

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a dismissal of a proposed plan that has included a public hearing. He stated that none of the Appellants had had the opportunity to express their comments or disapproval of the minor subdivision; and that a community input meeting was required before minor subdivision approval could be granted.

The subject property consists of 19.524 acres and is currently zoned R.C. 4, located in the vicinity of Cuba Road and Worthington Heights Parkway in Baltimore County. The minor subdivision plan consists of three lots and a conservancy area of 13.73 acres. Mr. Carroll opined that he owns 64 acres south of the subject property which was downzoned during the most recent Comprehensive Map Process from R.C. 4 to R.C. 2. He stated that, based on his analysis of the timeframe, the minor subdivision was "pushed" through the County's minor subdivision process to meet the deadline for approval under the R.C. 4 zoning by one day. He further stated that the property was not vested according to State law since there had been no work performed on the property itself. He also stated that there are no notes concerning the greenway, that the public right-of-way has not been addressed, and that there were other difficulties also present concerning the distances between wells and septic fields. He testified that it was his understanding that the current residents need to secure a 130-foot distance between the well and septic field. Mr. Carroll testified that, on the subdivision approval, there are two situations where the septic fields are only 100 feet from wells. He stated that one of the current residents, Gail Parker, and the conservancy area were not protected due to the change from 130 feet to 100 feet. Also present was a dispute relative to the right-of-way for one of the

Appellants (Robert Woolfe) as it pertains to the approved subdivision plan.

Mr. Barhight offered his case in support of the minor subdivision approval, initially citing Section 26-168 of the Baltimore County Code defining a plat:

> "Plat means the graphic representation of the development prepared pursuant to the approved plan for the purpose of recording in the land records of the County."

Mr. Barhight called Mr. Guy C. Ward as his first witness. The Developer's Exhibit No. 1 was introduced into evidence representing Mr. Ward's resume which was reviewed with Mr. Ward as to his expertise in land planning and environmental specialties. He stated that he held degrees in Agronomy and Horticulture from the University of Maryland at College Park and was licensed by the State of Maryland in 1992 as a Registered Environmental Sanitarian, and in 1993 as a Maryland Forest Conservation Act Qualified Professional. Both licenses remain in effect. Mr. Ward opined that he has also served as an Environmental Sanitarian for the Baltimore County Department of Environmental Protection & Resource Management (DEPRM) from 1990 through 1993. He is presently associated with McKee & Associates, Inc., as a Project Manager Associate, Hunt Valley, Maryland, with responsibilities in land layout, design preparation, and planning processes with regulatory agencies for land development. He essentially oversees land development and has been engaged in 30 to 40 land development projects. He stated that he was the project manager for the site involved in this hearing (Ridge View). Mr. Ward related his involvement in this Development Plan, which he had prepared and later submitted to Baltimore County Permits & Development

Management on September 17, 1996. The Plan was reviewed by that Department, returned to him, and an Amended Plan was submitted on October 26, 1996. Additional comments were made by PDM, and the Plan was resubmitted on November 22, 1996. He stated that the minor subdivision plan was approved by PDM on November 27, 1996, and by DEPRM on December 2, 1996. Mr. Barhight introduced Developer's Exhibit No. 2 into evidence, the approved subdivision plat of Ridge View.

The Developer's Exhibit No. 3 (A, B, C, and D) was introduced reflecting recorded deeds and that three lots and a conservancy area were recorded:

3A - Conservancy area, Ridge View, A Minor Subdivision
3B - Lot 1, Ridge View
3C - Lot 2, Ridge View and
3D - Lot 3, Ridge View, all of which were part of the approved minor subdivision.

The deeds were all dated November 26, 1996. Mr. Ward testified that he was well-conversant with the County's approval process for minor subdivision approval, and that compliance was performed in every area. He stated that the property was zoned R.C. 4 when the site was approved; and that is why the conservancy area was created by Developer's Exhibit No. 3A.

He further testified that Baltimore County's Department of Permits & Development Management had issued a building permit (Developer's Exhibit No. 4) on November 27, 1996 to "grade 10,000 sq. ft. of disturbed area for driveways for future single-family dwellings. Permit to expire 2 years from date of issuance."

On cross-examination, Mr. Ward was questioned by Mr. Carroll as to his previous work experience in R.C. 4 zones and conservancy areas. Mr. Ward acknowledged previous experience, but could not be

specific as to the exact projects. Mr. Ward confessed that Ridge View under the Development Plan consisted of four deeds for a 19-acre parcel, consisting of three single-family building lots plus one conservancy area. Mr. Carroll questioned Mr. Ward relative to Council Bill No. 113-92, enacted by the Baltimore County Council on June 1, 1992, Section 1A03.5 therein (Performance Standards for Rural Cluster Development); and, in particular, the ownership and control of the conservancy area. Mr. Ward acknowledged there is no remaining density on this property and that the conservancy area could not be used for dwelling purposes. Mr. Ward further stated that he had full knowledge of the downzoning process and that this property had been considered as a priority project. Mr. Ward acknowledged that the effective date of the Comprehensive Zoning Map was December 2, 1996; and that time constraints were important since the subdivision approval had to be secured by November 27, 1996 because of the Thanksgiving holiday weekend. Mr. Ward stated that he may have made several telephone calls to get the various reviews completed.

Mr. Carroll referenced comments concerning the greenway easement and the 100-year floodplain. Mr. Carroll queried Mr. Ward concerning future development and a right-of-way, and if any right-of-way would require future widening. Mr. Ward acknowledged no comments in his notes concerning this matter. Questions were also raised by Mr. Carroll concerning existing wells, and that 100 feet existed between the Scotts' well and the septic fields. Mr. Ward stated that comments had been received from Gail Parker during a second review of the project reflecting 130 feet between the well and septic tanks only for Lot 3 because of the adjacent property.

Mr. Ward confirmed no grading on the site as of the date of this hearing.

Mr. Carroll questioned Mr. Ward relative to a logging road that proceeded through Lot 2 to the Woolfe property. Mr. Carroll referenced Liber #2474, Folio 566, noting a 50-foot right-of-way through this area and questioned Mr. Ward as to the number of times this right-of-way crosses a 25-degree slope.

On redirect, Mr. Barhight confirmed with Mr. Ward that R.C. 4 lots require 1 acre of land, and that all three lots met this requirement. Mr. Ward stated that all wells met both County and State requirements.

Since Mr. Carroll was representing himself pro se, the Board permitted him to express his views. His primary objection concerned:

- The failure to have a community input meeting
- Planning Board intent was not to have property developed in this manner
- No grading has been done and substantial grading must be performed before the property would become vested
- Public right-of-way had been compromised
- Septic fields were too close to existing wells and would pose a public health issue
- The conservancy area is not protected because it is represented as a fourth lot which has no density, and it was his belief that there might be an application for density in the future
- Objections were also raised relative to events occurring prior to the plat approval

Mr. Jeffrey Woolfe was called as a witness for the Appellants. He resides at 1609 Falls Road and owns property adjacent to the building site. He indicated that there was a road which provided a right-of-way to his property from Worthington Heights Parkway no shown on the plat. He stated that his father had purchased the property in the mid-1950s from a Mr. Lusk. He stated that there

had been a verbal agreement with Mr. Lusk concerning a right-of-way that was originally allowed, with Mr. Lusk cutting in a new right-of-way that was 40-feet wide. He stated that one-half of the right-of-way is now in the conservancy area which cannot be used as an easement. He admitted to the presence of no written agreement. Mr. Woolfe acknowledged that Mr. Lusk sold the property in 1996 and that any right-of-way that was deeded is clearly shown on the plat; and that the oral agreement concerning any other easements is not recorded.

On rebuttal, Mr. Barhight offered a letter into evidence from himself dated May 21, 1997 to Arnold Jablon, Director of the Department of Permits & Development Management, requesting confirmation of vested rights for this subdivision (Developer's Exhibit No. 5). Also submitted was Developer's Exhibit No. 6, response letter from Michael J. Kellman, Planner II, of Zoning Review, dated May 30, 1997, confirming Mr. Barhight's interpretation of the vesting of the minor subdivision.

Mr. Barhight offered himself as a witness to explain and testify as to the methodology addressed in the vesting of the minor subdivision. He stated that State law and County law are consistent; however, they deal with two different issues. He further stated zoning is not vested, but that deeds recorded and approved are of record and are vested.

Both sides concluded their case with brief closing statements. Mr. Carroll requested an open deliberation and was advised by the Chairman that open deliberation was neither required for this decision nor would it be appropriate, and indicated that an opinion would be rendered at a future date.

The provisions for minor subdivisions are to be found in the Baltimore County Code, Section 26-171, "Limited Exemptions," with the definition of a minor subdivision being: "A development with no public works agreement, or (2) a residential development with a public works agreement involving only road widening."

The responsibility of this Board after careful review of the testimony and evidence is to determine whether or not the Appellant has met the burden of proof to determine that the Department of Permits & Development Management's approval of the Ridge View minor subdivision and plan violated Baltimore County law. The testimony and evidence clearly show that the 19.5-acre property was originally owned by Alvina P. Lusk and conveyed to Worthington Heights Organization on August 24, 1994. On September 17, 1996 Worthington Heights Organization subdivision conservancy and minor subdivision plan, to be known as Ridge View, was submitted to Baltimore County for approval. At this time, the 19.5 acres was presented as a forest conservancy area consisting of 13.732 +/- acres with three lots compatible to the requirements for single-family dwellings. The plan moved through the County process, with final approval being granted on November 27, 1996 by PDM, and subsequently by DEPRM on December 2, 1996. When the Developer submitted his minor subdivision plan, the subject property was zoned R.C. 4. Under the Comprehensive Zoning Map Process, it was downzoned to R.C. 2. The latter zoning became effective on December 2, 1996. However, on November 27, 1996, the Developer secured a building permit from PDM (Developer's Exhibit No. 4). Developer's Exhibit No. 3 (A through D) clearly show that the deeds to the three lots and conservancy area are dated November 26, 1996

with the minor subdivision plan attached to each deed.

Section 26-216 of the Baltimore County Code "Time Limits for Validity of Subdivision Plats," subsection (c)(1) states:

> "A subdivision, section, or parcel thereof is hereby defined as developed and is therefore considered to be vested if any of the following has occurred with respect to such subdivision, section, or parcel:
>
> (1) Building permits have been issued; or
>
> (2) Substantial construction on required public or private improvements has occurred on such subdivision, section, or parcel pursuant to the applicable regulations and requirements of public works."

Based upon the facts, the Developer properly vested its rights in the subdivision plan by obtaining the building permit, and the plan was approved prior to the reclassification of the property from R.C. 4 to R.C. 2. While the Appellant may feel that the community input meeting should have been held to provide public input as to the proposed plan, no such provision is required by the Baltimore County Code or zoning regulations, and while the Appellants may feel aggrieved by the movement of the subdivision process through the system, nevertheless the Developer has the right to protect their interests in timely fashion and in a manner consistent with the law.

It is the further conclusion of the Board that the Developer has complied with the requirements set forth under Baltimore County Bill No. 113-92 concerning agricultural preservation and that Baltimore County did not act in an arbitrary, capricious, discriminatory or otherwise illegal manner in approving the minor subdivision development.

In light of the fact that the subdivision plan is proper and

has met Baltimore County law and regulations, the Developer's Motion to Dismiss is moot.

For the reasons stated above, the Board will affirm the November 27, 1996 approval by the Department of Permits & Development Management of the minor subdivision and conservancy area known as Ridge View.

O R D E R

THEREFORE, IT IS THIS 24th day of September, 1997 by the County Board of Appeals of Baltimore County

ORDERED that approval of the subject minor subdivision plan be and is hereby **GRANTED.**

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Charles L. Marks, Acting Chairman

Lawrence M. Stahl

Donna M. Felling

vested rights
rescissinn of permit
Section 103.1
see Sec. 502.3

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO James E. Dyer Date September 24, 1979

FROM Office of Law

SUBJECT Application of Setbacks and Procedure for Building Permits Approved in Error

You requested our advices in regard to the following facts and issues.

FACTS:

A developer has applied for building permits for dwellings on Lots 13, 14, Block A, Lots 16, 17, and 18, Block B, Section 5, Ravenhurst. On Lot 14, construction is on-going, and the house frame is up. The developer has also applied for a variance on Lots 16, 17 from the strict application of the setback requirements in existence on January 21, 1976. He has signed contracts of sale for the construction of dwellings on Lots 13 and 18, respectively.

You advise us further that the approvals were based upon Section 5 being included within the boundaries of the preliminarily approved plan, dated March 9, 1966, and tentatively approved by County agencies in July, 1966. Upon rechecking, you advise us that it was found that preliminary approval did not include the entire property boundaries indicated on the plan, and parcel 5 on which the lots now appear was not included in the 1966 approval. Lots 13, 14, 16, 17 and 18 were first approved, preliminarily, on the final plat of Section 5, Ravenhurst, dated January 21, 1976. Finally, you advise that there is no problem with regard to lot area, or with the overall density of this site.

STATUTORY LAW:

Section 103 - APPLICATION OF ZONING REGULATIONS [B.C.Z.R. 1955].

103.1 -- These Regulations shall apply as of the date of their adoption but the provisions pertaining to use, height, area and density of population shall not apply to any development, subdivision or parcel of land, the preliminary plan for which was originally submitted to the (then)

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Baltimore County Planning Commission, 1/ (now Planning Board) and approved or tentatively approved (including any approval made subject to any condition or conditions) under the then existing official procedure in Baltimore County, prior to the adoption of these Regulations. 2/ The zoning regulations applicable to any such development, subdivision or parcel of land as aforesaid shall be the zoning regulations in effect at the time such plan, as aforesaid, was originally submitted to the Baltimore County Planning Commission.

ISSUE:

Our advices have been requested in regard to providing an interpretation as to the following:

1) The general application of paragraph one (1) of Section 103.1 of the Baltimore County Zoning Regulations, as that section applies to all subdivisions; and

2) The manner in which paragraph one (1) of Section 103.1 specifically applies to Lots 12, 13 and 14 Block A; Lots 16, 17 and 18, Block B, Section 5, Ravenhurst; and

3) Whether or not building permits Nos. 10381 through 10385 - NR were properly approved for dwellings on said lots and whether they are revocable?

DISCUSSION:

1. Re: General application of paragraph one (1) of Section 103.1 of the Baltimore County Zoning Regulations, as it relates to all subdivisions.

Absent any statutory protection, land included in a plat approved by the Planning Board and recorded, is as vulnerable to changes in the zoning regulations as is all other land in the County. In effect, the mere delineation of lots on a map of subdivision filed, after approval by the

1/ Thus (comma) in Resolution; November 21, 1956.
2/ B.C.Z.R. 1955, adopted March 30, 1955.

Planning Board, carries with it no guaranty that each lot or parcel will be sufficient in itself, in view of the possibility of zoning change, to be built upon when the time comes to do so. As a consequence, the conclusion is almost universal that, apart from statute, a developer has no vested rights relating to a change of zoning affecting land in an approved subdivision. Moreover, legislation changing the zoning requirements is in no sense retroactive legislation. Unless protected by statute, the filing of an approved subdivision plat does not establish a nonconforming use of the platted land which protects it from subsequent zoning changes; no right to the continuance of an existing zoning classification is gained by preparation, and preliminary works, however extensive. In brief, relief from subsequent zoning changes will not be afforded a subdivider, without the aid of statutory law, see Anderson, American Law of Zoning, Section 23.23 "Effect of approval on power to rezone", pp. 96, 97, 98.

Maryland case law is in fundamental agreement with the proposition that the mere approval or even recordation of a subdivision plat, without statutory intervention does not insulate the plat from further zoning changes. In Rockville Fuel and Feed Co. v. City of Gaithersburg, 266 Md. 117 (1972), the Maryland Court of Appeals held that a zoning case must be decided upon the law applicable at the time a case is before the Court, in the absence of intervening vested rights. Thus, a property owner has no absolute right to the zoning or the permitted uses unless he obtains a vested right in the use. Vested rights occur when the property owner:

1. Obtains a building permit or occupancy certificate; and

2. Proceeds under the permit to exercise his rights on the land by a substantive beginning to construct, so that the neighborhood may be advised as to the intended land use.

Earlier in Rupp v. Cline & Sons, 230 Md. 573, 578 (1963), speaking for the Court of Appeals, Judge Horney enunciated the test as to a vested right as follows:

> a manifest commencement of some work or labor on the grounds which everyone can readily see and recognize as the commencement of a building...begun with the intention and purpose then formed to continue the works until completion of the building.

Other cases reaching the same conclusion that was reached in Rockville Fuel and Feed Co., supra are Stewart Petroleum Co. v. Bd. of County Comm'rs of St. Mary's County, 276 Md. 435 (1935), County Council for Montgomery County v. District Land Corp., 274 Md. 691 (1975), and Mayor and Council of Baltimore v. Crane, 277 Md. 198 (1976). In discussing the effect of subdivision approval on the power to rezone, attention must be focused on the recent case of WSS Com v. TKU Associates, 281 Md. 01, 376 A2d 505 (1977). There, it was held that irrespective of the dedication of valuable rights of way and expenditures of large sums of money in connection with its subdivision plan, a property owner did not obtain vested rights in a prior zoning classification where nothing in the subdivision regulations guaranteed that the project would be approved.

In interpreting the proper application of Section 103.1 of the Baltimore County Zoning Regulations, it is important to recall that Chapter 310 (S.B.556) of the Public Local Law of 1955 enacted by the General Assembly and effective June 1, 1955, reconstituted the then existing Baltimore County Planning Commission as the Baltimore County Planning Board. 3/

Paragraph one (1) of Section 103.1 of the Baltimore County Zoning Regulations, in essence, provides that zoning regulations ordinarily apply as of the date of their adoption. The ordinance, however, also provides that current minimum restrictions pertaining to use, height, area and density shall not apply to any subdivision of land, the preliminary plan for which was originally submitted to the Baltimore County Planning Commission, and was approved or tentatively approved under what was, at the time of subdivision, the effective zoning regulations. A parenthetical expression, i.e. (now Planning Board), however, is used to refer to the current Planning Board. The question thus arises as to whether or not the legislative intention was to extend the benefit of Paragraph one (1) of Section 103.1 only to those plats submitted and approved by the Baltimore County Planning Commission; or, whether that intention was to extend the benefit of Paragraph one (1) to plats also approved by the Planning Board. As the legislative intention is not clear from the face of Paragraph one (1) of Section 103.1, there is a sufficient

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3/442. There shall be an Office of Planning, the head of which shall be a Planning Board...

478. The existing Planning Commission created by resolution under the Enabling Act of the State of Maryland contained in Article 66B of the Annotated Code of Maryland (1951 Edition, as amended) shall be and it is hereby reconstituted in accordance with the provisions of this title (effective June 1, 1955).

basis, in order to determine that intention, to resort to the canons of statutory construction, cf., Sands' Sutherland Statutory Construction, Vol. 02, Section 46.01 "The Plain Meaning Rule," p. 48. Among those canons of construction, in the canon that, where statutory language is ambiguous or uncertain, a contemporaneous construction may be resorted to as an aid in ascertaining the legislative intention; furthermore, the interpretation of administrative officials should not be disregarded except in the most demanding of circumstances, see City of Baltimore v. Machen, 132 Md. 618, 104 A. 175 (1918). Professor Sands in his edition of Sutherland Statutory Construction notes:

> Long continued contemporaneous and practical interpretation of a statute by the executive officers charged with its administration... constitutes an invaluable aid in determining the meaning of a doubtful statute Volume 2A, Section 49.03 "Contemporaneous and practical interpretation."

The interpretation that Paragraph one (1) of Section 103.1 is applicable also to subdivision plats submitted and approved by the Planning Board, is of long standing duration. It is currently applied to approvals by the Planning Board, and has been so applied since the beginning of the Board. Its application is in excess of twenty (20) years standing. In this context, it should be pointed out that contemporaneous interpretations ranging in duration from as long as seventy (70) to as short as five (5) years have been found to have established the legislative meaning, see Sands ibid, Section 49.07 "Duration of contemporaneous and practical interpretation." Moreover, where a contemporaneous interpretation has stood unchallenged for a considerable length of time, as in the case here, it is regarded as of great importance in arriving at the proper construction of statutory law, see Sutherland, ibid, Section 49.07.

Any ambiguity contained in Paragraph one (1) of Section 103.1 as to whether or not it applies to plats approved by the Planning Board as well as the Planning Commission has been resolved by the administrative determination that it has application to Planning Board approvals. This conclusion meets the test as set out by Sutherland as to whether or not it is proper to apply the principle of contemporaneous construction:

> The conclusiveness of a contemporaneous and practical interpretation will depend upon a number of additional elements that give efficacy to the rule. In general, these elements are: (1) that the interpretation

originated from a reliable source; (2) that the interpretation was made at or near the time of the enactment of the statute, and (3) that the interpretation has continued for a long period of time and received wide acceptance and following. Where these factors are present the vagueness usually surrounding the other aids of construction are not present, and therefore the rule serves as one of the most definite and reliable sources of statutory meaning. Sutherland, ibid, Vol. 2A., Section 49.04 "Probative force," pp. 235-236.

In light of this test, the administrative interpretation is proper that Paragraph one (1) of Section 103.1 is currently effective as to plats approved by the Planning Board. Consequently, the zoning regulations insofar as they relate to use, height, area, and density applicable on the development of any plan of subdivision, are the regulations in effect at the time the plan was originally submitted to either the Planning Commission or the Planning Board. As a result of this intervention of statutory law, an approved or tentatively approved plan of subdivision, relative to zoning restrictions concerning use, height, area and density, as of the time of its submissions, is insulated from further zoning changes.

The administrative interpretation of Paragraph one (1) of Section 103.1 that it insulates approved subdivisions, relative to minimum restrictions, from further zoning changes is corroborated by Section 103.3 of the Baltimore County Zoning Regulations, added to Section 103 by Bill No. 98-75. Section 103.3 provides that in any rural conservation zone, a recorded subdivision plat approved by the Commission or Board is insulated from further changes relative to residential densities, lot lines, yards, and open space. Further, if an approved plan does not indicate densities, lot lines or open space, they may be established or situated only in accordance with standards prescribed and in force at the time of lot recordation.

2. Re: Application of Paragraph one (1) of Section 103.1 to Lots 12, 13, 14 Block A, Lots 16, 17 and 18 Block B, Section 5, Ravenhurst.

Applying Paragraph one (1) of Section 103.1 to the preliminarily approved plan for Ravenhurst approved July, 1966, and excluding Section 5, as to the plan, use, height, area and density restrictions are those restrictions which are effective as of the time the plan was submitted to the

Planning Board for approval. The plan's approval, insofar as those restrictions are concerned, resulted in insulating the lots platted on the plan from further zoning changes. In the facts at issue, Lots 13, 14 Block A, Lots 16, 17, 18, Block B, Section 5, Ravenhurst were first approved on January 21, 1976. As to those lots, and with reference to the minimum restrictions applicable to use, height, area and density in effect in 1966, Paragraph one (1) of Section 103.1 does not establish a nonconforming use of the platted land. Consequently, unless, in reliance on the 1966 restrictions, there was a substantial beginning to construction, or intervening rights, there would be no vested right as per Paragraph one (1) of Section 103.1 to see applied the minimum restrictions as to those lots, except in conformity with the zoning regulations effective January 21, 1976.

3. Re: Propriety of approval of Building Permits Nos. 10782 through 10385-NR on Lots 12, 13, 14, Blocks A, Lots 16, 17 and 18, Block B, Section 5, Ravenhurst, and possible cancellation thereof.

Lot 12, Block A, Section 5, Ravenhurst is not in the ownership of the developer, Kirch Homes, Inc., as per information received from Mr. Kirch. As to Lots 16, 17 Block B, Section 5, the developer is applying for a variance from the strict application of the side yard setbacks as they existed as of January 21, 1976. Consequently, as there is no dispute that the 1976 setbacks requirements are applicable as to those lots, they need not be discussed at great length. The developer has construction out of the ground on Lot 13, Block A, Section 5, Ravenhurst. As determined by the test set out alone in Rockville Fuel & Feed Co., supra there is manifestly some work on the ground which is readily visible, and as to that lot, the developer has a vested interest to continue to develop in conformity with the zoning specifications as they existed as of January 21, 1976. No attempt should be made at revoking that building permit regardless of the assertion that it was issued in error.

Relative to Lots 13, Block A, and Lot 18, Block B, Section 5, Ravenhurst, contracts for construction of dwellings on those lots, respectively, have been signed by the developer and purchasers of those lots. On these facts, the Courts have held that where, as here, successors in title to a subdivider, in reliance on the approval of the final plan and recordation of the final plat thereof have acquired their respective interests as good faith purchasers their consent is necessary before approval of a plat or building permit can be rescinded, see Stoner v. Planning Board of Agawan, 368 Mass. 209, 266 NE2d 891. Accordingly, the consent of the contract

purchasers as well as the holders of mortgages on those lots would seem to be necessary prior to recission, see also Brigham v. Planning Board of North Reading, Mass. 285 NE2d 408. As it is highly unlikely that subdivision lot purchasers as well as their mortgagees would consent to a recission of the approved subdivision plan, or permits issued in reliance thereon, rescission of the approval of the final plat or permits is not recommended.

3A. Possible cancellation of permits.

As to the building permits relating to Lots 16, 17, as there is neither a substantial beginning to construct, nor intervening rights of purchasers or their mortgagees, these permits could be revoked. However, as the developer has applied for a variance from the strict application of the zoning regulations, as they existed January 21, 1976, the permits should not now be cancelled. Rather, it is suggested that all parties await the determination of the Zoning Commissioner on the petition for variance.

As to the building permits relative to Lots 13 and 18, intervening rights of good faith purchasers and their mortgagees are now extant; irrespective of the original error in issuing the permits not in conformance with January, 1976 zoning regulations; no attempt should be made at revocation. As there is a "frame" up on Lot 14, vested rights have intervened and the permit cannot be revoked, cf. Town of Berwyn Heights v. Rogers, 228 Md. 271, 179 A2d 712.

CONCLUSIONS:

1. Apart from statute, a developer has no vested rights relating to a change of zoning affecting land in an approved subdivision

2. Pursuant to statutory authority, the zoning regulations insofar as they relate to use, height, area, and density applicable or the development of any plan of approved or tentatively approved plan of subdivision, are the regulations in effect at the time the plan was originally submitted to either the Planning Commission or the Planning Board.

3. As a result of the intervention of statutory law, an approved or tentatively approved plan of subdivision, relative to zoning restrictions concerning use, height, area, and density, as of the time of its submission to the Planning Commission or Planning Board, is insulated from further zoning changes.

4. Lot 13, Block A, intervening rights of purchasers and their mortgagees are not extant; no attempt should be made at revocation of the building permit.

Lot 14, Block A, construction is out of the ground and visible, vested rights have intervened and the permit cannot be revoked.

Lot 16, Block B, application for variance is currently pending with the Office of Zoning Commissioner. The outcome of that petition should be awaited and considered prior to any attempt at revocation of the permit.

Lot 18, Block B, intervening rights of purchasers and their mortgagees are now extant; no attempt should be made at revocation.

This letter of advice is not to be construed as a formal opinion of the Office of Law of Baltimore County.

Leonard S. Jackson
County Solicitor

Michael J. McMahon
Assistant County Solicitor

LSJ/MJM:gp

originated from a reliable source; (2) that the interpretation was made at or near the time of the enactment of the statute, and (3) that the interpretation has continued for a long period of time and received wide acceptance and following. Where these factors are present the vagueness usually surrounding the other aids of construction are not present, and therefore the rule serves as one of the most definite and reliable sources of statutory meaning. Sutherland, ibid, Vol. 2A, §49.04 "Probative force" pp. 235-236.

In light of this test, the administrative interpretation is proper that paragraph one (1) of §103.1 is currently effective as to residential plats approved by the Planning Board. Consequently, the zoning regulations insofar as they relate to use, height, area and density applicable on the development of any plan of subdivision, are the regulations in effect at the time the plan was originally submitted to either the Planning Commission or the Planning Board. As a result of this intervention of statutory law, an approved or tentatively approved plan of subdivision, relative to zoning restrictions concerning use, height, area and density, as of the time of its submission, is insulated from further zoning changes.

The administrative interpretation of paragraph one (1) of §103.1 that it insulates approved residential subdivisions, relative to minimum restrictions, from further zoning changes is corroborated by §103.3 of the Baltimore County Zoning Regulations, added to §103 by Bill #98-75. Section 103.3 provides that in any rural conservation zone, a recorded subdivision plat approved by the Commission or Board is insulated from further changes relative to residential densities, lot lines, yards, and open space. Further, if an approved plan does not indicate densities, lot lines, or open space, they may be established or situated only in accordance with standards prescribed and in force at the time of lot recordation.

Focusing on Local Law 22-44.1, it is observed that the language used therein is plain and unambiguous and must be given effect as the Council intended. Accordingly, a recorded subdivision plat will have lapsed into invalidity where the subdivision remains undeveloped for a period of five (5) years from a date certain (April 17, 1977) or five (5) years after the plat recordation date, whichever is later. Local Law §22-44.1 originates with enabling legislation found respectively in both the Baltimore County Charter and Code. Charter §522.1 (1978) provides for the preparation of recommendations concerning subdivision regulations which can only take effect after approving legislation has been enacted by the Council, see Charter §§522.1(a)(3)(4) and 522.1(b). Additionally, Local Law §22-37

"Subdivision regulations" (1978 Code) provides that the Planning Board is to submit supplementary amendments to existing regulations governing the subdivision of land in Baltimore County, including requirements and procedures for the submission of subdivision plats.

With regard to the enabling authority for §103.1 of the Baltimore County Zoning Regulations, Local Law §22-19 (1978) requires the preparation of zoning maps and regulations restricting and regulating height, area, density, use and bulk of buildings, structures and land for the purpose of promoting health, safety, morals and the community's general welfare. In addition, Local Law 22-20 (1978) provides that the County is to divide into zones for the purpose of regulating the height, bulk, and area of lots, buildings and other structures.

As both the zoning and subdivision regulations have their statutory origin in Title 22 of the Baltimore County Code, they must be construed with reference to each other to produce a harmoniuous whole. Indeed, related statute or statutes on the same subject or objects should be construed together, Sutherland, ibid, Vol. 2A, §51.03 "Statutes deemed to be in pari materia", p. 298. Moreover, in terms of legislative intent, it is assumed that whenever the legislature enacts a provision, it has in mind previous statutes relating to the same subject matter; consequently, it is held that in the absence of any express repeal or amendment therein, the new provision was enacted in accord with the legislative policy embodied in those prior statutes and they all should be construed together, see Sutherland, ibid, Volume 4, §51.02 "Statutes on the same subject construed together" p. 290. Moreover, the construction that produces the greatest harmony and the least inconsistency is that which ought to prevail, see Sutherland, ibid, Vol. 2A, §46.05 "Whole Statute Interpretation", p. 57.

Applying those precepts of statutory construction, it is stressed that Baltimore County Zoning Regulations, §103.1 should be construed together with Local Law §22-44.1 to produce the greatest harmony and the least inconsistency. Moreover, it must be assumed that the County Council, when it adopted Local Law §22-44.1 was aware of the contemporaneous construction given to §103.1, that an approved or tentatively approved plan of subdivision relative to use, height, area and density regulations, was insulated from further zoning changes as of the time of the plan's submission to either the Planning Commission or Planning Board.

Consequently, construing §103.1 of the Baltimore County Zoning Regulations in light of the subsequently enacted Local Law §22-44.1 leads to the conclusion that height, area, bulk and density of a recorded subdivision plat are preserved against subsequent zoning changes for a period coextensive with the statutory period exempting recorded subdivision plats from the impact of the local Sunset provision of Title 22.

CONCLUSIONS:

1. Apart from statute, a developer has no vested rights relating to a change of zoning affecting land in an approved subdivision.

2. Pursuant to statutory authority, the zoning regulations insofar as they relate to use, height, area, and density applicable or the development of any plan of approved or tentatively approved plan of subdivision, are the regulations in effect at the time the plan was originally submitted to either the Planning Commission or the Planning Board.

3. As a result of the intervention of statutory law, as approved or tentatively approved plan of residential subdivision, relative to zoning restrictions concerning use, height, area, and density as of the time of its submission to the Planning Commission or Planning Board, is insulated from further comrehensive rezoning changes.

4. Use, height, area and density requirements (see §103.1 Baltimore County Zoning Regulations) of an approved recorded subdivision plat are preserved against subsequent comprehensive rezoning changes for a period coextensive with the statutory period exempting recorded subdivision plats from the impact of the local Sunset provision of Title 22.

This letter of advice is not to be construed as a formal opinion of the Office of Law of Baltimore County.

Leonard S. Jacobson
County Solicitor

Michael J. McMahon
Assistant County Solicitor

L.S.J./M.J.M.:ab

Board. As the legislative intention is not clear from the face of paragraph one (1) of §103.1, there is a sufficient basis, in order to determine that intention, to resort to the canons of statutory construction, cf., Sands' Sutherland Statutory Construction, Vol. 2, §46.01 "The Plain Meaning Rule", p. 48. Among those canons of construction, in the canon that, where statutory language is ambiguous or uncertain, a contemporaneous construction may be resorted to as an aid in ascertaining the legislative intention; furthermore, the interpretation of administrative officials should not be disregarded except in the most demanding of circumstances, see City of Baltimore v. Machen, 132 Md. 618, 104 A.175 (1918). Professor Sands in his edition of Sutherland Statutory Construction notes:

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The interpretation that paragraph one (1) of §103.1 is applicable also to subdivision plats submitted and approved by the Planning Board, is of long standing duration. It is currently applied to approvals by the Planning Board, and has been so applied since the beginning of the Board. Its application is in excess of twenty (20) years standing. In this context, it should be pointed out that contemporaneous interpretations ranging in duration from as long as seventy (70) to as short as five (5) years have been found to have established the legislative meaning, see Sands ibid, §49.07 "Duration of contemporaneous interpretation and practical interpretation." Moreover, where a contemporaneous interpretation has stood unchallenged for a considerable length of time, as in the case here, it is regarded as of great importance in arriving at the proper construction of statutory law, see Sutherland, ibid, §49.07.

Any ambiguity contained in paragraph one (1) of §103.1 as to whether or not it applies to plats approved by the Planning Board as well as the Planning Commission has been resolved by the administrative determination that it has application to Planning Board approvals. This conclusion meets the test as set out by Sutherland as to whether or not it is proper to apply the principle of contemporaneous construction:

> "The conclusiveness of a contemporaneous and practical interpretation will depend upon a number of additional elements that give efficacy to the rule. In general, these elements are: (1) that the interpretation

FEB 27 '81 Sec 103.1 vested rights

Please let me see you

BALTIMORE COUNTY, MARYLAND

Counsel OK 3/4/81

INTER-OFFICE CORRESPONDENCE

TO Norman E. Gerber, Director
Office of Planning & Zoning

Date February 10, 1981

FROM ~~Law Office~~

SUBJECT Request for Advice

RECEIVED
BALTIMORE COUNTY
FEB 25 1981
OFFICE OF PLANNING
AND ZONING

1) Application of §103 of the Zoning Regulations to Subdivisions which have had zoning changed via recently adopted 1980 Zoning Maps.

2) Development in accordance with subdivision plan or plat not complying with changed zoning classification.

You have requested our advice as to the following:

FACTS:

Section 103 of the Baltimore County Zoning Regulations (B.C.Z.R.) seems to provide that subdivisions which are approved tentatively or finally by the Planning Board may be developed in accordance with height, set-back, and area requirements of the zone applied to the property as of the time of either the tentative or final subdivision approval.

You would like clarification of the effect of §103 on subdivisions which receive final and/or tentative approval under a residential zone classification applied at the time of the approval and which have subsequently been reclassified through the 1980 Comprehensive Zoning Ordinance Map to another classification. You need advice in light of the impact of the Sunset provisions (Local Law §22-44.1, Record Subdivision plats protected for five years that now apply to final or record plats and also in light of the one (1) year life of tentative approval of any residential subdivision, (see also your request of 11/17/80; development in accordance with subdivision plat not complying with changed zoning classification).

STATUTORY LAW:

1) Section 103 - APPLICATION OF ZONING REGULATIONS (B.C.Z.R. 1955).

103.1--These Regulations shall apply as of the date of their adoption but the provisions pertaining to use, height, area and density of population shall not apply to any development, subdivision or parcel of land, the preliminary plan for which was originally submitted to the (then) Baltimore County Planning Commission, [1]

~~1 Thus (comma)~~ in Resolution; November 21, 1956.

EXH 20

(now Planning Board) and approved to tentatively approved (including any approval made subject to any condition or conditions) under the then existing official procedure in Baltimore County, prior to the adoption of these Regulations.[2] The zoning regulations applicable to any such development, subdivision or parcel of land as aforesaid shall be the zoning regulations in effect at the time such plan, as aforesaid, was originally submitted to the Baltimore County Planning Commission.

2) Local Law §22-44.1 Record subdivision plats protected for five (5) years.

Record subdivision plats...for any subdivision...shall be deemed to have lapsed and to be invalid...where the...subdivision... remains undeveloped for a period of five (5) years from April 16, 1977, or five (5) years after the date of recording the final subdivision plat, whichever is later.

ISSUE:

What is the effect of §103.1 of the Baltimore County Zoning Regulations on subdivisions which receive final and/or tentative approval under a residential zoning classification applied at the time of the approval, and which are subsequently reclassified through the 1980 Comprehensive Zoning Map to another classification?

DISCUSSION:

1) General application of paragraph one (1) of §103.1 of the Baltimore County Zoning Regulations, as it relates to residential subdivisions.

Absent any statutory protection, land included in a plat approved by the Planning Board and recorded, is as vulnerable to changes in the zoning regulations as is all other land in the County. In effect, the mere delineation of lots on a map of subdivision filed, after approval by the Planning Board, carries with it no guarantee that each lot or parcel will be sufficient in itself, in view of the possibility of zoning change, to be built upon when the time comes to do so. As a consequence, the conclusion is almost universal that, apart from statute, a developer has no vested

2. B.C.Z.R. 1955, adopted March 30, 1955.

rights relating to a change of zoning affecting land in an approved subdivision. Moreover, legislation changing the zoning requirements is in no sense retroactive legislation. Unless protected by statute, the filing of an approved subdivision plat does not establish a nonconforming use of the platted land which protects it from subsequent zoning changes; no right to the continuance of an existing zoning classification is gained by preparation, and preliminary works, however extensive. In brief, relief from subsequent zoning changes will not be afforded a subdivider, without the aid of statutory law, see Anderson, American Law of Zoning, §23.23 "Effect of approval on power to rezone", pp. 96, 97 and 98.

Maryland case law is in fundamental agreement with the proposition that the mere approval or even recordation of a subdivision plat, without statutory intervention does not insulate the plat from further zoning changes. In Rockville Fuel and Feed Co. v. City of Gaithersburg, 266 Md. 117 (1972), the Maryland Court of Appeals held that a zoning case must be decided upon the law applicable at the time a case is before the Court, in the absence of intervening vested rights. Thus, a property owner has no absolute right to the zoning or the permitted uses unless he obtains a vested right in the use. Vested rights occur when the property owner:

1. Obtains a building permit or occupancy certificate; and

2. Proceeds under the permit to exercise his rights on the land by a substantive beginning to construct, so that the neighborhood may be advised as to the intended land use.

Earlier in Rupp v. Cline & Sons, 230 Md. 573, 578 (1963), speaking for the Court of Appeals, Judge Horney enunciated the test as to a vested right as follows:

> "a manifest commencement of some work or labor on the grounds which everyone can readily see and recognize as the commencement of a building...begun with the intention and purpose then formed to continue the works until the completion of the building."

Other cases reaching the same conclusion that was reached in Rockville Fuel and Feed, supra., are Stewart Petroleum Co. v. Bd. of County Comm'rs of St. Mary's County, 276 Md. 435 (1935); County Council for Montgomery County v. District Land Corp., 274 Md. 691 (1975); and Mayor and Council of Baltimore v. Crane, 277 Md. 198 (1976). In discussing the effect of subdivision approval on the power to rezone, attention must be focused on the recent case of

WSS Com. v. TKU Associates, 281 Md. 01, 376 A.2d 505 (1977). There, it was held that irrespective of the dedication of valuable rights of way and expenditures of large sums of money in connection with its subdivision plan, a property owner did not obtain vested rights in a prior zoning classification where nothing in land use regulations served to preserve previous approvals with regard to height, area, density, use and bulk requirements, see also Millison v. Secretary of Health and Mental Hygiene, 32 Md. 165, 357 A.2d 274. Nonetheless, because of statutory modifications set forth in Title 22, Local Law is somewhat contrary to the result in TKU, supra, in that previous approvals with regard to height, set-back and are are insulated from subsequent comprehensive rezoning changes.

In interpreting the proper application of §103.1 of the Baltimore County Zoning Regulations, it is important to recall that Chapter 610 (Senate Bill 556) of the Public Local Law of 1955, enacted by the General Assembly and effective June 1, 1955, reconstituted the then existing Baltimore County Planning Commission as the Baltimore County Planning Board.[3]

Paragraph one (1) of §103.1 of the Baltimore County Zoning Regulations, in essence, provides that zoning regulations ordinarily apply as of the date of their adoption. The ordinance, however, also provides that current minimum restrictions pertaining to use, height, area, and density shall not apply to any subdivision of land, the preliminary plan for which was originally submitted to the Baltimore County Planning Commission, and was approved or tentatively approved under what was, at the time of subdivision, the effective zoning regulations. A parenthetical expression, i.e. (now Planning Board), however, is used to refer to the current Planning Board. The question thus arises as to whether or not the legislative intention was to extend the benefit of paragraph one (1) of §103.1 only to those plats submitted and approved by the Baltimore County Planning Commission; or, whether that intention was to extend the benefit of paragraph one (1) to plats also approved by the Planning

3. 442. There shall be an Office of Planning, the head of which shall be a Planning Board...

478. The existing Planning Commission created by resolution under the Enabling Act of the State of Maryland contained in Article 66B of the Annotated Code of Maryland (1951 Edition, as amended) shall be and it is hereby reconstituted in accordance with the provisions of this title (effective June 1, 1955).

BALTIMORE COUNTY
OFFICE OF LAW
TOWSON, MARYLAND 21204
494-4420

MALCOLM F. SPICER, JR.
COUNTY ATTORNEY

MAY 17 AM
By
May 17, 1984

Honorable Donald P. Hutchinson,
County Executive
Mezzanine - Court House
Towson, Maryland 21204

Honorable Ronald B. Hickernell
County Council of Baltimore County
Second Floor - Court House
Towson, Maryland 21204

Ted Zaleski, Director
Office of Permits & License
111 W. Chesapeake Avenue
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Arnold Jablon, Zoning Commissior
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Norman E. Gerber, Director
Office of Planning & Zoning
County Courts Building
401 Bosley Avenue
Towson, Maryland 21204

Re: Westchester
Opinion #1-84

Gentlemen:

This Office has received inquiries from all of you concerning the status of the development known as Westchester and particularly the status of that Plat entitled "Amended Plat of a Portion of Plat 4, Section 2, Westchester" recorded among the Plat Records of Baltimore County in Plat Book EHK, Jr. 41, folio 16 on March 14, 1977 (the "Plat").

The controversy surrounding this development came to the surface when the Developer, The Stefanowicz Corporation, applied for building permits to construct approximately 108 apartment units as shown on the Plat. At the time this Plat was originally approved by the Baltimore County Planning Board and at the time of its recordation, the subject property, which contains approximately 18.9 acres, was zoned D.R. 5.5. A new comprehensive zoning map for the First Councilmanic District was adopted by Bill #184-80, effective December 11, 1980. By that new map the subject property was downzoned to D.R. 2 and D.R. 3.5.

The ultimate question to be decided is what effect, if any, does the 1980 Comprehensive Rezoning (from D.R. 5.5. to D.R. 2 and D.R. 3.5) have on the developer's ability to proceed with his previously approved and recorded Plat.

Exc 19

The subdivision known as "Westchester" has a long and extensive history. It is not necessary for purposes of this Opinion to recite in detail that long and extensive history, but it will suffice to highlight certain important events which occurred during the course of development.

The Public Works Agreement for that portion of Westchester which includes the subject property was approved by the County Executive on January 24, 1975. The Agreement is known as Public Works Agreement #17404. The Agreement provided for the Developer to construct Bathhurst Road for a length of 630 feet, St. Johnsbury Road for a length of 620 feet, Stoneham Court for a length of 180 feet and the construction of Drawde Court for a length of 200 feet. In addition to the construction of the public roads previously mentioned, the Developer was required and did construct public water and sewer in the beds of those roads, as well as appropriate storm drains. In addition, the Developer constructed a sewer line running through the proposed apartment development from Bathhurst Road to Drawde Court. Sewer lines amounted to approximately 1660 feet, water lines amounted to approximately 1720 feet, storm drains amounted to approximately 1630 feet and the total street paving amounted to approximately 1630 feet. All of these public improvements were constructed at the Developer's full cost and expense and in accordance with County standards. Installation of public utilities was completed in October of 1978 and they, along with the roads referred to, were conveyed to the County by Deed dated April 19, 1979. All of the public improvements required by PWA #17404 were completed by the Developer in a timely fashion at a cost of approximately $180,000. All of the roads and public utilities have been conveyed to Baltimore County for public maintenance. Notwithstanding that the public improvements required under the Public Works Agreement had been completed in the fall of 1978 and accepted by the County in 1979, the Developer did not proceed with the construction of the planned apartment units and interior private road and utilities systems. The precise reason or reasons for the delay are not entirely clear although they are probably attributable in part, at least, to the financial difficulties of the Developer and the sewer moratorium in the Patapsco drainage area. The Stefanowicz Corporation commenced a Chapter 11 proceeding in the Federal Bankruptcy Court which eventually resulted in the approval of a plan of reorganization.

Renewed interest in proceeding with the apartment development began to occur in early 1982 when the Developer's attorney had a meeting with representatives of the Office of Planning and Zoning concerning the approval of building permits for 108 apartment units. At this time the property was in the Patapsco Sewer Moratorium Area and although the development had received approval for 108 connections in 1978 that approval had lapsed and it was

initially doubted that the Developer would qualify for an allocation under the provisions of the Growth Management legislation that had taken effect in November of 1979. By letter dated March 15, 1982 the Developer's attorney was advised that there was no sewer capacity available in the Patapsco area for this apartment development and that the prior application for a Reserve Capacity Use Certificate, which had been made in connection with a revised Plat of Westchester proposing the development of 55 townhouses, was no longer valid. As the revised plat for the 55 townhouses was never taken to final approval and record Plat, the Reserve Capacity Use Certificate was void. The correspondence of March 15, 1982 referred to a revised Plat of Westchester, Section 2, Plat 4 for 55 townhouses. This revised Plat of the subject property had been submitted to the County in May of 1979, but was subsequently abandoned by the Developer and never pursued to final approval. The revised Plat indicated 55 townhouses on the same property which had previously been covered by the record Plat indicating 108 apartment units. The correspondence of March 15, 1982 pointed out to the Developer's attorney that as the Plat for 55 townhouses was not approved and recorded and, in view of the fact that the zoning of the subject property was changed in December of 1980, the 55 townhouse development could not proceed under current regulation. There was no mention in that letter that the 108 apartment units which had been approved and recorded was in anyway affected by the zoning change. At this point the Developer was concerned to say the least. He had been told that he could not proceed with 55 townhouses as the zoning had been changed and that he could not proceed with his 108 apartment unit development because there was no sewer capacity available in the Patapsco area. In order to obtain some form of relief for the Developer, his attorneys filed a lawsuit against Baltimore County and the Director of Planning & Zoning in April of 1982. This action was commenced in order to obtain a Writ of Mandamus and Injunctive Relief. Specifically, the Plaintiff, The Stefanowicz Corporation, was requesting that the Director of Planning & Zoning be directed to issue Reserve Capacity Use Certificates for the apartment development and, as ancillary relief, enjoin the County from voiding the subject Plat because it was vested.

After the filing of this lawsuit the Department of Public Works and the Office of Planning & Zoning extensively reviewed this development and the subject property to determine its status and rights under the Growth Management legislation and under the recently adopted Development Regulations which took effect on June 11, 1982. After considering the fact that all of the public improvements required under the PWA had been completed many years prior to this time it was determined that the subject Plat which indicated 108 apartment units was "vested" and had no expiration

date. By letter dated December 1, 1982 the Director of Planning and Zoning wrote to the Developer's attorney and stated, in part, as follows:

> "I have determined that the amended plat of Westchester, Plat 4, Section 2 (EHK, Jr. 41, folio 16) which contains 108 apartment units and was recorded March 14, 1977, is vested and has no expiration date. This decision was based on a review of all required improvements for this subdivision. All necessary sewer and water mains have been built. All easements have been deeded to the County, including Bathhurst Road. In addition, varying percentages of streets, curb and gutter, grading and storm water management improvements had been constructed."

This decision was not made in a vacuum but was made after consultation with the Department of Public Works and with the Office of Law. The Department of Public Works, by inter-office memo dated October 28, 1982, advised the Office of Planning & Zoning that they had reviewed the Public Works requirements for the subject subdivision and found that all required public improvements have been completed and accepted by Baltimore County. In conclusion, the Department of Public Works indicated that they were of the opinion that the subdivision met the grandfather requirements of the Baltimore County Code. Copies of the letter dated December 1, 1982 and the memo of October 28, 1982 are attached to this Opinion and marked as Exhibits #1 and #2, respectively.

As a result of these conclusions and based upon the advice of the Office of Law, the litigation which had been filed was settled and an Order of Dismissal was filed in the case file.

Following the issuance of the letter of December 1, 1982 it was assumed by all parties concerned that the Plat was vested and that the development could proceed, subject only to the availability of sewer allocations in the Patapsco area. At no time during the history of this project and specifically, at no time subsequent to December of 1980, had there been any suggestion that the completed apartment development of 108 units could not proceed because of any change in the zoning classification. The Office of Planning & Zoning was quick to point out to the Developer that his revised plan for 55 townhouses could not proceed because it had not obtained record Plat status prior to the change in the zoning classification. There was never any mention or suggestion that the apartment development could not proceed because of the change in zoning classification. In February of 1983 the Developer's attorney wrote to the Department of Public

Works concerning this development. The letter begins by stating as follows:

> "As a result of Baltimore County's recent decision to allow my client, The Stefanowicz Corporation, to proceed in the development of the above-captioned property, as per letter of authorization from Norman Gerber, Director of Planning, dated December 1, 1982 (copy of which is attached hereto) I would request your consideration and approval to the following items:
>
> 1. That 108 building permits be approved by Baltimore County for construction and sale of condominium type apartments at such time that sewer allocations are approved by Baltimore County.
>
> 2. That the record plat dated March 14, 1977 recorded in plat book EHK, Jr. 41, 16 and development plan approved September 21, 1971 be recognized and accepted for the development of said subject site."

The letter then goes on to list several other items for which the Developer was requesting approval. A complete copy of this correspondence is attached hereto and marked as Exhibit #3. In response to the letter of February 3, 1983, the Department of Public Works wrote to the Developer's attorney by letter dated February 22, 1983. This letter indicates that the Department of Public Works and the Current Planning section of the Office of Planning & Zoning are in agreement with all items in his letter except for items #6 and #7. Items #6 and #7 dealt with adjustment of building sizes and adjustments of the grading study. A copy of this letter is attached hereto and marked as Exhibit #4. In June of 1983 the Office of Planning and Zoning issued Reserve Capacity Use Certificate #529 in the name of Westchester Apartments, which allocated 32,400 gallons of sewer allocation for 108 apartment units. This Use Certificate has no expiration date. See B.C.Z.R. §4A.02.3.G.5.

This brief factual scenario of the history of the Westchester subdivision brings us up to the present time. The Developer has applied for permits to construct the apartment buildings as indicated on the recorded Plat and questions have been raised by County agencies, as well as neighboring property owners, as to whether or not the changes in the comprehensive rezoning of the subject property would prohibit the development now shown on the recorded Plat for this portion of the Westchester subdivision. There is little, if any, dispute involving the

facts surrounding the development of this property and the only major legal issue to be decided is whether or not this property has achieved a "vested status" and thereby entitled to proceed in accordance with the Plat notwithstanding that the zoning has been changed.

The law in Maryland is clear. Absent statutory protection, land included in a Plat approved by the Planning Board and recorded is as vunerable to change in the Zoning Regulations as all other land in the County. The mere delineation of lots on a map of subdivision carries with it not guarantee that the land can be developed in accordance with the Plat. Unless protected by statute, the filing of an approved subdivision plat does not establish a non-conforming use of the platted land which protects it from subsequent zoning changes and no right to the continuance of an existing zoning classification is gained by the preparation and preliminary work, no matter how extensive. See Anderson, American Law of Zoning, §23.23 "Effect of approval on power to rezone" pp. 96-98. Maryland case law is in fundamental agreement with this proposition. In the case of Rockville Fuel & Feed Co. v. City of Gaithersburg, 266 Md. 117 (1972), the Court of Appeals of Maryland stated the well established rule that, in the absence of statutory intervention, for a property owner to obtain a "vested right" in the existing zoning classification which will be Constitutionally protected against subsequent change, the property owner must 1) obtain a permit where required and 2) must proceed under that permit to exercise it on the land involved so that the neighborhood may be advised that the land is being devoted to that use. This rule has been applied in prior, as well as subsequent cases, from the Court of Appeals. See Rupp v. Kline & Sons, 230 Md. 573 (1963); Stewart Petroleum Co. v. Bd. of Co. Com'rs of St. Mary's Co., 276 Md. 435 (1975); County Council for Montgomery Co. v. District Land Corp., 274 Md. 691 (1975); City of Baltimore v. Crane, 277 Md. 198 (1976); and Washington Suburban Sanitary Commission v. T.K.U. Associates, 281 Md. 1 (1977).

It is unnecessary to analyze the particular facts of the Westchester subdivision in light of the principals enunciated by the cited cases in view of the fact that it is the Opinion of this Office that the County Council has, by legislative enactment, altered the rules set forth in those cases in connection with subdivision Plats and Plans.

It should be noted, if only in passing, that from 1955 until at least 1977 and possibly longer, the Office of Planning and Zoning, as well as the Zoning Commissioners in Office during those years, interpreted and applied §103.1 of the Baltimore County Zoning Regulations to essentially insulate a subdivision plat which

OF §103.1

which had received tentative approval from the Baltimore County Planning Board from subsequent changes to the use, height, area and density accomplished by either zoning text amendments or comprehensive rezoning maps. The effect of this interpretation was to give a Developer a vested right to proceed with his tentative plan notwithstanding that the zoning may have been changed prior to the issuance of permits and the commencement of construction. Previous letters of advice from this Office, dated September 24, 1979 and February 10, 1981 have indicated that the ambiguity that may have existed in §103.1 has been resolved by long standing administrative interpretation and practice which has received wide acceptance and which has been acquiesed in by the County Council, the legislative branch of Baltimore County. While I personally have doubts that the administrative interpretation given to §103.1 in the past is the correct interpretation of that Section, it is unnecessary to delineate my reasons for disagreement with that interpretation in view of the subsequent legislation adopted by the County Council.

Prior to 1977, Baltimore County did not definitively provide a period of time after which a recorded Plat would lapse. While §103.1 of the Zoning Regulations has been interpreted to give a vested right to plats which had received tentative approval from the Planning Board, that legislation did not provide a period of time after which those rights would lapse.

Bill #12-77, commonly referred to as the Interim Development Control Act, was the first clear legislative recognition and the first legislative granting of vested rights to subdivisions which had received either final or tentative approval. This legislation set forth the circumstances and conditions under which a Developer could achieve a vested right to proceed with his development notwithstanding a subsequent change in the zoning classification. This Act was codified in §22-16 of the Baltimore County Code, 1978 and in paragraph (h)(3) of §22-16 the County Council provided as follows:

> "(h) Vested Rights.
>
> (3) Record subdivision plats protected for five years.
>
> Record subdivision plats (whether recorded prior to or subsequent to the effective date of this Act for any subdivision, section or parcel thereof, hereinafter defined as two or more contingous lots in the same ownership of said subdivision) shall be deemed to have lapsed and have been revoked for either the entire

> subdivision or any section or parcel thereof, where the applicable subdivision, section or parcel thereof remains undeveloped for a period of five years from the effective date of this act or five years after the date of recording the final subdivision plat whichever is later.
>
> Upon such lapse and revocation of the record plat, a new application for tentative and final subdivision approval for such undeveloped subdivisions, section or parcel thereof, shall be submitted to the Planning Board, prior to any development or issuance of building permits for reapproval, in accordance with the applicable provisions of the County zoning ordinance and subdivision regulations in force at the time of said reapplication."

The Section then goes on to list the circumstances under which a subdivision would be considered undeveloped. One of those conditions was the lack of substantial construction on required public improvements pursuant to the applicable regulations and requirements of the Department of Public Works.

The language of this Section is clear and unambiguous. A record Plat is protected for five (5) years from changes in both zoning and subdivision regulations. If, at the end of five (5) years, a Plat is still undeveloped then it lapses and must be resubmitted for approval in accordance with the then "applicable provisions of the County zoning ordinance and subdivision regulations." Copies of the pertinent Sections of Bill #12-77 are attached hereto and marked as Exhibit #5.

This Section was continued in essentially its same forum when Bill #61-79 was passed by the County Council. Bill #61-79 provided in its title that it was "To provide, with certain exceptions, for a limitation on time on which subdivision approvals are valid." Under the provisions of Bill #61-79 a record subdivision Plat would lapse and be considered invalid if the property remained undeveloped for a period of five (5) years from April 16, 1977 or five (5) years after the date of recording the plat, whichever was later. The same test, originally adopted by Bill #12-77, to determine whether or not a Plat was "undeveloped" was continued in the 1979 legislation.

Bill #56-82 passed by the County Council on April 19, 1982, enacted by the County Executive on April 27, 1982 and effective on June 11, 1982 repealed all previous Subdivision Regulations and adopted a comprehensive system for development approval in Baltimore

County. Included within the provisions relating to the approval process and standards for development were provisions substantially similar to those which had been in existence since 1977 and which provided a means whereby a Developer could be assured that he would have a reasonable period of time to complete his development. Section 22-68 of the current Development Regulations sets forth the time limit for validity of subdivision plats. Section 22-68(a) provides that a subdivision Plat will lapse and become invalid if it has not been developed in accordance with the time limit set forth. In connection with a Plat which was recorded prior to the effective date of the new regulations, §22-68(a)(1) provides that it will expire five (5) years after recordation or on April 16, 1982, whichever is later unless it has been "developed." Development is defined in subsection (c) of that Section to be either the issuance of building permits or substantial construction on required public or private improvements on such subdivision. Clearly, the Plat under consideration in this case has met the test of substantial construction on required public improvements and clearly it achieved its developed status prior to its otherwise scheduled expiration date of April 16, 1982. All of the public improvements required by the applicable regulations and requirements of the Department of Public Works have been completed in connection with the Westchester apartment development and all of the improvements were completed in 1978 and accepted by the County in 1979.

The County Council of Baltimore County has, since at least 1977, chosen to recognize that it takes a substantial expenditure of funds to go through the various regulations of Baltimore County in the subdivision process and that a Developer should be given a reasonable period of time to achieve a developed status for his property without running the risk of losing his investment by change in the Zoning Regulations or zoning classification. That recognition has come in the form of giving a Developer a five (5) year period of time (now eight (8) years for plans approved after the effective date of the new Development Regulations) within which to develop his property. The County Council has chosen, by legislative enactment, to change the rule of law enunciated in the line of Maryland cases cited in this Opinion and has decided that a Developer should have a vested right to proceed with his development if he has secured building permits or if there has been substantial construction on required public improvements.

The legislative history of Bill #56-82 supports this conclusion. In discussing the new Development Regulations recommended by the Planning Board, the County Council had before it the analysis of the regulations prepared by Thomas Peddicord,

Esquire, Legislative Draftsman for the County Council. In discussing the Planning Board recommendations dealing with the time limit for validity of Plats, Mr. Peddicord pointed out to the County Council on page two (2) of his report, as follows:

> "Absent statutory intervention, a record subdivision plat is valid only at the time of approval and recordation. The right to develop in accordance with the County's approval vests only when a building permit or occupancy certificate is obtained and some visible effort to begin construction takes place. If, before that vesting occurs, a change of zoning takes place effecting land in the approved subdivision, the developer's rights are nill.
>
> However, §103.1 of the zoning regulations insulates the approved subdivision from subsequent zoning changes by providing that the regulations in effect at the time the subdivision plan was originally submitted for approval are the applicable regulations for the approved subdivision. Then, in 1979, the Council enacted the sunset provision of §22-44.1. The effect is that the zoning requirements in effect at the time a subdivision is recorded are preserved against subsequent zoning changes for a period coextensive with the statutory sunset period.
>
> The draft then adds the additional factor of a longer period of validity if the developer has executed a Public Works Agreement."

Clearly, the County Council was aware of the administrative interpretation that had been given to §103.1 of the Zoning Regulations for approximately 25 years and clearly the County Council was aware of the intended effect of the provisions relating to the validity of subdivision plats.

Any doubt about the intended effect of the various provisions for protection of record Plats contained in the Development Regulations adopted by Bill #56-82 is further removed by reference to the Final Report of the Baltimore County Planning Board adopted October 1, 1981 and submitted to the County Council on October 6, 1981. On page iii of that Report, the Planning Board, in its discussion of major issues, states as follows:

> "Interim Development Control Legislation, enacted in April 1977, deemed recorded plats to have lapsed after five years. This five year plat provision was reconfirmed with the enactment of the growth management legislation,

but again emerged as an issue in discussions of the development regulations. The Planning Board is concerned that five years is not a sufficient period of time for subdivisions to be protected considering the development costs involved with required public improvements. After lengthy discussions, the Planning Board has recommended that subdivisions for which a Public Works Agreement is require should have a ten year plat life. Subdivisions for which Public Works Agreements are not required will continue to lapse after five years if not developed."

A subsequent Report prepared for the County Council and entitled "Development Regulations, Policy Decisions on Public Concerns, Part II" prepared by Thomas Peddicord, Esquire, Legislative Draftsman for the County Council, contains further discussions on this issue and suggests to the Council several options, one of which was to repeal both §103.1 B.C.Z.R. and §22-44.1 of the County Code and provide no specific period of validity for approved plats. It is pointed out to the Council that repeal of these provisions would then allow for the application of the general law of Maryland as set forth in the previously cited cases. The Council did not choose this option but instead retained the vesting provisions now contained in the County Code. Statutory protection to development plans is not unique to Baltimore County. Rathkopf, in his treatise, The Law of Zoning & Planning, Chapter 50 "Vested Rights" discusses similar provisions which have been adopted by various jurisdictions throughout the County.

It is clear that the County Council intended, by the enactment of §22-68 to protect a record Plat from subsequent changes in the Zoning Regulations and to give to the Developer a vested right to proceed with his development if at the end of that five (5) year period (for plats recorded prior to June 11, 1982) he has met the test of being "developed" as defined in §22-68(c)(2).

In conclusion, therefore, it is the Opinion of this Office that The Stefanowicz Corporation is entitled to receive building permits allowing the construction of 108 apartment units in the Westchester subdivision and as indicated on the Plat recorded among the Plat records of Baltimore County, notwithstanding that the zoning classification of the property has been changed.

Very truly yours,

Malcolm F. Spicer, Jr.
County Attorney

MFS:JR:ch

cc: B. Melvin Cole, County
Administrative Officer
Phyllis C. Friedman, Peoples' Counsel

voiced rights

IN THE MATTER
OF THE APPLICATION OF
WESTCHESTER, INC.
FOR SPECIAL HEARING RE
BUILDING PERMIT AND
APPLICATION FOR PERMITS
NW/S BATHURST ROAD, 95'
N. OF WESTCHESTER ROAD
1st DISTRICT

Case No. 85-7 SPH and
Case No. CBA-84-132

* IN THE
*
* CIRCUIT COURT
*
*
* FOR
*
* BALTIMORE COUNTY
*
* 10/218/85-CG-1483

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MEMORANDUM OPINION AND ORDER

This case came before the Court on September 17, 1985, on the appeal of Westchester, Inc. (Westchester). Westchester appeals a Baltimore County Board of Appeals Opinion and Order dated March 28, 1985, later confirmed by its Order of May 7, 1985, following hearing on Appellant's Motion for Reconsideration.

This case was heard by the County Board of Appeals on appeal by Protestants (Appellee) from an Opinon and Order of the Zoning Commissioner of Baltimore County which authorized the issuance of certain building permits to Westchester. Protestants also appealed the actual issuance of the permits by the Department of Licenses and Permits of Baltimore County.

Although the facts of this case are lengthy and complex, those central to the dispute are not contested. The dispute involves the development of that subdivision located in the First District of Baltimore County known as Westchester. This property was originally purchased by a predecessor to the Appellant in 1967. The development of the property was initially to include only

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single family homes. In 1970, the Baltimore County Council adopted Bill No. 100 which facilitated greater flexibility in residential development through the device of cluster development. Under this Bill, developers were allowed to take unused zoning density from one portion of a development tract and add it to the permitted zoning in another area of the tract.

The previous developer of the Westchester subdivision, the Stefanowicz Corporation, utilized the provisions of Bill 100 and gained approval from the Baltimore County Board of Appeals for a development plan. This plan contained an apartment complex which was to be surrounded by single family dwellings. The Board ruled that the final development plan was valid in an Order dated October 12, 1973. In 1975, the Stefanowicz Corporation negotiated and received approval for a public works agreement. In 1977, an amended record plat was filed which clearly showed the 108 unit apartment complex. The public improvements were completed in October of 1978 and were conveyed to the County by Deed dated April 19, 1979. By 1978, when many of the public improvements had been placed, the single family lots were being sold. The purchasers were aware of the proposed apartment complex as it appeared in the record plat and in fact, several purchasers signed a statement attesting to that knowledge.

The Baltimore County Council, in the comprehensive map process of 1980, downshifted the zoning of the Westchester property from D.R. 5.5 to D.R. 2 and D.R. 3.5, with some D.R. 5.5. This downshift in zoning has created the current controversy because it raises the issue of whether the record plat of 1977 remains valid in spite of the downshift. If the development plan has vested,

then it should be protected against subsequent changes in zoning. Otherwise, the downshift of 1980 renders the development plan void.

Much of the problem arising in this case stems from the developer's inability to obtain the proper sewer allocation. Because the Patapsco Watershed was experiencing a sewer deficiency during this time (the late 70's and early 80's), sewer allocations were difficult to obtain. The needed sewer allocation was granted and then withdrawn as the developer was put on a waiting list. Amidst some apparent confusion, the developer was dropped from the waiting list.

Suit was filed in 1982 in the Baltimore County Circuit Court by the developer to protect the 1977 record plat from being voided and to compel the issuance of sewer allocations. On December 1, 1982, an opinion was elicited from the Director of Planning and Zoning which declared that the subdivision development plan vested and reinstated the developer's waiting list status for sewer allocations. Relying on this opinion, Westchester purchased the property from the bankruptcy proceedings which reorganized the Stefanowicz Corporation. The sewer allocations were finally obtained in June, 1983. Additionally, the developer obtained utility permits for the subdivision. Further grading work was performed and private utilities were installed under the approved permits during 1983 and 1984. Final building permits were granted to the developer on July 30, 1984. The protestants, the homeowners surrounding the proposed apartment complex, appealed the issuance of the permit to the County Board of Appeals. Although formal opinions

of both the County Attorney and the Zoning Commissioner (after a special hearing) determined the subdivision plat to have vested, the County Board of Appeals ruled otherwise.

Thus, as previously stated, the issue in this case is whether the record plat filed in 1977 is vested. Appellant advances several different legal theories in support of its argument for vesting. One theory is that under common law the subdivision record plat is vested. All parties involved in the case have agreed that the proper standard to apply is found in Rockville Fuel & Feed Co. v. City of Gaithersburg, 266 Md. 117, 291 A.2d 672 (1972). The Court in Rockville Fuel quoted an earlier case, The Richmond Corporation v. Board of County Commissioners for Prince George's County, 254 Md. (1969), for the general law in regard to "vested rights" in zoning cases:

> In Maryland it is [illegible] in order to obtain a 'vested right' in the existing zoning use which will be constitutionally protected against a subsequent change in the zoning ordinance prohibiting or limiting that use, the owner must (1) obtain a permit or occupancy certificate where required by the a[illegible] and (2) must proceed under the [illegible] to exercise it on the land involved [illegible] the neighborhood may be advised th[illegible] being devoted to that use.

The standard thus contains [illegible] prong and what has sometimes been referred to as a substantial construction prong. In the discussion that follows the Court's quotation of the standard, it is clear that the permit required must be a building permit. Insomuch as no building permits in the present case were obtained until after the land improvements were made, the record

plat of 1977 fails to vest as it does not satisfy the permit requirement. Furthermore, the cases which discuss the substantial construction requirement as to when construction commences, all speak of the actual building or structure involved not preliminary land improvements. For these reasons, the Court agrees with the County Board of Appeals that Appellant's record plat does not vest under common law.

Appellant also argues that the plat vests under two different statutory provisions. The first statutory basis for vesting involves the question of the applicability of a provision of the Baltimore County Code, § 22-68. Section 22-68, in pertinent part, provides:

> (a) Unless extended pursuant to the provisions of section 22-68.1, a subdivision plat shall lapse and be invalid for either the entire subdivision or any section or parcel thereof, if such subdivision, section or parcel has not been developed, as defined in subsection (c), in accordance with the following time limits as applicable:
>
> . . .
>
> (c) A subdivision, section or parcel thereof is hereby defined as developed if any of the following has occurred with respect to such subdivision, section or parcel:
>
> (1) Building permits have been issued; or
>
> (2) Substantial construction on required public or private improvements has occurred on such subdivision, section or parcel pursuant to the applicable regulations and requirements of the department of public works.

There is no question that § 22-68 is currently the law in Baltimore County. The Board of Appeals observed that if the 1977 record plat was governed by § 22-68, then it would be vested. (Opinion p. 7). The Board, however, concluded that

§ 22-40 of the Code provides that § 22-68 applies only to development plats recorded after the date of the new regulations, June 11, 1982. (Opinion, p. 9.).

Section 22-40 provides:

> These regulations shall apply to all development except such development which, prior to the effective date of this article [June 11, 1982], has received tentative approval of the preliminary plan by the planning board or for which development a valid, unexpired building permit exists, or for which development a current executed public works agreement exists, all of which development shall be governed by the subdivision regulations in effect at the time of said preliminary plan approval, building permit issuance or public works agreement execution, as the case may be. (Bill No. 56, 1982, § 2).

The Board of Appeals ruled that the clear and unambigious language of § 22-40 precludes the application of § 22-68 to the Westchester development. Appellees further argue that § 22-68 does not apply because it is a subdivision regulation and thus has no bearing on a zoning question. Appellee notes that Article 3 of Title 22 of the Baltimore County Code is captioned "Zoning" whereas Article 4 (which contains both § 22-40 and § 22-68) of Title 22 is captioned "Development Regulations". Appellees thus argue that § 22-68 insulates recorded plats from changes in development regulations only and does not insulate recorded plats from changes in zoning regulations. There is nothing implicitly or explicitly in the Code, however, to support this argument. Appellees also argue that zoning is a nondelegatable legislative function, while subdivision control is a delegated administrative function.

The Court acknowledges the differences between the concepts of zoning, planning and subdivision regualtion. See E.g. Board of County Commissioners v. Gaster, 285 Md. 233, 401 A.2d 666 (19..)

Board of County Commissioners v. Stephens, 286 Md. 384, 408 A.2d 1017 (1979); Miller v. Forty West Builders, 62 Md. App. 320, 489 A.2d 26 (1985). All these cases quote 1 E. Yokley, Zoning Law and Practice § 1-2 (4th ed. 1978) which comments:

> ...[Z]oning is almost exclusively concerned with use regulation, whereas planning is a broader term and indicates the development of a community, not only with respect to streets, parks, civic beauty, industrial and commercial undertakings, residential developments and such other matters affecting the public convenience and welfare as may be properly embraced within the police power.
>
> . . .
>
> There are three integral parts of adequate land planning, the master plan, zoning, and subdivsiion. (emphasis added).

The caption under Title 22 of the Baltimore County Code confirms this integration: "Planning, Zoning and Subdivison Control". Thus, while the comparison of any of these component parts of land planning may to some degree be likened to comparing apples and oranges, it is clear that they all belong in the same basket. It is thus necessary to consider the articles of Title 22 as an integrated whole, not as subdivided parts existing in isolation.

This requires a close scrutiny of § 22-40 and § 22-68. Section 22-40, captioned simply "scope of regulations", serves to make the new regulations apply to all developments except those which have taken significant steps towards development prior to the date of the new regualtions. The new regulations in these cases are thus primarily intended to be prospective only in order to provide protection to those developments. If read in isolation, however, the general decree of § 22-40 would negate the similar yet more specific protection of § 22-68. There is nothing in

§ 22-68 to indicate that the protection it offers is to be prospective only. Most importantly, the legislative history of § 22-68 indicates the contrary. It is axiomatic to state that the polestar of statutory interpretation is to ascertain and carry out the real intent of the legislature when it enacts a statute. See E.g. Harbor Island Marina v. Calvert Co., 286 Md. 303, 407 A.2d 738 (1979). The legislative history of § 22-68 is thoroughly recounted in an opinion written by the County Attorney which is dated May 17, 1984. The opinion traces the history of several statutory provisions that the County, through the Office of Planning and Zoning as well as the County Council, utilized to provide protection through vesting for subdivision plats in which some steps toward development had been taken. The opinion notes that from 1955 to (at least) 1977, the Office of Planning and Zoning interpretated § 103.1 of the Baltimore County Zoning Regulations to insulate subdivision plats which had received tentative County Board approval from subsequent zoning changes. The effect of this interpretation was to vest the developer's plan. The County Council also passed the Interim Development Control Act, formerly codified at § 22-16 of the County Code, which set forth certain circumstances under which a development would vest. Finally, in 1982, the County Council repealed all previous subdivision regulations and passed the development regulations (which include § 22-68) now in effect. In his opinion, the County Attorney notes that since at least 1977 the Baltimore County Council has chosen to recognize that it takes a substantial expenditure of funds to comply with the various County regulations in the subdivision process and that a developer should be given a reasonable period of time to achieve a developed status for his property without running the

risk of losing his investment by changes in the zoning classification. (Opinion, p. 9). The Opinion further indicates that the County Council purposely chose to change the Maryland line of case law concerning vesting institute less stringent requirements for vesting. (Opinion, p. 9). Noting further details the legislative history of § 22-68, the County Attorney concluded that § 22-68 was intended to apply to plats recorded prior to June 11, 1982, the effective date of the new subdivision development regulations.

This Court agrees with the County Attorney's opinion. The Court finds after considering the background of legislative history and circumstances, that the County Council would not have enacted § 22-68 if it did not intend for it to apply to cases prior to the effective date of the new subdivison regulations that otherwise meet its requirements.

In addition to § 22-68, Appellant argues that § 103.1 serves as a statutory basis for the vesting of the Westchester record plat of 1977. Section 103.1 provides:

> These Regulations shall apply as of the date of their adoption but the provisions pertaining to use, height, area and density of population shall not apply to any development, subdivision or parcel of land, the preliminary plan for which was originally submitted to the (then) Baltimore County Planning Commission, (now Planning Board) and approved or tentatively approved (including any approval made subject to any condition or conditions) under the then existing official procedure in Baltimore County, prio to the adoption of these Regulations. The zoning regulations applicable to any such development, subdivision or parcel of land as aforesaid shall be the zoning regulations in effect at the time such plan, as aforesaid, was originally submitted to the Baltimore County Planning Commission.
>
> Provided further, however, that the use and development of land in M.L. zones shall not be affected by the foregoing provision, but development is permitted in accordance with

> any preliminary development plan approved by the Office of Planning and Zoning before the effective date of this further proviso, even though such development may be counter to then-current regulations for M.L. zones, if, on the fifth anniversary of such effective date, construction either is completed or is substantially commenced and diligently being pursued to completion; otherwise, the regulations generally in effect at the time such use or development is to be established shall control.
> (footnotes omitted).

The Court finds that the clear and unambigious language indicates that it was intended to apply only to cases prior to the date of its enactment, 1955. The Board of Appeals, the Zoning Commissioner, and the County Attorney all seem to concur in this assessment. The Office of Zoning and Planning for some reason, however, interpreted § 103.1 as providing vesting protection for developers for some 30 years past the date of enactment (1955). The Court agrees that § 103.1 itself does not serve to vest the record plat of 1977. Any reliance by Appellants on the County's interpretation of § 103.1 only affects the issue of estoppel. The Board of Appeals opinion correctly noted that notwithstanding the incorrect interpretation of § 103.1 by zoning officials since 1955, there arises the issue as to whether equitable estoppel is available to Appellant. (Opinion, p. 14).

Under Maryland law, equitable estoppel is defined as:

> the effect of the voluntary conduct of a party whereby he is absolutely precluded, both at law and in equity, from asserting rights which might have perhaps otherwise existed, either of property, of contract, or of remedy, as against another person, who has in good faith relied upon such conduct, and has been led thereby to change his position for the worse, and who, on his part, acquires some corresponding right, either of property, of contract, or of remedy.

Dixon v. Process Corp., 38 Md. App. 644, 382 A.2d 893 (1978) quoting 3 J. Pomeroy, A Treatise on Equity Jurisprudence § 804 (5th ed. 1941).

Whether the doctrine is to be applied in a given case is dependent soley upon the particular facts and circumstances of that case. Rodgers v. John, 131 Md. 455, 102 A. 549 (1917). The facts of this case cry out for an application of the doctrine. The Court finds it impossible to accept the conclusion of the Board of Appeals that there was a lack of reliance and no change of position by the developer as a result of the County's assurances that the record plat of 1977 was vested. (Opinion p. 16, 17). Only after extensive negotiations and communications with the County (which concluded in the assurance that the record plat was vested), did Appellant purchase the Westchester property out of bankruptcy. The negotiations were far from casual or informal. The developer filed suit against the County in 1982 and the centerpiece of the settlement of that action was the assurance that the plat with the 108 unit apartment complex was vested. This was set forth in a formal opinion by the Director of the Office of Planning and Zoning.

It should be further noted that the property's zoning density was downshifted in 1980 with no notice to the property owner. Although notice is now required in such cases, it was not in 1980.

The Court is also unable to accept the Board of Appeals' conclusion that equitable estoppel is unavailable to Appellant because of a lack of activity in developing the property. The Board of Appeals itself noted that the sewer allocation process which prevented the developer from securing the necessary hookups was "with some justification" blamed for the inactivity from sometime

in 1979 unti 1982. While the Board ultimately found that the developer did not "actively" seek the allocations, the affirmative action that the developer failed to take has not been revealed by the Board or Appellee.

While it may be true that Appellant might be able to develop the property in some other way consistent with the current zoning, it does not follow that to disallow the vesting of the plat would not still be highly inequitable. The Zoning Commissioner, after a hearing, also concluded in his opinion that the 30 year old interpretation of § 103.1 was incorrect. The Commissioner nonetheless found that Appellant acted in good faith reliance on that interpretation and other assurances by the County. The Commissioner thus ruled that under the circumstances of this case, to make the new interpretation retroactive would be "highly inequitable and oppressive". (Opinion, P. 9).

This Court conludes that in view of the considerable money and effort expended by Appellant by reason of justified, good faith reliance, coupled with the substantial change of position by the developer, the application of equitable estoppel is required in this case.

When a reviewing court examines a factual decision reached by an administrative agency, it must determine whether reasoning minds could reasonably reach that conclusion by direct proof or by permissible inference from the facts and the record before the agency. If the conclusion could be reached then it is based upon substantial evidence and the court has no power to reject that conclusion. See E.g. Commission on Human Relations v. Washingt. County Community Action Council, Inc., 59 Md. App. 451, 476 A.2d 222 (1

Furthermore, in applying this substantial evidence test, a court may not substitute its judgment for that of the members of the administrative agency from which the appeal is taken. Bullock v. Pelham Wood apts., 283 Md. 505, 390 A.2d 1119 (1978).

It has been noted, however, that the standard of review for a finding of law is not so limited. While the view taken by administrative officials is strong and persuasive, it may be disregarded for strong and argent reasons. Miller v. Forty West Builders, 62 Md. App. 320, 489 A.2d 76 (1985) citing Baltimore Building Construction Trades v. Barnes, 290 Md. 9, 427 A.2d 979 (1981).

For the above reasons, it is therefore ADJUDGED and ORDERED on this 8th day of October, 1985, that the Order of the County Board of appeals of March 28, 1985, and its Order of May 7, 1985 on reconsideration thereof are reversed.

Austin W. Brizendine

AUSTIN W. BRIZENDINE
Judge

Copies sent to:

John B. Gontrum, Esquire
Malcolm Spicer, Esquire
C. Victor McFarland, Esquire

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UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

NO. 1287

September Term, 1985

WILLIAM J. BAUMAN, et al.,

v.

WESTCHESTER, INC., et al.

Adkins
Bell, R.M.
Wenner,

JJ.

PER CURIAM

Filed: August 12, 1986

EXH 18

On October 8, 1985 the Circuit Court for Baltimore County (Brizendine, J.) filed an opinion and order which reversed an order of the Board of Appeals for Baltimore County, and reinstated an order of the Baltimore County Zoning Commissioner which directed the issuance of five building permits to Westchester, Inc. (appellee), a Baltimore County developer. Walter J. Bauman, et al. (appellants), a group of homeowners opposed to the issuance of the building permits, have appealed to this Court. For reasons explained below, we shall affirm the judgment of the circuit court.

The facts, although somewhat complex, are essentially undisputed. At issue is the development of an eight-acre parcel of land located in the Westchester subdivision in western Baltimore County. The property was originally purchased in 1967 by the Stefanowicz Corporation, the predecessor in title to the appellee. At that time its development was to include only single family homes.

In 1970 the Baltimore County Council adopted Bill No. 100, which substantially rewrote many of the county's zoning ordinances and provided for greater flexibility in residential development through the use of cluster development.[1] At that time the subject property was zoned D.R. 5.5 for maximum permissible density. In 1973 the Stefanowicz Corporation received

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1 "Cluster development" is a zoning technique which provides for greater flexibility and variation in housing, in the development of large tracts of land. It allows a developer to take unused density from one portion of a tract and add it to the permitted density in another portion of the tract. See 82 Am. Jur. 2d, Zoning and Planning, § 106.

approval from the Board of Appeals for Baltimore County (the "Board") of a development plan for eighteen and one-half acres utilizing the cluster concept. The plan consisted of a 108-unit apartment complex surrounded by single family homes. A record plat was filed early in 1975. In 1977 an amended plat was filed which made minor changes in the earlier plat. No changes were made, however, in the number of units planned, and the apartment buildings were clearly shown on the plat.

In January of 1975 the Stefanowicz Corporation entered into a public works agreement with the County. Pursuant to that agreement, the Stefanowicz Corporation constructed public streets, sewer lines, water lines, storm drains, sediment control facilities and other incidental improvements on the property, at substantial expense to the corporation. The public improvements were completed by late 1978, and conveyed to the County in April, 1979

In the meantime work was begun on the single family homes shown on the plat. By 1978 sales of those homes had begun. The buyers were told of the proposed apartment complex shown on the record plat and several of them signed statements which attested to their being advised of the proposed development plans.

At that time no construction on the apartment buildings had begun.

The reasons for the delay in construction of the apartment buildings are somewhat unclear, but it appears that it was due partially to the developer's financial difficulties and partially to the developer's inability to obtain the proper sewer allocations. The property is located in the Patapsco Watershed which was experiencing a sewer deficiency at that time, making

Board of Appeals. Although both the County Attorney and the Zoning Commissioner were of the opinion that the subdivision plat had vested, the Board ruled otherwise. On appeal to the Circuit Court for Baltimore County, the court found itself in agreement with the County Attorney and the Zoning Commissioner and reversed the ruling of the County Board of Appeals. Unhappy with that result, the homeowners have brought the case to this court.

Although appellants pose numerous questions in their brief, many of them were not raised below and thus will not be considered here. Rule 1085. The questions that are properly before us are all rephrasings of the central issue in this appeal: Have the developer's rights to develop the subject property according to the plans contained in the 1977 recorded plat vested so as to insulate the property against the subsequent downshift in permitted density?

Professor Rathkopf defines "vested rights" in this context as follows:

> A vested right is the right to initiate or continue the establishment of a use or construction of a structure which, when completed, will be contrary to the restrictions or regulations of a zoning ordinance or an amendment to it which has become effective in the meantime. The particular nonconforming use or structure will continue after the effective date of the ordinance or amendment as a vested right.

4 Rathkopf, The Law of Zoning and Planning, § 50.01 (4th ed. 1986). The Court of Appeals has held that such rights may be acquired where (1) the landowner has obtained a valid permit; and (2) in reliance upon the permit, the owner has made a substantial beginning in construction and in committing

the land to the permitted use before the change in the zoning ordinance. O'Donnell v. Bassler, 289 Md. 501, 425 A.2d 1003 (1981); Rockville Fuel and Feed Co. v. City of Gaithersburg, 266 Md. 117, 291 A.2d 672 (1972); Richmond Corporation v. Board of County Commissioners for Prince George's County, 254 Md. 244, 255 A.2d 398 (1969). Under this rule it is insufficient to show substantial expenses incurred in preparation for building, such as fees for studies and development plans or expenses for grading and clearing, and excavation; rather, the owner must show the commencement of construction of the structure itself. Steuart Petroleum Co. v. Board of County Commissioners 276 Md. 435, 347 A.2d 854 (1975); County Council of Montgomery County v. District Land Corporation, 274 Md. 691, 337 A.2d 712 (1975); Ross v. Montgomery County, 252 Md. 497, 250 A.2d 635 (1969). While the Court of Appeals has acknowledged that the application of this rule may be less onerous in other jurisdictions, it has declined to relax it in this state. Steuart Petroleum Co. v. Board of County Commissioners, supra; County Council of Montgomery County v. District Land Corporation, supra; see generally, Rathkopf, supra, § 50.03. In the case sub judice, no building permits were issued after the improvements had been made. Furthermore, in spite of the completion of the public works and the incurring of substantial expenses by the appellee, no construction has yet begun on the actual apartment buildings. Thus, the appellee has not met either requirement of the standard enunciated by the Court of Appeals and can claim no vested rights under a common law theory.

The most vigorously disputed question in this appeal, however, is whether the plat had vested under the statutory provisions of the Baltimore County Code. Section 22-68 of the Code provides, in pertinent part:

> (a) Unless extended pursuant to the provisions of section 22-68.1, a subdivision plat shall lapse and be invalid for either the entire subdivision or any section or parcel thereof, if such subdivision, section or parcel has not been developed, as defined in subsection (c), in accordance with the following time limits as applicable:
>
> ...
>
> (c) A subdivision, section or parcel thereof is hereby defined as developed if any of the following has occurred with respect to such subdivision, section or parcel:
>
> (1) Building permits have been issued; or
>
> (2) Substantial construction on required public or private improvements has occurred on such subdivision, section or parcel pursuant to the applicable regulations and requirements of the department of public works.

This statute was enacted in 1982, as a part of the regulations adopted by the Baltimore County Council in Bill No. 56-82. Bill No. 56-82 included new legislation encompassing § 22-37 through § 22-105 of the Baltimore County Code entitled "Article IV. Development Regulations of Baltimore County".

Notwithstanding the seemingly clear application of the language of § 22-68 to the subject property, the County Board of Appeals concluded that the statute was not controlling in this case. This conclusion was based on the Board's interpretation of § 22-40 (also enacted in 1982 as a part of Bill No. 56-82) which sets forth the scope of Article IV, the Developmental Regulations. Section 22-40 reads as follows:

> These regulations shall apply to all development except such development which, prior to the effective date of this article [June 11, 1982], has received tentative approval of the preliminary plan by the planning board or for which development a valid, unexpired building permit exists, or for which development a current executed public works agreement exists, all of which development shall be governed by the subdivision regulations in effect at the time of said preliminary plan approval, building permit issuance or public works agreement execution, as the case may be.

Under the Board's interpretation of § 22-40, the case turned on the statutes in existence in 1975, the year the public works agreement was executed. In 1975 there was no "saving" statutes in effect, and thus the Board ruled that the subdivision plat had not vested. As we have noted, the Circuit Court disagreed with the Board's interpretation and application of the statutes, as do we.

Section 22-40, a more general provision, serves to make the new regulations apply to all developments except those which had taken significant steps toward development prior to the effective date of the new regulations. The new regulations are primarily intended to be prospective in order to provide protection to those developments. If

read in isolation, the more general language of § 22-40 would seem to negate the similar but more specific protection in § 22-68. The statutes must be read as part of an integrated whole, however, and not as isolated parts. Nothing in § 22-68 indicates that the Baltimore County Council intended it to apply only prospectively. Furthermore, the legislative history of § 22-68, as recounted in the Opinion of the County Attorney in the record below, indicates to the contrary. The County Attorney notes that § 22-68 and its predecessor statutes were enacted by the County Council in recognition of the fact that it takes a substantial expenditure of funds to proceed through various county regulations in the subdivision process, and that a developer should be given a reasonable period of time to achieve a developed status for this property without running the risk of losing his investment through a change in the zoning regulations.

Additionally, the Board also ignored the effect of the predecessor statutes to § 22-40. In 1977 the County Council enacted Bill No. 12-77, known as the Interim Development Act. Section 22-15.1(L)(3) of that Act provided essentially that record subdivision plats, whether recorded prior to or after the enactment of Bill No. 12-77, would lapse and become invalid if they were undeveloped after five years from the later of the date of the enactment or the date of recordation. The statute further provided that where substantial construction on required public improvements had occurred, the subdivision would be considered "developed". This provision was repealed and reenacted in substantially the same form in 1979, in Bill

No. 61-79. Thus it seems clear from the history of the present § 22-68 and its predecessors, the statutes were enacted to provide protection for precisely the type of development that is at issue in this case. The subdivision plat vested by virtue of the substantial construction (indeed, it may be more accurate to say the completed construction) of the public improvements under the public works agreement, as provided in § 22-68 and its predecessor statutes.[2]

As a final comment, the circuit court noted that, even absent the statutory intervention of § 22-68, the facts of this case cry out for an application of the doctrine of equitable estoppel. Equitable estoppel is defined as:

> ... the effect of the voluntary conduct of a party whereby he is absolutely precluded both at law and in equity, from asserting rights which might perhaps otherwise have existed, either of property, of contract, or of remedy, as against another person, who has in good faith relied upon such conduct, and has been led thereby to change his position for the worse and who on his part acquires some corresponding right, either of property, of contract, or of remedy.

Knill v. Knill, ___ Md. ____ (No. 39, Sept. Term, 1985, filed 6/27/86, Slip. Op. at 9), quoting from 3 J. Pomeroy, Equity Jurisprudence, § 804 (5th ed. 1941). The appellants have strongly opposed the application of this doctrine in favor of the developer on the ground that there was insufficient detrimental reliance by the developer on the actions of the county officials to call for an application of estoppel. They have,

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2 We note further that § 22-40 speaks only of executory public works agreements. It would be somewhat strange to provide protection for those subdivisions where the public works agreements are simply executory, and not for those where the public works agreements have been fully performed.

however, missed the most essential point. While we may be inclined to agree that an estoppel could be invoked against the County under these facts, we do not see how estoppel can be invoked against the neighboring landowners. It was not their conduct upon which the appellee relied. See generally, Rathkopf, supra, § 50.04. The appellee presented a good argument for the application of estoppel - it simply had the wrong party on the opposing side of this case.

JUDGMENT AFFIRMED.

COSTS TO BE PAID BY APPELLANTS.

VESTED RIGHTS

CHARLES LEWIS and ROXANNE LEWIS, CHARLES T. KINDRED and GAIL KINDRED, PETER V. SCHUKAS, WILLIAM KUBIET and ELEANOR KUBIET, WILLIAM BUCHTA and SUSANNE BUCHTA, JOHN BENT and FRANCES BENT, ELLA KUBIET and WILLIAM KUBIET,	*	IN THE
Plaintiffs	*	CIRCUIT COURT FOR
vs.	*	
NORMAN GERBER, DIRECTOR, DEPT. OF PLANNING & ZONING, BALTIMORE COUNTY; HAROLD J. PISTEL, P.E., DIRECTOR, DEPT. OF PUBLIC WORKS, BALTIMORE COUNTY; WILLIAM T. HACKETT, CHAIRMAN, COUNTY BOARD OF APPEALS, BALTIMORE COUNTY; CHESAPEAKE HOMES, INC.; TED ZALESKI, DIRECTOR, DEPT. OF PERMITS and LICENSES, BALTIMORE, MD.; BALTIMORE COUNTY;	*	BALTIMORE COUNTY
Defendants	*	CASE NO. 84-CSP-969

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MEMORANDUM OPINION AND ORDER

This case came before the Court on May 27, 1985 on Plaintiffs, et al, as well as Defendant's (Chesapeake Homes) Motion for Partial Summary Judgment on the issue of whether Chesapeake Homes obtained vested rights in the zoning of a parcel of property which they sought to develop. Also heard at this time was Baltimore County's Motion for Summary Judgment as to the duty of the Office of Zoning to issue building permits pursuant to an approved plat where legislation to amend existing zoning regulations was pending.

This is an action for injunctive relief filed by Plaintiffs who are residents of Relay, located in Baltimore County, Maryland. Plaintiffs (hereafter Residents) seek an injunction against the continued construction and

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development of a parcel of property known as Huntsmoor South. The Huntsmoor South property encompasses approximately 50 acres in Baltimore County and is adjacent to Interstate 95. Suit was filed against various Baltimore County officials, as well as various Baltimore County Governmental Agencies. The purpose of the suit is to enjoin the continued development in Huntsmoor South, as well as to enjoin the continued issuing of development permits and to compel the revocation of previously issued permits. The owner and developer of Huntsmoor South, Chesapeake Homes (hereafter Chesapeake) intervened in the action and became a party Defendant in an attempt to protect its rights as the developer of Huntsmoor South.

A chronology of the facts relative to the development of Huntsmoor South is as follows. In November of 1982, Chesapeake submitted development plans to the County Review Group (C.R.G.) in order to develop the subdivision. On February 10, 1983, pursuant to two public hearings, C.R.G. granted final approval of the plan for development. The plan provided for construction of the subdivision in an existing D.R. 10.5 zoning classification. On May 7, 1984 the Department of Public Works approved the development of storm water management Pond No. 1. The final development plan was approved on July 6, 1984. Plans for storm water management pond No. 2 were approved by the Department of Public Works on July 24, 1984. On September 27, 1984, Chesapeake recorded a final subdivision development plat for Huntsmoor South in the D.R. 10.5 zone. Upon recording the subdivision plat, Chesapeake obtained building permits on November 20, 1984 and work was begun on the site on December 3, 1984.

On May 31, 1983, Residents requested a down-zoning of the Huntsmoor South property from D.R. 10.5 to D.R. 3.5. and presented their request to the Planning Board on November 16, 1983. On February 7, 1984, the Planning Board decided to recommend a change in the zoning of Huntsmoor South from D.R. 10.5 to D.R. 3.5

On June 20, 1984, public hearings were held before the Baltimore County Council on zoning issues relating to the down-zoning of Huntsmoor South. The County Council retired the Huntsmoor South issue on September 10, 1984 by accepting the Planning Board's recommendation for down-zoning the property to D.R.3.5. On November 13, 1984, the County Council voted to downshift the zoning from D.R. 10.5 to D.R. 3.5 which became effective on January 10, 1985.

As of the effective date of the down-zoning, January 10, 1985, Chesapeake's pre-construction and construction efforts consisted of clearing and grading the Huntsmoor South property, construction of two sediment control ponds, pouring of several concrete footings, delivery of cement blocks and bales of hay, erection of silt fencing as well as a trailer "hook-up" on the construction site. The total expenditure for the pre-construction and construction efforts was Eight Hundred Seventy-Eight Thousand, Five Hundred Twenty-Nine Dollars ($878,529.00).

The issue is whether Chesapeake obtained vested rights in the D.R. 10.5 zoning classification of Huntsmoor South. This has been addressed by the parties from two perspectives. First, whether Chesapeake obtained vested rights pursuant to the Common Law of Maryland; secondly, whether Chesapeake statutorily obtained vested rights pursuant to Baltimore County Code, Section 22-68 (1983 Cum. Supp.). Both will be considered herein.

In order to determine whether pursuant to Maryland's Common Law, Chesapeake obtained vested rights in the D.R. 10.5 zoning classification, it will be necessary to review the pertinent Maryland case law. Because the variant facts of the applicable cases have yielded different holdings, the Court believes it useful, if not necessary, to review the facts and holdings in those cases in order to properly explain its rationale in the application of the law to the facts at issue in this case.

The first case in a line of cases which addresses the issue of when construction commences, thereby resulting in a developer/property owner obtaining a vested right in the existing zoning, is Rupp, et al., Trustees, v. Earl H. Cline & Sons, Inc., et al, 230 MD 573 (1962). The Rupp court defines commencement of a building as "a manifest commencement of some work or labor on the ground which everyone can readily see and can recognize as the commencement of a building and the work done must have been begun with the intention and purpose then formed to continue the work until the completion of the building." The majority rule concerning vesting, which is stated in Rathkopf Law of Zoning and Planning, 3rd Edition, Volume 2, Chapter 57-6, Section 3 and which has been consistently followed by Maryland's Courts is that ...

> "a landowner will be held to have acquired a vested right to continue the construction of a building or structure and to initiate and to continue a use despite a restriction contained in an ordinance where prior to the effective date of the ordinance in reliance upon a permit theretofore validly issued he has in good faith made a substantial change of position in relation to the land, made substantial expenditures or has incurred substantial obligations....."

In Rockville Fuel and Feed Co., Inc. v. City of Gaithersburg, Maryland, 266 MD 117 (1972) the language used by the court concerning vesting is that a vested right can only result when a lawful permit is obtained by the owner of the property and in good faith the owner proceeds with such construction under the permit as would advise the public that the developer had made a substantial beginning to construct the building and commit the use of the land to the permission granted.

With these general rules in mind, we now turn to the contentions of the parties in this case. Residents argue Chesapeake did not obtain common law vesting for two reasons. The first reason asserted by Residents is that

Chesapeake did not perform substantial construction as required under the case law of Maryland; the second reason is that because Chesapeake knew of the potential down-zoning of Huntsmoor South and continued with development of the property in accordance with the building permits, it did not act in good faith.

As to the issue of substantial construction, the facts in the case of Ross, et al. v. Montgomery County, Maryland, et al., 252 MD 497 (1968) were that a landowner had a building permit to construct a then permitted apartment complex and that he had poured one footer in an attempt to maintain the validity of his building permit; however, the footer was filled in the very next day. The Ross court held that the landowner did not acquire any vested rights in the zoning classification. The court found that the landowner did not in good faith begin actual construction with the intention to complete the building prior to the expiration of the building permit as required by Rupp because the footer was filled in the day after it had been dug.

Addressing the issue of monies expended in anticipation of construction, the Ross court, although being cognizant that Fifty-Six Thousand Dollars ($56,000.00) had been expended on architectural fees, found that the amount was not substantial in the absence of actual construction. Furthermore, the court noted that this was not a situation where a valid permit had been revoked by operation of an ordinance which affected a re-zoning repugnant to the use for which the permit had been issued. This was a case where the permit had expired for want of construction and with that expiration any vested right which may have existed was nullified.

In Rockville Fuel, the petitioner's purchased a parcel of property for the exclusive purpose of building a concrete plant. The City of Gaithersburg opposed the construction of the plant and litigation resulted from that opposition. Rockville Fuel petitioned for a special exception pursuant to the zoning ordinance

which then included such plants as a permitted use. The Board of Appeals of the City of Gaithersburg denied Rockville's request for a special exception. The case ultimately wound up in the Court of Appeals which reversed the Court of Special Appeals and the Board of Appeals and remanded the case for further proceedings to enable Rockville Fuel to obtain a special exception and build the concrete plant. Subsequent to the decision by the Court of Appeals, the City applied for a zoning amendment for the sole purpose of eliminating the concrete plant as a permitted use and thereby including it as a prohibited use. The Mayor subsequently approved the ordinance granting the zoning amendment and accordingly disapproved Rockville's request for a special exception. Rockville subsequently initiated suit on the basis that it had acquired vested rights to construct the concrete plant as a result of the Court of Appeals decision. At no time did Rockville ever obtain a building permit and at no time did Rockville begin construction. Accordingly, the Court found that Rockville Fuel had not acquired a vested right in the prior zoning and it further stated that such a vested right could only result when a lawful permit was obtained and the owner in good faith had proceeded with such construction under it as would advise the public that the owner had made a substantial beginning to construct the building and commit the use of the land to the permission granted.

In Pemberton v. Montgomery County, Maryland, 275 MD 363 (1975), the Exxon Corporation sought to construct a gasoline station under a special exception. Approximately one (1) day before the end of the period granting the special exception, Exxon pursuant to a building permit, constructed a retaining wall, dug a trench, installed horizontal steel rods and then poured five (5) to six (6) yards of concrete into the excavation for footings. In determining whether substantial construction had begun, the Pemberton court, relying on the two-pronged test enumerated in Rupp, distinguished the case from Ross because

in Ross the footer was filled in the day after it was dug, and accordingly, the Court found that the second aspect of the Rupp test had not been met in that the requisite intent to continue construction was absent. The Court further stated that Pemberton was comparable to Ross to the limited extent that the same type of work was performed, i.e., excavation and construction of footings. The Pemberton court upheld the Board's decision that there was sufficient evidence of digging and cement work on the retaining wall foundation and accordingly upheld the Board's finding that Exxon had acquired vested rights.

The last in the line of cases relating to substantial construction is Steuart Petroleum Co., et al. vs. Board of County Commissioners of St. Mary's County, 276 MD 435 (1975). The Steuart Petroleum Co. sought to build a refinery; they applied for and were granted a permit authorizing construction of a warehouse. The permit covered construction of a foundation pad for processing and utility. At no time during the application process was there any reference to a proposed refinery. The County subsequently revoked the permit stating the permit could in no way be construed as pertaining to the construction of anything except the foundation pad. The day before the expiration of the permit, Steuart's contractor poured six (6) concrete footings for a pad on which a transformer was to be located. As the work progressed, it was determined that the footings had been improperly sited and they were ultimately incorporated in the foundation for the warehouse. The court held that pouring of the six (6) footings for the pad was not the commencement of construction because the footings were located in the wrong place and were ultimately covered by the warehouse.

As in Ross, the Steuart court noted that substantial preliminary commencement construction expenditures were made. The expenditures included One

Hundred Seventy-Five Thousand Dollars ($175,000.00) for a feasibility and design study and Eighty Two Thousand Five Hundred Dollars ($82,500.00) for an environmental impact study. However, the court stated that these expenditures were not sufficient to support its claim of a vested right because as in Ross where the Fifty-Six Thousand Dollars ($56,000.00) was expended for architectural fees, the expenditures were not substantial due to an absence of actual construction.

In applying the facts of the instant case to Rupp and the line of cases following it, the Court believes the law in this case to be less difficult than the facts. In accordance with the two-pronged Rupp test for determining commencement of construction, the Court believes that Chesapeake's procurement of five (5) building permits out of twelve (12) for plat A; three (3) building permits out of nine (9) for plat B; zero (0) building permits out of twenty-three (23) for plat C; five (5) building permits out of twelve (12) for plat D, as well as the digging of footings and the pouring of concrete for two (2) of the buildings, staking out of buildings, construction of two (2) sediment control ponds, substantial clearing and grading, the "hook-up" of an on-site construction trailer, erection of silt fencing and placement of bales of hay is sufficient to meet both prongs of the test. Accordingly, the Court finds that Chesapeake had commenced construction prior to the effective date of the down-zoning on January 10, 1985.

Furthermore, the Court finds that, pursuant to Ross and Rockville, Chesapeake began construction with the good faith intention to complete it in compliance with both their approved developmental plan and their subsequently issued building permits. This finding is evidenced by Chesapeake's expenditure, in connection with the development of Huntsmoor South, of over Eight Hundred

Seventy Thousand Dollars ($870,000.00) as of January 10, 1985 (the effective date of the down-zoning). The Court finds that because the aforementioned expenditures were coupled with the presence of actual construction, Chesapeake has made a substantial change of position in relation to the land and has therefore met the test for obtaining vested rights as stated by Rathkopf and as followed by the Maryland Courts. Accordingly, the Court finds that Chesapeake obtained vested rights in the D.R. 10.5 zoning classification pursuant to Maryland's Common Law.

As to Residents' argument that Chesapeake acted in bad faith by continuing the development of Huntsmoor South while possessing knowledge of pending down-zoning legislation, the Court finds that the good faith requirement enunciated by the Rupp Court is the good faith intent to complete the project started. Assuming arguendo, however, that Residents' good faith argument is meritorious, the Court notes that in none of the Maryland cases cited by counsel is there any indication that a developer's attempt to obtain vested rights in an existing zoning classification where down-zoning legislation is pending constitutes bad faith. The good faith considerations noted in Ross, Rockville and Steuart Petroleum, all address the issue of whether a developer, in good faith, initiated actual construction with the intent and purpose of completing said construction or whether the developer began the construction in bad faith, merely to obtain vesting.

Inasmuch as the Court has found that Chesapeake has obtained vesting in the D.R. 10.5 zoning classification as a result of commencing substantial construction prior to the effective date of the down-zoning, it is not necessary for the Court to determine whether vesting may have accrued under Section 22-68 of the Baltimore County Code. However, because the issue of whether this section of the Code vests zoning has arisen, the Court believes that a resolution of the issue should be made.

Section 22-68 provides in pertinent part that:

(a) "A subdivision plat shall lapse and be invalid ... ... if such subdivision ... has not been developed, as defined in subsection C, in accordance with the following time limits ...:

(3) Any plat ... approved after the effective date of these regulations shall expire eight (8) years after the approval of the plan pertinent to which the plat was prepared."

(c) "A subdivision ... is hereby defined as developed if any of the following has occurred ...:

(1) Building permits have been issued; or
(2) Substantial construction or required public or private improvements has occurred ... pursuant to the applicable regulations and requirements of the Department of Public Works. ..."

Accordingly, upon obtaining building permits or upon performing substantial construction, §22-68 permits a developer to maintain the validity of the subdivision plat for a period of eight (8) years after its approval.

Residents note that Article 4 in which §22-68 appears is captioned "Development Regulations of Baltimore County" as opposed to Article 3 which is captioned "Zoning Regulations." Accordingly, argue Residents, §22-68 by its own terms insulates recorded plats from changes in development regulations only and does not insulate recorded plats from changes in zoning regulations.

The Court recognizes the difference between zoning and planning. Board of County Commissioners vs. Gaster, 285 MD 233 (1979) states that zoning is concerned with the use of property but planning is broader in concept. Additionally, Judge Bishop in Miller v. Forty West Builders, Inc., No. 947 Sept. Term (1984) quoting from 1 - E Yokley Zoning Law and Practice, Section 1-2 (4th ed. 1978) describes the concepts as follows:

> "... Let us say that zoning is almost exclusively concerned with the use regulation whereas planning is a broader term and indicates the development of a community not only with respect to the uses of land and buildings but also with respect to streets, parks, civic beauty, industrial and commercial undertakings, residential developments and such other matters affecting the public convenience and welfare as may be properly embraced within the police power."

Accordingly, inasmuch as development regulations encompass the broader aspect of the development of a community with respect to its uses, i.e., with respect to its zoning, it becomes evident that §22-68 vests developmental regulations as well as zoning regulations for a duration of eight (8) years after approval of the plan pursuant to which the approved plat was prepared.

The Maryland Court of Special Appeals has most recently expressed their position regarding the relationship between zoning and regulation in the Forty West Builders, Inc. case. In Forty West, the Court stated that:

> 'There are three integral parts of adequate land planning, the Master Plan, zoning and subdivision regulations.....
>
> Although this case arose within the context of approval of a subdivision plan, ..., it also involves zoning. Accorndingly, we hold that the term 'zoning petition' was intended to be broad enough to include subdivision plans submitted to the C.R.G. for approval.
>
> Approval by the C.R.G. will necessarily entail review of and compliance with the applicable zoning regulations."

The language used by the Court of Appeals indicates that zoning and planning, although having distinct meanings, are not wholly unrelated concepts, and effectively, they are synonymous when considered in the context of C.R.G. approval of subdivision plans such as those at issue in this case.

In addition to the Forty West case, the legislative context within which §22-68 was adopted, is indicative of the intent of the statute. The legislative

history of §22-68 is addressed in an opinion written by the County Attorney on May 17, 1984 known as the Westchester Opinion. The opinion notes that from 1955 until at least 1977, the Office of Planning and Zoning, as well as the Zoning Commissioner's office, interpreted §103.1 of the Baltimore County Zoning Regulations to essentially insulate a subdivision plat which had received tentative approval from the Baltimore County Planning Board. The effect of this interpretation was to give a developer a vested right to proceed with his tentative plan notwithstanding that the zoning may be changed prior to the issuance of permits and prior to the commencement of construction. The County Attorney went on further to indicate that the interpretation of §103.1 had been adopted by the County Council.

The opinion further indicates that in 1977 the County Council passed the Interim Development Control Act, codified at §22-16 of the Baltimore County Code 1978. That legislation set forth the circumstances and conditions under which a developer could receive a vested right to proceed with his development notwithstanding a subsequent change in the zoning classification. Specifically, §22-16 (h) 3 expressly provided the developer with the vested right to proceed with development for five (5) years notwithstanding subsequent down-zoning.

In 1982 the County Council enacted §22-68 which repealed all previous subdivision regulations and established the development regulations now in effect. Said section established an eight (8) year period for development following plan approval. In his opinion, the County Attorney notes that since at least 1977 the County Council of Baltimore has chosen to recognize that it takes a substantial expenditure of funds to go through the various regulations of Baltimore County in the subdivision process and that a developer should be given a reasonable period of time to achieve a developed status for his property without running the risk of losing his investment by changes in the zoning classification.

The opinion goes on to state that the County Council has chosen by legislative enactment to change the rule of law enunciated in the line of Maryland cases cited in this opinion and has decided that a developer should have a vested right to proceed with his development if he has secured building permits or if there has been substantial construction on required public improvements.

Pursuant to the most recent assessment by the Court of Appeals concerning the interplay between zoning and planning, and given the legislative history of the enactment of §22-68, it is the opinion of this Court that the section vests zoning rights as well as developmental rights in the owner of property, provided said owner meets the requisite elements for such vesting.

The final motion for consideration is Baltimore County's Motion for Summary Judgment on the issue of whether applications for building permits conforming to current zoning regulations should be issued by the Zoning Office even though they proposed a use contrary to an enacted but not effective amendment to existing zoning regulations. Residents contend that Chesapeake's awareness of potential down-zoning and Chesapeake's knowledge of the comprehensive re-zoning by the 1984 Comprehensive Map should have inhibited Chesapeake's application for its building permits. The County's position is that if an application for a permit conforms to a then existing zoning regulation, it is encumbent on the County to issue the permit. The denial of the permit, pending the effectiveness of the amendment to the zoning regulation is, according to the County, beyond the powers delegated to it.

In the case of Baltimore County v. Security Mortgage Corp., 227 MD 234 (1961), the Security Management Corporation brought suit for declaratory judgment and injunctive relief pursuant to the County's refusal to approve recordation of

subdivision plats. The Court held that a municipal agency can exercise only so much of the police power as may be expressly granted or necessarily implied to it, and that if the action taken exceeds that power, the action is void. The Annotated Code of Maryland, Article 25 A, Section 5, (1957) enumerates the express powers provided to the counties. Section 5 contains no provision granting the County authority to refuse an application for a building permit where the intended use conforms to what is then the controlling zoning regulations. Accordingly, the Court believes that if the County were to deny the issuance of building permits pending the effectiveness of an amendment to existing zoning regulations such an act would be beyond the powers delegated to it.

In Baltimore Planning Commission vs. Victor Development Co., Inc., 261 MD 387 (1970), a Petition for Mandamus was filed by the Victor Development Co. when the Planning Commission rejected the approval of a development plan that complied with the legal requirements for its approval. The Court held that a refusal by the Baltimore County Planning Commission to approve a subdivision development plan where the plan appeared to have complied in all respects with the rules, regulations and requirements for its approval, was not within the Commission's authority. Similarly, in this case, the County was confronted with a situation where a request for building permits was made in accordance with the approval of a developmental plan that complied with the then existing zoning regulations. As the court in Ross stated in addressing the issue of how a change in zoning regulations enacted while litigation was pending would affect the determination of the suit, "The case must be determined under the law as it currently exists." Similarly, the Court finds that the County had to act under the law as it existed at the time Chesapeake sought their building permits. Therefore, the Court finds

that the County had no authority to reject Chesapeake's request for their building permits.

Accordingly, it is this 2nd day of August, 1985, by the Circuit Court for Baltimore County,

ORDERED that Plaintiffs' et al. Motion for Partial Summary Judgment* (Paper No. 30) be and is hereby DENIED, and it is further;

ORDERED that Defendant's (Chesapeake Homes, Inc.) Motion for Partial Summary Judgment (Paper No. 33) be and is hereby GRANTED, and it is further;

ORDERED that Defendant's (Baltimore County) Motion for Summary Judgment (Paper No. 35) be and is hereby GRANTED, and it is further;

ORDERED that Defendant's (Chesapeake Homes, Inc.) Motion to Strike the Memorandum filed on behalf of Kubiet and Spencer (paper No. 38) be and is hereby GRANTED.

*Plaintiffs' allegation of numerous design defects on Chesapeake's construction of Huntsmoor South is still pending.

A. OWEN HENNEGAN, JUDGE

COPIES SENT:

PETITIONER'S

EXHIBIT NO. 14

VENABLE LLP

210 Allegheny Avenue
Post Office Box 5517
Towson, Maryland 21285-5517

ARNOLD JABLON
(410) 494-6298

aejablon@venable.com

RECEIVED
MAR 14 2006
DEPT OF PERMITS AND DEVELOPMENT MANAGEMENT

14 March 2006

Mr. Donald Rascoe, Deputy Director
Department of Permits and Development Management
111 West Chesapeake Ave
Towson, Maryland 21204

Re: Stepcich Property
Windemere, Section III
3 Stonehurst Road
J.S.P.C. Material Amendment

Dear Mr. Rascoe:

This office represents Mr. and Mrs. Joseph Stepcich, the owners of the above cited property. The subject property, located at 3 Stonehurst Road, Baltimore, MD., identified as lot "1" on the J.S.P.C. plan and plat known as "Section III, Windemere", which was approved in or about 1969. The property owner desires to resubdivide their lot into 2 lots as shown on the accompanying redlined J.S.P.C. plan.

In early 2002, our clients filed a request to the DRC for approval of the proposed division of their lot into two by amendment to the originally approved J.S.P.C. plan. After review, in 2004, the Office of Planning denied the division due to the change in zoning from that which was in effect when the original plan was approved and that which is in place currently.

With the passage of Bill No. 26-04 by the County Council, we believe it appropriate to file the attached plan. Pursuant to this legislation, my clients' proposal merits endorsement at the very least as being in conformity with the regulations in place at the time of the original plan approval or as a material amendment to the previously approved plan, as shown and in accordance with the development and zoning regulations in effect at the time of the original plan approval.

Please accept this request for filing for a material amendment to a previously approved plan, pursuant to §6, of Bill 26-04.

Sincerely,

Arnold Jablon
AEJ/aj

ACCEPTED FOR FILING BY THE DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT

3-14-06 By: David T. Rowe
DATE PDM

PETITIONER'S
EXHIBIT NO. 16

Baltimore County Governme
Department of Permits and
Development Managemen

111 West Chesapeake Avenue
Towson, MD 21204

410-887-3335

April 12, 2006

Mr. Arnold Jablon
210 Allegheny Avenue
Towson, MD 21204

RE: Stepcich Property
3 Stonehurst Road
DRC Number 040306D, Dist. 11C3

Dear Mr. Jablon:

Pursuant to Article 25A, Section 5 (U) of the Annotated Code of Maryland, and as provided in Section 602 (d) of the Baltimore County Charter, and Sections 32-1-101, 32-3-401, and 32-3-517 of the Baltimore County Code, this letter constitutes an administrative order and decision on the request for issuance, renewal, or modification of a license, permit, approval, exemption, waiver, or other form of permission you filed with this department.

Your request has been submitted for careful review and consideration to the Development Review Committee (DRC), which is composed of representatives from each of those departments involved in land-use decisions. These representatives are designees of the directors of these departments. The purpose of the DRC is to ensure compliance with Section 32-4-106 and Section 32-4-262 of the Baltimore County Code and to make recommendations to the Director, Department of Permits and Development Management (PDM).

The DRC has, in fact, met in an open meeting on April 3, 2006, and has denied your request.

Sincerely,

Timothy Kotroco

Timothy Kotroco
Director

TK:DTR:dak
c: file

PETITIONER'S

EXHIBIT NO. 13

IN THE MATTER OF:	*	BEFORE THI
STEPCICH PROPERTY, SECTION III	*	COUNTY BOARD OF APPEALS
	*	OF BALTIMORE COUNTY
Windemere - 3 Stonehurst Road Phoenix, Maryland 21131	*	CASE NO.: CSA-04-157

MEMORANDUM OF LAW

Baltimore County, by its undersigned counsel and pursuant to this Board's May 12, 2005 Order, hereby files this Memorandum of Law, and states as follows:

A. Board of Appeals Lacks Jurisdiction

Baltimore County respectfully suggests that the Board does not have jurisdiction over the present controversy, given that the Petitioner has not first sought relief from the Zoning Commissioner by filing a petition for special hearing as required by Baltimore County Zoning Regulations ("BCZR") 1A00.4 and 1B01.3. This failure to exhaust administrative remedies bars Petitioner from seeking relief in this forum. *Brown v. Fire and Police Retirement Systems,* 375 Md. 661, 669 (2003) (exhaustion doctrine requires litigant to first seek relief from administrative agency created to handle such matters); *Maryland Reclamation Assoc., Inc. v. Harford County,* 382 Md. 348 (2004) (exhaustion doctrine requires litigant to first seek relief from administrative agency created to handle such matters).

This case involves a zoning/vesting dispute, and is therefore within the jurisdiction of the Zoning Commissioner. Indeed, the Zoning Commissioner recently issued an opinion in a zoning/vesting case, and the matter is now on appeal to this Board. *In re: US Filter Recovery,* Case No. 05-075-SPHXA. It is understandable why Petitioner strenuously objects to having his case heard in that forum, since the Zoning Commissioner expressly held that one cannot vest, for zoning purposes, without a valid building merit and substantial construction of the project. *Id.*

B. Petitioner is Not Vested and Must Comply With The Present Zoning Classification on the Property

Maryland's highest court on several occasions recently discussed in great detail the vested rights doctrine, and has set forth definitive guidelines. In *Prince George's County v. Sunrise Development Limited Partnership,* 330 Md. 297 (1993), the court noted:

> The vested rights doctrine has a constitutional foundation and "rests upon the legal theory that when a property owner obtains a lawful building permit, commences to build in good faith, and completes substantial construction on the property, his right to complete and use that structure cannot be affected by any subsequent change of the applicable building or zoning regulations.

Id. at 312 (emphasis added).

In the more recent case of *Marzullo v. Kahl,* 366 Md. 158 (2001), the court considered whether a property owner had a "vested right" to lawfully conduct a business of breeding, raising and selling snakes in an R.C. 4 zone. Ultimately, the Court of Appeals held that the landowner did not have such a right, and its decision was based largely upon the fact that the issuance of the permit for the construction was improper, and thus could not lead to a vested right. In reaching its holding, the *Marzullo* court stated as follows concerning the vested rights doctrine:

> In Maryland it is established that in order to obtain a 'vested right' in the existing zoning use which will be constitutionally protected against a subsequent change in the zoning ordinance prohibiting or limiting that use, the owner must (1) obtain a permit or occupancy certificate where required by the applicable ordinance, and (2) must proceed under that permit or certificate to exercise it on the land involved so that the neighborhood may be advised that the land is being devoted to that use.

Id. at 192-93.

Indeed, the *Marzullo* court noted that the vested rights doctrine is analogous to the nonconforming use doctrine, in that both stress the importance of "public knowledge in the neighborhood of the use." *Id.* at 192.

In the most recent case to address the doctrine, the Court of Appeals adopted the following standard for vesting in the zoning context:

1. There must be the actual physical commencement of some significant and visible construction;

2. The commencement must be undertaken in good faith, to wit, with the intention to continue with the construction to carry it through to completion; and

3. The commencement of construction must be pursuant to a validly issued building permit.

Powell v. Calvert County, 368 Md. 400, 409 (2002).

In addition, Maryland courts on many occasions have noted that there is no different rule of vested rights in scenarios involving special exceptions or subdivision approvals. *See, e.g., Powell,* 368 Md. at 409 ("there is no different rule of vested rights for special exceptions and the like"); *Montgomery County v. Waters Landing Limited Partnership,* 99 Md. App. 1 (1994) ("fact that a piece of property is subdivided does not in and of itself create a vested property interest"); *Washington Suburban Sanitary Commission v. TKU Associates,* 281 Md. 1, 22-23 (1977) (dedication of a right-of-way in connection with a subdivision did not vest rights in the property owner); *Miller v. Forty West Builders,* 62 Md. App. 320, 330 (1985) (party does "not acquire vested or substantive rights by obtaining...approval of the subdivision plan" under Baltimore County's development regulations).

Indeed, in *Hickory Point Partnership v. Anne Arundel Co.,* 316 Md. 118, 133-34 (1989), the Court of Appeals cited with approval several out of state cases also holding that the approval of a subdivision plat does not confer vested rights upon the land owner. *See, e.g., Dawe v. City of Scottsdale,* 581 P.2d 1136 (Az. 1978) (recording of subdivision plat did not give landowners a vested right to develop unimproved property in accordance with plat and contrary to subsequently enacted subdivision ordinance); *Sherman-Colonial Realty Corp. v. Goldsmith,* 230

A.2d 568, 572 (Conn. 1967) ("mere filing of maps for the subdivision of a parcel of real estate does not necessarily immunize the subject property from the operative affect of subsequent subdivision regulations"); *In re: McCormick Management Company,* 547 A.2d 1319 (Vt. 1988) (filing plats before adoption of zoning ordinance created no vested rights to develop in accordance with those plats and contrary to zoning ordinance).

Simply put, the mere fact that the Windemere subdivision plat was approved and recorded in 1970 has absolutely nothing to do with whether an owner of a lot in that subdivision is immunized against subsequent changes in zoning.

In previous correspondence with the Planning Board, the Protestant relied upon two provisions in support of his argument that he enjoyed "vested rights" in connection with the creation of one additional lot. Specifically, he relied upon County Code §26-169 [now §32-4-104] and BCZR §103.3. *See,* Exhibit "1." Neither provide any support for Protestant's case. Indeed, those sections undercut his argument.

Section 32-4-104 of the Code concerns the applicability of the various development laws and regulations, and specific scenarios are exempted from coverage. Petitioner argues that his rights are "vested by law," (per Code §32-4-104(b)(iv)) and hence he is not subject to the development process set forth in Title 32. First, such reasoning is circular, because Petitioner has not established - nor can he - that he is vested. More importantly, as noted by the Court of Special Appeals, these exceptions in §32-4-104(b) confer certain "grandfathering rights," whereby a developer (if he satisfies one of the exemptions in the section) can follow older, less-onerous development regulations in seeking approval for his project. *Beth Tfiloh Congregation v. Glyndon Comm. Ass'n,* 152 Md. App. 97, 110-11 (2003) (§32-4-104 is a "grandfather" provision allowing developer to adhere to earlier development process). Simply put, this code

section deals with "development," and has nothing to do with zoning. On many occasions, our highest court has stressed that zoning and subdivision are separate regulatory entities. *Remes v. Montgomery County,* ___ A.2d ___, 2005 WL1115075 (Md. 2005); *Friends of the Ridge v. BGE,* 352 Md. 645, 648 n.4 (1999) ("subdivision is not zoning"); *Board v. Stephens,* 286 Md. 384 (1979).

Finally, even if the code section were applicable, as Protestant argues, the text of the statute clearly provides that all proposed development must satisfy present zoning.

Indeed, the County Code expressly states that:

> (c) Present zoning classification. Proposed development shall be in compliance with the present zoning classification on the property to be developed.

BCC §32-4-104(c).

This is in accord with the common law rule, which invariably recognizes that "compliance with applicable zoning regulations is a prerequisite for approval of a development plan." *Wesley Chapel Bluemount Ass'n v. Baltimore County,* 347 Md. 125, 137 (1997). In *Remes,* decided less than a month ago, the Court of Appeals squarely disagreed with a landowner's claim that the sole issue governing approval of a building permit for a new house on a single lot is whether the "development standards" were met. *Id.* at *4. The court held:

> This is not so. Compliance with the requirements of zoning and zoning codes, where they exist, are generally necessary before permits may be issued.

Id. at *4 n. 6.

While the Windemere subdivision may be "grandfathered" for purposes of determining whether old or new development regulations apply, this determination does not mean that the Petitioner has a constitutionally protected, vested right in the zoning which existed in 1970. *Beth-Tfiloh v. Glyndon Comm. Ass'n,* 152 Md. App. 97, 110-11 (2003) (§26-169 [now §32-4-104] bestows on

a developer the right to further development in accordance with earlier, less onerous development regulations). "Vesting" for zoning purposes is an issue of constitutional dimension, which must be determined by Maryland common law (not County laws or regulations), as set forth in the appellate decisions discussed above. Indeed, in the numerous opinions issued by Maryland appellate courts in the last 35 years (since the seminal case of *Richmond Corp. v. Prince George's County,* 254 Md. 244 (1969)), not once has a court cited or relied upon a county's development laws and/or regulations to determine whether a landowner enjoyed vested rights. Given that Petitioner has not acquired a valid building permit or begun any construction with respect to the new lot he seeks, he clearly never obtained vested rights for zoning purposes.

It is anticipated Petitioner will also argue that BCZR §103.3 supports his argument of vested rights for zoning purposes. It does not. First and foremost, the section is applicable only to property in R.C.2., R.C.3, R.C.4 and R.C.5 Zones. *See,* Exhibit "1." Petitioner's property is zoned R.C.6, as reflected on the attached zoning map. *See,* Exhibit "2." Moreover, even if the section were applicable, it says nothing about subdivision approval conferring vested rights against subsequent zoning changes.

In what has become a recurring theme, counsel for Protestant advocates a legal position based on the institutional precedent he established in his many years as a department head for Baltimore County. The absurdity of this practice was evident in a recent case before this Board. *In the Matter of Mary Horner Trust,* CBA 04-114 (opinion attached). *See,* Exhibit "3." Therein, Baltimore County denied a building permit for a new home, and cited the "creeping subdivision doctrine." In a terse opinion, the Board explained the obvious: Baltimore County could not invoke internal policies and rules (like the unwritten "creeping subdivision" policy adopted by Mr. Jablon) to decide matters unless such have been properly adopted and

promulgated as law or regulation. This Board found that the "creeping subdivision" policy promulgated by "the Director of Permits and Development Management was arbitrary, capricious and illegal." *Id.* at 5.

On another occasion, the PADM office apparently had an internal practice of denying certain development exemptions (otherwise proper under the Baltimore County Code) when the community voiced objection. *Beth Tfiloh,* 152 Md. App. at 116-17. The Court of Special Appeals held that such an internal practice or policy had no effect when it was contrary to the plain meaning of a statute. *Id.* As such, it is abundantly clear that whatever policy or opinion PADM and its staff espoused, it has no bearing upon a determination of whether a particular property owner enjoys vested rights. That is a question of law for the court.

C. Conflict of Interest Arguments

During the preliminary hearing in this matter, Protestant's counsel argued that the Baltimore County Attorney's Office was "conflicted" out of this case, and could not enter its appearance therein. In support of this spurious argument, Petitioner contended that the department heads of PADM and Planning had divergent views on this case, thus creating the conflict.

Contrary to Petitioner's assertion, the undersigned represents Baltimore County (not the Director of PADM and/or Planning) in this matter. Under the Charter, the County is a corporate body that has the power to sue and be sued. Charter §101. Maryland courts have repeatedly emphasized that it is the County, and not any agency or department thereof, which has standing in litigation matters. *See, e.g., Hines v. French,* 157 Md. App. 536, 573 (2004) (county departments "should not be viewed as separate legal entities"); *Boyer v. State,* 323 Md. 558, 572 n. 9 (1991) ("sheriff's department is not an entity capable of being sued").

Finally, the Office of the Attorney General recently issued an opinion touching on these issues. 87 Op. A.G. ____ (2002) (Opinion No. 02-012) (attached as Exhibit "4"). Therein, the Attorney General clarified that it is the County government as a whole which is the County Attorney's client, not any particular department or agency. *Id.* at 4. The opinion expressly noted that departments and units of county government are not distinct clients for purposes of conflict of interest analysis. As such, the Attorney General opined that the Rules of Professional Conduct do not preclude one attorney in the County Attorney's Office from representing one agency or director while another lawyer from the same office provided legal counsel to the Board of Appeals. *Id.* at 7. In rendering its opinion, the Attorney General noted that the "conflicts rules may not apply to government lawyers in the same way they do to attorneys in private practice." *Id.* at 3.

In an earlier opinion, the Attorney General likewise confirmed that "[t]he corporate entity that is St. Mary's County is the client of the St. Mary's County Attorney." 82 Op. A.G.____ (1997) (Op. No. 97-028) (attached as Exhibit "5"). Simply put, there is no conflict, and the undersigned properly represents Baltimore County in this matter.

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County Attorney

John E. Beverungen
Deputy County Attorney
Baltimore County Office of Law
400 Washington Avenue
Towson, Maryland 21204
(410) 887-4420
Attorneys for Baltimore County, Maryland

PETITIONER'S

EXHIBIT NO. 12

IN RE: RESUBDIVISION
Stepcich Property, Section III Windemere
3 Stoenhurst Road
Phoenix, Md 21131

6th Councilmanic District
11th Election District

* BEFORE THE COUNTY
* BOARD OF APPEALS
* OF BALTIMORE COUNTY
*
* Case No.: CBA 04-157
*
* * * * * * * * * *

APPELLANTS' PRE-HEARING MEMORANDUM

Appellants Joseph and Joy Stepcich, by Arnold Jablon with Venable, LLP, their attorney, hereby submit this Hearing Memorandum for consideration by the County Board of Appeals.

INTRODUCTION

Appellants filed this appeal for the purpose of having the Board of Appeals reverse the decision of the Deputy Director of the Office Planning to deny the Appellants' request to subdivide their property. The Appellants had requested the Planning Board to review and approve the subdivision of their lot into two lots. However, the Planning Board refused to proceed until this appeal was resolved. The Appellants request the Board to find that the Director or Deputy Director of the Office of Planning does not have the authority to deny the Appellants request to subdivide and to order the Director or the Chairman of the Planning Board to certify the amendment to the record plat known as "Section III, Windemere" to the Clerk of the Circuit Court or, in the alternative, to order the Planning Board to process for review for approval the subject amendment.

This Memorandum is being prepared at the request of the Board of Appeals, and is unusual in that its preparation and presentation are pre-fact finding by the Board. Its purpose is to identify and clarify the issues and to propose the remedies sought. While no testimony has been presented, it must be emphasized that the legal analysis and conclusions presented must be read in consideration and within the context of the testimony that would otherwise be presented during the course of the hearing on the merits. Thus, certain liberties are taken and supporting information is presented as if given in testimony.

By way of background, the Appellants reside at 3 Stonehurst Road, in Phoenix, Maryland 21131, which is located between Dulaney Valley Road and Manor Road, off of Windemere Parkway. The Appellants property is a lot of record identified as lot "1" , now known as 3 Stonehurst Court, on the plat known as "Section III, Windemere" (hereinafter referred to as "Section III"), said plat attached hereto and marked for identification as **Appellant's Exhibit (App Exh) 1**. The plat was approved by the Baltimore County Planning Board on 19 February 1970.and recorded amongst the Land Records of Baltimore County on 24 February 1970 in OTG 34, Folio 10. The lot consists of 5.137 acres. The Appellant Joseph Stepcich purchased lot 1 in or about 1970, built his home on or about 1972 and has resided therein continuously to this date. The lot was purchased subject to a Declaration recorded by the owner and developer of Section III, executed on 2 September 1970 and recorded at Liber 5191, Page 243 of the Land Records, which provides in pertinent part, in paragraph 9, page 3, that "Nothing in these restrictions shall be construed to prohibit future subdivision of any parcel into R-40

residential lots. This means a lot containing at least 40,000 square feet and at least 150 feet wide at the building line." See **App Exh 2.**

Section III consisted of 19.035 +/- acres at the time of its approval in 1970 and was zoned RSC. The RSC zone permitted a minimum lot size of 1 acre. Section III had sufficient density under the RSC regulations for 19 lots; however, 4 lots and 2 parcels were requested and approved. Subsequently, the property was rezoned and is currently zoned RC 4.

The Appellants in early 2002 asked the Zoning Office to verify that lot 1 could be subdivided. In its response, dated 8 February 2002, the Zoning Office advised that the subdivision regulations and zoning governing a proposed subdivision were that which were in place at the time of the original approval, in 1970. The letter suggested that the Appellant file with the Development Review Committee (hereinafter referred to as "DRC") to determine whether the subdivision was vested. See **App Exh 3.** The Appellants then filed with the DRC for approval to subdivide. On or about 22 March 2002, the Director of the Office of Planning responded to the DRC that the Office of Planning recommended against the "resubdivision" of 3 Stonehurst Road. The Director concluded that "Changes to the layout that result in an increase in density must comply with current regulations. Furthermore, the plat of Windemere had no density calculations indicated, therefore, §103.3 states 'where such a plan has been so approved but does not indicate densities or the situations for buildings or yards or other open spaces, these may be established or situated only in accordance with the standards as prescribed and in force at the time of recordation.' In other words, lots established on that plat are buildable in

accordance with prior standards, provided that plat is vested. Newly established lots must comply with current regulations." **App Exh 4.**

On 23 May 2002, the Development Review Committee by letter to the Appellants issued its final decision as follows:

"The DRC has determined that your project was originally approved by the Joint Subdivision Planning Committee (JSPC). You may process a plan with changes to the last approved JSPC in compliance with JSPC regulations. To submit a JSPC plan for consideration, please contact this office for a transmittal form. It is also necessary to submit a plan to the Office of Planning for further review."

See **App. Exh 5.**

No appeal ensued from this decision.

Based on the information provided and the decision rendered by the DRC, the Appellants proceeded to have prepared and then submitted to the Department of Environmental Protection and Resource Management (DEPRM) a "Perc Plan of Stepcich Property". See **App Exh 6.** On June 3, 2003, DEPRM approved the installation of a private sewage disposal system for the proposed lot 2. See **App Exh** 7. By this time, the 2004 Comprehensive Zoning Map Process had commenced. This is the quadrennial rezoning process during which recommendations would be made to the County Council for changes to zoning designations on thousands of acres, which would culminate in September of 2004 by vote of the County Council on these recommendations for incorporation into the official zoning maps of the County.

Indeed, the Appellants' property was placed into the Comprehensive Zoning Map Process (CZMP) at the request of the Planning Board. The Appellants' property was included for consideration in Issue 3-105, for possible down zoning from its current RC 4 to RC 7. On or about 21 January 2004, the Appellants received notice from the Office of Planning in which it was explained to them that their property was at issue for a zoning change, its potential impact, and the reasons for the request. Included in the notice was the following paragraph:

> If approved by the County Council, the requested zoning (RC 7) would reduce the rate of residential subdivision to one lot per twenty five acres. The existing zoning (RC 4) allows residential subdivision at the rate of one lot per five acres. Existing lots in recorded subdivisions would continue to be regulated by the zoning regulations that were in effect at the time the existing lot was created.

See **App Exh 8.**

Thereafter, and based on the DRC letter of May 2002 and with the CZMP notice in hand, the Appellants filed with the Planning Board of Baltimore County a request to approve an amendment to the Section III, Windemere plat. See **App Exh 9**. In this letter to the Chairman of the Planning Board, the Appellants explained why the Planning Board had jurisdiction and requested approval of the proposed division of lot 1 into 2 lots.

On or about 28 May 2004, the Director of the Department of Permits and Development Management sent a letter to the Chairman of the Planning Board in which he confirmed the position of the Department of Permits and Development Management that the instant subdivision was vested and governed by the laws and regulations in effect at the time of the original plan approval. He concluded that "This includes further

subdivision of lots that were created by the original plan, and is controlled by the zoning classification then in effect."

See **App Exh 10**.

The instant matter was heard by the Planning Board on three occasions—21 October 2004, 18 November 2004, and 6 January 2005.

Prior to the 6 January Planning Board meeting, Appellants were notified by letter to Counsel, dated 26 October 2004, from the Deputy Director of Planning, in which he denied, on behalf of the JSPC, the Appellant's request to subdivide their property. See **App Exh 11.**

An appeal from this letter ensued.

At the 6 January meeting, the Planning Board decided not to take any action until the Board of Appeals heard the appeal. See **App Exh 12.**

While the above may represent a somewhat tortuous path, the issues may be clarified and delineated in a more simplified manner, as follows.

ISSUES PRESENTED

1. Is the letter from the Deputy Director of the Office of Planning, dated 26 October 2004, an adjudicatory order subject to appeal to and review by the Board of Appeals?
2. Does the Deputy Director have the authority on behalf of the JSPC to deny the Appellants proposed division of their lot?
3. What constitutes "vesting" of a previously approved subdivision?
4. What remedies are available to the Board of Appeals?

ARGUMENT

I. THE LETTER FROM THE DEPUTY DIRECTOR WAS AN ADJUDICATORY ORDER, SUBJECT TO REVIEW.

§602 (d) of the Baltimore County Charter grants to the Board of Appeals the broad jurisdictional authority set out by Article 25A, §5 (U), Annotated Code of Maryland, otherwise known as the Express Powers Act. Both provide the right of appeal to the Board from an adjudicatory order.

While the People's Counsel raises in a somewhat cursory manner a jurisdictional issue, he admits that the appeal had to be taken in order to protect Appellants' interests. His argument, as does the Appellants', goes to the result of the Board's decision on this issue. In order to arrive at that point, it is important that the Board determines that the letter was appealable.

In United Parcel Service, Inc. v. People's Council for Baltimore County, 336 Md 569 (1994), the issue revolved around a zoning dispute concerning whether a particular use was a warehouse, permitted as of right in the involved zone, or a trucking facility, which required a special exception. In this case, UPS had applied for and received a building permit. Subsequent to the commencement of construction, some two months after the issuance of the permit, a concerned citizen wrote to the Zoning Commissioner that UPS was required to have a special exception and none had been granted. The Zoning Commissioner responded that a special exception was not required and that a building permit had already been issued. No appeal from the issuance of the building permit was ever taken. An appeal to the Board from the Zoning Commissioner's letter

was taken. In UPS, the Court of Appeals considered the issue whether the Zoning Commissioner's letter constituted an "appealable event" within the meaning of Article 25A, §5(U), which had been incorporated by reference into §602 (d) of the Charter. The Court ruled that the subject letter was not an "appealable event". ***The appealable event in UPS was the issuance of the permit, not the response from the zoning commissioner, an administrative official, who had reaffirmed that the permit had been properly issued***. (Emphasis added). The Court said:

> The "decision" which is the subject of [the] Appeals...is not a final administrative decision, order or determination. It is at most a reiteration or reaffirmation of the final administrative decision or order of the department granting the original Use and Occupancy Certificate...

UPS involved the issuance of a permit. The appealable event, the "approval" or "other form of permission" and the "decision" of the Zoning Commissioner occurred when the building permit was approved and issued., which had occurred some two months before the flurry of letters. The issue before the Court was not a dispute about an adjudicatory order, rather an attempt by the Protestants to elevate a responsive letter to the level of an adjudicatory order, which the Court of Appeals rejected. The appealability of an action pursuant to Article 25A, §5(U), the Express Powers Act, and §602 (d), of the Baltimore County Charter, is determined on the occurrence of an "operative event".

The "operative event" in the instant matter is the letter from the Deputy Director. This letter is an "appealable event" within the parameters established by the Court in UPS. It is an adjudicatory order issued by an administrative official that effectively denied Mr. Stepcich's right to, at the very least, proceed before the Planning Board or, at

the very worst, subdivide his property. There cannot be a more obvious "appealable events."

In Meadows of Greenspring Home Owners Assoc v. Foxleigh Enterprises, Inc., 133 Md App. 510, 758 A2d 611 (2000), the issue before the Court of Special Appeals involved an appeal from a letter issued by the Director of the Department of Permits and Development Management. In his letter, the Director affirmed a recommendation of the DRC to require the subject project to proceed as a material change to a previously approved plan through the old CRG process. The immediate issue was what regulations were applicable. The Director concluded that it was the regulations in effect at the time of the plan's original approval. The appellants, however, wanted the project to be reviewed under the current development regulations, which had succeeded the CRG review and approval process. The question similarly as in UPS was whether the letter from the Director constituted an "appealable event". In this case, the Court concluded that the Director's "...letter was not an 'operative event' that determined that Foxleigh's [Meadows] proposed plan will be granted a license or permit, and did not determine the conditions or scope of that license or permit. Rather, the letter merely informed Foxleigh that the proposed plan must be reviewed by the CRG." The appealable event would be, the Court concluded, the action ultimately taken by the CRG, see Id, 516. There was, the Court concluded, not yet a final action that could be appealed. See also Art Wood v. Wiseburg, 88 Md App 723, 596 A2d 712 (1991).

In the instant matter, the letter from Mr. Long was not advice, not informational, other than to admit that the subdivision regulations in effect in 1970 were the operative

regulations. It was a final action that summarily ended the Appellants' quest to subdivide.

"[The] question [of] whether a judgment, order, or decree is final and appealable is not determined by the name or description which the court below gives it, but is to be decided by the appellate court on a consideration of the essence of what is done thereby." Art Wood, at 726. Whether the letters of the Director and of the Chairman were appealable is to be decided by this Court after consideration of their impact on the rights of the Appellants.

In both UPS and Meadows, the letters were informational; in the instant matter the letter was conclusionary and final.

Further, the Court of Special Appeals again took up the issue of when does a letter from the Director become appealable, in Beth Tfiloh Congregation of Baltimore City, Inc. v. Glyndon Community Association, Inc., 152 Md App 97, 831 A2 93 (2003). Once again, the Director of the Department of Permits and Development Management was the cause and the source of controversy. In Meadows, the controversy surrounded the issue of when a change to a previously approved plan was a refinement or a material change and which development process it would be subject to. The significance was the development review and approval process used. In Beth Tfiloh, the issue was whether the proposed change was an "exemption" to the requirements of development plan approval, the current process. The Court was not asked to determine which process the project should be subject to. In this case, the Director of accepted the DRC's recommendation to deny the applicant's request to be exempted from the current

development process because it was a "lot of record", which is one of the enumerated exemptions in the Baltimore County Code. Beth Tfiloh appealed. The Director's letter was ruled by the Board of Appeals to be an "appealable event" and reversed the Director, finding that Beth Tfiloh's proposal was exempted from the review and approval process. An appeal was then taken to the Circuit Court, which reversed the Board, basing its decision on Meadows. An appeal followed to the Court of Special Appeals, which then reversed the Circuit Court. The Court concluded the letter was appealable.

UPS involved the issuance of a permit; Meadows involved a material change to a previously approved development plan; Beth Tfiloh involved an exemption to the development regulations. The appellee, a community association, in Beth Tfiloh argued that the Director's letter was not an "operative event" and not appealable. The argument it employed was the same as that adopted in Meadows and, thus, it argued an appeal from the Director's letter should not be permitted. The Court after summarizing the Appellee's position stated:

> ...because the letter to appellant [Beth Tfiloh] advising that it was not entitled to an exemption "does not make any decision and is not an order." We disagree. While the letter from PDM, arguably, was not an "order", it clearly advised that a final 'decision' had been made. Foxleigh [Meadows] is inapposite because it did not concern the denial of an exemption. This is of crucial importance because article 25A, §5 (U), allows the Board to hear appeals from the "denial...of any exemption..." In contrast to the specific language in §5 (U) allowing an appeal to the Board from the denial of an exemption, nothing in §5 (U) allowed an appeal from the type of ruling sought to be reviewed in Foxleigh.

Beth Tfiloh, at 102.

In the instant matter, when the Deputy Director denied the Appellants the right to subdivide, the "scope" of the denial was obvious and definitive. See Beth Tfiloh, at 98. Its finality is indisputable.

The letter did not merely inform the Appellants and their counsel that the proposed subdivision of their lot into two lots was being denied but it justified the denial by referring to the law in effect at the time of the original plat approval to support the denial! The denial was disingenuous to say the least. The letter did not "merely" inform of a denial, it was the denial. The letter was not an explanation of previous actions taken, but was an adjudicatory order declaring finality to the Appellants' request. Surely, this letter is exactly what the Court in Beth Tfiloh described as an "appealable event", granting to the Board the jurisdiction to hear Appellants' appeal from the denial of the Deputy Director on behalf of the JSPC to permit the division of Appellants lot into 2 lots.

II. THE DEPUTY DIRECTOR DID NOT HAVE THE AUTHORITY ON BEHALF OF THE JSPC TO DENY THE APPELLANTS PROPOSED DIVISION OF THEIR LOT

In the Code of Local Public Laws of Baltimore County, 1955 ed., approved by the County Commissioners and adopted by the State Legislature, the Planning Board and the Department of Public Works were given joint authority to approve all plats. See Title 25, §381, **App Exh 13**. See also Title 25, §387, wherein the Planning Board could approve a plat but could only disapprove a plat after a public hearing. **App Exh 14.** Plats were required to meet "...minimum widths and areas of lots. Such minimums shall coincide with such provisions in the Zoning Regulations for Baltimore County." See Title 25,

§382, **App Exh 13.** Title 25, §383, provided that subdivisions would be exempt from the subdivision regulations if the

> ...number of new lots is less than a designated number, or plats that do not involve new streets, or such other plats of subdivisions as such ordinance shall designate. In all cases involving such exempted subdivisions, the Planning Board Chairman, or its Director, shall certify the exemption on the plat, deed or instrument to be filed with the Clerk...for recording.

App Exh 15.

As shown below, this provision was still the law in 1970, when Section III was approved. The County Commissioners in addition to the authority given to the Planning Board and the Department of Public Works established the Joint Subdivision Planning Committee (JSPC), see Title 25, §384, **App Exh 15.** The JSPC was to process and approve plats, and consisted of representatives of the Office of Planning and of the Department of Public Works, and its approvals were to be in addition to those required by the Planning Board and Public Works.

In 1958, by then a Charter County, the County Council adopted the 1958 County Code, that included changes to the then existing subdivision regulations, see Title 23, §§23-17, et. seq. BCC, 1958 ed., as amended. §23-19 continued the exemptions provided in Title 25, §383, of the 1955 Code, verbatim. Further, §23-20 continued the JSPC. See **App Exh 16.**

The County Council, however, by Bill No. 80-1960, abolished the JSPC when it adopted changes to the subdivision regulations it had adopted in the 1958 Code. No longer was the Department of Public Works required to approve a plat, although it had the authority to require a public works agreement. The Planning Board had exclusive

authority to approve a plat. Even with all the changes, the Council chose to maintain the exemption provision that had been first adopted in the 1955 Code. Relevant sections of Bill 80-1960 attached hereto as **App Exh 17.**

The legislative history of the subdivision regulations is clear and absolutely unambiguous; the legislative body of this County determined that all developments receiving tentative approval of a preliminary plan by the planning board, much less final approval, "shall be governed by the subdivision regulations in effect at the time of the preliminary plan approval..." See below for a thorough review of this history.

This protection first adopted in 1963, broadened in 1977, 1979, and 1982, as set out below, was re-adopted in 1993, and is still the law of this County. Clearly, an amendment to Section III, which was originally approved in 1969 and 1970, must be reviewed for approval pursuant to the regulations then in effect. The law as adopted and contained in the 1968 Baltimore County Code governs.

§22-33, 1968 BCC, as amended, continued the exemption language, as follows:

> Any such subdivision regulations may exempt from the requirements of governmental approval, subdivisions wherein the number of new lots is less than a designated number, or plats that do not involve new streets, or such other plats or subdivisions as such ordinance shall designate. In all cases involving such exempted subdivisions, the planning board chairman, or its director, shall certify the exemption on the plat, deed or instrument to be filed with the clerk of the circuit court for recording.

App Exh 18. There are no references to the JSPC.

Indeed, there is no disagreement by the Office of Planning to this proposition, but the Director's conclusion in his memo to the DRC contradicts what he admits the law provided. The Director had no independent authority to approve or disapprove a plan

other than to certify an amendment as an exemption to the development review and approval process. The Director certainly did not have any authority to speak for the JSPC. Neither the Office of Planning nor the Director, or Deputy Director, had such independent authority under the laws in effect in 1970, as found in the 1968 BCC, as amended. The Director in the instant matter could not make a decision on behalf of the JSPC to deny the amendment because the JSPC was abolished in 1960.

At most, the Director could review a proposed amendment to a previously approved plan or plat to determine whether it satisfied the exemptions contained in §22-33, of the 1968 Code. Equal and separate authority resided with the Chairman of the Planning Board. Their only authority was to determine whether the amendment complied with the specific criteria set out in §22-33 of the 1968 BCC. If there was compliance, the Director or the Chairman was required to certify the exemption on the amended plat to be recorded. Alternatively, if the criteria were not met, then only the Planning Board could approve or disapprove the amendment pursuant to the regulations in effect at the time of the original approval.

Here, the Appellants' amendment complies with the criteria established in §22-33 of the 1968 BCC. The criteria are set out in the disjunctive. The amendment is exempt if the number of new lots is less than a designated number, or plats that do not involve new streets, or such other plats or subdivisions as designated in the law. First, the proposed amendment does not involve new streets. Thus, §22-33 is satisfied. Second, only 1 new lot is proposed, and, while there were no designated number of lots on the approved plat, the zoning then in place permitted 19 lots and only 4 lots and 2 parcels were approved.

III. THE APPROVED PLAT OF SECTION III, WINDEMERE IS VESTED AND IS GOVERNED BY THE SUBDIVISION AND ZONING REGULATIONS IN EFFECT AT THE TIME OF ITS ORIGINAL APPROVAL

The Board of Appeals has consistently held that decisions rendered by the DRC, as they are set out in its infamous letters, are appealable. The 23 May 2002 letter speaks for itself. **App Exh 5**. The letter confirmed that the Section III plat was vested and subject to the laws in place at the time of original approval, subject to the original zoning. No appeal was taken. Certainly, the Office of Planning knew of the letter, knew of the decision, and elected not to appeal. No appeal was taken. The decision as set out in the letter was final. The issue of what zoning governs was decided and the Office of Planning, the People's Counsel and the County Attorneys Office should now be estopped from raising this as an issue. The ***only issue*** should be whether the proposed subdivision of the Appellants' property should be approved as an exemption under pursuant to §22-33 of the 1968 Code or whether the Planning Board must have a hearing to determine whether the proposal complies with the subdivision regulations in effect at the time of the original approval.

When Section III was originally approved, the zoning density was permitted pursuant to the RSC classification at one lot per acre. The Appellants' property is zoned RC 4 today. The RC 4 regulations do not permit a subdivision of a lot less than 6 acres, and, as the existing lot is 5 +/- acres, the RC 4 would not permit further division. The RSC zone would. If Section III is "vested" pursuant to the zoning in place at the time of the original approval, then RSC controls. Notwithstanding that the zoning classification

has changed, the Appellants are entitled to divide their lot and have the Section III record plat amended accordingly.

The Appellants' purpose in going to the Director and to the Planning Board was to have either the Director or the Chairman of the Planning Board certify their proposed subdivision to the originally approved Section III to the Clerk of the Circuit Court, as provided in §22-32 of the 1968 BCC. The issue now revolves around the question of "vesting"

The seminal case on vesting in Maryland is Rockville Fuel v. Gaithersburg, 291 A2d 672 (1972), in which the Court of Appeals set out the test for the common law doctrine of vested rights. Rockville and its progeny define the application of the common law doctrine of vesting as having its "constitutional foundation resting upon the legal theory that when a property owner obtains a lawful building permit, commences to build in good faith, and completes substantial construction on property", the property owner's rights to complete and use his property cannot be affected by subsequent changes in laws. See Powell v. Calvert County, 795 A2 96 (2002). The Court of Appeals has been consistent in that all the component parts of the common law doctrine of vested rights must be read conjunctively.

The argument the Director of the Office of Planning presented to the Planning Board centered on the notion "use it or lose it". He argued if a subdivision consists of 6 lots, and building permits are issued and substantial construction occurs on 4 of the lots, and subsequently a more restrictive zoning classification is applied, then the owner or owners of the remaining 2 lots lose any rights granted under the approved subdivision

plat and the less restrictive zoning in effect at the time of the original approval. Each lot must be vested, pursuant to the common law doctrine of vesting, not just the subdivision, section or parcel thereof, of which the lot is a constituent part.

There is, however, no need for the Appellants to fit their facts into the "vesting" box heretofore adopted by the Appellate Courts of this State or argue that these facts fit within the four walls as constructed by Rockville and in the subsequent line of cases defining this common law doctrine. In Baltimore County, the County Council has elected to substitute a statutory scheme in lieu of this common law doctrine of vested rights. And there is nothing in Article 66B or in Article 25A, of the Annotated Code of Maryland, which grant local subdivisions their rights to regulate local land use or prevents a local Charter government from statutorily changing the criteria for vesting. Baltimore County has done just that. The issue, therefore, is not whether the common law doctrine of vesting applies to the instant matter, but whether Baltimore County's statutory scheme permits what the Appellants propose under the 1970 subdivision regulations and 1970 zoning classification.

The question to the Board in regard to this issue is whether or not the proposed division of the Appellants' single lot is subject to the current RC 4 zone requirements, as the Director determined, or the RSC zone requirements as they existed in 1970.

The Appellants are not aware of any case law in which the common law doctrine of vesting has been applied that involve Baltimore County. None have ruled that a local subdivision does not have the right to adopt language establishing its own rules on vesting. As past County Attorneys have opined, in Baltimore County there is a

legislative history that clearly confirms that the doctrine of common law vesting is not applicable. They point to the clarity of the intent of County Councils past and present to change the rule.

See County Attorney's Opinion, No. 1-84, 17 May 1984, **App Exh 19.**

In his opinion after an extensive discussion of the law of vesting, the then County Attorney compares and contrasts the common law doctrine as found in Rockville with the then relevant County laws, which are the same provisions currently in effect and applicable. He answers two questions: (a) what constitutes vesting of development in Baltimore County and, (b) what impact does a change in the zoning classification have on a vested subdivision? In answering these questions, he did a thorough review of the legislative history of County laws and regulations. Significantly, the opinion's conclusions were later adopted by the Circuit Court of Baltimore County in **The Matter of the Application of Westchester, Inc. for Special Hearing Re: Building Permit and Application for Permits, Case No. 10/218/85-CG-1483, 10/8/85,** in which the issues addressed in the opinion were litigated before the Circuit Court, the same issues presented herein.

The County Attorney's Opinion was sought by the Director of Planning and the Zoning Commissioner to determine whether to issue building permits under a record plat that various Protestants argued was no longer valid. The Zoning Commissioner adopted the conclusions of the County Attorney and an appeal was taken to the Board of Appeals by those opposed to the issuance of the permits. The Board of Appeals reversed the Zoning Commissioner. An appeal to the Circuit Court then ensued. The Circuit Court

concluded that the law of vesting in Baltimore County was statutorily changed, and the subsequent change in zoning classification had no impact on a previously approved subdivision. The concept of "use it or lose it" was in effect firmly rejected by the Circuit Court. The Circuit Court concluded that the development at issue was vested under the laws in effect at the time of the plat's original approval by virtue of public works agreements having been executed and substantial construction having occurred pursuant to those PWA's. Further, the Court concluded that a subsequent change in zoning classification did not impact the validity of the originally approved plat. Therefore, the developer was entitled to building permits for lots not yet developed under the density the original zoning allowed.

See attached App Exh 20.

Not satisfied by the Circuit Court's decision, the Protestants appealed to the Court of Special Appeals. In an unreported decision, the CSA affirmed the Circuit Court. The Court also referred to the County Attorney's Opinion in affirming the Circuit Court's conclusions. **William J. Bauman, et al v. Westchester, Inc. et al, unreported, Court of Special Appeals, per curium, No. 1287, September Term, 1985, 8/12/86. See attached App. Exh 21.**

In the County Attorney Opinion, the Circuit Court decision, and the affirmation by the Court of Special Appeals in the **Bauman** case are directly on point to the matter now before this Board. Record plats are protected from subsequent changes in the zoning classification of the property if they have been vested under the statutory scheme set out under the laws and regulations of Baltimore County. The common law doctrine of

vesting is not applicable but has been superseded by legislative act of the County Council.

Interestingly, just two months prior to the Circuit Court's decision in Westchester, the Circuit Court of Baltimore County issued an opinion in another case involving similar issues. In **Lewis, et al v. Chesapeake Homes, Inc., et al, Case No. 84-CSP-969, 8/2/85,** the Court analyzed the doctrine of common law vesting as defined in Rockville and subsequent cases and found that the development at issue had vested. It first concluded that the criteria enunciated in **Rockville** were satisfied. However, the Circuit Court went on to analyze the vesting statutes adopted by the County Council. The Circuit Court reviewed **Miller v. Forty West Builders, Inc.,** 489 A2d 76 (1985), in which the Court of Special Appeals recognized the difference between planning and zoning but concluded that they were not unrelated concepts. The Circuit Court analyzed the relevant County zoning and development regulations, and concluded that §22-68, of the 1978 BCC, vested zoning rights as well as developmental rights if the development was vested as prescribed in §22-68. The analysis in **Forty West,** the Circuit Court concluded, required all relevant statutes to be read together in order to achieve a clear meaning. The Circuit Court looked at the development laws and the zoning regulations and concluded that a previously approved subdivision was protected under the laws in effect at the time of the original approval, including protection from change in zoning classification. The Circuit Court referred to the 1984 County Attorney's Opinion in support of its conclusions.

See **App Exh 22.**

In 1963, by Bill No. 68-1963, the Council adopted legislation establishing comprehensive standards governing local open space requirements as a condition precedent for the approval of residential subdivision. This is important because the legislation provided these requirements would not be applicable to any final plat of a subdivision recorded prior to the effective date of the subdivision, and was not applicable to any preliminary subdivision plan that had tentative approval prior to the effective date of the subdivision. See §22-60, BCC, 1968 ed., as amended. **App Exh 23.** The Council legislated a "savings" provision (a legislative enactment protecting in some way previously approved plans and plats from future changes in law and regulation). These provisions vested these previously approved subdivisions. This language was the precursor to the "savings" or "vesting" language the Council later adopted in 1982, Bill No. 56-82.

In 1982, the County Council repealed most of the subdivision regulations then contained in the Baltimore County Code, 1978 ed., and enacted an entirely new system for the review and approval of subdivision plans and plats. See Bill No. 56-82, codified in BCC, 1978 ed, as amended. No longer did the Planning Board approve or disapprove plans and plats. A County Review Group was created in its stead. As noted above, the Council adopted a "savings provision", language that specifically exempted certain development from the applications of the new subdivision regulations, as follows:

> These regulations shall apply to all development except such development which, prior to the effective date of this Article (June 11, 1982), has received tentative approval of the preliminary plan by the Planning Board, or for which development a valid, unexpired building permits exists, or for which development a current executed Public Works Agreement exists, all of which development shall be governed by the

> subdivision regulations in effect at the time of said preliminary plan approval, building permit issuance, or Public Works Agreement execution, as the case may be.

See §22-40, 1978 BCC, as amended. **App Exh 24.**

If §22-60, 1968 BCC, as amended, could be interpreted only to exempt previously approved subdivision plats from the new open space requirements set out in Bill 68-1963, there could now be no mistake that by adopting §22-40, 1978 BCC, as amended (Bill 56-82), the County Council intended all subdivision plans and plats approved prior to June 11, 1982 to be exempted from all of the subdivision regulations then adopted. The Council confirmed its commitment to protect previously approved subdivisions from prospective changes in the law. But, even the vesting provisions adopted in Bill 56-82 were not original. The County Council had adopted legislation in 1977 and 1979 that reflected it's recognition that protection of previously approved subdivisions from future change was warranted. Bill 12-77, referred to then as the "Interim Development Control Act", granted vested rights to previously approved subdivisions. Bill 61-79 continued and reaffirmed the provisions contained in Bill 12-77. A subdivision plat would essentially lapse and be considered invalid if the property remained "undeveloped" for a period of five years. Under the provisions of these bills, however, a test was created to determine whether or not a plat was "undeveloped", e.g. a building permit was not issued or substantial construction on required public improvements had not occurred. (emp added) See Bill 12-77, pp 40-42, and Bill 61-79, pp 160-161, attached hereto as **App Exh 25 (a) and (b).** If any of the conditions occurred, the subdivision was vested.

The County Council decided by legislative mandate to change the common law definition of vesting and decided "...that a Developer should have a vested right to proceed with his development if he has secured building permits or if there has been substantial construction on required public improvements." See **App Exh 19,** referred to above, the Opinion of the then County Attorney in which he traced the legislative history of the "savings" clauses included in Bill No. 56-82.

In 1993, the County Council yet again revisited the subdivision regulations and created a new system of review and approval of plans and plats. Again, however, just as it did in 1982, the Council continued its commitment to previously approved subdivisions by keeping the exemption, or "savings" language of §22-40 in §26-169. BCC, 1991 ed, amended, and now §32-4-104 (b), BCC.

Under current law, the analyses cited above still control and are as valid today as they were twenty and more years ago in Baltimore County. §32-4-273 (b), BCC, 2003, ed., provides that

> (1)...a subdivision plat shall lapse and become invalid for either the entire subdivision or any section or parcel of the subdivision, according to the applicable time limits specified under paragraph (2) of this subsection *if* the subdivision, section, or parcel has not been developed, as provided under subsection (d) of this section.

Paragraph (d) states that:

> A subdivision, section or parcel of the subdivision is considered developed and vested if any of the following has occurred with respect to the subdivision, section, or parcel:
>
> (1) Building permits have been issued; or
> (2) Substantial construction on required public improvements or private improvements has occurred on the subdivision, section or parcel in

accordance with the applicable regulations and requirements of the department of public works.

These statutory provisions, in the disjunctive, require either a building permit or substantial construction to vest a subdivision, section or parcel.

The statutory provisions contained in the 2003 edition of the BCC are exactly the same, except as to style, as they appeared in the 1978 and 1988 editions of the Code, as amended.

Notwithstanding any other provisions of the BCZR or the County Code to the contrary, these provisions when read in conjunction with §32-4-104, BCC, 2003 ed, as amended, support the Appellants' contention that their proposed amendment to Section III must be governed by the laws and regulations in effect when Section III was originally approved.

Rather than being in the conjunctive, the law since 1977 sets out the criteria to vest in the disjunctive.

§ 22-68, of the 1978 BCC, as amended by Bill No. 56-82, to which the County Attorney and the Courts above refer, became §26-216, in the 1988 Code, as amended.

§26-216 then became §32-4-273 in the recent Code recodification, of 2003. The significance of the law is the same: Baltimore County unambiguously adopted by legislative act of the County Council its own definition of what constitutes "vesting".

In addition, there are two provisions in the BCZR, §§ 103.1 and 103.3, that must also be read in conjunction with the vesting provisions cited above.

§103.1 is as follows:

These regulations shall apply as of the date of their adoption but the provisions pertaining to use, height, area and density of population shall not apply to any development, subdivision or parcel of land, the preliminary plan for which was originally submitted to the (then) Baltimore County Commission (now Planning Board) and approved or tentatively approved (including any approval subject to any condition or conditions) under the then existing official procedure in Baltimore County, prior to the adoption of these Regulations. The zoning regulations applicable to any such development, subdivision or parcel of land as aforesaid shall be the zoning regulations in effect at the time such plan, as aforesaid, was originally submitted to the Baltimore County Planning Commission...

§103.3 is as follows:

In an RC 2, RC 3, RC 4, or RC 5 Zone, contrary provisions of Subsection 103.1 and any other contrary provisions of or pursuant to these regulations notwithstanding, in the case of property covered by a recorded subdivision plat which was approved by the Baltimore County Planning or Board before the effective date of this subsection, and which remains in effect, building may be constructed, residential densities and lot lines may be established, and yards and other open areas may be laid out in accordance with that plan, subject to any conditions of the approval.

Where such a plan has been so approved but does not indicate densities or the situations of buildings or yards or other open spaces, these may be established or situated only in accordance with the standards as prescribed and in force at the time of the lot recordation.

In reaching their conclusions, the Circuit Courts in Westchester and Chesapeake Homes cited §103.1 of the Baltimore County Zoning Regulations (BCZR) in support. This section specifically provides for the protection from subsequent changes to the zoning classification of property where a plat was previously approved. The Office of Planning recognized the applicability of this section, as well as §103.3, when it sent out the CZMP notices, referred to above. See **App Exh 8**. In §103.3, to which the Director

referred in his recommendation to the DRC, **App Exh 4**, the County Council further evidenced its intent to protect previously approved plans. While §103.3 specifically protects such plans in the RC zones, there is nothing in its content that would contradict or be in conflict with §103.1. Both sections provide the proof of the County Council's intention to protect previously approved development from subsequent change.

In a letters of advice from the Office of Law to James Dyer, of the Zoning Office, and to Norman Gerber, Director of Planning, dated 24 September 1979 and 10 February 1981, respectively, the County Attorney then opined as follows:

> 1. Apart from statute, a developer has no vested rights relating to a change of zoning affecting land in an approved subdivision;
> 2. Pursuant to statutory authority, the zoning regulations insofar as they relate to use, height, area, and density applicable or the development of any plan of approved or tentatively approved plan of subdivision, are the regulations in effect at the time the plan was originally submitted to either the Planning Commission or the Planning Board;
> 3. As a result of the intervention of statutory law, an approved or tentatively approved plan of subdivision, relative to zoning restrictions concerning use, height, area, and density, as of the time of its submission to the Planning Commission or Planning Board, is insulated from further zoning changes.

See County Attorney Letters of Advice, dated 9/24/1979 and 2/10/81, **App Exh 26 and App Exh 27.**

In these letters of advice, the then County Attorneys noted that with the adoption of §103.3 of the BCZR, the County Council corroborated its intention to protect previously approved subdivisions, and, certainly, later with the adoption of §22-68 of the 1978 BCC, the County Council underscored its intention to protect previously approved subdivisions. Both letters of advice were referred to in the 1984 County Attorney Opinion.

Finally, in Feinberg v. Southland Corp, 301 A2d 6 (1973), the Court of Appeals looked to §103.1 of the BCZR. Southland owned land zoned ML. Prior to 1970, the zoning regulations permitted those non-residential uses as permitted in the BR zone in the ML zone. Then, in 1970, with the adoption of Bill 100-70, all BR uses were prohibited in the ML except as otherwise protected by §103.1, which provided in pertinent part "...use and development of land in ML zones shall not be affected by the foregoing provision, but development is permitted in accordance with any preliminary development plan approved by the Office of Planning and Zoning before the effective date...". This paragraph was new, added to §103.1 by Bill 100. Thus, BR uses were prohibited by the new zoning laws unless Southland was protected by §103.1. Southland had in fact acquired approval of a plan prior to the effective date of the paragraph in §103.1. The Court of Appeals looked to the statutory language and the protection §103.1 provided. The Court concluded that the change in zoning was not applicable here because of the "savings" clause. The Court looked to the statutory application, the legislative intent, the "savings" clause, and ruled that the change in zoning regulations was not applicable. Southland was protected.

Section III is a vested subdivision pursuant to Baltimore County law; permits were issued and houses built. The question at issue is what impact a subsequent change in zoning has on a previously approved, prior to 1982, plat?

The answer is none!

IV. THE REMEDIES AVAILABLE TO THE BOARD OF APPEALS.

The Appellants request the Board to:

1. Find that the Director/Deputy Director did not have the authority to deny the Appellants' amendment to the Section III, Windemere plat; and
2. Order the Director or the Chairman of the Planning Board to certify to the Clerk of the Circuit Court the amendment to the subject plat as an exemption pursuant to §22-33, 1968 BCC, as amended; or
3. Remand to the Planning Board for it to review and determine whether §22-33 is applicable or, if not, hold a hearing to approve or deny the proposed amendment pursuant to the laws in effect when Section III, Windemere was originally approved.

This appeal ensued from the Deputy Director's letter of 26 October 2004, in which he on behalf of the JSPC denied the Appellants' request to subdivide their lot. People's Counsel seems to agree the Director/Deputy Director did not have this authority. People's Counsel, however, disagrees with Appellants as to the remedy. He suggests remand to the Zoning Commissioner for a hearing to be held on the zoning issue. However, People's Counsel misses the mark and the point. Appellants were directed by the appropriate County agencies to the Planning Office, which in turn determined that it was to the Planning Board the Appellants must go. At no time did the Zoning Office or the Planning Office ever suggest, direct or recommend that the Appellants should proceed before the Zoning Commissioner.

In fact, the Zoning Office had determined that the RSC zoning classification controlled, the zoning in place when the plat was originally approved. Why would the Appellants go to the Zoning Commissioner? For what purpose? The DRC accepted and decided that the plat was vested under the zoning in place in 1970. No appeal was taken

from this finding. The decision became final and binding, so, again, why would the Appellants question what they already had?

Notwithstanding the finality of the DRC decision, there is no requirement in any of the "vesting" or "savings" provisions in the BCC, as amended over these past many years, that require what the People's Counsel suggests. The Zoning Commissioner simply does not have jurisdiction in this particular matter, over this particular set of facts. The law set out the process, and the Appellants followed the law.

If the Board considers a remand, then it must be to the Planning Board. There is nothing is pending before the Zoning Commissioner; but this matter is pending before the Planning Board, which refuses to consider the Appellants' request until this Board rules on this appeal.

The appeal from the letter is obviously de novo. While the fact finding held by the Board on such an appeal is conducted as if there was no hearing or fact finding below, the Board is not bound to legislative bromides or remedies as to its decision-making. It has the authority to affirm, reverse, or remand. If it remands, the matter should be remanded to the appropriate agency for further review and decision-making. No case law can be identified on point, and it, therefore, can be presumed that the answer is so obvious that no case law has been needed. And, certainly, the Board has remanded to various agencies in the past from other than development plan hearings. However, if a remand to an agency is ordered, then there must be a nexus between the issue and the agency to which the remand is ordered. The nexus here is the Planning Board because it

is before the Planning Board that this matter is now pending and which is awaiting the decision of this Board.

The essential point of this appeal, it must be emphasized, is to present to the Board questions of law for its interpretation, not questions of fact, which have not been questioned. Based on the law, the Appellants seek the Board's concurrence that the Director was in error and he, or the Chairman, should be directed to certify the amendment, as stated above. Resolution does not require a remand.

If this Board should determine that a remand is warranted, for whatever reason, then it can only be to the Planning Board. It is the Planning Board that has the ultimate and final authority to review and approve subdivision plans and plats under the laws in effect when Section III was originally approved, which laws required the Board to determine whether the proposed plan or plat complied with the requisite zoning classification on which the subdivision was proposed. This is a case where planning and zoning marry, if not become engaged. See Forty West, supra.

CONCLUSION

For the above stated reasons, the Appellants respectfully request that the Board of Appeals of Baltimore County reverse the Director/Deputy Director of the Office of Planning, conclude that the Director/Deputy Director do not have authority to deny the Appellants' request to subdivide their lot, and order that the Director, or the Chairman of the Planning Board, certify to the clerk of the circuit court for recordation the proposed amendment to Section III, Windemere record plat. Or, in the alternative, the Board reverse the Director/Deputy Director and remand the request to subdivide to the Planning

Board for further review subject to the subdivision laws and zoning classification in effect at the time of the original approval.

Respectfully submitted,

Arnold Jablon
Venable, LLP
210 Allegheny Ave.
Towson, Maryland 21285-5517
(410) 494-6298

Certification of Service

IT IS HEREBY CERTIFIED that a copy of the foregoing Appellants' Post-Hearing Memorandum was hand-delivered on this 13th day of June 2005 to John E. Beverungen, Deputy County Attorney, Old Court House, 400 Washington Ave., Towson, Maryland 21204, and to Peter M. Zimmerman, Esq., People's Counsel, 400 Washington Ave., Towson, Maryland 21204.

_____

Arnold Jablon

IN THE MATTER OF STEPCICH PROPERTY, SECTION 3 WINDMERE – 3 STONEHURST ROAD BRIZENDINE, TRUSTEES PHOENIX, MD 21131 11TH ELECTION DISTRICT 6TH COUNCILMANIC DISTRICT	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
RE: JSPC SUBDIVISION PLAN/DENIAL OF PROPOSED RE-SUBDIVISION / AMENDMENT TO JSPC PLAN	*	CASE NO. CBA-04-157

* * * * * * * * *

ORDER TO REMAND

Statement Of Facts

This matter comes before the Baltimore County Board Of Appeals on appeal from a decision by the Director of the Office of Planning dated October 26, 2004, in which the Appellants' request with the Planning Board of Baltimore County to approve an amendment to the Section III, Windermere plat was denied. Appellants filed an appeal to the Board Of Appeals on November 19, 2005.

Arnold Jablon, Esquire, VENABLE, LLP, represented the Property Owners /Appellants; John E. Beverungen, Deputy County Attorney, appeared on behalf of Baltimore County, Maryland; and Peter M. Zimmerman, People's Counsel for Baltimore County, entered his appearance on behalf of that Office. A hearing was held before the County Board of Appeals on May 11, 2005 and was heard *de novo*. A public deliberation was held on July 14, 2005

Testimony and Evidence

No testimony was heard as to the merits at the May 11, 2005 hearing. The parties by agreement made oral argument and agreed to submit memorandums on the following issues as well as others:

PETITIONER'S
EXHIBIT NO. 11

1. Was the letter of October 6, 2004 by the Director of Planning a final order appealable to the County Board of Appeals?

2. Did the Director of Planning have authority to render a decision on the Petitioners' request made to the Planning Board?

This matter arose when the Appellants filed a request with the Planning Board of Baltimore County to approve an amendment to the Section III, Windermere plat. The Planning Board held a hearing on this matter on three occasions; October 21, 2004, November 18, 2004 and January 6, 2005, according to counsel for Appellants. The Director of Planning issued a letter on October 26, 2004 denying Appellants' request. Appellants' filed an Appeal to the Board of Appeals from the Director of Planning's letter of October 26, 2004. The Planning Board at the January 2005 hearing decided not to take any action until the Board of Appeals had rendered a decision on the appeal .

The Board finds that the letter of October 6, 2004 by the Director of Planning was a final order appealable to the Board Of Appeals. The Board of Appeals' jurisdictional authority to hear appeals is granted under § 602 (d) of the *Baltimore County Charter* and Article 25A, Section5 (U) of the *Annotated Code of Maryland.* We find that under *United Parcel Service, Inc., v. People's Counsel for Baltimore County*, 336 Md 569 (1994), the Director Of Planning's letter of October 26, 2004 was an appealable event. We agree with Appellants' counsel that the Director Of Planning's letter of October 26, 2004 was an adjudicatory order issued by an administrative official that effectively denied the Appellants' request.

The Board finds that the Director of Planning did not have authority to render a decision on the Appellants' request. Appellants filed their request with the Planning Board not with the Director of Planning. The request was for plat approval. Under the *Baltimore County Code*, the

Planning Board and Department of Public Works were given joint authority to approve all plats. The Baltimore County Code does not give the Director Of Planning the authority to deny the request made by the Appellants.

ORDER

THEREFORE, it is this 21st day of July, 2005, by the County Board of Appeals of Baltimore County

ORDERED that letter dated October 26, 2004 from the Director of Planning be and is hereby **REVERSED**; And it is further

ORDERED that this matter be and is hereby **REMANDED** to the Baltimore County Planning Board for a final decision as required by statute.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence M. Stahl, Chairman

Michael O. Ramsey

Edward W. Crizer, Jr.

VENABLE LLP

210 Allegheny Avenue
Post Office Box 5517
Towson, Maryland 21285-5517

Telephone 410-494-6200
Facsimile 410-821-0147

www.venable.com

ARNOLD JABLON
(410) 494-6298

agjablon@venable.com

20 May 2004

Hon. Charles Klein, Chairman
Planning Board of Baltimore County
401 Bosley Ave
Towson, Maryland 21204

Re: amendment to subdivision plan known as "Section III, Windemere"

Dear Mr. Klein:

Please be advised that we represent Mr. and Mrs. Joseph A. Stepcich, who reside at 3 Stonehurst Road, Phoenix, Maryland 21131, which is located between Dulaney Valley Road and Manor Road, and off of Windemere Parkway.

Our clients request that the Chairman of the Planning Board approve an amendment to the subdivision plat known as "Section III, Windemere". Our clients propose to subdivide their lot of record into two lots, as is more particularly described on the site plan accompanying this letter and marked as Exhibit A.

The authority of the Planning Board and the Chairman to approve the proposed amendment is founded in Article V. Development Regulations, Division 1., specifically, §26-169, of the Baltimore County Code, 1988 edition, as amended. §26-169 provides as follows:

> §26-169. Scope of regulations.
>
> These regulations shall apply to all development except: (i) such development which, prior to the effective date of this article (June 11, 1982), has received tentative approval of the preliminary plan by the planning board or for which a development a valid, unexpired building permit exists, or for which development a current executed public works agreement exists, all of which development shall be governed by the subdivision regulations in effect at the time of said preliminary plan approval, building permit issuance, or public works agreement execution, as the case may be. Proposed development shall be in compliance with the present zoning classification on the subject property; (ii) such development as has received a CRG approval, reclamation plan approval, any other project vested by law or such development for which a CRG plan has been accepted for filing by the department of public works prior to the

PETITIONER'S
EXHIBIT NO. 8

> adoption of Bill 1-92, all of which development shall be governed by the subdivision regulations in effect at the time of said approval or acceptance for filing, as the case may be.

The proposed amendment to the subdivision known as "Section III, Windemere" is governed by the subdivision regulations in effect at the time it was approved, that an amendment to a plan approved and vested prior to June 11, 1982, is governed by the regulations in effect at the time of original approval, which as further explained below, would be 1970. The applicable and relevant regulations in effect at the time of the approval of the instant subdivision are as follows:

1. §22-33, Baltimore County Code, 1968 edition, as amended;
2. §22-60, Baltimore County Code, 1968 edition, as amended.

Our clients' property is a lot of record as shown on the record plat known as "Section III, Windemere". Our clients' lot, identified as lot 1 on the attached exhibit A, consists of 5.137 acres. The current zoning is RC 4. "Section III, Windemere" received preliminary and tentative approval by the Joint Subdivision Planning Committee (JSPC) on or about December 1969, and subsequently approved by the Baltimore County Planning Board on 19 February 1970. It was recorded in the land records of Baltimore County at Plat Liber 34, folio 10, on or about 24 February 1970. The subdivision consisted of 19.035 acres +/- and was zoned RSC. While the designated number of lots was 19, as permitted by the zoning in place at the time, the subdivision was approved for six lots. 13 density units remained available. See Exhibit B.

3 Stonehurst Road, where my clients reside, is approximately 5.137 +/- acres. As stated above, my clients propose to subdivide their lot into two, on one will be located their existing house. The lot on which their home is located would be 2.448 acres +/- and the other would be 2.689 acres +/-.

The subdivision regulations in effect in 1970 when this subdivision was approved are found in the Baltimore County Code, 1968 edition, as amended. Copies of the relevant law as referred to herein are attached for reference.

Our request for approval is governed by §22-33 of the 1968 Code, which reads as follows:

> §22-33. Exemption of governmental approval of subdivision regulations.

> Any such subdivision regulations may exempt from the requirements of governmental approval, subdivisions wherein the number of new lots is less than a designated number, or plats that do not involve new streets, or such other plats or subdivisions as such ordinance shall designate. In all cases involving such exempted subdivisions, the planning board chairman, or its director, shall certify the exemption on the plat, deed or instrument to be filed with the clerk of the circuit court for recording.

The proposed amendment consists of one new lot, which is less than the designated number of lots as permitted at the time of the approval of the subdivision plat for "Section III, Windemere", and involves no new streets. Clearly, the proposed amendment satisfies the strictures as contained in §22-33

Further, §103.3 of the Baltimore County Zoning Regulations (BCZR) in conjunction with the forecited Code provisions confirms that the laws, zoning and subdivision, in effect when original approval of a plan or plat was granted govern notwithstanding the ever-changing landscape of zoning and subdivision in Baltimore County.

> §103.3 In an R.C.2, R.C.3, R.C.4 or R.C.5 Zone, contrary provisions of Subsection 103.1 and any other contrary provisions of or pursuant to these regulations notwithstanding, in the case of property covered by a recorded subdivision plat which was approved by the Baltimore County Planning Commission or Board before the effective date of this subsection, and which remains in effect, buildings may be constructed, residential densities and lot lines may be established, and yards and other open areas may be laid out in accordance with that plan, subject to any conditions of the approval.
>
> Where such a plan has been so approved but does not indicate densities or the situations of buildings or yards or other open spaces, these may be established or situated only in accordance with the standards as prescribed and in force at the time of the lot recordation.
> The Zoning Regulations applicable to any such development, subdivision or parcel of land as aforesaid shall be the Zoning Regulations in effect at the time such plan, as aforesaid, was originally submitted to the Baltimore County Planning Commission.

The law in Baltimore County has always recognized the inviolability of approved and vested plans and plats. §22-60, of the Baltimore County Code, 1968, as amended, clearly stated this principle and it is restated in §26-169, Code, 1988 edition, as amended.

> §22-60. Previously approved subdivisions not affected.
>
> Nothing herein provided shall be applicable to any final plat of a subdivision which was recorded prior to the effective date of this subdivision, nor shall it be applicable to any preliminary subdivision plan which had tentative approval prior to the effective date of this subdivision.

§22-60 is the precursor to §26-169, Baltimore County Code, 1988 as amended. There is no ambiguity. RSC permitted 1-acre lots, but only 6 were created. Our clients want to create one more. This is entirely consistent and in compliance with the zoning and subdivision regulations then in effect and governing.

The Development Review Committee supported this conclusion in March of 2002. Our clients submitted to the DRC their request to approve the proposed subdivision of their lot. In a letter, dated 23 May 2002, issued subsequent to the public meeting at which the amendment was discussed by representatives of various county agencies, the DRC concluded that "Section III Windemere" was originally tentatively approved by the Joint Subdivision Planning Committee (JSPC) and subsequently approved by the Planning Board, and agreed that my clients could process an amendment to the last approved plan that would be in compliance with subdivision regulations then in effect. My clients were further told that a copy of the amended plan should be submitted to the Office of Planning for review. See Exhibit C. On 8 February 2002, the Zoning Review section of the Department of Permits and Development Management issued a letter confirming that the zoning at the time of the original approval was RSC, which permitted 1-acre lots. See exhibit D

In a memo to the DRC, dated 22 March 2002, the director of the Office of Planning recommended against approval. The director stated the position of the Office of Planning is that "…any resubdivision of lots in a previously recorded plat is subject to current zoning regulations, therefore this lot is not subdividable." See exhibit E.

Interestingly, however, the Office of Planning in its notice to my clients, dated January 21st, 2004, that their property was being considered for a possible zoning change at the request of the Planning Board, noted:

"Existing lots in recorded subdivision would continue to be regulated by the zoning regulations that were in effect at the time the existing lot was created."

See exhibit F.

Finally, in a Declaration, dated September 2nd, 1970, and recorded amongst the Land Records in Liber 5191, Page 243, the developer of "Section III, Windemere", in paragraph 9 provided as follows:

> 9. Nothing in these restrictions shall be construed to prohibit the future subdivision of any parcel into R-40 residential lots. This means a lot containing at least 40,000 square feet and at least 150 feet wide at the building line.

Exhibit G.

The law in 1970, and the law today, recognizes the significance of plan approval and vesting. It is the law.

Pursuant to the law in effect in 1970, as provided for in §26-169, of the Code, 1988 as amended, and §103.3 of the BCZR, we submit to you for approval, as Chairman, and to the Planning Board the amendment to the plan of "Section III, Windemere." This amendment comports with all the requirements as set out in the Code, 1968 as amended. We will be ready and available to answer any questions and to make our presentation. Thank you.

Sincerely,

Arnold Jablon

c: Arnold F. "Pat" Keller, Director and Secretary to the Board
Members, Planning Board of Baltimore County
Timothy M. Kotroco, Director, Permits and Development Management

Office of Planning

401 Bosley Avenue, Suite 406
Towson, Maryland 21204
Tel: 410-887-3211 • Fax: 410-887-5862
E-mail: planning@co.ba.md.us

Baltimore County

James T. Smith, Jr., County Executive
Arnold F. 'Pat' Keller, III, Director

October 26, 2004

Arnold Jablon, Esq.
Venable, Baejter and Howard LLP
210 Allegheny Avenue
Towson, Maryland 21204

Re: Stepcich Property, Lot 3 Windemere

Dear Mr. Jablon:

Based upon a review of the information provided and analysis conducted, the Joint Subdivision Planning Committee, JSPC, has determined that your client's request to resubdivide the above-referenced lot has been denied as the property's zoning has changed since the original lot was recorded. The RC 4 zone permitted density does not allow for the resubdivision of this existing lot of record.

Please contact me at 410-887-3213 should you have any questions.

Sincerely,

Jeffrey Long
Deputy Director

JWL:rk

CC: Jay Liner, County Attorney
Tim Kotroco, Director of Permits and Development Management
Amanda Conn, Assist. County Attorney
Pat Keller, Director Office of Planning
Jeff Mayhew, Chief, Community Planning
Lynn Lanham, Chief, Development Review

PETITIONER'S
EXHIBIT NO. 9

Stepcich

Baltimore County, Maryland

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

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

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

May 9, 2005

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

Re: In the Matter of the Stepcich Property
Section III, Windemere Subdivision
Case No.: CBA-04-157

Dear Mr. Stahl:

Enclosed is a copy of a letter dated January 3, 2005 sent to the Planning Board regarding this matter. There, we raised the preliminary concern that the request to amend the Windemere subdivision is subject to the BCZR 1A00.4 and 1B01.3 special hearing/special exception review and requirements to amend a final development plan. The Zoning Commissioner has jurisdiction over that review.

This is a fundamental statutory process which must be followed and exhausted. It appears, therefore, that the CBA does not at this time have jurisdiction or authority to hear this case on the merits. See Queen Anne's Conservation, Inc. v. County Com'rs of Queen Anne's County, 382 Md. 306 (2004), Maryland Reclamation Associates, Inc . v. Harford County, Maryland, 382 Md. 348 (2004). Alternatively, the case is not ripe for CBA review.

In addition to the special hearing/special exception, the request must be reviewed in the development process. This is another jurisdictional issue which may be taken up preliminarily.

In the event this case is ultimately reviewed on the merits, this office's position, stated in more detail in the January 3, 2005 letter, is that the addition of a new lot is subject to the R.C.4 Zone standards and that there are no "vested rights" to this proposed amendment.

Thank you for your consideration.

PETITIONER'S
EXHIBIT NO. 10

Sincerely,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. Demilio

Carole S. Demilio
Deputy People's Counsel

PMZ\rmw

cc: Arnold Jablon, Esquire, Sent Via Fax
John E. Beverungen, Deputy County Attorney
Arnold F. "Pat" Keller, Planning Director and Secretary to Planning Board
William J. Wiseman, Zoning Commissioner

PETITIONER'S

EXHIBIT NO. 3

032502M

Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
pdmlandacq@co.ba.md.us

February 8, 2002

Ms. Joy Stepcich
3 Stonehurst Road
Phoenix Maryland 21131
Election District 10

Dear Ms. Stepcica:

RE: Zoning Verification of 3 Stonehurst Road

The property on the site plan you have submitted is zoned R.C.-4

The current subdivision regulations for that zone requires a minimum of (6) six acres to subdivide.

However, you are part of a development know as "Windmere" Section III which was approved by the Baltimore County Planning Board on January 19, 1970. During that time property was zoned R.S.C. which permitted (1) one acre lots.

If the properties in the development were vested, infrastructure construction and houses built on lots, the number of lots per acre as permitted when the development was approved, may possibly be permitted to be used when considering current subdivision.

To verify if the County considers your property to be vested and to determine whether you may proceed with a Minor Subdivision process, or whether you must amend the record plat and follow the full large tract development process. You must contact the Development Management Office to schedule a review before the Development Review Committee, chaired by Mr. Donald Rascoe.

One of the things they will look at is whether your neighbors within the Development have further subdivided their properties since the original subdivision was created.

I trust that the information set forth in this letter is sufficiently detailed and responsive to the request. If you need further information or have any questions, please do not hesitate to contact me at 410-887-3391.

Sincerely,

John R. Alexander
Planner II
Zoning Review

JRA/rjc

EXH 3

Printed with Soybean Ink

PETITIONER'S

EXHIBIT NO. 4

PET EXH C

Baltimore County Government
Department of Permits and
Development Management

111 West Chesapeake Avenue
Towson, MD 21204

410-887-3335

May 23, 2002

Joseph A. Stepcich
Three Stonehurst Road
Phoenix, MD 21131-2439

RE: Stonehurst Road
Three Stonehurst Road
DRC Number 032502M, Dist. 11C6

Dear Mr. Stepcich:

Pursuant to Article 25A, Section 5(U) of the Annotated Code of Maryland, and as provided in Section 602 (d) of the Baltimore County Charter, and Section 26-132 of the Baltimore County Code, this letter constitutes an administrative order and decision on the request for issuance, renewal, or modification of a license, permit, approval, exemption, waiver, or other form of permission you filed with this department.

Your request has been submitted for careful review and consideration to the Development Review Committee (DRC), which is composed of representatives from each of those departments involved in land-use decisions. These representatives are designees of the directors of these departments. The purpose of the DRC is to ensure compliance with Section 26-171 and Section 26-211 of the Baltimore County Code and to make recommendations to the Director, Department of Permits and Development Management (PDM).

The DRC has, in fact, met in an open meeting on April 29, 2002, and made the following recommendations:

The DRC has determined that your project was originally approved by the Joint Subdivision Planning Committee (JSPC). You may process a plan with changes to the last approved JSPC in compliance with JSPC regulations. To submit a JSPC plan for consideration, please contact this office for a transmittal form. It is also necessary to submit a plan to the Office of Planning for further review. Please forward the plan, along with a copy of this DRC letter, to Room 123, County Office Building; 111 West Chesapeake Avenue; Towson, MD 21204.

EXH 5

#4

I have reviewed the recommendation carefully, and I have determined to adopt the recommendations set forth above. It is this 23rd day of May 2002, ordered and decided that the recommendations of the DRC are hereby adopted.

Should you submit an application for any permits that may be required for this project, your application will be processed subject to the conditions set forth above and any plans, securities, or non-county permits that may be required in accordance with County, State, or Federal regulations.

Sincerely,

Arnold Jablon
Director

AJ:DTR:dak

c: Kristin Weis
File

BALTIMORE COUNTY, MARYLAND

INTEROFFICE MEMORANDUM

TO: Development Review Committee **DATE:** March 22, 2002

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

SUBJECT: Item Number 032502M, Resubdivision of 3 Stonehurst Road

---

Recommendation: The Office of Planning recommends against the resubdivision of 3 Stonehurst Road. The RC-4 zoning regulations do not allow the resubdivision of lots less than 6 acres in size. The matter before the Development Review Committee on March 25, 2002, DRC#032502M, is a request for a minor subdivision of 3 Stonehurst Road, a 5.15 acre lot recorded in Liber O.T.G. 34 Folio 10, as Lot 1, Section III of Windemere. Windemere is a development approved in 1970 pursuant to the R40 zoning regulations, which allowed one dwelling per 40,000 sq. ft. Windemere has a total of 114 recorded lots on approximately 179 acres. Windemere is currently zoned RC-4, Watershed Protection, which requires a minimum of 6 acres in order to subdivide into two lots. It is the position of the Office of Planning that any resubdivision of lots in a previously recorded plat is subject to current zoning regulations, therefore this lot is not subdividable.

Pertinent sections of the Baltimore County Zoning Regulations and the County Code are as follows.

Section 103.3 In any RC2, RC3, RC4, or RC5, contrary provisions of Subsection 103.1 and other contrary provisions of or pursuant to these regulations notwithstanding, in the case of property covered by a recorded subdivision plat which was approved by the Baltimore County Planning Commission or Board before the effective date of this subsection, and which remains in effect, buildings may be constructed, residential densities and lots may be established, and yards and other open areas may be laid out in accordance with that plan, subject to any conditions of the approval.

Where such a plan has been so approved but does not indicate densities or the situations of buildings or yards or other open spaces, these may be established or situated only in accordance with the standards as prescribed and in force at the time of the lot recordation.

PETITIONER'S

EXHIBIT NO. 5

Q:Pkeller/Stonehurst Rd Memo032202

Section 26-169 **Scope of Regulations**.

These regulations shall apply to all development except: (i) such development which, prior to the effective date of this article (June 11, 1982), has received tentative approval of the preliminary plan by the planning board or for which development a valid, unexpired building permit exists, or for which development a current executed public works agreement exists, all of which development shall be governed by the subdivision regulations in effect at the time of said preliminary plan approval, building permit issuance, or public works agreement execution, as the case may be. Proposed development shall be in compliance with the present zoning classification on the subject property: (ii) such development as has received a CRG approval, reclamation plan approval, any other project vested by law or such development for which a CRG plan has been accepted for filing by the department of public works prior to the date of adoption of Bill 1-92, all of which development shall be governed by the subdivision regulations in effect at the time of said approval or acceptance for filing, as the case may be.
(Code 1978, §22-40; Bill No.18, 1990§2; Bill No.1, 1992 §2)

The Office of Planning's position is that a resubdivison of an existing lot of record must comply with current zoning regulations. The "grandfathering provision" in Section 103.3 applies to the lot layout as approved by the Planning Commission or Board. Changes to the layout that result in an increase in density must comply with current regulations. Furthermore, the plat of Windemere had no density calculations indicated, therefore, Section 103.3 states " where such a plan has been so approved but does not indicate densities or the situations of buildings or yards or other open spaces, these may be established or situated only in accordance with the standards as prescribed and in force at the time of recordation. In other words, lots established on that plat are buildable in accordance with prior standards, provided that plat is vested. Newly established lots must comply with current regulations.

Any interpretation that allows this resubdivision has far reaching implications for there is great potential for the resubdivision of old RSC and RDP lots at a density that exceeds current zoning. This is not in keeping with the county's Smart Growth initiatives and Rural Strategy as articulated in Master Plan 2010, and the state and county funded rural preservation efforts in the Piney Run, Coastal, Manor, Gunpowder and Long Green Rural Legacy areas.

Arnold F. 'Pat' Keller, III

AFK:rk

Department of Permits and Development Management

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

Arnold Copy

Baltimore County

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

28 May 2004

Hon. Charles Klein, Chairman
Planning Board of Baltimore County
401 Bosley Ave.
Towson, Maryland 21204

Re: proposed amendment to "Section III, Windemere"

Dear Mr. Klein:

Arnold Jablon of Venable, LLP represents Joseph Stepcich, who has submitted to you, as Chairman of the Planning Board, a proposed subdivision of his lot into 2 lots. Mr. Stepcich's lot is part of a previously approved subdivision, known as "Section III, Windemere", that was tentatively approved by the Joint Subdivision Planning Committee (JSPC) in or about 1969 and approved by the Planning Board in 1970, and then vested.

The laws and regulations in effect at the time of an original plan's approval govern approvals of changes to previously approved subdivision plans. The County Code and the Baltimore County Zoning Regulations require the application of the zoning classification and subdivision regulations in effect at the time of the original plan approval when amendments to previously approved plans are proposed. This includes further subdivision of lots that were created by the original plan, and is controlled by the zoning classification then in effect.

The proposed subdivision of Mr. Stepcich's lot within "Section III, Windemere" is therefore governed by the zoning classification and the subdivision regulations in effect in 1969 and 1970 when "Section III, Windemere" was approved.

Sincerely,

Timothy Kotroco

Timothy M. Kotroco
Director

PETITIONER'S
EXHIBIT NO. 6

Printed on Recycled Paper

Office of Planning

401 Bosley Avenue, Suite 406
Towson, Maryland 21204
Tel: 410-887-3211 • Fax: 410-887-5862
E-mail: planning@co.ba.md.us

Baltimore County

James T. Smith, Jr., County Executive
Arnold F. 'Pat' Keller, III, Director

01/21/2004

MAIORANA JOY L
STEPCICH JOSEPH A
3 STONEHURST RD

PHOENIX MD 21131

Tax Account Number: 11 1600003598

In accordance with Baltimore County Code, 1988, Section 26-123(f), as amended, every four years Baltimore County undergoes a comprehensive zoning process, when any time any property can be requested for a zoning change.

Please be advised that your property, referenced by the Tax Account Number located above, is being considered for a possible zoning change under 2004 CZMP Issue **3-105**. At the of request of **Planning Board**
The description of the property is listed below as well as the existing zoning and requested zoning.

Property Description					
	IMPSS.158 AC				
	3 STONEHURST RD SW				
	WINDEMERE				
	3		STONEHURST	RD	

Existing Zoning		*Requested Zoning*	
RC 4	20,830.81	RC 7	20,830.817
Total	20,830.81	Total	20,830.817

If approved by the County Council, the requested zoning (RC-7) would reduce the rate of residential subdivision to one lot per twenty-five acres. The existing zoning (RC-4) allows residential subdivision at the rate of one lot per five acres. Existing lots in recorded subdivisions would continue to be regulated by the zoning regulations that were in effect at the time the existing lot was created.

The rezoning request was submitted because the sponsoring Planning Board members consider the RC-7 zone to be more effective than the existing RC-4 zone in protecting the County's watersheds.

The Office of Planning is preparing a Log of Issues that lists all zoning requests. A copy of the current Log of Issues is available on the County Web Page at the following address, which can be accessed at the Baltimore County Libraries.
www.baltimorecountyonline.info/go/czmp

The Planning Board will be holding public hearings on all zoning issues in each Councilmanic District during March 2004. Citizens are welcome to attend and present their comments on these issues at the public hearings. If you are unable to attend the meeting in your Councilmanic District, you may send written comments to:

Baltimore County Office of Planning
Attention Coordinator, 2004 CZMP 401
Bosley Avenue, Suite 406
Towson, MD 21204

Please make certain that all correspondence contains the 2004 CZMP Issue Number listed above.

For additional information or questions, please contact the Office of Planning at 410 887-3480.

Visit the County's Website at www.baltimo

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PETITIONER'S
EXHIBIT NO. 7

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

SHA
Driven to Excel
State Highway Administration
Maryland Department of Transportation

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

Date: 3.14.06

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

RE: Baltimore County
Item No. 419 JCM

Dear. Ms. Matthews:

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

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

Very truly yours,

S. D. Foster

Steven D. Foster, Chief
Engineering Access Permits Division

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

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

DATE: March 14, 2006

FROM: Dennis A. Kennedy, Supervisor
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
For March 20, 2006
Item Nos. 411, 418, 419, 420, 421, 422, 423, 424, and 426

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

DAK:CEN:clw
cc: File
ZAC-NO COMMENTS-03142006.doc

Fire Department

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

Baltimore County

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

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

March 14,2006

ATTENTION: Zoning Review Planners

Distribution Meeting of: March 13,2006

Item No.: 411, 418, 419, 420, 421, 423, 424, 426

Pursuant to your request, the referenced plan(s) have been reviewed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

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

Acting Lieutenant Don W. Muddiman
Fire Marshal's Office
(O)410-887-4881
MS-1102F

cc: File

Printed on Recycled Paper

BW 4/18

Baltimore County
Fire Department

Office of the Fire Marshal
700 East Joppa Road
Towson, Maryland 21286-5500
410-887-4880

RECEIVED
MAR 10 2006
ZONING COMMISSIONER

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

March 7, 2006

ATTENTION: Zoning Review planners

Distribution Meeting of: March 6, 2006

Item No.: Item Numbers 409 through 417 and 425
419

Pursuant to your request, the referenced plan(s) have been reviewed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

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

LT. Roland P. Bosley Jr.
Fire Marshal's Office
PHONE 887-4881
MS-1102F

cc: File

Printed with Soybean Ink on Recycled Paper

Visit the County's Website at www.baltimorecountyonline.info

RE: PETITION FOR SPECIAL HEARING 3 Stonehurst Road; W/S Stonehurst Road, 218' S of c/line Windemere Park Way 11th Election & 6th Councilmanic Districts Legal Owner(s): Joy & Joseph Stepcich Petitioner(s)	*	BEFORE THE ZONING COMMISSIONER FOR BALTIMORE COUNTY 06-419-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 sent/ 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 13th day of March, 2006, a copy of the foregoing Entry of Appearance was mailed to Arnold Jablon, Esquire, Venable, LLP, 210 Allegheny Avenue, Towson, MD 21204 , Attorney for Petitioner(s).

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

RECEIVED
MAR 13 2006
Per

RE: PETITION FOR SPECIAL HEARING 3 Stonehurst Road; W/S Stonehurst Road, 218' S of c/line Windemere Park Way 11th Election & 6th Councilmanic Districts Legal Owner(s): Joy & Joseph Stepcich Petitioner(s)	*	BEFORE THE ZONING COMMISSIONER FOR BALTIMORE COUNTY CASE NO.: 06-419-SPH

ENTRY OF APPEARANCE

Please enter the appearance of the undersigned in the above-referenced case as counsel for Baltimore County, Maryland and forward all notices of future hearings to my attention.

John E. Beverungen
County Attorney

RECEIVED

APR 14 2006

ZONING COMMISSIONER

Nancy C. West
Assistant County Attorney
Office of Law
400 Washington Avenue
Towson, Maryland 21204
(410) 887-4420

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of April 2006, a copy of this Entry of Appearance was mailed, first class mail, postage prepaid, to: Arnold Jablon, Esquire, Venable, LLP, 210 Allegheny Avenue, Towson, MD 21204, attorney for Petitioner(s) and Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County, Old Court House, Room 47, 400 Washington Avenue, Towson, Maryland 21204.

4-24-06
Zoning will forward
and may be
advised.

Nancy C. West
Assistant County Attorney

Baltimore County, Maryland

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

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

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

June 5, 2006

Hand-delivered
Timothy Kotroco, Director
Department of Permits and
Development Management
111 W. Chesapeake Avenue
Towson, MD 21204

Re: PETITION FOR SPECIAL HEARING
W/S Stonehurst Read, 218' S c/l Windmere Parkway
(3 Stonehurst Road)
11th Election District; 6th Council District
Joseph A. Stepcich - Petitioners
Case No.: 06-419-SPH

Dear Mr. Kotroco:

Please enter an appeal by the People's Counsel for Baltimore County to the County Board of Appeals from the Findings of Fact and Conclusions of Law dated May 16, 2006 by the Baltimore County Zoning Commissioner. This scope of this appeal includes the entire Order, except to the extent that it denies the Special Hearing request.

Please forward copies of any papers pertinent to the appeal as necessary and appropriate.

Very truly yours,

Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. Demilio
Deputy People's Counsel

RECEIVED
JUN 05 2006
Per.

PMZ/CSD/rmw

cc: Arnold Jablon, Esquire
Nancy C. West, Assistant County Attorney
Arnold "Pat" F. Keller, Director of Planning
Jeffrey W. Long, Deputy Planning Director

Department of Permits and Development Management

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

Baltimore County

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

June 21, 2006

Arnold Jablon
Venable, LLP
210 Allegheny Avenue
Towson, MD 21204

Dear Mr. Jablon:

RE: Case: 06-419-SPH, 3 Stonehurst Road

Please be advised that an appeal of the above-referenced case was filed in this office on May 30, 2006 by Arnold Jablon and also on June 5, 2006. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

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

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

Sincerely,

Timothy Kotroco

Timothy Kotroco
Director

TK:klm

c: William J. Wiseman III, Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel
Mr. & Mrs. Joseph A. Stepcich, 3 Stonehurst Road, Phoenix 21131
Brian Dietz, 7867 Oakdale Avenue, Baltimore 21237
John Beverungen, 400 Washington Avenue, Towson 21204
Dr. Eusebia Gonzales, 300 Stonehurst Road, Phoenix 21131

Case No.: 06-419 SPH

Exhibit Sheet

Petitioner/Developer

~~Protestant~~ Petitioners - Continued -

No. 1	Site Plan	No.13 - Office of Law Pre Hearing Board Memorandum
No. 2	2002 Subdivision Plat	No.14 - Letter to DRC 3/14/06 - Requesty Material Amendment
No. 3	2/8/02 - John Alexander Letter to Petitioner	No.15 - Response indicating a denial of request for material Amendment
No. 4	2/23/02 DRC Letter from PDM Director	No.16 Case of Lewis v Gerber 1985 84-CSP-969
No. 5	Office of Planning - 3/22/02 Letter from Director	No.17 Case of Westchester 10/218/85-CG-1483
No. 6	Office of PDM - 5/28/04 Director Kotroco - Re Applicable Zoning	No.18 Bauman v Westchester Unreported No. 1287
No. 7	Rezoning - Standard Letter (Zoning in effect at time Existing Lot was created)	No.19 County Attorney Opinion 5-17-84
No. 8	5/20/04 - Jablon to Charles Klech - History of Regulations	No.20 Letter of Advice 2-10-81
No. 9	10/26/04 - Jefflongo Letter to Atty Jablon	No.21 Letter of advice to Zoning Office 9-24-79
No. 10	Peoples Counsel letter to County Brd of Appeals.	No.22 CBA - Case 96-136-M
No. 11	Board of Appeals ORDER Dev. Regulations in effect	No.23 CBA - Case 96-405-SPH
No. 12	Appellants Pre-Hearing Memorandum - to Board	

(SIGN IN SHEETS – OPPORTUNITY TO SIGN) - (RECORDER)

Good Morning – My name is Bill Wiseman, I am the Zoning Commissioner for Baltimore County and I've been assigned to hear your case pursuant to Art. 32 of the Baltimore County Code. **THESE PROCEEDINGS ARE BEING RECORDED**

FOR THE RECORD, THIS IS A PUBLIC HEARING ON case number 06-419 SPH.

This is a Petition for ___ ***Variance***
___✓ ***Special Hearing***
___ ***Special Exception***

filed by the Venable Law Firm for Joseph & Joy Stepcioff for property located at 3 Stonehurst Rd and zoned RC 6.

"Read language from file" READ

The Code requires that notice of today's hearings be provided to neighbors and interested parties by the posting of a sign on the property for at least 15 days prior to the hearing. The sign was posted April 3 2006 by Sgt Robt Black, an approved sign poster and shows the time, date, place and subject matter of the hearing.

The Code further requires that notice be placed in a newspaper of general circulation, in this case the Jeffersonian, and the file contains the requisite certification of publication.

I THEREFORE FIND THAT THE POSTING AND NOTICE REQUIREMENTS HAVE BEEN SATISFIED

IF ATTORNEYS PRESENT, HAVE THEM IDENTIFY THEMSELVES; ASK IF THERE ARE ANY PRELIMINARY MATTERS

LOOK AROUND ROOM – AND ASK – IS ANYONE HERE APPEARING IN OPPOSITION TO THE REQUEST?

NO PROTESTANTS: For the record, no one is here in opposition to the request. Mr./Ms. _____, since there is no opposition, if you want to make **AN INFORMAL PROFFER** of the ***testimony*** and ***evidence,*** you're welcome to do so.

IF PROTESTANTS: This is your opportunity to come forward and have a seat at the table. You will be able to see and hear better, so come forward and I have a sign-in sheet here for you to sign so that we can mail you a copy of the decision in this case.

EXPLAIN PROCESS:

First the owner of the property will have an opportunity to present testimony and evidence regarding the _____request for the property at _____ .

Listen carefully, if you have any questions that you want to ask of any witness who testifies, I'll give you an opportunity to do so.

Once Petitioner is finished putting forward their testimony, and you've had an opportunity to ask questions, you will be given an opportunity to present testimony and evidence for me to consider in this _____ request. I'll tell you when it's appropriate to ask questions and when it's appropriate to testify – help you along as we proceed.

PRESENT CASE

SWEAR WITNESS – NAME AND ADDRESS – HAVE A SEAT

All right Mr./Ms. _____, please proceed with your case:

TO PROTESTANTS: Do you have any questions about the testimony that Mr./Ms. _____ just gave? I don't want to hear any testimony from you at this point, but if you would like to ask him/her any questions go ahead.

<u>CLOSE OF PETIONERS CASE</u>: This is your opportunity to tell me why you might be opposed to this_____. Where do you live? How long have you lived there? What is it about the _____that bothers you/or what would you like to tell me about this case.

CONCLUSION: ALRIGHT – THANK YOU. THIS WILL CONCLUDE THE MATTER. THANK YOU FOR ATTENDING

I'm not prepared to make a decision here and now.

I want some time to think about the evidence presented – might want to look at the property

Hopefully, within a few weeks, I'll issue a written decision in the case

If you do not like my decision, YOU HAVE A RIGHT TO APPEAL TO THE Board of Appeals. This must be done within 30 days from date of my Order.

Pridgeon

Verified

Verified
4-24-07

Protestants Exhibits

1 of 1 Pictures of Adrienne True Property

Stipcic

Case No.: 06-419-SPH

Petitioner's Exhibit

1a-f Photos - Adjacent Tree Property

APPEAL

Petition for Special Hearing
3 Stonehurst Road
West side Stonehurst Road, 218' south of c/l of Windemere Parkway
11th Election District – 6th Councilmanic District
Legal Owners: Joseph Stepcich

Case No.: 06-419-SPH

Petition for Special Hearing (February 28, 2006)

Zoning Description of Property

Notice of Zoning Hearing (March 16, 2006)

Certification of Publication (The Jeffersonian – April 4, 2006)

Certificate of Posting (April 3, 2006) by Robert Black

Entry of Appearance by People's Counsel (March 13, 2006)

Petitioner(s) Sign-In Sheet – One Sheet

Protestant(s) Sign-In Sheet - None

Citizen(s) Sign-In Sheet - None

Zoning Advisory Committee Comments

Petitioners' Exhibit

1. Site Plan
2. 2002 Subdivision Plat
3. 2/8/02 Letter to Petitioner
4. DRC Letter 2/23/02
5. Office of Planning Letter 3/22/02
6. Letter dated 5/28/04 from Director of PDM
7. Rezoning – Standard Letter
8. Letter to Charles Klein dated 5/20/04
9. Letter to Arnold Jablon – 10/26/04
10. Peoples Counsel letter to Board of Appeals
11. Board of Appeals Order
12. Appellants Pre-Hearing Memorandum
13. Office of law Pre-Hearing Memorandum
14. Letter to DRC – 3/14/06
15. Response indicating a denial of request
16. Case of Lewis v Gerber (1985)
17. Case of Westchester
18. Bauman v Westchester (Unreported)
19. County Attorney Opinion – 5/17/84
20. Letter of Advice – 2/10/81
21. Letter of Advice – 9/24/79
22. CBA Case 96-136-M
23. CBA Case 96-405-SPH

Protestants' Exhibits - None

Miscellaneous (Not Marked as Exhibit)

1. Entry of Appearance – Nancy West

Zoning Commissioner's Order (GRANTED – in part – May 16, 2006)

Notice of Appeal received on May 31, 2006 – Arnold Jablon

Notice of Appeal received on June 5, 2006 – Peoples Counsel

C: People's Counsel of Baltimore County, MS #2010
Zoning Commissioner/Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
Mr. & Mrs. Joseph A. Stepcich, 3 Stonehurst Road, Phoenix 21131
Brian Dietz, 7867 Oakdale Avenue, Baltimore 21237
John Beverungen, 400 Washington Avenue, Towson 21204
Dr. Eusebia Gonzales, 300 Stonehurst Road, Phoenix 21131

date sent June 21, 2006, klm

CBA-06-019

In the Matter of: **Pridgeon Property, Lot 3 and Parcel B** Windemere, Section III
6 Stonehurst Road DRC 040306 E
11th E; 3rd C

CBA-06-020

In the Matter of: **Stepcich Property**
3 Stonehurst Road DRC 040306 D
11th E; 3rd C

RE: PDM Decision / DRC
Denial of Appellant's request to reconfigure lots of record into two buildable lots

---

5/17/06 – Entry of Appearance filed by Peter Max Zimmerman, People's Counsel for Baltimore County, and Carole S. Demilio, Deputy People's Counsel.

10/27/06 – Notice of Assignments sent to following parties; case assigned for hearing on Tuesday, November 14, 2006 10:00 a.m.:

Arnold Jablon, Esquire
Mr. Richard Pridgeon (6 Stonehurst)
Mr. and Mrs. Joseph Stepcich (3 Stonehurst)
David Martin /GW Stephens & Assoc.
Brian R. Dietz
Adrienne True and Kim Ward
Dr. Eusebia Gonzales
Office of People's Counsel
Walt Smith, Dev. Manager /PDM
Timothy M. Kotroco, Director /PDM
Nancy C. West, Esquire
John E. Beverungen, County Attorney

11/02/06 – Request for postponement filed by Nancy West, Assistant County Attorney due to schedule conflict. Mr. Zimmerman and Mr. Jablon have no objection to same; however, Mr. Jablon requests new dates as early on the Board's schedule as possible.

11/03/06 – Request for postponement filed by J. Carroll Holzer, Esquire (entering appearance on behalf of Carol \ Trela and Long Green Valley Association); he will be out of town 11/10 through 11/15/06.

11/09/06 – After conversations with Ms. West and attempts to confirm dates in January, notice of postponement to be sent this date due to closeness of date – to be pulled from schedule and new dates to be assigned as soon as an agreement is reached as to availability of parties /counsel. Copy via FAX to Messrs. Holzer, Jablon, and West this date; copy left for hand-delivery to Mr. Zimmerman.

12/19/06 – Notice of Assignment sent to parties – hearing in Case No. 06-419-SPH and JSPC appeals – Case No. CBA-06-019 and CBA-06-020 – for Wednesday, January 10, 2007 at 10:00 a.m. /Day #1 and Thursday, February 1, 2007 at 10:00 a.m. /Day #2. FYI copy sent to Board members in this matter.

1/10/2007 – Board convened for hearing in this matter (Stahl, Grier, Crizer). Noted prior to hearing that Case No. CBA-04-159 was not included in the group of files used to schedule this hearing. To be included by agreement and entered into record. Notice of Assignment for day #2 will reference all files involved in this hearing.

1/16/07 – Notice of Assignment /Day #2 sent to all parties this date. Day #2 remains assigned for Thursday, February 1, 2007 at 10:00 a.m. FYI copy to 2-4-7.

CBA-06-019

In the Matter of: **Pridgeon Property, Lot 3 and Parcel B** Windemere, Section III
6 Stonehurst Road DRC 040306 E
11th E; 3rd C

CBA-06-020

In the Matter of: **Stepcich Property**
3 Stonehurst Road DRC 040306 D
11th E; 3rd C

RE: PDM Decision / DRC
Denial of Appellant's request to reconfigure lots of record into two buildable lots

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1/29/07 – T/C from Board Member (7); death in family; funeral on 2/01/07.

1/30/07 – Confirmed with counsel that 2/01/07 hearing date must be postponed for above reason; to be reassigned to next available date on Board's schedule. Board members and reporter notified this date.
-- Notice of PP and Reassignment sent to parties this date (with FAX to counsel); reassigned to Thursday, March 29, 2007 at 10:00 a.m. FYI copy to 2-4-7.

2/20/07 – Request for postponement filed by People's Counsel; Mr. Zimmerman scheduled to be out of town on vacation 3/18 through 3/31/07. Possible dates 4/19 or 4/24/07.

3/12/07 – Second Notice of PP and Reassignment sent to parties; case reassigned for Day #2 to Tuesday, April 24, 2007 at 10:00 a.m. FYI copy to 2-4-7 this date.

4/24/07 – Board convened for day #2 (Stahl, Grier, Crizer); concluded day #2 with early recess due to schedule conflict /witness; agreed to reconvene on Tuesday, 5/15/07 at 10:30 a.m.; all calendars confirmed this date.
- Notice of Assignment /Day #3 sent to parties this date; assigned for Tuesday, May 15, 2007 at 10:30 a.m. FYI copy to 2-4-7.

5/15/07 – Board convened for day #3; concluded this date. Memos due from counsel 7/16/07; deliberation date to be assigned and notice sent.

5/18/07 – Notice of Deliberation sent to parties; assigned for Wednesday, August 8, 2007 at 9:00 a.m. FYI copy to 2-4-7.

5/23/07 – Letter from P. Zimmerman including copy of Layton v. Howard County / Court of Appeals decision filed May 9, 2007; and also additional points.

7/11/07 – T/C from Carol Richardson - secretary to Ms. West – regarding possible extension for filing of memos – she will contact Mr. Jablon and then submit written request if no objection.

7/13/07 – Letter from C. Holzer via FAX stating that on 5/31/07, he adopted both Memos filed by People's Counsel; in addition, he will adopt Ms. West's Memo when it is filed.
- Letter from Ms. West requesting one week extension for filing memos; no objection by Mr. Jablon (confirmed via telephone); no objection by People's Counsel; left message for Mr. Holzer.

7/16/07 – Confirmed extension for filing of memos to Monday July 23, 2007 by close of business (one week extension). Copy of letter via FAX to Messrs. Jablon and Holzer and Ms. West; copy hand-delivered to Mr. Zimmerman. Also sent via US Mail.

7/20/07 – Petitioner's Post-Hearing Memorandum filed by Arnold Jablon, Esquire, VENABLE, LLP.

CBA-06-019

In the Matter of: **Pridgeon Property, Lot 3 and Parcel B** Windemere, Section III
6 Stonehurst Road DRC 040306 E
11th E; 3rd C

CBA-06-020

In the Matter of: **Stepcich Property**
3 Stonehurst Road DRC 040306 D
11th E; 3rd C

RE: PDM Decision / DRC
Denial of Appellant's request to reconfigure lots of record into two buildable lots

---

7/23/07 – Baltimore County, Maryland's Memorandum filed by Nancy West, Assistant County Attorney. Copies of above memos from Ms. West and Mr. Jablon, as well as a copy of Mr. Zimmerman's Pre-Hearing Memo, Mr. Zimmerman's May 23, 2007 letter, and Mr. Holzer's July 13th letter in which he adopts the submittals of Mr. Zimmerman and Ms. West sent to panel members Stahl, Grier and Crizer. Public Deliberation assigned for Wednesday, August 8, 2007.

MEMOS FILED IN CASE NO 06-419-SPH FILE.

8/08/07 – Board convened for public deliberation (Stahl-Grier-Crizer); unanimous decision – approved Petitioner's request regarding Stepcich and Pridgeon properties. Written opinion and order to be issued; appellate period to run from date of written Order. (2)

CBA-06-019

In the Matter of: **Pridgeon Property, Lot 3 and Parcel B** Windemere, Section III
6 Stonehurst Road DRC 040306 E
11th E; 3rd C

CBA-06-020

In the Matter of: **Stepcich Property**
3 Stonehurst Road DRC 040306 D
11th E; 3rd C

RE: PDM Decision / DRC
Denial of Appellant's request to reconfigure lots of record into two buildable lots

---

7/23/07 – Baltimore County, Maryland's Memorandum filed by Nancy West, Assistant County Attorney. Copies of above memos from Ms. West and Mr. Jablon, as well as a copy of Mr. Zimmerman's Pre-Hearing Memo, Mr. Zimmerman's May 23, 2007 letter, and Mr. Holzer's July 13th letter in which he adopts the submittals of Mr. Zimmerman and Ms. West sent to panel members Stahl, Grier and Crizer. Public Deliberation assigned for Wednesday, August 8, 2007.

MEMOS FILED IN CASE NO 06-419-SPH FILE.

IN THE MATTER OF:	*	BEFORE THE
PRIDGEON & STEPCICH PROPERTIES Special Hearing Request & Reconfigure Lots of Record 6 & 3 Stonehurst Road DRC # 040306 E & DRC # 040306 D 11th Election District 3rd Councilmanic District	* * * * * * *	COUNTY BOARD OF APPEALS BALTIMORE COUNTY Case No. CBA-06-019 & 020 and Case No. 06-419-SPH

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

SUBPOENA

Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on Wednesday, January 10, 2007 at 10:00 a.m. at Room 48, located at Basement, Old Courthouse, 400 Washington Ave., Towson and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board. (See attached Notice of Hearing)

Witness: Jeff Long
Address: Office of Planning
County Courts Bldg.
Towson, MD 21204

Name: J. Carroll Holzer
Firm: Holzer & Lee
Address: 508 Fairmount Ave. Towson, 21286 **410-825-6961**
The witness named above is hereby ordered to so appear before the County Board of Appeals and bring any and all files and documents referenced in above case. The Board requests the Sheriff to issue the summons set forth herein.

Lawrence B. Stepcich
County Board of Appeals of
Baltimore County

Cost: $

Summoned: _____, 2007

Not Served: _____, 2007

Sheriff of Baltimore County

C:Subpoenas CBA Stepcich Pridgeon 1-3-07

RECEIVED
JAN 03 2006
BALTIMORE COUNTY
BOARD OF APPEALS

IN THE MATTER OF: Joseph Stepcich, Petitioner 3 Stonehurst Road	*	BEFORE THE COUNTY BOARD OF APPEALS
Stepcich Property, Section III Windmere-3 Stonehurst Road 3 Stonehurst Road	*	OF BALTIMORE COUNTY Case No. 06-419SPH. Case No. CBA 04-157
Pridgeon Property Section 6 Windmere 6 Stoenhurst Road	*	Case No. CBA 04-159
11th ED 3 CD	*	

* * *

SUBPOENA

Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matters captioned above on Wednesday, January 10th, 2007, at 10:00 a.m. and Thursday, February 1, 2007 at 10:00 a.m., in Room 48, Old Courthouse, 400 Washington Ave., Towson, Maryland 21204. and continuing thereafter as necessary for such witness' testimony and as scheduled by the County Board of Appeals of Baltimore County.

WITNESS: **Donald Rascoe**
Deputy Director
Baltimore County Department of Permits and Development Management

ADDRESS: **County Office Building**
111 West Chesapeake Ave.
Towson, Maryland 21204

General Purpose: for the witness to testify and bring all files and information regarding the properties known as 3 Stonehurst Road and 6 Stonehurst Road, Phoenix, Maryland 21131; policies related to determination as to what constitutes a "material change" and a "refinement".

Requested By: Arnold Jablon, Esq.
Venable, LLP
210 Allegheny Ave
Towson, Maryland 21204
410-494-6298

RECEIVED
DEC 2 9 2006
BALTIMORE COUNTY
BOARD OF APPEALS

The witness named above is hereby ordered to so appear before the County Board of Appeals of Baltimore County.

Linda B. Fliegel
County Board of Appeals of Baltimore County

Date: 12/29/06

RECEIVED
DEC 29 2006
BALTIMORE COUNTY
BOARD OF APPEALS

HOLZER
& LEE

LAW OFFICES

J. CARROLL HOLZER, PA

J. HOWARD HOLZER
1907-1989

THOMAS J. LEE
OF COUNSEL

THE 508 BUILDING

508 FAIRMOUNT AVE.
TOWSON, MD 21286
(410) 825-6961
FAX: (410) 825-4923
E-MAIL: JCHOLZER@BCPL.NET
xxxxxxxxxxxxxxx
jcholzer@cavtel.net

May 31, 2007
#7671

Lawrence M. Stahl, Panel Chair
County Board of Appeals
of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

RE: In the Matter of the Stepcich Property
Section III, Windemere Subdivision
Case Nos.: CBA-04-157; CBA-06-019; CBA-06-020 and 06-419-SPH

Dear Mr. Stahl:

In the above-captioned case, Dr. Gonzales, Adrian True and the Long Green Valley Community Association desire that I express my support for the pre-hearing Memorandum and the letter of May 23, 2007 of the Office of People's Counsel.

Along with Mr. Zimmerman's excellent analysis of the history and law of this case, I believe Deputy Planning Director, Jeff Long's testimony and the reasons for the Office of Planning's actions in this case are consistent with the law.

I would therefore, on behalf of my clients, respectfully request the Board to deny the relief requested by both of Mr. Jablon's clients.

Very truly yours,

J. Carroll Holzer

JCH:mlg

Enclosure

cc: Ms. Adrian True
Dr. Eusebio Gonzales
Ms. Charlotte Pine

RECEIVED
JUN - 1 2007
BALTIMORE COUNTY
BOARD OF APPEALS

Eusebio P. & Judith A. Gonzales
300 Stonehurst Road
Phoenix, Maryland 21131
HomeTelephone & Fax: (410) 592-5522
Daytime Office Telephone: (410) 296-1120
August 17, 2004

Mr. Jeffrey Long
Chief, Comprehensive & Community Planning
Office of Planning
County Courts Building, Suite 406
401 Bosley Avenue
Towson, MD. 21204

Re: Stepcich Property
proposal to subdivide
(3 Stonehurst Road
Phoenix, Md. 21131)

Dear Mr. Long:

We would like to hereby submit to the Planning Board and the Department of Permits & Development Management of Baltimore County, through your office, this Addendum to the August 08, 2003 Letter of Petition/Objection regarding the above-mentioned. We firmly believe that Baltimore County should **not** approve this proposal because the referenced property is a "Palustrine/Forested Wetland" which is protected under the Federal Clean Water Act of 1972 and by the State of Maryland Nontidal Wetlands Protection Act (COMAR Sections 8-1201-8-1211) of 1984. (1)

More recent initiatives regarding this sensitive environmental issue to protect the ecosystem include: Source Water Stewardship Program sponsored by the U.S. EPA, Trust for Public Land and the cooperative Reservoir Watershed Protection Agreement of 2003, which involves all three metropolitan Baltimore water-supply reservoirs: Pretty Boy, Liberty and Loch Raven. These initiatives address exactly the same concerns we have: not only to identify and protect high quality forests but also establish a goal of **no net loss** of forest land in the watershed. (2) After all, in Maryland, nearly 95 percent of the state is part of the Chesapeake Bay watershed. (3)(4)

Attached herewith, please find irrefutable geophysical, biological and technological body of evidence such as satellite digital image mapping, that supports our claim: the above-referenced property is without a doubt, a protected forest wetland, the most common type (84.9%) of all Palustrine wetland in the State of Maryland. (1)(5)(6). We also included an analysis of the information from Baltimore County on the result of the percolation tests done on the subject property in 1969 and 2003, when correlated with the State of Maryland Annual Precipitation recorded in the weather report archives of BWI. (7)(8)

Finally, in another format submitted with this package, please look at the old and recent photos that will definitely "raise some eyebrows".

Once again, we thank you for your help in this matter.

Sincerely,

Eusebio P. Gonzales,M.D,FAAP (Mrs.) Judith A. Gonzales

copy: file
Attachment
John Canoles Paula Kurrus Stephen Kirsch J. Lee Bishop
Adrienne True M. Kim Ward John Bartkowiak Joan Worthington
Joseph Matarazzo Daria Matarazzo Craig Laudeman Mary Laudeman

VENABLE LLP

210 Allegheny Avenue
Post Office Box 5517
Towson, Maryland 21285-5517

Telephone 410-494-6200
Facsimile 410-821-0147

www.venable.com

ARNOLD JABLON
(410) 494-6298

aejablon@venable.com

14 March 2006

Mr. Donald Rascoe, Deputy Director
Department of Permits and Development Management
111 West Chesapeake Ave
Towson, Maryland 21204

MAR 2006

Re: Stepcich Property
Windemere, Section III
3 Stonehurst Road
J.S.P.C. Material Amendment

Dear Mr. Rascoe:

This office represents Mr. and Mrs. Joseph Stepcich, the owners of the above cited property. The subject property, located at 3 Stonehurst Road, Baltimore, MD., identified as lot "1" on the J.S.P.C. plan and plat known as "Section III, Windemere", which was approved in or about 1969. The property owner desires to resubdivide their lot into 2 lots as shown on the accompanying redlined J.S.P.C. plan.

In early 2002, our clients filed a request to the DRC for approval of the proposed division of their lot into two by amendment to the originally approved J.S.P.C. plan. After review, in 2004, the Office of Planning denied the division due to the change in zoning from that which was in effect when the original plan was approved and that which is in place currently.

With the passage of Bill No. 26-04 by the County Council, we believe it appropriate to file the attached plan. Pursuant to this legislation, my clients' proposal merits endorsement at the very least as being in conformity with the regulations in place at the time of the original plan approval or as a material amendment to the previously approved plan, as shown and in accordance with the development and zoning regulations in effect at the time of the original plan approval.

Please accept this request for filing for a material amendment to a previously approved plan, pursuant to §6, of Bill 26-04.

Sincerely,

Arnold Jablon
AEJ/aj

ACCEPTED FOR FILING BY THE DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT

3-14-06
DATE

By: David T. Rosenberg
PDM

Baltimore County, Maryland

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

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

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

May 23, 2007

Lawrence M. Stahl, Panel Chair
Edward W. Crizer, Jr., Panel Member
Wendell H. Grier, Panel Member
County Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, MD 21204

RECEIVED
MAY 23 2007
BALTIMORE COUNTY
BOARD OF APPEALS

Re: In the Matter of the Stepcich Property
Section III, Windemere Subdivision
Case Nos: CBA-04-157, CBA-06-019, CBA-06-020 and 06-419-SPH

Dear Mr. Stahl:

Enclosed is the May 9, 2007 decision of the Court of Appeals in Layton v. Howard County ___ Md. ____ (2007), No. 116, September Term, 2006. Judge Cathell's opinion reinforces the rule of Yorkdale Corp. v. Powell that a new land use law applies to an existing situation, even when the law is passed while litigation is ongoing. The case law cited reflects that the rule applies to situations where there is a change in the zoning map designation of the property. The case is available for the parties online at the Maryland Courts website.

In addition, while memories are fresh, I respectfully ask the Board (CBA) to scrutinize the prehearing memorandum filed by our office. I also ask the Board to consider the following brief additional points:

1. Deputy Planning Director Jeffrey Long's excellent testimony on the applicability of the current R.C. 6 zoning designation is consistent with the law explained in our memorandum.

2. Surveyor Brian Dietz's testimony and exhibits addressed current environmental standards not in place in 1970. See, e.g. Pet. Exh. 4-5, 14-16. In this context, Petitioner arbitrarily cherrypicked the 1970 zoning map classification (erroneously assumed to be R.S.C., actually R.6) in order to facilitate resubdivision in conflict with current zoning law.

3. The zoning history reflects that the Council had choices to make in each legislative cycle. The Council chose to replace the original R.6 zoning with R.S.C. (1971), R.C. 4 (1976-2000), and R.C. 6 (2004). It is undisputed that the R.C. 4 and R.C. 6 zone density and conservancy standards do not allow resubdivision here. So, as of 1976, Windemere Section III, as well as the other sections of Windemere, were already over the new .2 density limit. BCZR

1A03.4.B.1.b, 1A07.8.B.1. Moreover, the subdivision was designed without the conservancy areas required for R.C. 4 and R.C. 6 zones residential developments. BCZR 1A03.5, 1A07.7.

4. Adrienne True's testimony reflects the reason for the separate BCZR 1A00.4/1B01.3 density, consistency, and special exception-type controls on amendments to final development plans filed after lots are sold. There is a reasonable expectation of stability in the approved subdivision. This encompasses so-called JSPC, CRG, and post-1992 subdivision plans.

5. It is irrelevant whether the resubdivision proposals here are euphemistically named lot-line adjustments, reconfigurations, refinements, or any other name. These are details of development policy. As Mr. Long noted, they do not affect basic zoning issues. The Layton decision rejects a comparable attempt to sidestep zoning issues under the guise of another legal rubric. Slip opinion, P. 36. It is elementary that subdivisions must comply with zoning law. See Miller v. Forty West Builders 62 Md. App. 320, 329-35 (1985). The County Code has explicitly incorporated this requirement for many years. It is currently found in Code Sec. 32-4-114(a), which requires developments to comply with all other county laws and ordinances.

6. In any event, the proposed resubdivisions here are not "refinements." They are significant, and thus constitute material amendments. County policy has consistently defined "refinement" as "slight, minor, or insignificant changes to an approved plan." Despite this fair definition, the bureaucratic implementation has often been ludicrous. The CBA rejected PDM approval of an office expansion as a "refinement" in its April 6, 2007 Charlestown Retirement Communities decision. (L. Wescott, E. Crizer, W. Grier). P. 12. Case Nos. 5-143, 5-621-A. Previously, in Meadows of Greenpring Homeowners Assoc. v. Foxleigh Enterprises (2004) No. 2170, September Term, 2003, the Court of Special Appeals had reversed a different CBA panel's decision to affirm the county PDM Director's approval of a reduction in height as a "refinement." In contrast, the 2007 Charlestown CBA panel showed a much better understanding of the law. This panel would not allow "refinement" to become a tool for abuse, avoidance and circumvention of relevant land use law.

The main thing is that law, logic, and common sense dictate application of the current zoning classification to the current proposal for resubdivision, especially where the original zoning disappeared more than 35 years ago.

Sincerely,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

PMZ\rmw

cc: Arnold Jablon, Esquire
Nancy West, Assistant County Attorney
J. Carroll Holzer, Esquire

Colleen Layton, et al. v. Howard County Board of Appeals, et al.
No. 116, September Term, 2006

Headnote: Reaffirming the *Yorkdale Corporation v. Powell*, 237 Md. 121, 205 A.2d 269 (1964) rule that a change in statutory law that takes place during the course of the litigation of a land use or zoning issue shall be retrospectively applied by appellate courts whether it operates to deny, i.e., moot an application (provided that it does not affect the vested rights of a party), or applies in an opposite context.

Circuit Court for Howard County
Case # 13-C-04-058937 & 13-C-04-058939

IN THE COURT OF APPEALS OF MARYLAND

No. 116

September Term, 2006

Colleen Layton, et al.

v.

Howard County Board of Appeals, et al.

Bell, C. J.
Raker
Cathell
Harrell
Battaglia
Greene
Wilner, Alan M.
(Retired specially assigned),
JJ.

Opinion by Cathell, J.
Wilner, J., Dissents

Filed: May 9, 2007

This case, in a land use or zoning context, addresses the question of the retrospective applicability of a related statutory law which is amended during the course of litigation. It presents the issue of whether the rule in *Yorkdale Corporation v. Powell*, 237 Md. 121, 205 A.2d 269 (1964), may be applied to enlarge uses as well as to limit uses.

Colleen Layton and Scott Robbins, d/b/a Frisky's Wildlife and Primate Sanctuary, Inc., (collectively referred to as "Frisky's"), the petitioners, attempted to obtain a special exception to operate as a charitable and philanthropic institution in Howard County. The primary reason for the application was that Frisky's had apparently been out of compliance with Howard County's zoning ordinances in its operation as an animal rehabilitation center and primate sanctuary. The Howard County Board of Appeals (the "Board") granted Frisky's special exception in part, but denied it permission to operate as a primate sanctuary. Thereafter, on June 17, 2004, petitioners filed a petition for judicial review in the Circuit Court for Howard County. On June 25, 2004, Richard Wyckoff and Julianne Tuttle, neighbors of Frisky's, filed a separate petition for judicial review, which the Board joined (collectively the respondents). Both petitions, by order of the court, were later consolidated. On September 27, 2004, a pertinent portion of the Howard County Code was amended, changing the definition upon which the Board had relied in making its initial zoning decision to deny Frisky's permission to operate a primate sanctuary. On April 8, 2005, the Circuit Court held a hearing on the matter and, on July 13, 2005, issued a memorandum opinion affirming the decision of the Board.

Petitioners filed a motion to alter or amend judgement, which was denied on August 30, 2005. Petitioners then appealed to the Court of Special Appeals. In a reported opinion, *Layton v. Howard County Board of Appeals*, 171 Md. App. 137, 908 A.2d 724 (2006), the Court of Special Appeals affirmed the decision of the Circuit Court. Petitioners then timely filed a petition for certiorari with this Court, which we granted on December 14, 2006. *Layton v. Howard County*, 396 Md. 12, 912 A.2d 648 (2006).[1] One question is presented for our review:

> "Whether one who challenges a decision of a zoning board may have, as Petitioners here seek, (a) the benefit of a legislated change in the basis of a decision of the zoning board and (b) demand application on judicial appeal of the 'new law'?"

We answer this question in the affirmative. Under the *Yorkdale Corporation v. Powell*, 237 Md. 121, 205 A.2d 269 (1964), rule, legislated change of pertinent law, which occurs during the ongoing litigation of a land use or zoning case, generally, shall be retrospectively applied.

I. Facts

Petitioners have operated Frisky's, a wildlife refuge and sanctuary, in Howard County since 1976. Frisky's has been at its current location, 10790 Old Frederick Road, Woodstock, Maryland, since 1993. That property is composed of 3.728 acres and is zoned as a Rural Conservation-Density Exchange Option Overlay Zoning District ("RC-DEO").

This controversy arose on December 14, 1999, when petitioners were issued a notice

---

[1] This matter has been before administrative and judicial entities for approximately seven years.

by the Howard County Department of Planning and Zoning (the "Department") for violating a zoning regulation by operating a charitable and philanthropic institution without an approved special exception. Frisky's was incorporated in 1998, as a not-for-profit corporation, but petitioners had never filed for a special exception to bring the operation of the facility into compliance with Howard County's zoning regulations.

On April 28, 2000, petitioners filed a petition "for a Special Exception for a Charitable and Philanthropic Institution (Section 131.N.13) for an existing wildlife rehabilitation center and primate sanctuary" with the Department. The Department, on August 9, 2000, issued a recommendation to the Howard County Board of Appeals, in which it suggested that Frisky's petition for a special exception be approved, subject to a number of conditions. The matter then went before the Board, for a special exception petition for a charitable and philanthropic institution in a RC-DEO, pursuant to §§ 131.N.13[2] and 130.B.2[3] of the Howard County Zoning Regulations ("HCZR") in effect at that time. Numerous hearings were held over the course of the next three years – these hearings included testimony from witnesses on both sides.

On May 18, 2004, the Board issued its written decision, which, as relevant to this proceeding, granted Frisky's a special exception to operate as a charitable and philanthropic institution, including permitting the operation of an animal rehabilitation center on the property. The Board, however, denied Frisky's an exception to operate a primate or other exotic wildlife sanctuary. The Board's factual findings stated, in pertinent part:

> "2. The Petitioner currently operates a charitable institution that functions as an animal rehabilitation center and primate sanctuary (the 'Center') on the Property. Frisky's is registered with the State of Maryland as a Charitable Organization and with the State Department of Assessments and Taxation as a non-stock, not for profit corporation for the purpose of a charitable organization. In order to operate such an organization in the RC district, a Special Exception is required.[4] The Petitioner is trying to gain approval as a Special Exception for a 'Charitable and Philanthropic

[2] HCZR § 131.N.13 at that time stated:
"Charitable and Philanthropic Institutions
A special exception may be granted in the RC, RR, R-ED, R-20 and R-12 Districts for a charitable or philanthropic institution, provided that:
a. The minimum lot size shall be 40,000 square feet.
b. The proposed activities on the site shall be specified, including the institution's goals, activities and hours of operation.
c. The institution shall be a charitable or philanthropic institution as defined in these regulations. The fact that the organization is a tax-exempt entity does not, of itself, constitute eligibility as a special exception, but may be considered as one of the factors of eligibility, provided the use complies in all other respects with the definition.
d. The petitioner demonstrates that the use shall meet applicable Federal, State or local laws and regulations.

(continued...)

[2](...continued)
e. The use shall not have an adverse effect on the use or development of surrounding properties due to noise, odor, traffic, lights or any other reason.
f. All parking areas and outdoor activity areas shall be screened from surrounding properties and roads by landscaping or other appropriate means.
g. The design of any structures shall be compatible with that of other structures in the vicinity."

[3] HCZR § 130.B.2 pertained to variances and is not relevant to this appeal.

[4] "A zoning violation notice was issued to Scott Allen Robbins and Colleen Lucille Layton on December 14, 1999, for operating a charitable and philanthropic institution without an approved Special Exception." Board's opinion, n.1.

Institution' for this purpose on the 3.728 acre Property.

"3. The Petitioner's proposed activities include care and rehabilitation for 'wildlife that have been injured or orphaned; domestic animals such as rabbits, and farm animals that are sick or who have become pets, but can't be kept by their owners; and primates that come from laboratories, sanctuaries or private owners around the country before it became illegal to own primates without a license.' The Petitioner submitted documentation of a Wildlife Permit for Wildlife Rehabilitation from the Maryland Department of Natural Resources. . . .

"4. At the hearing held before the Board on November 1, 2001, the Petitioner submitted documentation that Frisky's had obtained a 'Class C Exhibitor' license pursuant to the Animal Welfare Act (7 U.S.C. 2131 et seq.) from the United States Department of Agriculture.

"5. Animals which are permitted to be rehabilitated are accepted from multiple sources, provided care and shelter, and upon recovery, are released back into the wild or made available for adoption. Primates stay in the care of Frisky's for the remainder of their lives.

. . .

"18. The Board finds based on the evidence presented that the Petitioner operates the Center on the subject Property as a charitable institution for the rehabilitation and sanctuary of animals. Included in the animals housed in the center are monkeys, other primates and wild animals. Exotic animals are defined in Section 17.300(p) of the Howard County Code (the 'Code') as 'animals of a species that is not indigenous to Howard County and is not a domesticated animal.' A wild animal is defined in Section 17.300(y) of the Code as 'an animal which is not a domesticated animal, is incapable of being completely domesticated, or requires the exercise of art, force, or skill to keep it in subjugation. Wild animal includes any hybrid animal which results from the breeding of a wild animal and a domesticated animal.'

"19. The Board finds that the monkeys and other primates housed in the Center are wild and exotic animals as defined in the Code.

"20. Section 17.306(e) of the Code provides that wild or exotic animals are prohibited in Howard County as follows:

(1) Wild or exotic animals prohibited: No person may keep, hold for sale or sell wild or exotic animals even if well trained, declawed, defanged, ostensibly domesticated and affectionate to people.

(2) Exemption for licensed veterinarian: a licensed veterinarian is exempt from the provisions of paragraph (1) only for the purpose of professional medical treatment of such animals.

(3) Exemption for research, study, exhibits: The holder of a currently valid permit issued by a state or federal authority to keep animals for scientific research, study, or exhibits is exempt from the provisions of paragraph (1) only to the extent provided in the permit.

"21. The Board finds that although the Petitioner may have a license to exhibit animals at the Center, the Petitioner initially did not apply to be an animal exhibitor and subsequently failed to provide sufficient evidence during the course of the hearings held before the Board to determine that the Petitioner is, in fact, an animal exhibitor. . . .

"22. Therefore, the exemption for 'exhibits' in Section 17.306(e)(4)[(3)] is not applicable to this petition."

The Board's conclusions of law stated, in pertinent part:

"1. The Board concludes that the Petitioner operates the Center as a charitable institution for the rehabilitation and sanctuary of animals on the Property.

"2. The Board concludes that the rehabilitation center and sanctuary does not operate as a center for displaying or exhibiting the animals to the public.

"3. The Board concludes that the monkeys and other primates at the center are wild and exotic animals as defined by the Howard County Animal Control Law, Section 17.300 et seq. of the Howard County Code.

"4. The Board concludes that it is unlawful under the Howard County Code to operate a primate sanctuary or wildlife rehabilitation center in Howard County. Section 17.306(e)(1) of the Code provides that 'No person may keep, hold for sale or sell wild or exotic animals even if well trained, declawed, defanged, ostensibly domesticated and affectionate to people.'

"5. The Board concludes that although the Petitioner may have an exhibitor's license, the Petitioner failed to provide sufficient evidence during the course of the hearings for the Board to determine that the Petitioner is, in fact, an animal exhibitor rather than a sanctuary and rehabilitation center for animals. The exemption for exhibits in Section 17.306(e)(4)[(3)] of the Howard County Code does not apply because the Petitioner[] did not prove to the Board that she was an exhibitor and the Petitioner[] cannot therefore legally keep primates or other wild or exotic animals on the subject Property.

. . .

"7. The Board further concludes that because wild or exotic animals are prohibited by local law in Howard County (except under circumstances not found to be present in this case) the Zoning Board could not have contemplated a land use for a rehabilitation center and primate sanctuary for wild and exotic animals as constituting a charitable institution in the context of the zoning regulations. The Board cannot grant a special exception for the primate sanctuary use or that portion of the rehabilitation center involving wildlife which is not permitted by the Howard County Code or the Howard County Zoning Regulations.

"8. Thus this Board's approval of the charitable and philanthropic institution use for a animal sanctuary and rehabilitation center hereinafter (referred to as 'Approved Charitable Use') excludes the primate sanctuary and other wildlife not permitted under the Howard County Code."

Pursuant to the provisions of the Howard County Code in effect at the time of the Board's decision, monkeys and other primates were considered exotic or wild animals. §§ 17.300(p) and (y). Furthermore, § 17.306(e) of the Howard County Code, at that time, provided that no person (or corporation) could keep exotic or wild animals unless it met the exemption of having a valid permit issued by a state or federal authority to keep such animals for scientific research, study or exhibits. § 17.306(e)(3). The Board found that Frisky's did not satisfactorily establish evidence to meet such an exemption and, therefore, determined that it was not permitted to operate a primate sanctuary.

On June 17, 2004, Frisky's filed a petition for judicial review in the Circuit Court for Howard County; Richard Wyckoff and Julianne Tuttle, neighbors of Frisky's, filed a separate petition for judicial review on June 25, 2004. Those petitions were consolidated by order of the court.

On September 27, 2004, prior to any hearing before the Circuit Court, Howard

County amended pertinent provisions of the Howard County Code. The Code provided a definition for "Animal Sanctuary," which was not in existence at the time of the hearing before the Board. Specifically, § 17.300(g) stated:

"*Animal Sanctuary.*
A facility that performs at least one of the following functions:
(1) Rescues, rehabilitates and releases, when possible, native wildlife; or
(2) Provides permanent housing to the following categories of non-releasable animals, as defined in this subtitle:
  (i) Wild animals; or
  (ii) Exotic animals."

Exotic animals were defined in § 17.300(q) as: "An animal of a species that is not indigenous to Howard County and is not a domesticated animal. . . ." Wild animals were defined in § 17.300(aa) as: "An animal that is not a domesticated animal, is incapable of being completely domesticated, or requires the exercise of art, force, or skill to keep it in subjugation. . . ." Thus, monkeys and other primates still fell under the definition of a wild or exotic animal.

The provision upon which this case turns, however, (i.e., the section dealing with the keeping of wild or exotic animals) was also amended. Now set forth in § 17.307(d), it read:

"*Wild or Exotic Animals Prohibited.* A person shall not keep, hold for sale, offer for sale, or sell a wild or exotic animal, even if the animal is well-trained, de-clawed, de-fanged, ostensibly domesticated, and affectionate to people, except that:
(1) A circus or animal show holding a valid permit from any public authority for temporary operation is exempt from this subsection for the term of the permit;
(2) A licensed veterinarian may temporarily keep such an animal only for the purpose of professional medical treatment of the

animal;

(3) The holder of a valid permit issued by a state or federal authority to keep a wild or exotic animal is exempt from this subsection only to the extent provided in the permit;

. . .

(5) *An animal sanctuary is exempt from this subsection if the sanctuary meets all state and federal licensing and permitting requirements*." [Emphasis added.]

Subsection (5) now provided an exemption for animal sanctuaries. Therefore, under the new law, as described by §§ 17.300(g) and 17.307(d) of the Howard County Code, Frisky's may arguably meet the definition of an "Animal Sanctuary" and thus be exempt from the prohibition[5] against keeping wild or exotic animals under § 17.307(d)(5).[6]

Petitioners incorporated this change in law into the arguments presented before the Circuit Court for Howard County. On April 8, 2005, the Circuit Court held a hearing on the consolidated petitions for judicial review and, on July 13, 2005, issued a memorandum opinion affirming the decision of the Board. The Circuit Court declined to accept petitioners' argument that the new provisions of the Howard County Code should be

[5] This, of course, assumes that Frisky's does, in fact, meet all of the pertinent State and Federal licensing and permitting requirements.

[6] Arguably, Frisky's could apply for a new special exception utilizing the current law. There are, however, provisions in the Code that prohibit reapplication until a certain period of time has passed. Whether reapplication prohibitions apply when the law itself is changed is an issue not directly presented in this case and the resolution must await a case in which the issue is present.

retrospectively applied to Frisky's petition for the operation of a primate sanctuary.[7]

Petitioners filed a motion to alter or amend judgment, which was denied by the Circuit Court. The petitioners then timely appealed to the Court of Special Appeals. The intermediate appellate court heard argument and issued its reported opinion on October 2, 2006. *Layton v. Howard County Board of Appeals*, 171 Md. App. 137, 908 A.2d 724 (2006).

The Court of Special Appeals addressed the retrospective application of the new provisions of the Howard County Code. After conducting a review of Maryland law, the court determined that the changes in the Code should not be applied to the case at bar. Specifically, the court stated:

> "Turning to the instant case, we see no reason to stray from the general rule that statutes are presumed to operate prospectively and are construed accordingly. *See Washington Suburban Sanitary Commission v. Riverdale Heights Volunteer Fire Co. Inc.*, 308 Md. 556, 560-61, 520 A.2d 1319 (1987). We are unable to discern in the statute a clear expression of the legislative intent that the statute should operate retrospectively, nor have appellants directed us to any such intent in their brief or oral argument. Notwithstanding that there is no articulated legislative intent, no other exception to the general rule applies to the change in the animal control law.
>
> "The law is not procedural, but substantive. The Court of Appeals discussed the difference between substantive laws and procedural or remedial laws in *Langston*, stating: 'A law is substantive if it creates rights, duties, and obligations, while a remedial or procedural law simply prescribes the methods of enforcement of those rights.' 359 Md. at 419, 754 A.2d 389 [(2000)] (citations omitted). The animal control law at issue provides a right for a sanctuary to have exotic and wild animals, not a new method or procedure to

[7] The Circuit Court also addressed several other arguments which were not presented to this Court.

enforce their right to have the animals. We discussed in *Langston* what defines a remedial statute, stating:

> Generally, remedial statutes are those which provide a remedy, or improve or facilitate remedies already existing for the enforcement of rights and the redress of injuries. They also include statutes intended for the correction of defects, mistakes and omissions in the civil institutions and the administration of the state.

359 Md. at 408-09, 754 A.2d 389. The animal control law is not remedial, but a new substantive right to possess wild and exotic animals for facilities that are designated as animal sanctuaries.

"Finally, the animal control law is not a zoning law;[8] whether it should be applied retrospectively is not properly based upon the rationale relied upon in our decisions in *Mandel*[9] and *Holland*[10]. Thus, we hold that the circuit court did not err by refusing to remand the case to the Board for consideration under the current animal control law."

Layton, 171 Md. App. at 172-73, 908 A.2d at 744. The Court of Special Appeals affirmed the decision of the Circuit Court.

II. Standard of Review

In *Purich v. Draper Properties, Inc.*, 395 Md. 694, 912 A.2d 598 (2006), we quoted *Alviani v. Dixon*, 365 Md. 95, 775 A.2d 1234 (2001), where we discussed the standard of review of administrative agency decisions in the context of special exceptions:

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[8] The Court of Special Appeals failed to discern that the definitions in the Animal Control Law were being applied in a land use context by reason of the description of uses in the zoning code and that, moreover, the definitions were a determinative factor in the agency's land use decision.

[9] *Mandel v. Board of County Comm'rs of Howard County*, 238 Md. 208, 208 A.2d 710 (1965). We note that *Mandel* is a decision of this Court, not the Court of Special Appeals.

[10] *Holland v. Woodhaven Building and Development, Inc.*, 113 Md. App. 274, 687 A.2d 699 (1996).

"A proceeding on a special exception is subject to a full judicial review. *Mossburg v. Montgomery County*, 329 Md. 494, 506, 620 A.2d 886, 892 (1993). We examined the correct standard of judicial review in *White v. North*, 356 Md. 31, 44, 736 A.2d 1072, 1079-80 (1999), when we stated that:

> In judicial review of zoning matters, including special exceptions and variances, 'the correct test to be applied is whether the issue before the administrative body is "fairly debatable," that is, whether its determination is based upon evidence from which reasonable persons could come to different conclusions.' *Sembly v. County Bd. of Appeals*, 269 Md. 177, 182, 304 A.2d 814, 818 (1973). *See also Board of County Comm'rs v. Holbrook*, 314 Md. 210, 216-17, 550 A.2d 664, 668 (1988); *Prince George's County v. Meininger*, 264 Md. 148, 151, 285 A.2d 649, 651 (1972); *Zengerle v. Board of County Comm'rs*, 262 Md. 1, 17, 276 A.2d 646, 654 (1971); *Gerachis v. Montgomery County Bd. of Appeals*, 261 Md. 153, 156, 274 A.2d 379, 381 (1971). For its conclusion to be fairly debatable, the administrative agency overseeing the variance decision must have 'substantial evidence' on the record supporting its decision. *See Mayor of Annapolis v. Annapolis Waterfront Co.*, 284 Md. 383, 395, 396 A.2d 1080, 1087 (1979); *Montgomery County v. Woodward & Lothrop, Inc.*, 280 Md. 686, 706, 376 A.2d 483, 495 (1977), *cert. denied sub nom. Funger v. Montgomery County*, 434 U.S. 1067, 98 S. Ct. 1245, 55 L. Ed. 2d 769 (1978); *Agneslane, Inc. v. Lucas*, 247 Md. 612, 619, 233 A.2d 757, 761 (1967).

In *Mayor of Annapolis v. Annapolis Waterfront Co.*, 284 Md. 383, 398, 396 A.2d 1080, 1089 (1979), we defined the substantial evidence test as "'whether a reasoning mind reasonably could have reached the factual conclusion the agency reached,' *Insurance Comm'r v. Nat'l Bureau*, 248 Md. 292, 309, 236 A.2d 282 (1967), or as "'such relevant evidence as a

reasonable mind might accept as adequate to support a conclusion,'" *Bulluck v. Pelham Apts.*, 283 Md. 505, 390 A.2d 1119 (1978); *Snowden v. Mayor & C.C. of Balto., supra*, 224 Md. [443] at 448, 168 A.2d 390.' In applying the substantial evidence test:

> The question for the reviewing court is . . . whether the conclusions 'reasonably may be based upon the facts proven.' The court may not substitute its judgment on the question whether the inference drawn is the right one or whether a different inference would be better supported. The test is reasonableness, not rightness.

Annapolis Waterfront Co., 284 Md. at 399, 396 A.2d at 1089, quoting 4 K. Davis, *Administrative Law*, § 29.05, 137, 139 (1958).

When we review an administrative agency's order, we make sure that it is not premised upon an error in the law. *Ad + Soil, Inc. v. County Commissioners of Queen Anne's County*, 307 Md. 307, 338, 513 A.2d 893, 909 (1986). 'Generally, a decision of an administrative agency, including a local zoning board, is owed no deference when its conclusions are based upon an error of law.' *Belvoir Farms Homeowners Association, Inc. v. North*, 355 Md. 259, 267, 734 A.2d 227, 232 (1999), citing *Catonsville Nursing Home, Inc. v. Loveman*, 349 Md. 560, 569, 709 A.2d 749, 753 (1998).

Alviani, 365 Md. at 107-09, 775 A.2d at 1241-42; *see also Department of Natural Resources v. Heller*, 391 Md. 148, 892 A.2d 497 (2006); *Motor Vehicle Administration v. Weller*, 390 Md. 115, 887 A.2d 1042 (2005)."

Purich, 395 Md. at 706-08, 912 A.2d at 606-07.

Furthermore, we stated in *Schultz v. Pritts*, 291 Md. 1, 432 A.2d 1319 (1981):

> "When the legislative body determines that other uses are compatible with the permitted uses in a use district, but that the beneficial purposes such other uses serve do not outweigh their possible adverse effect, such uses are designated as conditional or special exception uses. *See City of Takoma Park v. County Bd. of Appeals for Montgomery County*, 259 Md. 619, 621, 270 A.2d 772, 773 (1970); *Creswell v. Baltimore Aviation Servs., Inc.*, 257 Md. 712, 719, 264 A.2d 838, 842 (1970); Art. 66B, § 1.00. Such uses cannot be developed if at the particular location proposed they have an adverse effect above and beyond that ordinarily associated with such uses."

291 Md. at 21-22, 432 A.2d at 1330; *see Mossburg v. Montgomery County*, 107 Md. App. 1, 7-8, 666 A.2d 1253, 1257 (1995) ("[A] special exception/conditional use in a zoning ordinance recognizes that the legislative body of a representative government has made a policy decision for all of the inhabitants of the particular governmental jurisdiction, and that the exception or use is desirable and necessary in its zoning planning provided certain standards are met."). Judge Davidson, writing for the Court in *Shultz*, elucidated the proper standard in relation to special exceptions as follows:

> "[T]he appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone."

291 Md. at 22-23, 432 A.2d at 1331 (citations omitted); *Harford County v. Earl E. Preston, Jr., Inc.*, 322 Md. 493, 499, 588 A.2d 772, 775 (1991).

In this case, we are not concerned with the Board's initial disposition of the case. Its determination as to whether Frisky's was entitled to a special exception was made pursuant to the Code in effect at that time. The question presented is purely one of law – whether the Circuit Court should have retrospectively applied (or remanded the case for the Board to consider) the changed Code. As such, we shall review that question of law *de novo*. *Nesbit v. GEICO*, 382 Md. 65, 72, 854 A.2d 879, 883 (2004).

III. Discussion

We are presented in this case with the occasion to revisit *Yorkdale Corporation v. Powell*, 237 Md. 121, 205 A.2d 269 (1964),[11] and those cases preceding and following it in creating an exception in land use cases to the general rule that statutes are presumed to operate prospectively. We stated the general rule in *Washington Suburban Sanitary Comm'n v. Riverdale Heights Volunteer Fire Co.*, 308 Md. 556, 560, 520 A.2d 1319, 1321 (1987), "[a]s a general rule, statutes are presumed to operate prospectively and are to be construed accordingly." *See State Ethics Comm'n v. Evans*, 382 Md. 370, 381, 855 A.2d 364, 370 (2004); *County Council of Prince George's County v. Collington Corporate Ctr. I Ltd. P'ship*, 358 Md. 296, 305, 747 A.2d 1219, 1223 (2000); *but cf. Spielman v. State*, 298 Md. 602, 607, 471 A.2d 730, 733 (1984) ("There is 'no absolute prohibition against retroactive application of a statute.'") (quoting *State Comm'n on Human Relations v. Amecom Div.*, 278 Md. 120, 123, 360 A.2d 1, 4 (1976)). *Yorkdale*, as an exception to the general rule, provides for the retrospective application of changes to statutes that impact land use issues made during the course of litigation in land use and zoning cases.

In our Country's early jurisprudence, Chief Justice Marshall, writing for the United States Supreme Court, in *U.S. v. Schooner Peggy*, 1 Cranch 103, 5 U.S. 103, 2 L.Ed. 49 (1801), laid the foundation for the retrospective application of changes in a statutory scheme to ongoing litigation. There, the Court was concerned with the disposition of spoils of war. A French schooner (the *Peggy*) had been captured by an American ship. The Court was faced with the question, in the midst of litigation, of determining who was entitled to possession of the *Peggy*. For guidance, the Court turned to a treaty. The provisions of the treaty involving the validity of the capture and resultant possession of captured ships had changed during the course of the litigation.[12] Chief Justice Marshall explicated:

> "It is in the general true that the province of an appellate court is only to enquire whether a judgment when rendered was erroneous or not. But if subsequent to the judgment and before the decision of the appellate court, a law intervenes and positively changes the rule which governs, the law must be obeyed, or its obligation denied."

1 Cranch at 110, 5 U.S. at 110.[13] The Court continued:

"If the law be constitutional . . . . I know of no court which can contest its

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[11] In the forty plus years since *Yorkdale*, governmental entities have generally supported its applicability in land use cases. In those cases, however, the application of the *Yorkdale* rule restricted the rights of property owners. As far as we have discerned, the present case is the first instance where the *Yorkdale* rule might result in the expansion of a property owner's rights. Now, in this changed context, the governmental entity wants the Court to abandon *Yorkdale*.

[12] The treaty entered into with France provided in pertinent part: "Property captured, and not yet *definitively* condemned, or which may be captured before the exchange of ratifications . . . shall be mutually restored." *Schooner Peggy*, 1 Cranch at 107, 5 U.S. at 107. The Court found that the ship was "not yet *definitively* condemned" because litigation involving the possession of the schooner Peggy had not concluded. *Id.* at 108, 5 U.S. at 108.

[13] This holding was specifically adopted by our Court in *Price v. Nesbitt*, 29 Md. 263, 266 (1868), where, after referring to the above language, we stated: "This doctrine has been recognized and settled by this court in *Atwell v. Grant*, 11 Md. [101,] 104 [(1857)]; *State v. Norwood*, 12 Md. [195,] 206 [(1858)]; *Keller v. State*, 12 Md. [322,] 326 [(1858)], and will be applied to the decision of this case." *Price*, interestingly, was a case relating to real property (i.e., ejectment), (generally zoning laws were not formulated until the early 20th century) but, the issue in which *Schooner Peggy* was adopted involved a change in law relating to removal questions.

> obligation. It is true that in mere private cases between individuals, a court will and ought to struggle hard against a construction which will, by a retrospective operation, affect the rights of parties, but in great national concerns where individual rights, acquired by war, are sacrificed for national purposes, the contract, making the sacrifice, ought always to receive a construction conforming to its manifest import; and if the nation has given up the vested rights of its citizens, it is not for the court, but for the government, to consider whether it be a case proper for compensation. In such a case the court must decide according to existing laws, and if it be necessary to set aside a judgment, rightful when rendered, but which cannot be affirmed but in violation of law, the judgment must be set aside."

Id.[14]

In *Yorkdale*, the Court addressed a situation in which a property owner (the Yorkdale Corporation) had negotiated the reclassification of the zoning of its property in order to build an apartment building. Yorkdale also applied for a special exception and variance. The zoning commissioner granted Yorkdale's requests, with the exception of limiting the number of units in the apartment building, i.e., the density of the zoning. A neighboring property owner appealed the Board's decision to the Circuit Court. There, the question was "whether the zoning ordinances . . . gave the zoning officials power to grant a variance as to density." *Yorkdale*, 237 Md. at 123, 205 A.2d at 270. The Circuit Court found that the then-current

[14] We recognize that the retrospective application in *Schooner Peggy* differs from the situation extant in the case *sub judice*. As Justice Stevens stated for the Supreme Court in *Landgraf v. USI Film Products*, 511 U.S. 244, 273, 114 S.Ct. 1483, 1501, 128 L.Ed.2d 229 (1994), "[o]ur application of 'the law in effect' at the time of our decision in *Schooner Peggy* was simply a response to the language of the statute[,]" referring to the language "not yet *definitively* condemned." *Schooner Peggy*, 1 Cranch at 109, 5 U.S. at 109. Nonetheless, our Maryland cases, in the context of land use and zoning issues, both preceding and following *Yorkdale*, have applied the "law in effect at the time" of the Court's decision.

law did not authorize a variance in density. *Id.* at 124, 205 A.2d at 270. Yorkdale appealed to the Court of Appeals and, after argument, but before a decision was issued, a bill was passed by the county council modifying the law in respect to the granting of variances as to density. *Id.* Upon becoming aware of this event, the Court set the case for reargument.[15]

In reaching its decision, the *Yorkdale* Court first stated that:

> "Maryland consistently has followed the rule that 'an appellate court is bound to decide a case according to existing laws, even though a judgment rightful when rendered by the court below should be reversed as a consequence,' as Judge Markell, for the Court, repeated in *Woman's Club v. State Tax Comm.*, 195 Md. 16, 19 (or, it may be noted, even when a judgment wrong when rendered is made right by the change in the law). See also for this proposition that a change in the law after a decision below and before final decision by the appellate Court will be applied by that Court unless vested or accrued substantive rights would be disturbed or unless the legislature shows a contrary intent, *Keller v. State*, 12 Md. 322; *Day v. Day*, 22 Md. 530; *Gordy v. Prince*, 175 Md. 688; *Cockerham v. Children's Society*, 185 Md. 97; and *Tudor Arms Apts. v. Shaffer*, 191 Md. 342."[16]

[15] It is clear that the Court realized the importance of what it was doing. The Court had already heard the case, then directed that it be reargued based upon the possible retrospective applicability of a change in law. The *Yorkdale* rule was not an unintended holding relating to some larger issue. It was specifically considered by the Court and it was the major holding of the case. It is a holding that has stood the test of time.

[16] *See Tudor Arms Apartments v. Shaffer*, 191 Md. 342, 351, 62 A.2d 346, 350 (1948) (In a landlord tenant case, the Court was "bound to decide [the] case according to existing laws."); *Cockerham v. Children's Aid Soc'y*, 185 Md. 97, 43 A.2d 197 (1945) (In a habeas corpus proceeding for child custody, the Court decided the case according to the law existing at the time of argument.); *Gordy v. Prince*, 175 Md. 688, 7 A.2d 611 (1939) (per curiam) (In an income tax case, the Court applied an intervening decision of the United States Supreme Court.); *Day v. Day*, 22 Md. 530, 539 (1865) (In a land use case concerning a patent to land, the Court followed the reasoning in *Schooner Peggy*, stating: "It is proper, however, to refer to another well settled rule, which clearly leads to the same results, and that is, that we are bound to decide according to existing laws, even though a judgment, (continued...)

Yorkdale, 237 Md. at 124, 205 A.2d at 271. In discussing several zoning cases in which this rule had been applied, the *Yorkdale* Court stated:

> "It would seem to follow from the decisions in *Banner* [*v. Home Sales Co. D.*, 201 Md. 425, 94 A.2d 264 (1953)], *Lake Falls* [*Ass'n v. Board of Zoning Appeals of Baltimore County*, 209 Md. 561, 121 A.2d 809 (1956)] and *Grau* [*v. Board of Zoning Appeals of Baltimore County*, 210 Md. 19, 122 A.2d 824 (1956)][17] that an applicant for rezoning to a more intense use of his property, who has been successful before the zoning authorities and the circuit court does not acquire a vested or substantive right which may not be wiped out by legislation which takes effect during the pendency in this Court of the appeal from the actions below."

Yorkdale, 237 Md. at 126, 205 A.2d at 272.

Applying this reasoning to the case, and after analyzing the legislative intent of the county in its enactment of the new bill and determining that there was no evidence that the bill was not to be subject to retrospective application, the *Yorkdale* Court held that the change in the zoning law had made the case decided under the old law moot. Because the amended law had come into effect during the course of litigation (i.e., while the appeal was pending and before a final judgment) the Court applied it retrospectively and dismissed Yorkdale's appeal. *Yorkdale*, 237 Md. at 133, 205 A.2d at 276.

Following the Court's decision in *Yorkdale*, we have affirmed those principles in relation to land use and zoning cases several times. In *Mandel v. Board of County Comm'rs of Howard County*, 238 Md. 208, 214, 208 A.2d 710, 714 (1965), the property owners "had applied to the Board to use their respective properties for high-rise apartments under the zoning regulations then existing." During the course of litigation, the pertinent zoning regulations were changed to disallow high-rise apartments. Applying the *Yorkdale* rule, the Court decided against the property owners and held that:

> "[T]his case is to be determined under the law as it now exists, that the appellants had not secured a final decree establishing their rights to use their properties for the use permitted under the former classification, that they had no vested rights, and that the change in the regulations is not invalid because it eliminates the proposed use."

Mandel, 238 Md. at 215, 208 A.2d at 714. Additionally, the Court stated that:

> "[I]t is clear that the Board, as a legislative body, if its action is otherwise in accordance with law, can validly change a zoning regulation, even though the effect of its action is to eliminate any inchoate rights, which property owners may have asserted in pending appeals from adverse administrative determinations under the pre-existing regulations."

Id. at 216, 208 A.2d at 715. Furthermore, "[u]nder the *Yorkdale* rule, the Board's legislative act, if otherwise valid, eliminated any rights which the appellants had to use their property for high-rise apartments under the pre-existing zoning regulations." *Mandel*, 238 Md. at 217, 208 A.2d at 715-16.

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[16](...continued)
rightful when rendered by the court below, should be reversed as a consequence."); *Keller v. State*, 12 Md. 322 (1858) (In a criminal case, the Court held that a party cannot be convicted after the law under which he may be prosecuted has been repealed, though the offence may have been committed before the repeal, and the same principle applies where the law is repealed or expires pending an appeal or writ of error from the judgment of an inferior court.).

[17] *See Grau v. Board of Zoning Appeals of Baltimore County*, 210 Md. 19, 122 A.2d 824 (1956) (Rezoning case, in which appeal was dismissed as moot because the property in question was rezoned again during the course of litigation.); *Lake Falls Ass'n v. Zoning Appeals of Baltimore County*, 209 Md. 561, 121 A.2d 809 (1956) (same); *Banner v. Home Sales Co. D.*, 201 Md. 425, 94 A.2d 264 (1953) (same).

In *Marathon Builders, Inc. v. Montgomery County Planning Board*, 246 Md. 187, 227 A.2d 755 (1967), we addressed the impact of a change to the overall zoning ordinance during the course of litigation. After referencing the holding in *Mandel*, we stated:

> "Certainly if such a change in classification has the effect of extinguishing existing rights during the pendency of an appeal involving the exercise of rights under a former classification, *a fortiori* a change in classification as a result of the passage of a comprehensive rezoning ordinance would have at least the equal effect of terminating any rights unexercised as of the effective date of the change in classification. This Court has made frequent declarations in zoning cases that courts are bound to decide cases according to existing laws. *Yorkdale v. Powell*, 237 Md. 121, 205 A.2d 269 (1964)."

Marathon Builders, 246 Md. at 194, 227 A.2d at 758.

In *Springloch Area Citizens Group v. Montgomery County Board of Appeals*, 252 Md. 717, 723, 251 A.2d 357, 360 (1969), citing to *Yorkdale* and *Mandel*, we stated: "[T]his Court is bound to decide a zoning case according to the laws existing at the time the decision is rendered unless vested rights have intervened . . . ." And, in *Dal Maso v. Board of County Comm'rs for Prince George's County*, 264 Md. 691, 694, 288 A.2d 119, 121 (1972), we stated that "we have held that a zoning case must be decided upon the law applicable at the time the case is before us, in the absence of intervening vested rights . . . ."

We had further occasion to address this issue in *Anne Arundel County v. Maragousis*, 268 Md. 131, 299 A.2d 797 (1973). The Maragousises had purchased a piece of property that was subject to a rezoning after their purchase. They brought an action in the Circuit Court and then appealed that verdict to this Court. After the case had been appealed, but

prior to any decision being issued, the County amended the zoning ordinance. We stated:

> "It has consistently been our policy to consider zoning cases on the state of the substantive law as it exists when the case is argued before us, *Dal Maso v. Board of County Comm'rs*, 264 Md. 691, 694, 288 A.2d 119 (1972); *Mandel v. Board of County Comm'rs*, 238 Md. 208, 215, 208 A.2d 710 (1965); *Yorkdale Corporation v. Powell*, 237 Md. 121, 124-28, 205 A.2d 269 (1964),[18] and *compare Springloch Area Citizens Group v. Montgomery County Board of Appeals*, 252 Md. 717, 723, 251 A.2d 357 (1969). The amendment of [the statutes] marked the opening of an entirely new ball game, because the uses permitted by [the new statutes] were obviously much wider in scope."

Maragousis, 268 Md. at 139, 299 A.2d at 802. The County also conceded that some of the uses allowed under the rezoning had changed. We continued, stating that, "[s]ince neither this concessum nor [the new Bill] was before the lower court, the whole picture has been drastically altered." *Id.* at 140, 299 A.2d at 802. As a result of this determination and the *Yorkdale* rule, we remanded the case for reconsideration under the new law.

Yorkdale and its progeny have never been overruled.[19] They are still good law and are determinative in evaluating whether, in a land use or zoning case, a change in statutory law taking place during the course of a litigated issue should have retrospective application. As discussed *supra*, we shall consider zoning cases based upon the law as it exists at the

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[18] "A different rule is applicable to procedural changes, *Luxmanor Citizens Ass'n, Inc. v. Burkart*, 266 Md. 631, 644-45, 296 A.2d 403 (1972)." *Anne Arundel County v. Maragousis*, 268 Md. 131, 139 n.3, 299 A.2d 797, 802 n.3 (1973). The present case concerns changes in reference to the substance of the law.

[19] Like the Rule in Shelley's Case, which pre-existed *Wolfe v. Shelley*, 1 Co. Rep. 93b, 76 Eng. Rep. 206 (C.P. 1581), the so called *Yorkdale* rule had been applied prior to the Court's decision in *Yorkdale*. *See* footnotes 16 and 17.

time the case is before us.

The respondents argue that, after the Court's decision in *Washington Suburban Sanitary Commission v. Riverdale Heights Volunteer Fire Co.*, 308 Md. 556, 520 A.2d 1319 (1987), *Yorkdale* is no longer viable. We disagree. Before we discuss *Riverdale* directly, we look to *Janda v. General Motors Corp.*, 237 Md. 161, 205 A.2d 228 (1964). The *Janda* opinion was issued by the Court of Appeals on the same day as *Yorkdale* and penned by the same judge. Thus, there can be little argument that the Court rendered the opinions without a realization of their full effect.

In *Janda*, we addressed a change in the State's unemployment law. There, a number of employees were denied unemployment insurance benefits for a week in January of 1963. Those employees appealed the denial to the Board of Appeals, which, on August 21, 1963, affirmed the initial denial. The facts of the case show that there was a collective bargaining agreement between the employees and General Motors in effect from September 20, 1961, through August 31, 1964. During the course of the litigation, a statute governing unemployment insurance benefits in 1961, was repealed and reenacted in 1963. The 1963 statute specifically provided that benefits to be paid under a contract in force prior to the reenactment should be continued. The *Janda* Court stated, in pertinent part:

> "Many of the reasons that led us to conclude that the Legislature intended in 1961 to make extra pay in lieu of vacation a bar to benefits lead us to conclude the 1963 act operates to remove that bar where the allowance in lieu of vacation is paid by the employer under and during the term of a written contract in effect on December 6, 1962, and the 'normal practice' of the employer was not to grant a vacation with pay. December 6, 1962, was

> the day the 1961 act first took effect (it having been in suspended animation since June 1, 1961, its stated effective date, because it had been put to referendum). Prior to that day extra pay in lieu of vacation had not been a bar to benefits. We think the 1963 Legislature, by expressly making December 6, 1962, the critical date, manifested a clear and unmistakable intent that extra pay allowances in lieu of vacation, paid under a contract in force on that day, should continue not to be a disqualification for unemployment benefits so long as the contract then currently in force continued, whether or not the time of separation from employment came before June 1, 1963, the effective date of the 1963 act."

237 Md. at 171, 205 A.2d at 234. *Janda* clearly did not involve a land use or zoning issue, and the Court found that the changed statute specifically provided that the pre-existing contract continue to be in force.

In reaching its decision, however, the *Janda* Court described various rules "formulated by the courts to aid in determining whether a statute is to be applied retrospectively or prospectively." 237 Md. at 168, 205 A.2d at 232. Pertinent to our discussion, the Court stated in its fourth rule[20] that:

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[20] The other rules extant in *Janda* are as follows:
"(1) 'Ordinarily a change affecting procedure only, and not substantive rights, made by statute . . . applies to all actions [and matters] whether accrued, pending or future, unless a contrary intention is expressed.' *Richardson v. Richardson*, 217 Md. 316, 320, and cases cited. (2) Ordinarily a statute affecting matters or rights of substance will not be given a retrospective operation as to transactions, matters and events not in litigation at the time the statute takes effect:
'* * * unless its words are so clear, strong and imperative in their retrospective expression that no other meaning can be attached to them, or unless the manifest intention of the Legislature could not otherwise be gratified. * * * (citing cases). An amendatory Act takes effect, like any other legislative

(continued...)

> "(4) A statute which affects or controls a matter still in litigation when it became law will be applied by the court reviewing the case at the time the statute takes effect although it was not yet law when the decision appealed from was rendered, even if matters or claims of substance (not constitutionally protected), as distinguished from matters procedural or those affecting the remedy are involved, unless the Legislature intended the contrary. See *Yorkdale Corp. v. Powell*, 237 Md. 121, and cases cited . . . ."[21]

Janda, 237 Md. at 169, 205 A.2d at 233.

Respondents contend that *Riverdale* overruled this portion of *Janda*, thereby overruling *Yorkdale*. That is simply not the case.

In *Riverdale*, an Act was passed, effective July 1, 1983, providing fire companies with immunity for civil liability arising out of allegedly tortious conduct in the course of performing their duties. In 1980, a fire had occurred, damaging an apartment house in

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[20](...continued)

> enactment, only from the time of its passage, and has no application to prior transactions, unless an intent to the contrary is expressed in the Act or clearly implied from its provisions.' *Tax Comm. v. Power Company*, 182 Md. 111, 117.
>
> (3) A statute, even if the Legislature so intended, will not be applied retrospectively to divest or adversely affect vested rights, to impair the obligation of contracts, or so as to violate the due process clause, or to operate as a bill of attainder or an *ex post facto* law. Aside from the disinclination of legislative bodies and courts to make a law operate on past events or transactions, the limitations on retroactive laws are only those which affect all legislation and, if the Legislature intends a law affecting substantive matters to operate retrospectively and the law does not offend constitutional limitations or restrictions, it will be given the effect intended. See 2 Sutherland, *Statutory Construction*, Sec. 2201 (3rd Ed. 1943), and *Match Co. v. State Tax Comm.*, 175 Md. 234."

Janda, 237 Md. at 168-69, 205 A.2d at 232-33.

[21] Also citing *Gordy v. Prince*, 175 Md. 688, 7 A.2d 611 (1939) (per curiam) and *Day v. Day*, 22 Md. 530 (1865).

Riverdale. The fire insurer paid for the loss and then sued the Washington Suburban Sanitary Commission (WSSC), alleging that WSSC was negligent in failing to maintain the fire hydrant closest to the fire. In other words, when fire fighters arrived to combat the blaze, they attempted to utilize that particular fire hydrant, but it proved to be dry, failing to provide any water. This allegedly caused a delay that resulted in an increase in damages and the resultant loss due to the fire. In September 1984, after the 1983 Act became effective, WSSC filed a third-party complaint against the Riverdale Heights Volunteer Fire Co., Inc. ("Fire Co."), alleging that Fire Co. knew that the fire hydrant was inoperable and therefore, any negligence on the part of WSSC was secondary. Fire Co. moved to dismiss, asserting immunity under the 1983 Act.

The Circuit Court granted Fire Co.'s motion to dismiss. WSSC appealed to the Court of Special Appeals, arguing that the Circuit Court was erroneous in its retrospective application of the Act. This Court issued a writ of certiorari prior to consideration by the Court of Special Appeals.

First, it must be noted that *Riverdale* clearly did not concern a land use or zoning issue. The case involved a statute pertaining to fire companies' immunity from civil liability in tort actions. In determining whether such a statute should be applied retrospectively, the Court stated:

> "As a general rule, statutes are presumed to operate prospectively and are to be construed accordingly. *See, e.g., Rigger v. Baltimore County*, 269 Md. 306, 305 A.2d 128 (1973); *Kastendike v. Baltimore Association for Retarded Children, Inc.*, 267 Md. 389, 297 A.2d 745 (1972); *State Farm*

> *Mutual Automobile Insurance Co. v. Hearn*, 242 Md. 575, 219 A.2d 820 (1966); *but cf. Spielman v. State*, 298 Md. 602, 471 A.2d 730 (1984) (there is no absolute bar to retrospective application). The presumption against retrospectivity is rebutted only where there are clear expressions in the statute to the contrary. *State Farm Mutual Automobile Insurance Co. v. Hearn, supra*. Moreover, even where permissible, retrospective application is not found except upon the plainest mandate in the legislation. *Bell v. State*, 236 Md. 356, 204 A.2d 54 (1964). The rationale underlying the general rule provides that retrospective application, which attempts to determine the legal significance of acts that occurred prior to the statute's effective date, increases the potential for interference with persons' substantive rights. *State Commission on Human Relations v. Amecom Division of Litton Systems*, 278 Md. 120, 360 A.2d 1 (1976)."

Riverdale, 308 Md. at 560-61, 520 A.2d at 1321-22. The Court then addressed *Janda*, which Fire Co. had raised in arguing for the retrospective application of the 1983 Act.

The Court, initially, correctly distinguished *Janda*, stating that, "[u]nlike the instant case, *Janda* involved a statute the terms of which clearly reflected a retroactive intent." *Riverdale*, 308 Md. at 562, 520 A.2d at 1322. The Court then observed that there was writing, which it described as dicta, in *Janda*, referring to the four rules discussed *supra*, and in particular to the fourth rule. The *Riverdale* Court elaborated: "*Janda's* collection of rules was not intended to restate the universe of then Maryland law on prospective or retrospective application of statutes." *Riverdale*, 308 Md. at 563, 520 A.2d at 1323. The Court proceeded to state that "[t]his Court has never applied the fourth rule in *Janda* to decide a case." *Id.* at 563, 520 A.2d at 1323.

As *Yorkdale*, *Mandel*, *Marathon Builders*, *Springloch*, *Dal Maso*, *Maragousis*, and the cases cited in *Yorkdale* indicate, that was only correct to the extent of actual statements

in reference to *Janda* in the determination of subsequent cases.[22] In the case *sub judice*, respondents' reliance on this statement – placed out of the context of the rule's basis in *Yorkdale* and other cases – is unavailing. It is evident that the *Janda* Court cited to *Yorkdale* in stating the fourth rule. *Janda*, 237 Md. at 169, 205 A.2d at 233. And, as we have said, the two opinions were written by the same judge and filed on the same day. Thus, it is clear that the holdings are related to each other. The Court obviously knew what it was doing in *Yorkdale* and *Janda*. Moreover, as discussed *supra*, there are a significant number of cases which follow and affirm *Yorkdale* in the context of land use and zoning cases and cases prior to *Yorkdale* supporting the concept.[23] It is evident that this Court has applied the fourth rule in *Janda*, but generally only in the context of land use and zoning cases. After discussing several non-land use and non-zoning cases, the *Riverdale* Court went on to state that "[b]ecause it is inconsistent with the general body of Maryland law on the subject, the fourth rule in *Janda* is disapproved." *Riverdale*, 308 Md. at 565, 520 A.2d at 1324.

The *Riverdale* Court ultimately declined to retrospectively apply the 1983 Act, and therefore, held that Fire Co. was not immune from liability. In doing so, the Court applied

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[22] The fourth rule in *Janda*, as we have indicated, was based on *Yorkdale*. *Yorkdale's* rule, even at the time of *Riverdale*, had been continuously and frequently cited. Shepardizing *Yorkdale* and *Janda* indicate that *Yorkdale* is still good law.

[23] We reiterate that *Yorkdale* and its progeny apply to land use and zoning cases: Thus, even if the statute in *Janda* did not clearly reflect a legislative intent as to retrospective application (though it did), the fourth rule may have been distinguishable from the current *Yorkdale* rule in allowing retrospective application of the statute in that instance, because it was not a land use case like its companion, *Yorkdale*.

the general rule that the Act was presumed to operate prospectively and found that there was no evidence of legislative intent that the statute be applied otherwise. *Id.* at 568-69, 520 A.2d at 1326. Specifically, the Court stated that "[t]he foregoing review demonstrates that under the law of Maryland statutes ordinarily are construed to operate prospectively, absent a clear legislative intent to the contrary." *Id.* at 568, 520 A.2d at 1325.

The *Riverdale* Court was correct in the above statement. *Ordinarily*, we do construe statutes to operate prospectively, absent a clear legislative intent to the contrary. The *Riverdale* Court, however, did not address *Yorkdale*, the exception to the general rule. The *Riverdale* Court's "disapproval" of what it termed dicta from *Janda* (a non-land use and non-zoning case) does not affect the *Yorkdale* rule.[24] Any disapproval of *Janda's* fourth rule

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[24] See also *Enviro-Gro Tech. v. Bockelmann*, 88 Md. App. 323, 341 n.17, 594 A.2d 1190, 1199 n.17 (1991), where the Court of Special Appeals stated:

> "*Janda's* fourth holding was expressly 'disapproved' in *Riverdale Heights Fire Co., supra*, 308 Md. 556, 520 A.2d 1319, a case involving the application of an immunity statute. *Yorkdale* and the zoning and other cases we have cited were not overruled in *Riverdale Heights*, although the court's reasoning in rejecting *Janda's* 'fourth rule' causes us some concern. We note, however, that it was somewhat limited to that factual situation, thus apparently not applicable to dissimilar factual cases. Due to the long and consistent body of law from *Schooner Peggy* to *Yorkdale* and subsequent thereto, we perceive that the *Yorkdale* rule still applies in zoning cases generally, and this case specifically, until overruled or disapproved by higher authority, or by the legislature."

The Court of Special Appeals expressly recognized that *Riverdale* did not overrule the *Yorkdale* rule. *But see Wharf at Handy's Point, Inc. v. Dep't of Natural Res.*, 92 Md. App. 659, 674 n.8, 610 A.2d 314, 321 n.8 (1992) ("The proposition for which we cited *Yorkdale* in *Enviro-Gro* was that in zoning cases involving changes in *substantive* law, not affecting vested rights and absent a contrary legislative intent, a 'change in the law after a decision

(continued...)

by the *Riverside* Court was made in the context of the statute at issue in that case, which had no relation to land use and zoning issues. The exception to the general rule still stands. In land use and zoning cases, the law shall be applied as it is in effect at the time of argument.[25]

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[24](...continued)
below and before final decision by the appellate court will be applied by that Court.'") (citing *Enviro-Gro*, 88 Md. App. at 339, 594 A.2d at 1198 (quoting *Yorkdale*, 237 Md. at 124, 205 A.2d at 271.)).

[25] A current zoning treatise supports this position, albeit based in part on Maryland cases:

> **"§ 27.38. Effect of amendment during pendency of appeal**
>
> "In proceedings to review a decision of a board of adjustment, the reviewing court, in most jurisdictions, will apply the law as it exists at the moment of decision in the reviewing court. . . .
>
> "If a zoning ordinance has been amended between the moment of administrative action or decision and the moment of review, the amendment will apply. Thus, where a restrictive amendment was adopted after the application for a permit, the reviewing court will judge the administrative decision on the basis of the amendment. If the affect of the amendment is to render the case moot, the reviewing court will dismiss the appeal.
>
> "The amendment will be applied even though it was adopted after an inferior court reviewed the decision in issue, [citing *Yorkdale* in footnote] and in spite of the fact that the amendment is not part of the record. . . ."

4 *Anderson's Am. Law. Zoning* § 27.38 (4th ed. 1997, 2006 supp.) (footnotes omitted). *See Atlantic Richfield Co. v. Bd. of Supervisors*, 115 Cal. Rptr. 731 (Cal. Ct. App. 1974); *West Coast Advertising Co. v. City and County of San Francisco*, 64 Cal. Rptr. 94 (Cal. Ct. App. 1967); *McCallum v. Inland Wetlands Comm'n*, 196 Conn. 218, 223, 492 A.2d 508, 510 (1985) ("The majority rule, and the rule followed in Connecticut, is that the zoning law or regulation in effect at the time of the decision of a court is controlling as opposed to that in effect when the proceedings were instituted or when the administrative agency entered its decision upon the application."), *superceded by statute*, Connecticut General Statute §§ 8-2h and 22a-42e (2006), *as recognized in Protect Hamden/North Haven from Excessive Traffic and Pollution, Inc. v. Planning and Zoning Comm'n of Town of Hamden*, 220 Conn. 527, 540, 600 A.2d 757, 765 (1991); *Johnson v. Zoning Bd. of Appeals*, 2 Conn. App. 24, 475 A.2d 339 (1984), *superceded by statute*, Connecticut General Statute §§ 8-2h and 22a-42e (2006), *as recognized in Protect Hamden/North Haven*, 220 Conn. at 540, 600 A.2d at 765;

(continued...)

Therefore, respondents' reliance on *Riverdale* is misplaced.

Respondents urge that *Holland v. Woodhaven Building and Development, Inc.*, 113 Md. App. 274, 687 A.2d 699 (1996), demonstrates that zoning cases are not to be distinguished from the general rule of prospective application. We disagree. When

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[25](...continued)
Holladay v. City of Coral Gables, 382 So.2d 92 (Fla. Dist. Ct. App. 1980); *Outdoor Systems, Inc. v. Cobb County*, 274 Ga. 606, 608, 555 S.E.2d 689, 691 (2001) ("An appellate court must apply the law as it exists at the time of its judgment and may, therefore, even reverse a judgment that was correct at the time it was rendered, where, as here, the law has changed in the meantime and no vested rights are impaired."); *Nuuanu Neighborhood Assoc. v. Dep't of Land Utilization*, 63 Haw. 444, 630 P.2d 107 (1981); *City and County of Honolulu v. Midkiff*, 62 Haw. 411, 616 P.2d 213 (1980); *O'Hare International Bank v. Zoning Bd. of Appeals*, 37 Ill. App. 3d 1037, 347 N.E.2d 440 (1976); *U.S. Cellular Corp. v. Bd. of Adjustment of City of Des Moines*, 589 N.W.2d 712, 717 (Iowa 1999) ("The rule in most states is that 'a reviewing or appellate court must decide a case based on the zoning law as it exists at the time of the court's decision.'") (quoting Edward H. Ziegler, *Rathkopf's The Law of Zoning and Planning* § 26.02[2][a], at 26-3 to 26-4 (4th ed. 1996)); *State ex rel. Jacobson v. New Orleans, Dept. of Safety & Permits*, 166 So.2d 520 (La. App. 1964); *Thomas v. Zoning Bd. of Appeals*, 381 A.2d 643 (Me. 1978); *Caputo v. Board of Appeals*, 330 Mass 107, 111 N.E.2d 674 (1953); *Town Pump, Inc. v. Bd. of Adjustment of City of Red Lodge, Montana*, 971 P.2d 349 (Mont. 1998); *Kruvant v. Cedar Grove*, 82 N.J. 435, 414 A.2d 9 (1980), *but see Pizzo Mantin Group v. Twp. of Randolph*, 137 N.J. 216, 235, 645 A.2d 89, 99 (1994) (Retroactive application is not automatic, "A court must balance the municipality's zoning interest against the developer's degree of reliance on the old statute and its entitlements of right[,]" appearing to recognize that "vesting" may negate the retrospectivity of a new statute.); *Cathedral of the Incarnation v. Glimm*, 61 N.Y.2d 826, 473 N.Y.S.2d 972, 462 N.E.2d 149 (1984); *Mascony Transport & Ferry Service, Inc. v. Richmond*, 49 N.Y.2d 969, 428 N.Y.S.2d 948, 406 N.E.2d 803 (1980); *Dyl & Dyl Dev. Corp. v. Building Dept.*, 298 N.Y.S.2d 45 (N.Y. App. Div. 1969); *Lunden v. Petito*, 292 N.Y.S.2d 757 (N.Y. App. Div. 1968); *Atlantic Beach Towers Constr. Co. v. Michaelis*, 251 N.Y.S.2d 794 (N.Y. App. Div. 1964); *Atlantic Refining Co. v. Zoning Bd. of Appeals*, 180 N.Y.S.2d 656 (N.Y. Sup. Ct. 1958); *Keiger v. Winston-Salem Bd. of Adjustment*, 281 N.C. 715, 190 S.E.2d 175 (1972); *Szymanski v. City of Toledo*, 18 Ohio App. 2d 11, 47 Ohio Op. 2d 12, 246 N.E.2d 368 (1969); *Shender v. Zoning Bd. of Adjustment*, 388 Pa. 265, 131 A.2d 90 (1957); *Linda Dev. Corp. v. Plymouth Twp.*, 281 A.2d 784 (Pa. Commw. Ct. 1971).

language in a Court of Special Appeals opinion is in conflict with language in an opinion of this Court, the language of this Court's opinion is controlling. The Court of Special Appeals in *Holland* dealt with the issue of a party's standing to challenge a ruling of a zoning board. Factually, the protesting party filed an appeal to the Board. The Board dismissed that appeal due to lack of standing. The protesting party then appealed to the Circuit Court, and while that appeal was pending, an ordinance was enacted specifically providing for such standing. Addressing the argument that the ordinance should be applied retrospectively, the intermediate appellate court stated:

> "Without discussing *Janda* or *Riverdale Fire Co.*, appellants assert that '[i]n *zoning* cases, Maryland law is absolutely clear [that "a]n appellate court must apply the law in effect at the time a case is decided, provided that its application does not affect intervening vested rights."' We see no reason to distinguish zoning cases in this manner. The Court of Appeals could have limited its holding in *Riverdale Fire Co.* to exclude zoning cases, but it did not so limit that case. *See, e.g., Arundel Corp. [v. County Comm'rs of Carroll County]*, 323 Md. [504,] 509-10, 594 A.2d 95 (applying *Riverdale Fire Co.* in a zoning case).[26]"

Holland, 113 Md. App. at 286, 687 A.2d at 705-06. Obviously, the viability of the *Yorkdale* rule was not "absolutely clear" at the time of the *Holland* decision. We now, however, deem to make it so. Our discussion *supra*, serves to distinguish *Yorkdale* from *Riverdale*, thus, in the case *sub judice*, the Court of Special Appeals' ruling in *Holland* does not control.

Furthermore, in *Powell v. Calvert County*, 368 Md. 400, 795 A.2d 96 (2002), decided

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[26] *Arundel Corp.* did not involve a change in substantive law, it concerned a change to procedure, as did, arguably, *Holland*.

subsequent to both *Riverdale* and *Holland*, we reaffirmed the principles of *Yorkdale*. There, the granting of a special exception for the outdoor storage of excavating material was at issue. The landowner, respondent, in that case was granted a special exception by the Calvert County Board of Appeals in February of 1997, over the protests of his neighbors. The neighbors, petitioners, appealed to the Circuit Court, which affirmed the decision of the Board. The neighbors then appealed to the Court of Special Appeals. In December of 1998, while the appeal was pending, the Board amended the pertinent zoning ordinance to disallow outdoor storage of excavating material, repealing the section under which the landowner had initially obtained approval from the Board for his special exception. In April of 1999, the Court of Special Appeals issued an unreported opinion (*Powell I*), reversing the Circuit Court's decision, vacating the Board's decision, and remanding the case back to the Board. The intermediate appellate court's decision was based upon a "lack of evidence result[ing] in a deficient record from which the court was unable to determine if the Board's decision was based on substantial evidence." *Powell*, 368 Md. at 405, 795 A.2d at 99.

In September of 1999, the Board again considered the landowner's application for a special exception. His application was granted, with the Board applying the law as it existed at the time of the original hearing (February 1997), not in accord with the new ordinance enacted in December of 1998. The neighbors appealed that decision to the Circuit Court. The Circuit Court upheld the Board's decision based upon a finding that the landowner had established a vested right. The neighbors again appealed to the Court of

Special Appeals, which affirmed the relevant decision of the Board (*Powell II*).

We first looked at the Court of Special Appeals' decision in *Powell II*, *Powell v. Calvert County*, 137 Md. App. 425, 435-36, 768 A.2d 750, 756 (2001), where the court found that, under *Holland*, the amendment to the zoning ordinance *by its terms* operated retrospectively. *Powell*, 368 Md. at 407-08, 765 A.2d at 100. We then went into an in-depth discussion of whether the landowner had obtained vested rights, ultimately holding that:

> "In instances where there is ongoing litigation, there is no different 'rule of vested right' for special exceptions and the like. Until all necessary approvals, including all final court approvals, are obtained, nothing can vest or even begin to vest. Additionally, even after final court approval is reached, additional actions must sometimes be taken in order for rights to vest."

Id. at 409, 795 A.2d at 101. We found that the landowner in *Powell* had not obtained a vested right because he had "never used his property for the storage of materials under a valid special exception." *Id.* at 412, 795 A.2d at 103.[27] We then, discussing *Ross v. Montgomery County*, 252 Md. 497, 250 A.2d 635 (1969), cited *Yorkdale* and *Mandel* in support of this "ongoing litigation" reasoning and for the rule that, in cases involving land use and zoning, we apply the law as it "now exists," absent a vested right. *Powell*, 368 Md. at 412-13, 795 A.2d at 103. In *Powell*, we reiterated the language of *Yorkdale*, that one "who has been successful before the zoning authorities and the circuit court does not acquire

[27] The litigation involving whether he would ultimately be entitled to a special exception was ongoing through, and until the time of, our decision.

a vested or substantive right which may not be wiped out by legislation which takes effect during the pendency in this Court of the appeal from the sections below." *Powell*, 368 Md. at 413, 795 A.2d at 103 (quoting *Ross*, 252 Md. at 503, 250 A.2d at 639 (quoting *Yorkdale*, 237 Md. at 126, 205 A.2d at 272)) (quotation marks omitted).

Respondents, in the case *sub judice*, attempt to characterize *Powell's* citations to *Yorkdale* and *Mandel* as only affirming the "proposition that mere zoning approval does not create vested rights." Respondents assert that, "[i]f *Yorkdale* was still good law, the Court had the opportunity to so state. It did not." The converse, however, is true. We did not have to state that *Yorkdale* is good law, because it was and still is. *Yorkdale* has never been overruled and our citation to it in *Powell* is evidence of that. Had *Yorkdale* been overruled, we would have had to distinguish it. Thus, not only does it stand for the proposition elucidated in *Powell*, that approval pending ongoing litigation does not create a vested right, but also for the rule that we reiterate today, that in the case of land use and zoning issues, appellate courts generally are bound to apply the law (whatever its source) relating to those issues as it exists at the time of their decision.

Respondents cite to several additional non-land use and non-zoning cases in support of their argument that we should not retrospectively apply a change in statutory law: *State Ethic Comm'n v. Evans*, 382 Md. 370, 855 A.2d 364 (2004); *Allstate Ins. Co. v. Kim*, 376 Md. 276, 829 A.2d 611 (2003); *Langston v. Riffe*, 359 Md. 396, 754 A.2d 389 (2000); *Informed Physician Services, Inc. v. Blue Cross & Blue Shield of Md., Inc.*, 350 Md. 308, 711 A.2d 1330 (1998); *Morgan v. Cohen*, 309 Md. 304, 523 A.2d 1003 (1987). None of these cases dealt with land use or zoning and, thus, they do not affect the viability of the *Yorkdale* rule as applicable to land use and zoning cases.

Respondents also argue that the law in question, §§ 17.300(g) and 17.307(d) of the Howard County Code, is not part of Howard County's zoning ordinance or regulation, but part of the Howard County Animal Control Law. The zoning law, however, impliedly incorporates those relevant provisions of the Animal Control Law. The Animal Control Law was applied by the Board in making its land use determination as to whether Frisky's was entitled to a special exception under the zoning ordinance. It was applied in a land use context.[28] Therefore, it was a determinative provision in a zoning context, and we will apply it retrospectively under *Yorkdale*. On remand, the Board shall apply the current law.

IV. Conclusion

For the aforementioned reasons, we reaffirm the *Yorkdale* rule that a substantive change in relevant statutory law that takes place during the course of the litigation of a land use or zoning issue shall be retrospectively applied by appellate courts. We reverse the decision of the Court of Special Appeals.

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[28] Obviously, the Animal Control Law may apply in other contexts unrelated to land use issues. If so, *Yorkdale* may not apply. When, however, an ancillary statute becomes a part of the resolution of a land use issue, such as present here, *Yorkdale* may apply.

JUDGMENT OF THE COURT OF SPECIAL APPEALS REVERSED. CASE REMANDED TO THAT COURT WITH DIRECTIONS TO REMAND THE CASE TO THE CIRCUIT COURT FOR HOWARD COUNTY WITH INSTRUCTIONS TO REMAND THE CASE TO THE BOARD OF APPEALS FOR FURTHER PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION. COSTS IN THIS COURT AND IN THE COURT OF SPECIAL APPEALS TO BE PAID BY THE RESPONDENTS.

IN THE COURT OF APPEALS OF MARYLAND

No. 116

September Term, 2006

Colleen Layton, et al.

v.

Howard County Board of Appeals, et al.

Bell, C.J.
Raker
Cathell
Harrell
Battaglia
Greene
Wilner, Alan M.
(Retired specially assigned),
JJ.

Dissenting Opinion by Wilner, J.

Filed: May 9, 2007

With respect, I dissent. As Judge Cathell's opinion points out, there is, indeed, case law to support the conclusion that zoning cases have been treated somewhat differently than other kinds of cases in determining the effect to be given to a change in statutory law while a matter is pending in court. I therefore cannot fault the Court's reliance on those cases in continuing to carve out a special exception – no pun intended – for zoning, or even broader land use, cases.

My problem is that I can find no practical or jurisprudential basis for such a distinction, and the Court offers none. The issue is always presented when a legislature changes a law whether that change, from and after its declared effective date, should apply to matters already in litigation when the law takes effect. On the one hand, as Chief Justice Marshall observed in the *Schooner Peggy* case, there is a certain anomaly in a court's failure to apply the law that is in effect when it decides the case, for the effect of that is to render a judicial decision that is not supported by existing law. On the other hand, there is a certain unfairness in applying laws retroactively, at least where, as part of its legitimate declaration of public policy, the legislative body has not clearly indicated an intent that they be so applied. In both commerce and personal dealings, people and entities necessarily rely on existing law to guide their conduct and their transactions, and that necessary and permissible reliance – that certainty – is seriously jeopardized when the rules are changed in the middle of the game.

The general rules that we have adopted attempt to balance those considerations. *As an overarching principle, subject only to Constitutional imperatives, we have left it to* the legislative body to determine whether statutory changes should be applied to matters already in litigation. If the legislature declares that a new law should be so applied and there is no Constitutional impediment to such application, we respect the legislative judgment and apply the new law as the legislature intended. The problem arises when there is no such expressed intent – when all that we have is an effective date of the law and nothing more. *In those situations, we have generally applied the principle that, if the* change is one of procedure only, we will apply the new law even if doing so would produce a different result than not doing so. If the change affects substance, however, we will not apply the new law, at least if doing so would produce a different result. In that circumstance, we do not permit the rules to be changed mid-stream.

Those distinctions are not perfect; they can, and sometimes do, result in what may appear to be an injustice in a given case, and it is not always clear whether a change is merely procedural or also affects substance. But, on the whole, the distinctions are reasonable, and they have a solid jurisprudential basis. When we start carving out categorical exceptions to them, however, both their rationality and their jurisprudential basis are eroded. Why just zoning or land use cases? What is so special about them? They involve property, but only real property. Is real property somehow more, or less, sacred than other kinds of property, including contractual rights? I would be more inclined to bless the Court's opinion in this case if it offered any legitimate reason for *drawing a distinction between zoning cases and other kinds of cases. Unfortunately,*

however, it does not. I would therefore overrule the prior case law relied upon by the Court and affirm the judgment of the Court of Special Appeals.

RECEIVED
JUL 13 2007
BALTIMORE COUNTY
BOARD OF APPEALS

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

JOHN E. BEVERUNGEN
County Attorney
Office of Law

July 13, 2007

Via Hand Delivery
Kathleen C. Bianco, Administrator
Baltimore County Board of Appeals
400 Washington Ave., Rm. 49
Towson, MD 21204

Re: In the Matter of: Pridgeon Property, Case No. CBA-04-159
In the Matter of: Pridgeon Property, Case No. CBA-06-019
In the Matter of: Stepcich Property, Section III, Case No. CBA-06-020
In the Matter of: Joseph Stepcich, Case No.-06-419-SPH

Dear Ms. Bianco:

I have been ill and out of the office most of this past week. So I have been unable to complete the memorandum that the Board requested be submitted by Monday, July 16, 2007 in the above referenced consolidated cases.

My secretary, Carol, has spoken with Arnold Jablon, attorney for Messrs. Stepcich and Pridgeon, who was kind enough to agree to our request for some additional time within which to submit our memorandum. She was unsuccessful in contacting Carroll Holzer, attorney for the Long Green Valley Association et al, but did reach Peter Max Zimmerman, People's Counsel, who is amenable to our request. Although a voicemail message was left with Mr. Holzer's office on July 12th, we have not yet heard back from him. Unless we receive any objections from Mr. Holzer, the County will be submitting its memorandum by Monday, July 23, 2007.

Please accept my apologies for any inconvenience this may cause the Board.

Sincerely yours,

Nancy C. West
Assistant County Attorney

C: Arnold Jablon, Esq.
Peter Max Zimmerman, People's Counsel
J. Carroll Holzer, Esq.

County Board of Appeals of Baltimore County

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

July 16, 2007

FILE

VIA FACSIMILE 410-296-0931

Nancy C. West
Assistant County Attorney
Baltimore County Office of Law
Old Courthouse
400 Washington Avenue
Towson, MD 21204

RE: *In the Matter of: Pridgeon Property* /Case No. CBA-04-159;
Pridgeon Property /Case No. CBA-06-019;
Stepcich Property III /Case No. JCBA-06-020; and
Joseph Stepcich –Petitioner /Case No. ~~06-421-X~~ 06-419-SPH
Extension of Time for Filing Memos

Dear Ms. West:

This will confirm my conversation with counsel on July 13th regarding your request for additional time for filing briefs in the subject matter. That request has been granted, and **briefs are now due from all parties by close of business on Monday, July 23, 2007** (an extension of one week).

The public deliberation will remain as assigned on Wednesday, August 8, 2007 at 9:00 a.m.

Should you have any questions, please call me.

Very truly yours,

Kathleen C. Bianco
Administrator

c: Arnold Jablon, Esquire /**via facsimile 410-821-0147**
Peter M. Zimmerman, People's Counsel /**Hand delivered**
J. Carroll Holzer, Esquire/ **via facsimile 410-825-4923**

Printed with Soybean Ink
on Recycled Paper

COUNTY BOARD OF APPEALS

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

FACSIMILE TRANSMITTAL SHEET

TO AND FAX NUMBER:

ARNOLD JABLON, ESQUIRE

FAX : 410-821-0147

J CARROLL HOLZER, ESQUIRE

FAX : 410-825-4923

NANCY C. WEST, ESQUIRE

FAX : 410-296-0931

FROM:

KATHLEEN BIANCO
FAX : 410-887-3182

TELEPHONE : 410-887-3180

DATE:
JULY 16, 2007

TOTAL NO. OF PAGES INCLUDING COVER:
TWO (2)

Re: PRIDGEON PROPERTY AND STEPCICH PROPERTY – extension for filing memos

URGENT FOR REVIEW FOR YOUR RECORDS PLEASE REPLY PLEASE RECYCLE

PERSONAL AND CONFIDENTIAL

ATTACHED IS A COPY OF THE LETTER SENT OUT THIS DATE CONFIRMING THAT MEMOS ARE NOW DUE IN THE SUBJECT MATTER ON 7/23/07.

kathi

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: Pridgeon Property – CBA-04-159
Pridgeon Property - CBA-06-019
Stepcich Property – CBA-06-020
and
Joseph Stepcich – 06-419-SPH

DATE: August 8, 2007

BOARD/PANEL Lawrence Stahl (LS)
Wendell Grier (WG)
Edward W. Crizer (EWC)

RECORDED BY: Linda B. Fliegel/Legal Secretary

PURPOSE: CBA-04-159

PRIDGEON PROPERTY
WINDMERE – 6 STONEHURST RD.
PHOENIX 21131

Request by owner, Richard Pridgeon, through G. W. Stephens., Jr. and Associates, Engineers to the Planning Board for a proposed lot line adjustment

CBA-06-019

6 STONE ROAD
PRIDGEON PROPERTY LOT 3, PARCEL B (Zoned R.C. 4)
WINDEMERE, SEC III

Appeal of the decision and determination of the Dir. Of PDM denying the appellant's request for reconfiguration of two building lots.

CBA-06-020

3 STONEHURST ROAD - LOT 3 (Zoned R.C. 6)
STEPCICH PROPERTY

Appeal of the decision and determination of the Dir. of PDM denying the appellant's request for re-subdivision of building lots.

JOSEPH STEPCICH
3 STONEHURST ROAD

Petition for Special Hearing- to confirm what constitutes the vesting of a previously approved subdivision.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

1) What set of rules do they have to follow?
2) Is Stepcich vested?
3) What is the definition of vesting?
4) Is what they are asking material, or non-material? (If it is material, then the new law applies. However, if it is found to be non-material than the JSPC applies.)
5) Is a lot line adjustment a material change?

SOME OF THE LAWS DISCUSSED WERE:

1) Section 32-4-273(b)
2) Section 32-4-274
3) Section 32-4-262(1)
4) Common Law/Statutory Law?
5) Definition of vested as show in Webster's dictionary.
6) Bill No. 24-06.

STANDING

- The Petitioners are requesting lot line adjustments to enable an additional dwelling to be built.
- A house already exists at 3 Stonehurst Road
- DRC stated that the old law would apply.
- Jeff Long stated that the new law applies.
- The Board determined, according to the BCC, that the Petitioners are vested.
- Baltimore County defines vesting by statue, and not by Common Law.
- The Board felt that the changes would be non-material and that the JSPC would apply.

DECISION BY BOARD MEMBERS: The Board concluded that the Petitioners were vested, that the changes would be non-material, and that the guidelines under the JSPC would apply.

FINAL DECISION: After a thorough review of the facts, testimony, and law in the matter, the Board unanimously decided to *GRANT* the Petitioners requests and allow the lot line adjustments.

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

Respectfully Submitted

Linda B. Fliegel

Linda B. Fliegel
County Board of Appeals

Protestants and

People's Counsel Sign-In Sheet

Case Name: Pridgeon + Stepcich Properties
Case No.: CBA 06-019 + 020 + 06-419SPH
Date: 1/10/07

The Office of People's Counsel was created by the County Charter to participate in zoning matters on behalf of the public interest. While it does not actually represent community groups or protestants, it will assist in the presentation of their concerns, whether they have their own attorney or not. If you wish to be assisted by People's Counsel, please sign below.

Check to testify	Name	Address	Phone #	Email	Group you represent	Basis of your concerns
✓	Charlotte Pine	607 Baltimore Ave Towson MD 21204	410-823-5200		Long Green Valley Assn	
✓	Adrienne Teve	11 Windemere Parkway 21131	410 592-6721	Adrienne@comcast.net	Personal Property	Uphold current zoning

PLEASE PRINT CLEARLY

CASE NAME _____
CASE NUMBER _____
DATE _____

PETITIONER'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
BRIAN DIETZ	8119 OAKLEIGH ROAD	BALTO. MD 21234	BRIAN@DIETZSURVEYING.NET
Joe Stepcich	2 Stonehurst Rd	Phoenix MD 21131	—

WINDEMERE
053A1
RC 6
053A2
RC 7
ANNTICKET
Copyright (C) 2005 Baltimore County, Maryland
0

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 2006, Legislative Day No. 3

Bill No. 24-06

Councilmembers Kamenetz, Bartenfelder, Moxley , McIntire & Olszewski

By the County Council, February 6, 2006

A BILL
ENTITLED

AN ACT concerning

Development

FOR the purpose of requiring previously approved developments to comply with the current law and the current development procedural review process; defining terms; defining the manner of the vesting of a project; clarifying the methodology employed by the Office of Planning in compiling its annual recommendation regarding overcrowded school districts; providing for the extension and expiration of development plan approvals; providing for the application of the Act; providing for the effective date of the Act; and generally relating to the scope of the County's development regulations and the vesting of development plans and plats.

BY repealing and re-enacting, with amendments

Sections 32-4-104, 32-4-261(a) and (b), 32-4-262, 32-4-273(d) and 32-6-103(d)
Article 32 - Planning, Zoning and Subdivision Control
Baltimore County Code 2003

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter stricken from existing law.
~~Strike out~~ indicates matter stricken from bill.
Underlining indicates amendments to bill.

BY adding

Section 32-4-101(bbb)
Article 32 - Planning, Zoning and Subdivision Control
Baltimore County Code 2003

SECTION 1. BE IT ENACTED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, that Sections 32-4-104, 32-4-261(a) and (b), 32-4-262, 32-4-273(d) and 32-6-103(d) of Article 32, Planning, Zoning and Subdivision Control, of the Baltimore County Code 2003, be and they are hereby repealed and re-enacted, with amendments, to read as follows:

§32-4-104. Scope of Title.

(a) Applicability of title. [Except as provided in subsection (b) of this section, this title shall apply to all development.

(b) Exceptions.

(1) This title does not apply to a development that before the effective date of this article, June 11, 1982:

(i) Received tentative approval of the preliminary plan by the Planning Board;

(ii) Has a valid unexpired building permit;

(iii) Has a current executed public works agreement;

(iv) Received a CRG approval, reclamation plan approval, or was otherwise vested by law; or

(v) Where a CRG plan was accepted for filing by the Department of Public Works before the date of adoption of Bill 1-92.

(2) An exempt development under paragraph (1) of this subsection shall be governed by the subdivision regulation in effect at the time:

(i) Of the preliminary plan approval in the case of a development that received tentative approval by the Planning Board;

(ii) The development received a CRG approval, reclamation plan approval, or was otherwise vested by law;

(iii) The valid unexpired building permit was issued;

(iv) The current public works agreement was executed; and

(v) Of the acceptance for filing in the case of a CRG plan that was accepted for filing by the Department of Public Works before the date of adoption of Bill 1-92.]

THIS TITLE SHALL APPLY TO THE PROCESS OF REVIEW FOR APPROVAL OF ALL DEVELOPMENT.

[(c)] (B) Present zoning classification. Proposed development shall be in compliance with the present zoning classification on the property to be developed.

§32-4-261. Expiration of Development Plan Approval.

(a) In general. Unless extended under SUBSECTION (B) OR UNDER §32-4-274(a) of this subtitle, Development Plan approval shall expire [5] 4 years after the date [of] A FINAL, NON-APPEALABLE approval was granted.

(b) Request for extension.

(1) An applicant may make a written request to the Hearing Officer for [an] A ONE YEAR extension of the [5] 4 year Development Plan approval period provided under subsection (a) of this section UPON A SHOWING THAT A COUNTY AGENCY FAILED TO PROPERLY PROCESS AN ESSENTIAL REQUEST NECESSARY TO ACHIEVE VESTING IN A TIMELY FASHION, CAUSING A DELAY BEYOND THE INITIAL FOUR YEARS AFTER THE FINAL, NON-APPEALABLE APPROVAL WAS GRANTED.

(2) THE REQUEST FOR EXTENSION SHALL BE FILED PRIOR TO THE

EXPIRATION OF FOUR YEARS FROM THE DATE OF APPROVAL OF THE DEVELOPMENT PLAN.

[(2)] (3) The Hearing Officer SHALL ACT WITHIN 60 DAYS OF THE FILING OF THE REQUEST AND may grant, in writing, the request for an extension [upon certification by the applicant that the Development Plan meets the development regulations in effect at the time of the requested extension].

[3] (4) The Hearing Officer may not act upon the request for an extension until comments from the applicable agencies are received.

(5) ANY APPEAL OF THE EXTENSION GRANTED UNDER SUBSECTION (B) SHALL BE ON THE RECORD. THE STANDARD OF REVIEW SHALL BE BASED UPON AN ABUSE OF DISCRETION.

§32-4-262. Amendments to Development Plans.

(1) Any material amendment to an approved NON-RESIDENTIAL Development Plan shall be reviewed and approved in the same manner as the original plan.

[(2) Any other material amendment shall be in accordance with the comprehensive manual of administrative policy.]

(2) ANY MATERIAL AMENDMENT TO AN APPROVED RESIDENTIAL DEVELOPMENT PLAN OR PLAT SHALL BE REVIEWED IN ACCORDANCE WITH THIS TITLE, AND WITH RESPECT TO THAT PORTION OF THE ORIGINAL PLAN OR PLAT TO WHICH THE AMENDMENT PERTAINS, THE AMENDMENT SHALL BE REVIEWED FOR COMPLIANCE WITH ALL CURRENT LAW AND REGULATIONS, INCLUDING THE DEVELOPMENT REGULATIONS AND THE ZONING REGULATIONS.

§32-4-273. Time Limit for [Validity of Plats and Plans.] VESTING.

(d) Development. A subdivision or section or parcel of the subdivision is considered [developed and] vested if [any of the following has occurred with respect to the subdivision, section, or parcel:

(1) Building permits have been issued; or

(2) Substantial construction on required public improvements or private improvements has occurred on the subdivision, section, or parcel in accordance with the applicable regulations and requirements of the Department of Public Works.]

~~BUILDING PERMITS HAVE~~ A BUILDING PERMIT HAS BEEN ISSUED FOR ANY LOT IN ACCORDANCE WITH AN APPROVED PLAN OR PLAT, AND INSPECTION BY THE COUNTY CONFIRMS THAT SUBSTANTIAL CONSTRUCTION HAS OCCURRED ~~ON~~ WITHIN THE SUBDIVISION , INCLUDING ANY LOT, TRACT, SECTION, OR PARCEL THEREOF, WITHIN FOUR YEARS AFTER THE DATE OF THE FINAL, NONAPPEALABLE APPROVAL OF THE PLAN OR PLAT OR ANY EXTENSION THEREOF AUTHORIZED UNDER SECTION 32-4-261(A).

Title 6. Adequate Public Facilities

§32-6-103. Overcrowded School Districts.

(d) Recommendation. [The Office of Planning shall make the recommendation of whether a district is an overcrowded school district and whether the proposed Development Plan, in conjunction with any other proposed or approved development plan, would result in the school district becoming an overcrowded school district at the time of the filing date.]

(1) THE OFFICE OF PLANNING SHALL MAKE THE RECOMMENDATION OF WHETHER A DISTRICT IS AN OVERCROWDED SCHOOL

DISTRICT AND WHETHER THE PROPOSED DEVELOPMENT PLAN WOULD RESULT IN THE SCHOOL DISTRICT BECOMING AN OVERCROWDED SCHOOL DISTRICT AT THE TIME OF THE FILING DATE.

(2) IN MAKING ITS RECOMMENDATION ON THE PROPOSED DEVELOPMENT PLAN, THE OFFICE OF PLANNING SHALL CONSIDER THE CUMULATIVE EFFECT OF:

(I) THE SCHOOL IMPACT ANALYSIS FILED UNDER SUBSECTION (G) WITH RESPECT TO THE PROPOSED PLAN;

(II) THE IMPACT OF ANY DEVELOPMENT PLAN, OR PORTION OF A DEVELOPMENT PLAN, APPROVED WITHIN FOUR YEARS PRIOR TO THE FILING DATE; AND

(III) THE IMPACT OF ANY DEVELOPMENT PLAN APPROVED PRIOR TO THE FILING DATE, IF AN EXTENSION WAS GRANTED.

SECTION 2. AND BE IT FURTHER ENACTED, that Section 32-4-101(bbb) be and it is hereby added to Article 32, Planning, Zoning, and Subdivision Control of the Baltimore County Code 2003, to read as follows:

§32-4-101. Definitions.

(BBB) SUBSTANTIAL CONSTRUCTION MEANS ACTUAL CONSTRUCTION ACTIVITY OCCURRING ON THE GROUND OR BUILDING SITE FOR WHICH A ~~PERMIT IS SOUGHT~~ DEVELOPMENT PLAN OR PLAT HAS BEEN APPROVED THAT IS DIRECTLY RELATED TO THE ~~FACILITY OR STRUCTURE FOR WHICH THE PERMIT IS SOUGHT~~ APPROVED PLAN OR PLAT AND IS SUFFICIENTLY SUBSTANTIVE AND VISIBLE AND IS BEING PURSUED TO COMPLETION WITH REASONABLE DILIGENCE SO AS TO PUT THE PUBLIC ON NOTICE THAT THE GROUND OR SITE IS BEING DEVOTED TO THE CONSTRUCTION OF A FACILITY

OR STRUCTURE.

SECTION 3. AND BE IT FURTHER ENACTED, that this Act shall apply to any development, subdivision, parcel of land, or plat which received any form of approval from Baltimore County prior to the effective date of this Act as follows: ~~, including approval from the Planning Commission or Baltimore County Planning Board or CRG or DRC, prior to the effective date of this Act.~~

(A) A development plan or plat that vested in accordance with the law in effect prior to the effective date of this Act is subject to the zoning regulations and development regulations in effect at the time the plan or plat was approved, if those regulations were not otherwise subsequently abrogated or superseded by other law; however, with respect to a material amendment to the plan or plat, the provisions of Section 32-4-262 shall apply.

(B) An unexpired development plan or plat that was approved prior to the effective date of this Act, but not yet vested, shall have four years from the effective date of this Act to achieve substantial construction, as defined in this Act. The plan or plat shall be in compliance with the zoning regulations and development regulations in effect at the time of the original approval, or any extension properly granted under Section 32-4-261(b), if those regulations were not otherwise subsequently abrogated or superseded by other law. Upon the failure to achieve substantial construction or to obtain an extension within the four-year period, the plan or plat shall be deemed to be expired.

SECTION 4. AND BE IT FURTHER ENACTED, that this Act is adopted independently of Section 103 of the Baltimore County Zoning Regulations so that it supersedes and abrogates the rights to the vesting of a development that would otherwise accrue from the zoning or development regulations or other County laws.

~~SECTION 5. AND BE IT FURTHER ENACTED, that a development plan that was approved prior to the effective date of this Act, but not yet vested, shall have three years from the effective date of this Act to achieve substantial construction as defined herein. The plan shall be in compliance with the zoning classification in effect on the property at the time of the original approval, or any extension properly granted, as the case may be. Upon the failure to achieve substantial construction or obtain an extension within the three year period, the plan shall be deemed to be expired.~~

SECTION 5. AND BE IT FURTHER ENACTED, that this Act does not apply to any development plan for which a Hearing Officer's hearing was commenced prior to March 17, 2006 or to any request accepted for filing prior to March 17, 2006 for a material amendment to a previously approved plan.

SECTION 6. AND BE IT FURTHER ENACTED, that this Act, having been approved by the affirmative vote of five members of the County Council, shall take effect on March 17, 2006.

b02406.wpd

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

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

Case Number: 03-C-08-001585 AA
Administrative Agency : 06-419-SPH
Administrative Agency : CBA-04-159
Administrative Agency : CBA-06-019
Administrative Agency : CBA-06-020
C I V I L

In the Matter of Baltimore County Maryland

Notice

Pursuant to Maryland Rule 7-206(e), you are advised that the Record of Proceedings was filed on the 24th day of April, 2008.

Suzanne Mensh
Clerk of the Circuit Court, per

Date issued: 04/29/08

TO: BOARD OF APPEALS
400 Washington Avenue
Old Courthouse Room 49
Towson, MD 21204

RECEIVED
MAY - 1 2008
BALTIMORE COUNTY
BOARD OF APPEALS

NOTICE OF CIVIL TRACK ASSIGNMENT AND SCHEDULING ORDER

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

RECEIVED
MAY 23 2008
BALTIMORE COUNTY
BOARD OF APPEALS

Board Of Appeals
400 Washington Avenue
Old Courthouse Room 49
Towson MD 21204

Assignment Date: 05/21/08

Case Title: In the Matter of Baltimore County Maryland
Case No: 03-C-08-001585 AA

Joseph Stepcich

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

SCHEDULING ORDER

1. Motions to Dismiss under MD. Rule 2-322(b) are due by..... 06/05/08
2. All Motions (excluding Motions in Limine) are due by..... 07/19/08
3. TRIAL DATE is..... 08/28/08
   Civil Non-Jury Trial; Start Time: 09:30AM; To Be Assigned: 1/2 HOUR ADMINISTRATIVE APPEAL

Honorable John Grason Turnbull II
Judge

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

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

Special Assistance Needs: If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the Americans with Disabilities Act, please contact the Civil Assignment Office at (410)-887-2660 or use the Court's TDD line, (410) 887-3018, or the Voice/TDD M.D. Relay Service, (800) 735-2258.

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

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

Camera Phones Prohibited: Pursuant to Md. Rule 16-109 b.3., **cameras and recording equipment are strictly prohibited** in courtrooms

and adjacent hallways. This means that cameras cell phones should not be brought with you on the day of your hearing to the Courthouse.

cc: J Carroll Holzer Esq
cc: Nancy C West
cc: Arnold Jablon Esq
cc: Peter M Zimmerman Esq
cc: Carole S Demilio Esq
Issue Date 05/21/08

COPY

PETITION OF:	*	IN THE
BALTIMORE COUNTY, MARYLAND	*	
FOR JUDICIAL REVIEW OF THE DECISION OF COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Suite 203, Jefferson Building 105 W. Chesapeake Avenue Towson, MD 21204	*	CIRCUIT COURT
	*	FOR
	*	
IN THE MATTER OF: THE APPLICATION OF JOSEPH STEPCICH – LEGAL OWNER /PETITIONER* FOR SPECIAL HEARING ON PROPERTY LOCATED AT 3 STONEHURST ROAD W/S STONEHURST ROAD, 218' S OF C/L OF WINDEMERE PARKWAY	*	BALTIMORE COUNTY CIVIL ACTION: 03-C-08-1585
CASE NO.: 06-419-SPH	*	
RE: REQUESTING CONFIRMATION THAT THE ZONING IN PLACE AT THE TIME OF THE ORIGINAL APPROVAL OF VESTED SUBDIVISION CONTINUES AS APPLICABLE ZONING	*	
	*	
AND	*	
IN THE MATTER OF: STEPCICH PROPERTY WINDEMERE /3 STONEHURST ROAD	*	
CASE NO. CBA-06-020	*	
RE: DRC DECISION /DENIAL OF APPLICANT'S REQUEST TO RECONFIGURE LOTS	*	
	*	
AND	*	
IN THE MATTER OF: PRIDGEON PROPERTY WINDEMERE /6 STONEHURST ROAD PHOENIX, MD 21131	*	
CASE NO. CBA-06-019	*	
RE: DRC DECISION /DENIAL OF APPLICANT'S REQUEST TO RECONFIGURE LOTS	*	
	*	
AND		

RECEIVED AND FILED
2008 APR 24 AM 10: 28
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

COPY

STEPCICH/PRIDGEON PROPERTIES
CIRCUIT COURT CASE NO.: 03-C-08-1585

IN THE MATTER OF:
PRIDGEON PROPERTY
WINDEMERE /6 STONEHURST RD

CASE NO. CBA-04-159

RE: JSPC DECISION /DENIAL OF PROPOSED
LOT LINE ADJUSTMENT /AMENDMENT TO JSPC

11TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

* * * * * * * * * *

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

TO THE HONORABLE, THE JUDGE OF SAID COURT:

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

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

CBA-04-159

Aug. 3, 2004	Request by owner, Richard Pridgeon, through GW Stephens., Jr. and Associates, engineers to the Planning Board for a proposed lot line adjustment.
Dec. 3	Letter from Jeffrey Long, Deputy Director of Planning, to GW Stephens, Jr. & Associates, Mr. David, *DENYING* Petitioner's request for lot line adjustments.
Dec. 23	Notice of Appeal filed by Arnold Jablon, Esq.
Dec. 28	File received in the Board of Appeals.

06-419-SPH

Feb. 28, 2006	Petition for Special Hearing.
Mar. 13	Entry of Appearance by People's Counsel.
Mar. 16	Notice of Zoning Hearing
Apr. 3	Certificate of Posting
Apr. 4	Certificate of Publication
May 16	Zoning Commissioner's Order *GRANTING* in part as follows: THEREFORE, IT IS ORDERED, by the Zoning Commissioner for Baltimore County this 16th day of May 2006, that a vested subdivision is governed by the zoning in place at the time of the original approval of the subdivision, and IT IS FURTHER ORDERED, that any further re-subdivision of Petitioners' vested lot of record shall be governed by, and be in compliance with, the present (R.C.6) zoning classification on the property to be developed. THEREFORE, the Petition for Special Hearing is granted in part and yet denied in part as it related to any future re-subdivision.
May 31	Notice of Appeal filed by Arnold Jablon, Esquire
June 5	Notice of Appeal filed by People's Counsel for Baltimore County.
June 22	File received in the Board of Appeals.
Nov. 3	Entry of Appearance by J. Carroll Holzer, Esq. on behalf of Carol Trela and long Green Valley Association.

CBA 06-019 *and*
CBA-06-020

Mar. 13, 2006	Entry of Appearance by People's Counsel
Mar. 14	DRC Applications filed.
Apr.12	DRC response letters from Arnold Jablon to Don Rascoe.
Apr. 18	Letters of Appeal filed by Arnold Jablon, Esq.
May 2	Files received in the Board of Appeals.

Jan. 10, 2007 Board (Stahl, Grier & Crizer) convened for hearing on case nos. CBA 04-159, 06-419-SPH, CBA 06-019 and CBA-06-020 – Day #1.

Petitioner's Exhibits

1. Plat of Windmere III – 1970
2. Letter from Arnold Jablon, Dir. 5-23-2000
3. Aerial photo of subject property
4. Amended JSPC Plan – 10-10-03 (recreated)
5. Plat to Accompany a zoning special hearing 2-3-06
6. Hearing Officer's Order – 5-16-2006
7. Letter from Arnold Jablon 3- 14-2006
8. Letter from Timothy Kotroco – 5-28-2006
9. Declaration made this 2nd day of September, 1970.
10. ZCMP letter dated Jan. 1 2004
11. Letter from Timothy Kotroco dated 5-28-04
12. Letter from John R. Alexander dated 2-06-06
13. Bill No. 24-06
14. Letter from Robert Powell Re: Soil Evaluation Program – Dated June 3, 2003
15. PERC Plan
16. Plan to accompany DRC request (Lot 3 Parcel B)
17. Letter from Timothy Kotroco – 9-2-04
18. Letter from Jeffrey Long – 12-3-04
19. Application for DRC – 3/13/06
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22. Letter from Timothy Kotroco – 4-12-06
23. Mylar overlay
24. 1956 Plan
25. Long Shadow Plan
26. Development Regulations (Map)

Protestant's Exhibits

1A-F Pictures of Adrienne True Property
2 Rule 8 papers for Mrs. Pine
3 Plan from Dr. Gonzales.

People's Counsel's Exhibits

1.A-B Zoning maps
2, Plan titled Windemere (tentative) 1956
3.A-J Zoning maps over the years

4.	Sign in sheet.
Apr. 24, 2007	Board (Stahl, Grier & Crizer) convened for hearing on case nos. CBA 04-159, 06-419-SPH, CBA 06-019 and CBA-06-020 – Day #2.
May 15	Board (Stahl, Grier & Crizer) convened for hearing on case nos. CBA 04-159, 06-419-SPH, CBA 06-019 and CBA-06-020 – Day #3.
Aug. 8, 2007	Board convened for Public Deliberation on case nos. CBA 04-159, 06-419-SPH, CBA 06-019 and CBA-06-020.
Jan. 10, 2008	Board issued its Opinion and Order as follows: ORDERED that the request for special hearing in Case No.: 06-419-SPH be and the same is hereby GRANTED; and it is further ORDERED that the request to reconfigure lots of record into two buildable lots in Case No. CBA-06-020, 3 \ Stonehurst Road, Stepcich Property, be and the same is hereby GRANTED, and it is further ORDERED that the request to reconfigure lots of record into two buildable lots in Case No. CBA-06-019, 6 Stonehurst Road, Pridgeon Property, be and the same is hereby GRANTED; and it is further ORDERED that the request for a lot line adjustment/amendment to JSPC subdivision plan, in Case No. CBA-04-159, 6 Stonehurst Road, Pridgeon Property, is therefore rendered MOOT.
Feb. 1, 2008	Petition for Judicial Review filed in the Circuit Court by Nancy C. West, Asst. County Attorney on behalf of Baltimore County, Maryland. *Board received a copy from the Court on February 26th 2008.*
Feb. 14	Response to Petition for Judicial Review filed by Arnold Jablon, Esq., Attorney for Respondents.
Feb. 26	Certificate of Notice sent to interested parties.
April 24	Transcript of Proceedings filed.
April 24, 2008	Record of Proceedings filed in the Circuit Court for Baltimore County.

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

Respectfully submitted,

Kathleen C. Bianco, Administrator
County Board of Appeals of Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204 (410) 887-3180

C: Office of People's Counsel
Arnold Jablon, Esq
David Karceski, Esq.
Mr. and Mrs. Joseph Stepcich
Mr. Richard Pridgeon
Brian R. Dietz
Dr. Eusebia Gonzales
Joseph Lee Bishop, Jr., President
Donna Spicer
Adrienne True and Kim Ward
J. Carroll Holzer, Esq.

2/26/08 + Transcripts here

● Draft

PETITION OF:	*	IN THE
BALTIMORE COUNTY, MARYLAND	*	
IN THE MATTER OF: THE APPLICATION OF JOSEPH STEPCICH – LEGAL OWNER /PETITIONER FOR SPECIAL HEARING ON PROPERTY LOCATED AT 3 STONEHURST ROAD W/S STONEHURST ROAD, 218' S OF C/L OF WINDEMERE PARKWAY	*	CIRCUIT COURT FOR
CASE NO.: 06-419-SPH	*	BALTIMORE COUNTY
RE: REQUESTING CONFIRMATION THAT THE ZONING IN PLACE AT THE TIME OF THE ORIGINAL APPROVAL OF VESTED SUBDIVISION CONTINUES AS APPLICABLE ZONING	*	
AND	*	CIVIL ACTION: 03-C-08-1585
IN THE MATTER OF: STEPCICH PROPERTY WINDEMERE /3 STONEHURST ROAD	*	
CASE NO. CBA-06-020	*	
RE: DRC DECISION /DENIAL OF APPLICANT'S REQUEST TO RECONFIGURE LOTS	*	
AND	*	
IN THE MATTER OF: PRIDGEON PROPERTY WINDEMERE /6 STONEHURST ROAD PHOENIX, MD 21131	*	
CASE NO. CBA-06-019	*	
RE: DRC DECISION /DENIAL OF APPLICANT'S REQUEST TO RECONFIGURE LOTS	*	
AND	*	
IN THE MATTER OF: PRIDGEON PROPERTY WINDEMERE /6 STONEHURST RD	*	
CASE NO. CBA-04-159	*	
RE: JSPC DECISION /DENIAL OF PROPOSED		

Issue 4-14-08
file on 4/25/08

STEPCICH/PRIDGEON PROPERTIES
CIRCUIT COURT CASE NO.: 03-C-08-1585

LOT LINE ADJUSTMENT /AMENDMENT TO JSPC *

11TH ELECTION DISTRICT *
3RD COUNCILMANIC DISTRICT

* * * * * * * * * *

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

TO THE HONORABLE, THE JUDGE OF SAID COURT:

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

ENTRIES FROM THE DOCKET OF THE BOARD APPEALS AND DEPARTMENT OF PERMITS & LICENSES OF BALTIMORE COUNTY

CBA-04-159

Aug. 3, 2004	Request by owner, Richard Pridgeon, through GW Stephens., Jr. and Associates, engineers to the Planning Board for a proposed lot line adjustment.
Dec. 3	Letter from Jeffrey Long, Deputy Director of Planning, to GW Stephens, Jr. & Associates, Mr. David, *DENYING* Petitioner's request for lot line adjustments.
Dec. 23	Notice of Appeal filed by Arnold Jablon, Esq.
Dec. 28	File received in the Board of Appeals.

06-419-SPH

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Mar. 16	Notice of Zoning Hearing
Apr. 3	Certificate of Posting

Apr. 4	Certificate of Publication
May 16	Zoning Commissioner's Order *GRANTING* in part as follows: THEREFORE, IT IS ORDERED, by the Zoning Commissioner for Baltimore County this 16th day of May 2006, that a vested subdivision is governed by the zoning in place at the time of the original approval of the subdivision, and IT IS FURTHER ORDERED, that any further re-subdivision of Petitioners' vested lot of record shall be governed by, and be in compliance with, the present (R.C.6) zoning classification on the property to be developed. THEREFORE, the Petition for Special Hearing is granted in part and yet denied in part as it related to any future re-subdivision.
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June 5	Notice of Appeal filed by People's Counsel for Baltimore County.
June 22	File received in the Board of Appeals.
Nov. 3	Entry of Appearance by J. Carroll Holzer, Esq. on behalf of Carol Trela and long Green Valley Association.

CBA 06-019 *and*
CBA-06-020

Mar. 13, 2006	Entry of Appearance by People's Counsel
Mar. 14	DRC Applications filed.
Apr.12	DRC response letters from Arnold Jablon to Don Rascoe.
Apr. 18	Letters of Appeal filed by Arnold Jablon, Esq.
May 2	Files received in the Board of Appeals.
Jan. 10, 2007	Board (Stahl, Grier & Crizer) convened for hearing on case nos. CBA 04-159, 06-419-SPH, CBA 06-019 and CBA-06-020 – Day #1.

Petitioner's
Exhibits

1. Plat of Windmere III – 1970

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3. Aerial photo of subject property
4. Amended JSPC Plan – 10-10-03 (recreated)
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8. Letter from Timothy Kotroco – 5-28-2006
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10. ZCMP letter dated Jan. 1 2004
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12. Letter from John R. Alexander dated 2-06-06
13. Bill No. 24-06
14. Letter from Robert Powell Re: Soil Evaluation Program – Dated June 3, 2003
15. PERC Plan
16. Plan to accompany DRC request (Lot 3 Parcel B)
17. Letter from Timothy Kotroco – 9-2-04
18. Letter from Jeffrey Long – 12-3-04
19. Application for DRC – 3/13/06
20. Plan to accompany DRC request (R.C. 6)
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22. Letter from Timothy Kotroco – 4-12-06
23. Mylar overlay
24. 1956 Plan
25. Long Shadow Plan
26. Development Regulations (Map)

Protestant's Exhibits

1A-F Pictures of Adrienne True Property
2 Rule 8 papers for Mrs. Pine
3 Plan from Dr. Gonzales.

People's Counsel's Exhibits

1.A-B Zoning maps
2, Plan titled Windemere (tentative) 1956
3.A-J Zoning maps over the years
4. Sign in sheet.

Apr. 24, 2007 Board (Stahl, Grier & Crizer) convened for hearing on case nos. CBA 04-159, 06-419-SPH, CBA 06-019 and CBA-06-020 – Day #2.

May 15 Board (Stahl, Grier & Crizer) convened for hearing on case nos. CBA 04-159, 06-419-SPH, CBA 06-019 and CBA-06-

020 – Day #3.

Aug. 8, 2007 — Board convened for Public Deliberation on case nos. CBA 04-159, 06-419-SPH, CBA 06-019 and CBA-06-020.

Jan. 10, 2008 — Board issued its Opinion and Order as follows:

ORDERED that the request for special hearing in Case No.: 06-419-SPH be and the same is hereby GRANTED; and it is further

ORDERED that the request to reconfigure lots of record into two buildable lots in Case No. CBA-06-020, 3 \ Stonehurst Road, Stepcich Property, be and the same is hereby GRANTED, and it is further

ORDERED that the request to reconfigure lots of record into two buildable lots in Case No. CBA-06-019, 6 Stonehurst Road, Pridgeon Property, be and the same is hereby GRANTED; and it is further

ORDERED that the request for a lot line adjustment/amendment to JSPC subdivision plan, in Case No. CBA-04-159, 6 Stonehurst Road, Pridgeon Property, is therefore rendered MOOT.

Feb. 1, 2008 — Petition for Judicial Review filed in the Circuit Court by Nancy C. West, Asst. County Attorney on behalf of Baltimore County, Maryland. *Board received a copy from the Court on February 26th 2008.*

Feb. 14 — Response to Petition for Judicial Review filed by Arnold Jablon, Esq., Attorney for Respondents.

Feb. 26 — Certificate of Notice sent to interested parties.

Transcript of Proceedings filed.

Record of Proceedings filed in the Circuit Court for Baltimore County.

Record of Proceedings pursuant to which said Order was entered and upon which

said Board acted are hereby forwarded to the Court, together with exhibits entered before the Board.

Respectfully submitted,

_____

County Board of Appeals of Baltimore County
400 Washington Avenue, Room 49
Towson, MD 21204 (410) 887-3180

C: Office of People's Counsel
Arnold Jablon, Esq
David Karceski, Esq.
Mr. and Mrs. Joseph Stepcich
Mr. Richard Pridgeon
Brian R. Dietz
Dr. Eusebia Gonzales
Joseph Lee Bishop, Jr., President
Donna Spicer
Adrienne True and Kim Ward
J. Carroll Holzer, Esq.

2/26/08

PETITION OF:	*	IN THE
BALTIMORE COUNTY, MARYLAND	*	
IN THE MATTER OF: THE APPLICATION OF JOSEPH STEPCICH – LEGAL OWNER /PETITIONER* FOR SPECIAL HEARING ON PROPERTY LOCATED AT 3 STONEHURST ROAD W/S STONEHURST ROAD, 218' S OF C/L OF WINDEMERE PARKWAY	*	CIRCUIT COURT FOR
CASE NO.: 06-419-SPH	*	BALTIMORE COUNTY
RE: REQUESTING CONFIRMATION THAT THE ZONING IN PLACE AT THE TIME OF THE ORIGINAL APPROVAL OF VESTED SUBDIVISION CONTINUES AS APPLICABLE ZONING	*	
AND	*	CIVIL ACTION: 03-C-08-1585
IN THE MATTER OF: STEPCICH PROPERTY WINDEMERE /3 STONEHURST ROAD	*	
CASE NO. CBA-06-020	*	
RE: DRC DECISION /DENIAL OF APPLICANT'S REQUEST TO RECONFIGURE LOTS	*	
AND	*	
IN THE MATTER OF: PRIDGEON PROPERTY WINDEMERE /6 STONEHURST ROAD PHOENIX, MD 21131	*	
CASE NO. CBA-06-019	*	
RE: DRC DECISION /DENIAL OF APPLICANT'S REQUEST TO RECONFIGURE LOTS	*	
AND	*	
IN THE MATTER OF: PRIDGEON PROPERTY WINDEMERE /6 STONEHURST RD	*	
CASE NO. CBA-04-159	*	
RE: JSPC DECISION /DENIAL OF PROPOSED		

RECEIVED AND FILED
2008 FEB 26 AM 11: 15
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

STEPCICH/PRIDGEON PROPERTIES
CIRCUIT COURT CASE NO.: 03-C-08-1585

LOT LINE ADJUSTMENT /AMENDMENT TO JSPC *

11TH ELECTION DISTRICT *
3RD COUNCILMANIC DISTRICT

* * * * * * * * * *

CERTIFICATE OF NOTICE

Madam Clerk:

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

Office of People's Counsel
for Baltimore County
Jefferson Building – Suite 204
105 W. Chesapeake Avenue
Towson, MD 21204

Arnold Jablon, Esq
And
David Karceski, Esq.
VENABLE, BAETJER & HOWARD, LLP
210 Allegheny Avenue
Towson, MD 21204

Mr. and Mrs. Joseph Stepcich
3 Stonehurst Road
Phoenix, MD 21131

Mr. Richard Pridgeon
6 Stonehurst Road
Phoenix, MD 21131

Brian R. Dietz
7867 Oakdale Avenue
Baltimore, MD 21237

Dr. Eusebia Gonzales
300 Stonehurst Road
Phoenix, MD 21131

Joseph Lee Bishop, Jr., President
Greater Sparks-Glencoe Community Council
P.O. Box 396
Sparks, MD 21152

Donna Spicer
8719 Eddington Road
Baltimore, MD 21234

Adrienne True and Kim Ward
11 Windmere Parkway
Baltimore, MD 21131

J. Carroll Holzer, Esq.
Counsel for Carol Trela/
Long Green Valley Association
508 Fairmount Avenue
Towson, MD 21286

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

Linda B. Fliegel

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

I HEREBY CERTIFY that on this 26th day of Feb., 2008, a copy of the foregoing Certificate of Notice has been mailed: Office of People's Counsel for Baltimore County, Jefferson Building – Suite 204, 105 W. Chesapeake Avenue, Towson, MD 21204, Arnold Jablon, Esq, and David Karceski, Esq., Venable, Baetjer & Howard, LLP, 210 Allegheny Avenue, Towson, MD 21204, Mr. and Mrs. Joseph Stepcich, 3 Stonehurst Road, Phoenix, MD 21131, Mr. Richard Pridgeon, 6 Stonehurst Road, Phoenix, MD 21131, Brian R. Dietz, 7867 Oakdale Avenue, Baltimore, MD 21237, Dr. Eusebia Gonzales, 300 Stonehurst Road, Phoenix, MD 21131, Joseph Lee Bishop, Jr., President, Greater Sparks-Glencoe Community Council, P.O. Box 396, Sparks, MD 21152, Donna Spicer, 8719 Eddington Road, Baltimore, MD 21234, Adrienne True and Kim Ward, 11 Windmere Parkway, Baltimore, MD 21131, J. Carroll Holzer, Esq., Counsel for Carol Trela/Long Green Valley Association, 508 Fairmount Avenue, Towson, MD 21286.

Linda B. Fliegel

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

County Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

February 26, 2008

John E. Beverungen
County Atorney
Old Courthouse – 2nd Floor
400 Washington Avenue
Towson, MD 21204

Nancy C. West,
Assistant County Attorney
Old Courthouse – 2nd Floor
400 Washington Avenue
Towson, MD 21204

RE: Circuit Court Civil Action No. 03-C-08-1585
Petition for Judicial Review
Joseph Stepcich – Case No.: 06-419-SPH *Pridgeon Property – Case No.: CBA-06-019*
Joseph Stepcich – Case No.: CBA-06-020 *Pridgeon Property – Case No.: CBA-04-159*

Dear Counsels:

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

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

CAROLYN PEATT
TELEPHONE: 410- 486-8209
HEARING DATES AS FOLLOWS:

Joseph Stepcich	*Case No.: 06-419-SPH*	*Jan. 10th, Apr. 24th and May 15th 2007*
Joseph Stepcich	*Case No.: CBA-06-020*	*Jan. 10th, Apr. 24th and May 15th 2007*
Pridgeon Property	*Case No.: CBA-06-019*	*Jan. 10th, Apr. 24th and May 15th 2007*
Pridgeon Property	*Case No.: CBA-04-159*	*Apr. 24th and May 15th 2007*

This office has also notified Ms. Peatt that a transcript on the above captioned matter is due by April 22, 2008, for filing in the Circuit Court. A copy of your Petition, which includes your telephone number, has been provided to the Court Reporter, to enable her to contact you for payment provisions.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Linda B. Fliegel

Linda B. Fliegel
Legal Secretary

c: Carolyn Peatt, Court Reporter
Arnold Jablon, Esq/David Karceski/J. Carroll Holzer, Esq.

Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

Jefferson Building
105 West Chesapeake Avenue, Room 204
Towson, Maryland 21204

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

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

February 26, 2008

Arnold Jablon, Esq
David Karceski, Esq.
Venable, Baetjer and Howard LLP
210 Allegheny Avenue
Towson, MD 21204

Re: Circuit Court Civil Action No. 03-C-08-1585
Petition for Judicial Review
Joseph Stepcich – Case No.: 06-419-SPH
Joseph Stepcich – Case No.: CBA-06-020
Pridgeon Property – Case No.: CBA-06-019 and
Pridgeon Property – Case No.: CBA-04-159

Dear Counsel:

Notice is hereby given, in accordance with the Maryland Rules, that a Petition for Judicial Review was filed on February 11, 2008 in the Circuit Court for Baltimore County, from the decision of the County Board of Appeals rendered in the above matter. The Board, for whatever reason, was not mailed and copy of said petition and *retrieved* a copy of same from the Circuit Court on February 26, 2008. Any party wishing to oppose the petition must file a response within 30 days after the date of this letter, pursuant to the Maryland Rules.

Petition for Judicial Review, **must be filed under Civil Action No. 03-C-08-1585**

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Linda B. Fliegel
Legal Secretary

/lbf
Enclosure
c: J. Carroll Holzer, Esq. Counsel for
Carol Trela/Long Green Valley Assoc.
Joseph L. Bishop, Jr., Pres. Greater
Sparks-Glenco Community Council
Dr. Eusebia Gonzales
Adrienne True & Kim Ward
Brian R. Dietz
Donna Spicer

John E. Beverungen, County Attorney
Nancy C. West, Asst. Co. Attorney
William J. Wiseman, III/Zoning Comm
Timothy M. Kotroco, Dir/PDM
Pat Keller, Dir./Planning
Jeffrey Long, Deputy Dir./Planning
Walt Smith, Dev. Mgr./PDM
Lynn Lanham, Chief/Dev. Rev.

2/13/08

PETITION OF	*	IN THE
BALTIMORE COUNTY, MARYLAND	*	CIRCUIT COURT FOR
	*	BALTIMORE COUNTY
FOR JUDICIAL REVIEW OF THE DECISION OF COUNTY BOARD OF APEALS Of BALTIMORE COUNTY 400 Washington Ave. Towson, Maryland 21204	*	CIVIL ACTION
	*	NO. 03-C-081585
IN THE MATTER OF: JOSEPH STEPCICH For Special hearing on Property Located 3 Stonehurst Road W/S Stonehurst Road, 218' S of C/L of Windemere Parkway 11th Election District 3rd Councilmanic District	*	
Case No. 06-419SPH	*	
and	*	
IN THE MATTER OF: JOSEPH STEPCICH Re: DRC Decision/Denial of Applicant's Request to Reconfigure Lots Windemere/3 Stonehurst Road 11th Election District 3rd Councilmanic District	*	
CBA Case No. 06-020	*	
and	*	
IN THE MATTER OF: PRIDGEON Property Re: DRC Decision/Denial of Applicants Request to Reconfigure Lots Windemere/6 Stonehurst Road 11th Election District 3rd Councilmanic District	*	
CBA Case No. 06-019	*	

RECEIVED
FEB 14 2008
BALTIMORE COUNTY
BOARD OF APPEALS

and

*

IN THE MATTER OF:
PRIDGEON Property *
Re: JSPC Decision/Denial of Proposed
Lot Line Adjustment/Amendment to JSPC *
Windemere/6 Stonehurst Road
11th Election District *
3rd Councilmanic District

*

CBA Case No. 04-159

****

RESPONSE TO PETITION FOR JUDICIAL REVIEW

Joseph Stepcich and Richard Pridgeon, the Respondents herein, by Arnold Jablon, Venable, LLP, their attorney, in accordance with Maryland Rule 7-204, submit this Response to the Petitions for Judicial Review filed by Baltimore County, Maryland, People's Counsel for Baltimore County, by Long Green Valley Association, Inc., and by Adrienne True, and state that they intend to participate in this action for judicial review. Respondents were parties to the above-referenced proceedings before the County Board of Appeals for Baltimore County.

Arnold Jablon
210 Allegheny Ave.
Towson, Maryland 21285-5517
410 494 6298

Attorney for Respondents

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of February, 2008, copies of the foregoing Response to Petition for Judicial Review were mailed, by first class delivery, postage prepaid, to the County Board of Appeals, Old Courthouse 400 Washington Ave., Towson, Maryland 21204, Nancy C. West, Esq., Assistant County Attorney, Office of Law, Courthouse, 2nd Floor, 400 Washington Ave., Towson, Maryland 21204, Peter M. Zimmerman, Esq., People's Counsel, Old Courthouse, 400 Washington Ave., Towson, Maryland 21204, and to J. Carroll Holzer, Esq., 508 Fairmount Ave., Towson, Maryland 21286.

Arnold Jablon

1/30/08

PETITION OF BALTIMORE COUNTY, MARYLAND, Old Courthouse, 2nd Floor, 400 Washington Avenue, Towson, MD 21204 *

IN THE MATTER OF
THE APPLICATION OF
JOSEPH STEPCICH – LEGAL OWNER /PETITIONER
FOR SPECIAL HEARING ON PROPERTY
LOCATED AT 3 STONEHURST ROAD
W/S STONEHURST ROAD, 218' S OF C/L OF
WINDEMERE PARKWAY
11TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT
(Case No. 06-419-SPH)

AND

IN THE MATTER OF
STEPCICH PROPERTY
WINDEMERE /3 STONEHURST ROAD
11TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT
RE: DRC DECISION /DENIAL OF APPLICANT'S
REQUEST TO RECONFIGURE LOTS
(Case No. CBA-06-020)

AND

IN THE MATTER OF
PRIDGEON PROPERTY
WINDEMERE /6 STONEHURST ROAD
PHOENIX, MD 21131
11TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT
RE: DRC DECISION /DENIAL OF APPLICANT'S
REQUEST TO RECONFIGURE LOTS
(Case No. CBA-06-019)

AND

IN THE

CIRCUIT COURT

FOR

BALTIMORE COUNTY

Civil Case No. 03-C-08-1585

RECEIVED
FEB 26 2008
BALTIMORE COUNTY
BOARD OF APPEALS

RECEIVED AND FILED
2008 FEB -1 PM 2:46
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

cc: Nancy C. West
Arnold Jablon, Esq.
J. Carroll Holzer, Esq.
Peter Max Zimmerman, Esq.
S.K.

IN THE MATTER OF *
PRIDGEON PROPERTY
WINDEMERE /6 STONEHURST RD *
11TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT *
RE: JSPC DECISION /DENIAL OF PROPOSED
LOT LINE ADJUSTMENT /AMENDMENT TO JSPC *
(Case No. CBA-04-159)
*

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

PETITION FOR JUDICIAL REVIEW

Baltimore County, Maryland, by its undersigned attorneys, hereby requests judicial review of the Opinion and Order of the County Board of Appeals dated January 10, 2008. Baltimore County, Maryland was a party to the proceedings before the County Board of Appeals of Baltimore County in this matter.

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

JOHN E. BEVERUNGEN
County Attorney

NANCY C. WEST
Assistant County Attorney
Office of Law
Courthouse, 2nd Floor
400 Washington Avenue
Towson, MD 21204
Phone: 410.887.4420
Attorneys for Baltimore County, Maryland

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of January 2008 a copy of Baltimore County's *Petition for Judicial Review* was mailed first class to:

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1/10/08

IN THE MATTER OF THE APPLICATION OF JOSEPH STEPCICH – LEGAL OWNER /PETITIONER FOR SPECIAL HEARING ON PROPERTY LOCATED AT 3 STONEHURST ROAD W/S STONEHURST ROAD, 218' S OF C/L OF WINDEMERE PARKWAY 11TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Case No. 06-419-SPH
AND	*	and
IN THE MATTER OF STEPCICH PROPERTY WINDEMERE /3 STONEHURST ROAD 11TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT RE: DRC DECISION /DENIAL OF APPLICANT'S REQUEST TO RECONFIGURE LOTS	* * *	Case No. CBA-06-020
AND	*	and
IN THE MATTER OF PRIDGEON PROPERTY WINDEMERE /6 STONEHURST ROAD PHOENIX, MD 21131 11TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT RE: DRC DECISION /DENIAL OF APPLICANT'S REQUEST TO RECONFIGURE LOTS	* * *	Case No. CBA-06-019
AND	*	and
IN THE MATTER OF PRIDGEON PROPERTY WINDEMERE /6 STONEHURST RD 11TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT RE: JSPC DECISION /DENIAL OF PROPOSED LOT LINE ADJUSTMENT /AMENDMENT TO JSPC	* * *	Case No. CBA-04-159

* * * * * * *

OPINION

The appeals in this matter come before the Baltimore County Board of Appeals as the result of several determinations by the Director of Permits and Development Management. The first was to deny Petitioner Pridgeon's request for a proposed lot line adjustment /amendment to a JSPC subdivision plan and to deny his request to reconfigure lots of record into two buildable lots. He further, in a separate matter, denied Petitioner Stepcich's request to reconfigure his lot

of record into two buildable lots. Petitioner Stepcich additionally appeals to the Board the decision of the Baltimore County Zoning Commissioner granting in part and denying in part his Petition for Special Hearing.

The Board heard these matters on three hearing dates, followed by a public deliberation. The Petitioners were represented by Arnold Jablon, Esquire, and David Karceski, Esquire. The Office of People's Counsel was represented by Peter Max Zimmerman, People's Counsel for Baltimore County; and Protestants were represented by J. Carroll Holzer, Esquire. Baltimore County was represented by Nancy C. West, Assistant County Attorney.

Brian Dietz, a practicing, licensed land surveyor employed by Dietz and Surrey Surveyors, was, after *voire dire*, accepted by the Board as an expert in preparing plats and the minor subdivision process in Baltimore County. He testified that he was hired by Petitioner Stepcich to prepare the plat accompanying the request for an amendment from the DRC of the original JSPC Plan for Mr. Stepcich's property. He related that the original 1970 R-40 zoned lot, which became an RSC zone, permitted one house on 1 acre of land, pursuant to the original development plan. The original subdivision was 19 acres, and had a potential for 19 lots, but only actually had four lots and two parcels platted. He then described the Stepcich request to divide one lot of 5.3 acres into two lots, with sizes of 2 acres and 2.6 acres respectively. Mr. Stepcich resides in one of the two proposed lots and noted that the proposed second lot had already obtained an acceptable perc test.

David Martin, of Martin, Phelps Design and Land Planning, was called by Petitioners and after *voire dire* was accepted as an expert in Baltimore County development and zoning regulations. He testified that the lots in question of the "Windemere Development III" were zoned R.C. 4 when the Petitioners filed with the DRC for the proposed changes, but that it was now R.C. 6 property. He placed before the Board the plat of Section III, superimposed over the

original JSPC Plan. According to his analysis, the JSPC Plan allowed for 17 lots, although by density calculation the whole tract, some 239 lots, would have been permitted. In fact, 183 were actually approved. Section III consists of four lots and two parcels. Turning his attention to Bill 24-06 of the Baltimore County Council, he opined that the lot line adjustments requested by Petitioners were indeed "refinements" and not material changes; that, therefore, the original regulations at the time of the approval of the subdivision and the R 40 zoning would apply. He stated that, while not permitted under the R.C. 6 zoning, the previous R.C. 4 zoning would in fact have presented no bar to the request.

Charlotte Pine, a past president and board member of the Protestant Long Green Valley Association, submitted Rule 8 documentation and testified on behalf of the organization. She was concerned about the fact of resubdividing an older subdivision according to zoning in effect at its inception, in contrast to the requirements of current rules.

Jeffrey Long, Deputy Director of the County Office of Planning, testified as to his view of the applicable zoning of the properties in question. He maintained that County Council Bill 24-06 was simply a re-acknowledgement of what is already County policy. He believes that it was appropriate to deny Petitioners' requests, as the present R.C. 6 zoning does not provide sufficient density for the proposed changes. He believes that once the Council alters the zoning, the old zoning is no longer in effect, nor is it an issue at all. The new density controls – and is the basis for all subsequent requested changes.

Under cross-examination, the witness maintained that he acknowledged no distinction between a "material change" and a "nonmaterial change" or "refinement," and stated that "a change is a change." He disagreed categorically to the contrary position taken by Mr. Kotroco, Director of Permits and Development Management, that the JSPC "refinement" could go forward under the old zoning.

Dr. Eusebio Gonzales, who lives next door to the Stepcich Property, told the Board of his concerns regarding the effect of Petitioner's proposal on the septic arrangements of that portion of Windemere III. He did, however, acknowledge, that his well was presently good and that he is aware of no danger to others in the area, real or anticipated.

The Board has reviewed the full testimony, exhibits, and the applicable statutes and case law relative to the issues raised in this matter. Counsel are correct in that the issue of vesting and changes to existing plans are governed by statute in Baltimore County. We have reviewed County Council Bill 24-06 relating to vesting, as reflected in *Baltimore County Code* (BCC) § 32-4-262 which states:

> (1) Any material amendment to an approved non-residential Development Plan shall be reviewed and approved in the same manner as the original plan.
>
> (2) Any material amendment to an approved residential Development Plan or plat shall be reviewed in accordance with this title, and with respect to that portion of the original plan or plat to which the amendment pertains, the amendment shall be reviewed for compliance with all current law and regulations, including the development regulations and the zoning regulations.

as well as BCC § 32-4-273, which states:

> **§ 32-4-273. TIME LIMIT FOR VESTING.**
>
> (a) *"Same ownership" defined.* In this section the term "same ownership" means an ownership interest by the same individual, corporation, firm, entity, trust, estate, partnership, or unincorporated association.
>
> (b) *Time limit.*
>
> (1) Unless extended under § 32-4-274 of this subtitle, a subdivision plat shall lapse and become invalid for either the entire subdivision or any section or parcel of the subdivision according to the applicable time limits specified under paragraph (2) of this subsection if the subdivision, section, or parcel has not been developed, as provided under subsection (d) of this section.
>
> (2) (i) Except as provided under subparagraph (ii) of this paragraph, a plat, whether recorded or not, shall expire 8 years after the date of approval of the Development Plan pursuant to which the plat was prepared.
>
> (ii) A plat for which there is an approved reclamation plan in accordance with Subtitle 5 of this title shall expire 8 years after the date of CRG approval pursuant to which the plat was approved, but in no event later than 20 years after the date of approval of the reclamation plan by the Planning Board.

(c) *Future development of lapsed subdivision plat.* Upon the lapse of a plat for any undeveloped subdivision, section, or parcel of the subdivision, the future development of the undeveloped subdivision, section, or parcel shall comply with the development laws in effect at the time of its development.

(d) *Development.* A subdivision or section or parcel of the subdivision is considered vested if a building permit has been issued for any lot in accordance with an approved plan or plat, and inspection by the county confirms that substantial construction has occurred within the subdivision, including any lot, tract, section, or parcel thereof, within four years after the date of the final, non-appealable approval of the plan or plat or any extension thereof authorized under § 32-4-261(a).

(e) *Exception.* Lots in the same ownership, not to exceed three in number, if used for single-family dwellings, are exempt from the lapse provisions of this section.

The actual chronological facts as to each Petitioner were presented to the Board and are essentially unchallenged. Petitioner Stepcich lives, since 1970, on a lot of 5.137 acres in Section III of the Windemere Subdivision, which development was approved in 1970. The lot is improved by the Petitioner's residence, constructed in 1972. Petitioner Pridgeon resides in the same section and development on a lot which comprises 3.43 acres. He owns an adjacent parcel of .75 acre.

Petitioner Stepcich inquired as to subdividing his property in 2002. After being informed that the zoning at the time of approval of the subdivision was still controlling, he filed, at the County's suggestion, with the DRC for approval to proceed. By letter dated May 23, 2002 (Petitioner's Exhibit #2) he was advised by the DRC that the original JSPC rules would apply to his current request, that he needed to obtain and file an appropriate transmittal form, and forward a copy to the Office of Planning. He then requested the Baltimore County Planning Board to approve the resubdivision plat of his property. Shortly thereafter, he received a letter from Jeffrey Long, Deputy Director of the Office of Planning, that his JSPC request had been denied.

In August 2004 Petitioner Pridgeon made the same initial request to the DRC as had Stepcich as to what regulations would be applicable regarding requested changes to his two properties. By letter dated September 2, 2004, he was also advised that the original regulations

and zoning controlled and was given the same procedural instructions as Petitioner Stepcich. He did not immediately file with the Planning Board, but was similarly informed in a letter dated December 3, 2004 from Jeffrey Long that the JSPC had, in his case, also turned down his request.

In both instances, Mr. Long has taken the position that, in effect, only present zoning controls present subdivision amendments. He does not appear, pursuant to his testimony and letters, to recognize a difference or, for that matter, the existence of "material" versus "nonmaterial" changes, or "refinements."

The Board believes that, under the statutes listed above, as well as the text of Baltimore County Council Bill 24-06, nonmaterial amendments do, in fact, exist in Baltimore County. It is equally clear that the Baltimore County Council has consistently and most recently in its Bill 24-06 taken the position that **material** amendments in approved developments must comport with presently existing development and zoning regulations. They clearly opted not to include in 24-06 any different treatment of "nonmaterial amendments or refinements" than that which already exists. We conclude that there can be different standards applied to different types of amendments, be they yesterday's standards or regulations or today's. It follows that we then need to inquire whether or not the Petitioners qualify for treatment by the earlier regulations.

Therein lies the underlying question in this matter of whether or not the Petitioners are "vested," that is, do they have a right to rely upon the regulations existing at the time of the original development approval under the JSPC process, including the original R 40 or RSC zoning.

As stated before, vesting in Baltimore County is defined by statute. Under § 32-4-273(d)(2), an approved development plan had been granted for Windemere Section III, both Stepcich and Pridgeon had obtained building permits and had constructed homes. We disagree

with Mr. Long and the Protestants and find that, under the auspices of Bill 24-06, the granting of a permit for one lot in Windemere vested the subdivision for purposes of later change requests. Moreover, the County Council in 2003 clearly set forth in what was then § 32-4-273(b)(d) that the issuance of a building permit for a lot or substantial construction thereupon vested the property in question. The change in Council Bill 24-06 was only to separate out and enunciate a new requirement as to "material" changes, but allowed other parts of the existing law to remain unaffected—namely the treatment of "nonmaterial" changes to property, which were still subject to the status quo of statutory vesting and amendment according to the zoning requirements existing at the moment of vesting.

Accordingly, we find that the amendments requested by Petitioners Stepcich (to divide his lot into two lots) and Pridgeon (to alter a lot line) are "nonmaterial" changes or "refinements" to the existing Windemere III subdivision. We further conclude that the properties of both Petitioners are vested under Baltimore County statute by the issuance of building permits and construction thereupon. We therefore unanimously conclude that, based upon the foregoing, Petitioners Stepcich and Pridgeon may process their respective requests pursuant to the existing JSPC procedures and subject to the zoning regulations and density requirements in existence at the time of vesting.

ORDER

IT IS THEREFORE this 10th day of January, 2008, by the Board of Appeals for Baltimore County,

ORDERED that the request for special hearing in Case No. 06-419-SPH be and the same is hereby **GRANTED**; and it is further

ORDERED that the request to reconfigure lots of record into two buildable lots in Case No. CBA-06-020, 3 Stonehurst Road, Stepcich Property, be and the same is hereby **GRANTED**; and it is further

ORDERED that the request to reconfigures lots of record into two buildable lots in Case No. CBA-06-019, 6 Stonehurst Road, Pridgeon Property, be and the same is hereby **GRANTED**; and it is further

ORDERED that the request for a lot line adjustment /amendment to JSPC subdivision plan, in Case No. CBA-04-159, 6 Stonehurst Road, Pridgeon Property, is therefore rendered **MOOT**.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence M. Stahl, Panel Chairman

Wendell H. Grier

Edward W. Crizer, Jr.

County Board of Appeals of Baltimore County

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January 11, 2008

Arnold Jablon, Esquire
Venable, Baetjer & Howard, LLP
210 Allegheny Avenue
Towson, MD 21204

RE: *In the Matter of: Joseph Stepcich /Stepcich Property*
Case No. 06-419-SPH and Case No. CBA-06-020 and
Pridgeon Property / Case No. CBA-06-019 and
Case No. CBA-04-159

Dear Mr. Jablon:

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 matters.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **with a photocopy provided to this office concurrent with filing in Circuit Court. Please note that all subsequent Petitions for Judicial Review filed from this decision should be noted under the same civil action number as the first Petition.** If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Kathleen C. Bianco

Kathleen C. Bianco
Administrator

Enclosure

c: Office of People's Counsel
David Karceski, Esquire
Mr. and Mrs. Joseph Stepcich (3 Stonehurst)
Mr. Richard Pridgeon (6 Stonehurst)
Brian R. Dietz
J. Carroll Holzer, Esquire, Counsel for
Carol Trela / Long Green Valley Association
Donna Spicer
Adrienne True and Kim Ward
Dr. Eusebio Gonzales
Timothy M. Kotroco, Director /PDM
Pat Keller, Planning Director
William J. Wiseman III /Zoning Commissioner
Jeffrey Long, Deputy Planning Director
Caren B. Hoffberger /Planning
Jeff Mayhew, Chief /Community Planning
Lynn Lanham, Chief /Development Review
Nancy C. West, Assistant County Attorney

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7/23/07

IN RE:	**RESUBDIVISION** Stepcich Property, Lot 3 Windemere (3 Stonehurst Road)	*	BEFORE THE
		*	BALTIMORE COUNTY
	6th Election & 11th Councilmanic Districts	*	BOARD OF
		*	APPEALS
	Legal Owner(s): Mr. & Mrs. Joseph Stepcich	*	CASE NOS. 06-419 SPH & CBA-04-157

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

IN RE:	**JSPC DECISION** Pridgeon Property, Lot 3 & Parcel B Windemere (6 Stonehurst Road)	*	BEFORE THE
		*	BALTIMORE COUNTY
	11th Election & 3rd Councilmanic Districts	*	BOARD OF
		*	APPEALS
	Legal Owner(s): Mr. Richard Pridgeon	*	CASE NO. CBA-04-159

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

BALTIMORE COUNTY, MARYLAND'S MEMORANDUM

Baltimore County, Maryland, by John E. Beverungen, County Attorney, and Nancy C. West, Assistant County Attorney, hereby submits this Memorandum as requested by the County Board of Appeals ("CBA") at the conclusion of day three of the hearings relative to the above referenced consolidated cases. This Memorandum is limited to a discussion of the testimony of Jeffrey Long, Deputy Director of the Office of Planning for the County.[1] The County hereby adopts the Pre-Hearing Memorandum filed by the People's Counsel, Peter Max Zimmerman, in this matter, as well as his post-hearing letter. Mr. Zimmerman's submittals provide an excellent overview of the complicated procedural history and factual background of these consolidated cases, as well as a discussion of the relevant law applicable to the issues

[1] Mr. Long testified before the County Board of Appeals on May 15, 2007, which was day three of the proceedings. T. refers to the transcript of his testimony that is attached hereto for the CBA's convenience.

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before the Board. This Memorandum is intended to buttress Mr. Zimmerman's well articulated argument that

> **[i]t is common sense that when the County Council reclassifies property to a more restrictive zoning classification, property owners in an existing subdivision do not have *carte blanche* to expand and to resubdivide lots in a way prohibited by the new zoning classification and density controls. The County Council certainly knew in 1976 that the Windemere subdivision was in place when it reclassified the area to the Watershed Protection Zone, and again in 2004 when it changed the classification to Rural Conservation and Residential Zone. There would have been no point to these legislative actions if the lot owners could operate as if they were in a time machine returning to 1970.**

People's Counsel Memorandum at 7.

TESTIMONY OF JEFFREY LONG

The County presented Jeffrey Long ("Long"), Deputy Director of the Office of Planning ("Planning"), and a county employee with over 28 years experience in planning, zoning, and subdivision regulations. He was accepted as an expert. Long opined that neither the Stepcich nor the Pridgeon properties have any subdivision potential regardless of whether one considers their requests under the former or current zoning. (T. at 12). Upon questioning by Arnold Jablon ("Jablon"), counsel for Stepcich and Pridgeon, Long noted that as far as any proposed changes to an approved development plan, Planning does not make a distinction between a "material change" and a "refinement." (T. at 53). While Long acknowledged the Development Management Policy Manual that was adopted pursuant to the Code of Baltimore County Regulations, he averred that he did not refer to it when considering the issue of vesting.

> **Q. Is it not true that the policy that I was just referring to has been applied to not just the CRG, but to the development regulations that are currently in place?**
>
> **A. Yes.**
>
> **Q. Correct?**

A. Yes.

Q. So you would agree then that this policy is what you would look at when you're interpreting Bill 24-06?

MR. ZIMMERMAN: Objection.

A. I would look at something that was actually created in 2007 before I would really focus on something that's as old as this. Again, as I stated earlier, 24-06 confirms what the office of planning—I understand, I think we all understand—that the office of planning and the zoning office or PDM over the years have not been able to reconcile their philosophical differences that we have with respect to vesting as it applies to zoning, although I think, today, we are together in terms of our position on that.

THE CHAIRMAN: Both offices are as a matter of policy?

THE WITNESS: Both.

Q. Let's talk simply a (sic) policy that's been adopted pursuant to the Baltimore County Code of Regulations that says that.

A. I don't think I have to show you a policy. We can look to the law for direction on the laws of vesting.

Q. Let's look at Bill 24-06, to the paragraph I just read. It uses the words "material amendment". Would you not agree that in order to interpret, to define "material amendment", that you would go to the adopted policy in place?

A. No. 24-06, we're happy it was adopted, but in terms of how we apply our position with regard to vesting, particularly with respect to zoning, 24-06 is great, but entirely unnecessary as far as we're concerned. It's icing on the cake.

Q. I understand. Let's assume for the moment though—and I recognize you're an expert witness—let's throw out there for a moment, a hypothetical.

A. Okay.

Q. Assuming for the moment that the development management policy manual is, in fact, in effect for the purposes of Bill

24-06, and further that the definition of material change as set forth in that policy manual is the term of art that we would apply.

A. I'm not so sure it's the same term of art that was applied in the legislation as is what's found in the policy manual, Mr. Jablon.

Q. Is there a definition of material change in Bill 24-06?

A. I'd have to refresh my memory.

MR. ZIMMERMAN: Is Bill 24-06 an exhibit?

MR. JABLON: It's thirteen.

A. I'm sorry. I'm not finding it upon review.

Q. If you can't find it, can we assume for the purposes of the hypothetical that there is no definition in the Bill?

A. That may be so.

Q. So if there is no definition in the Bill, and if we apply the hypothetical—I know you disagree with it, the hypothetical—but if the only definition is found in the development management policy manual, would you not agree, therefore, that there is a difference between a material change and something other than a material change?

MR. HOLZER: Objection. He's asked that question twice. Mr. Long answered it twice. And each time, he answered it consistently.

MR. JABLON: But he's looking at it in terms of the policy that they haven't adopted. I am asking, based on my hypothetical of the policy manual that has been adopted. The policy manual does, in fact, this exhibit I've introduced, differentiates—

THE CHAIRMAN: Well, as a hypothetical, if you're asking him to use that as the only basis for whatever value that hypothetical is, he can answer.

* * * * * *

Q. If, in fact, the policy manual's definition of material change and refinement - for the purpose of my hypothetical - would

you agree for the purpose of Bill 24-06, the use of the term material change was referring to or could have been referring to or should be referring to the differences between what the policy manual calls material change and refinement?

MR. HOLZER: Objection.

THE CHAIRMAN: I'll let him answer.

A. That's an impossible question to answer, really, because there's too many "should haves", "could haves", and you have taken the hypothetical to the extreme.

Q. I am the one asking the question.

A. I understand.

Q. Do you have an answer?

A. I am attempting to answer it. I can't give you a sufficient answer to the question as you've presented it.

Q. If, in fact, the term refinement as used if the policy manual is applicable to Bill 24-06 – if it were – I know you're not going to agree – but if it were --

MR. HOLZER: Objection.

Q. -- if it were, would you not agree that if a change to a previously approved plan were to be considered a refinement, then the old zoning regulations and the old development regulations are applicable?

A. The distinction between a refinement and material amendment would have no bearing whatsoever on whether a property for zoning purposes was considered vested.

T. at 55- 61.

On redirect by People's Counsel, Long indicated that Petitioner's Exhibit No. 10, which was a January 21, 2004 letter to Stepcich from the Office of Planning, was "inartfully written". T. at 69. In response to further questioning by Chairman Stahl, Long opined that,

I don't think that I am really—and this is a fine point—disagreeing with what's said in the letter as much as I am critiquing the message that it conveyed.

I'm saying that the message would be the same, but it could have been conveyed in a clearer manner so that the person who received this would know what it means.

* * * * * *

I think the statement is unclear. I think it means to say that if you have a recorded lot in an R.C. 4 Zone, you can put a house on that lot.

We are not going to suddenly say since the zoning changed to R.C. 7, you can't do that anymore because of other regulations that apply.

So if you are in a subdivision and you own a record lot, and that record lot has not been improved with a house, you can do that.

But I think, in my opinion, it's reading a lot into this to say that the R.C. 7, if applied, would have no consequence whatsoever over the R.C. 4. It does not say that.

Q. It does not say that, in your opinion?

A. In my opinion, yes, sir."

T. at 74-75. By way of illustration, Long stated that if Stepcich today wanted to put a house on the lot that he bought in 1970, after it has sat vacant all these years, that he would approve a permit. Such a scenario is far different from the subdivision approval that Stepcich now seeks. T. at 75-76.

Next, People's Counsel asked Long about Section 1A00.4 of the Baltimore County Zoning Regulations ("BCZR") that pertains to plans and plats. It provides that

> **[d]evelopment plans and final subdivision plats shall be required in the manner prescribed under Section 1B01.3, and for the purpose of this section, all references to D.R. Zones shall include the R.C. Zone.**

Zimmerman also asked Long about 1B01.3.B.2 of the BCZR, which states that

It is the intent of these zoning regulations to prohibit subdivision or resubdivision of portions of a tract in a D.R. zone in a manner so as to exceed the total number of dwellings for density units allowed on the applicable D.R. zone – parenthesis---asked for the entire tract.

T. at 77. Long noted that both regulations were instructive with regard to the instant case and consistent with his testimony.

In response to further questioning by Jablon, Long concurred that a lot line adjustment may qualify as a limited exemption from the subdivision process. Yet he stressed that, **"[i]f the lot line adjustment would be for density purposes, in all likelihood, the limited exemption would not be granted."** T. at 85. Jablon then asked Long to accept that as a hypothetical and asked him whether Pridgeon's parcel met the R.6 lot size requirements for density. Long responded:

A. It doesn't matter to me because I make a distinction between a lot and a parcel.

Q. What's the difference?

A. Lots are meant for development. Parcels can be created for a myriad of reasons.

T. at 87. Long asserted that Pridgeon could not construct a house on property that was zoned R.6 or R.40, or R.S.C. in 1970, although it met the zoning regulations as to those zones, because **"it wasn't designated as a lot at the time the plan was recorded."** T. at 86-87. As to Planning's position with regard to the various hypotheticals proferred by Jablon, Long opined:

My correct statement would be that – and I believe we started out with this -- that it would not be appropriate in the position of the office of planning, my position, to allow for a house to be constructed on Pridgeon, because it's a parcel.

I think I later said that if it had been designated a lot, we wouldn't be here today on Pridgeon.

But at the time the Windemere plat was recorded, this was identified as a parcel and not as a lot. And parcels are not always developable tracts of land.

So, therefore, a parcel that was recorded as part of a former zoning classification would not be treated the same as a lot under a newer zoning classification.

And the lot line adjustment further complicates it because it needs additional land in order to make it work.

So we are taking essentially a non-conforming situation in order to comply with a regulation that is over three decades old, which is ludicrous.

T. at 89-90.

THE APPLICABLE LAW

In *Yorkdale Corporation v. Powell*, 237 Md. 121, 205 A.2d 269 (1964), the Court of Appeals addressed a situation in which a property owner had negotiated the zoning reclassification of its property in order to build an apartment building. Yorkdale also applied for a special exception and variance that was granted by the zoning commissioner although the number of units in the apartment building were limited, i.e., the density of the zoning. On appeal the Circuit Court found that the then current law did not authorize a variance in density. Yorkdale appealed to the Court of Appeals, and after argument, but before a decision was issued, a bill was passed by the county council that amended the law relative to the granting of variances as to density. The Court held that "Maryland consistently had followed the rule that '[a]n appellate court is bound to decide a case according to existing laws, even though a

judgment rightful when rendered by the court below should be reversed as a consequence." Id. at 124.

Recently the Court of Appeals had occasion to revisit *Yorkdale* and those cases preceding and following it that created an exception in land use cases to the general rule that statutes are presumed to operate prospectively. In *Layton v. Howard County Board of Appeals,* 399 Md. 36, 922 A.2d 576 (2007), the Court held that a subsequent change to the zoning law regarding the definition of an animal sanctuary applied retroactively to the operator of a not-for-profit wildlife and primate sanctuary. Speaking for the Court, Judge Cathell provides an excellent discussion of those cases decided since *Yorkdale*, which have held that a zoning case must be decided upon the law applicable at the time a case comes before the Court, in the absence of intervening vested rights. He noted that in *Mandel v. Board of County Comm'rs of Howard County,* 238 Md. 208 (1965) the property owners "had applied to the Board to use their respective properties for high-rise apartments under the zoning regulations then existing." During the course of litigation, the applicable zoning regulations were changed to disallow high-rise apartments. Applying the Yorkdale rule, the Court decided against the property owners because they had not secured a final decree establishing their rights to use their properties for the use permitted under the former classification. Id. at 56.

Yorkdale and its progeny have never been overruled, are still good law and are dispositive of the issues before this Board. Following the Court's decision in *Yorkdale*, and its most recent pronouncement in *Layton*, this Board should deny the Stepcich and Pridgeon requests for material amendment to the approved development plan and likewise deny the Stepcich Petition for Special Hearing. As People's Counsel has noted "[i]t is clear that the

entire subdivision tract, Section III, and every lot in it fail to comply with the later enacted R.C. 4 Zone and R.C. 6 Zone .2 density limits, lack the required conservancy area, and do not satisfy the relevant performance standards." This Board must deny the requested relief.

John E. Beverungen
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of July 2007, a copy of the foregoing Baltimore County, Maryland's Memorandum was hand delivered to: Peter Max Zimmerman, People's Counsel, Old Courthouse, 400 Washington Avenue, Towson, MD 21204; and mailed via first-class mail to: Arnold E. Jablon, Esq., Venable LLP, 210 Allegheny Avenue, Towson, MD 21204, and J. Carroll Holzer, Esq., Holzer and Lee, P.A., 508 Fairmount Avenue, Towson, MD 21286.

Nancy C. West
Assistant County Attorney

7/23/07

IN MATTER OF: Stepcich Property, Section III Windemere 3 Stoenhurst Road Phoenix, Md 21131	*	BEFORE THE COUNTY BOARD OF APPEALS
	*	OF BALTIMORE COUNTY
	*	
	*	Case No.: 06-419SPH CBA 06-020
Pridgeon Property, Section III, Windemere 6 Stonehurst Road Phoenix, Maryland 21131	*	
	*	Case No. CBA 06-019
6th Councilmanic District 11th Election District	*	

* * * * * * * * *

PETITIONERS' POST-HEARING MEMORANDUM

Petitioners Joseph and Joy Stepcich and Richard Pridgeon, by Arnold Jablon with Venable, LLP, their attorney, hereby submit this Hearing Memorandum for consideration by the County Board of Appeals.

PROLOGUE

This is the tale of the Quest for the Holy Grail, worthy of the best of Monty Python. It's a story about the "vesting".

It's a story that has wound its way over four years up and through the Development Review Committee (hereinafter referred to as "DRC"), to the Planning Board, to the Board of Appeals, then to the Zoning Commissioner, and, back to the DRC, and now, for the second time, to the Board of Appeals. It's a story all about the "vesting".

RECEIVED
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BALTIMORE COUNTY
BOARD OF APPEALS

The Petitioners are now before the Board because they followed the rules laid down by their County government, only to be later told that the rules no longer matter. The Petitioners are Mr. and Mrs. Stepcich and Mr. Pridgeon. The Petitioners Stepcich own one lot in the Section III, Windemere subdivision, which they propose to re-subdivide into two lots. The Appellant Pridgeon is the owner of two lots in the same subdivision. He proposes a lot line adjustment to make one lot bigger at the expense of the other. Mr. and Mrs. Stepcich reside on their lot; Mr. Pridgeon resides on one of his lots.

Chapter I

The Subdivision Known as Windemere

Stepcich

Stepcich reside at 3 Stonehurst Road, in Phoenix, Maryland 21131, which is located between Dulaney Valley Road and Manor Road, off of Windemere Parkway. Their property is a lot of record identified as lot "1" , now known as 3 Stonehurst, on the plat known as "Section III, Windemere" (hereinafter referred to as "Section III"). See **Petitioners Exhibit 1**. The plat was approved by the Baltimore County Planning Board on 19 February 1970.and recorded amongst the Land Records of Baltimore County on 24 February 1970 in OTG 34, Folio 10. The lot consists of 5.137 acres. Stepcich purchased lot 1 in or about 1970, built his home on or about 1972 and has resided therein continuously to this date. The lot was purchased subject to a Declaration recorded by the owner and developer of Section III, executed on 2 September 1970 and recorded at Liber 5191, Page 243 of the Land Records, which provides in pertinent part, in paragraph 9,

page 3, that "Nothing in these restrictions shall be construed to prohibit future subdivision of any parcel into R-40 residential lots. This means a lot containing at least 40,000 square feet and at least 150 feet wide at the building line." See **Petitioners Exhibit 9**.

Section III consisted of 19.035 +/- acres at the time of its approval in 1970 and was zoned either R-40 or RSC. Bill 100-70 was adopted at or around the time Section III was approved and the R-40 zone became the RSC zone. The RSC zone, as the R-40 zone, permitted a minimum lot size of 1 acre. Section III had sufficient density under either the R-40 or the RSC regulations for 19 lots; however, only 4 lots and 2 parcels were requested and approved. Subsequently, the property was rezoned to RC 4, and, in 2004, was rezoned to RC 6.

David Martin, accepted by the Board as an expert in land use and zoning in Baltimore County, testified that he had superimposed the plat of Section III, Windemere, over the original JSPC plan (**People's Counsel Exhibit 2**), which was approved in 1956. *See* **Petitioners Exhibit 23 and Exhibit 24.** He highlighted the divisory lines of Section III on the JSPC plan. The area shown, he attested, actually represented the very similar line of division between Section III and the other sections as they were platted in Windemere. **Transcript (hereinafter referred to as "T"), 4/24/07, p31, lines 3-13.** Mr. Martin testified based on his analysis of the plat for Section III as it relates to the JSPC plan, the JSPC plan permitted for 17 lots. **T, 4/24/07, p. 34, line 20**. Mr. Martin further testified, based on the 38.16 acres of the entire tract, the gross density would have

permitted 239 lots. 183 were actually approved. **T, 4/24/07, p. 36, lines 6-13.** Six were approved for Section III, four lots and two parcels.

Chapter II

DRC I

Stepcich in early 2002 asked the Zoning Office to verify that lot 1 could be subdivided. In its response, dated 8 February 2002, the Zoning Office advised that the subdivision regulations and zoning governing a proposed subdivision were that which were in place at the time of the original approval, in 1970. In other words, Stepcich was "vested". The letter suggested that Stepcich file with the DRC to determine whether the subdivision, Windemere, was vested. See **Petitioners Exhibit 12**. Stepcich then filed with the DRC for approval to subdivide.

On 23 May 2002, the DRC by letter to Stepcich issued its final decision as follows:

"The DRC has determined that your project was originally approved by the Joint Subdivision Planning Committee (JSPC). You may process a plan with changes to the last approved JSPC in compliance with JSPC regulations. To submit a JSPC plan for consideration, please contact this office for a transmittal form. It is also necessary to submit a plan to the Office of Planning for further review."

See **Petitioners Exhibit 2.**

Chapter III

DEPRM

Based on the information provided and the decision rendered by the DRC, Stepcich proceeded to prepare and then submit to the Department of Environmental Protection and Resource Management (DEPRM) a "Perc Plan of Stepcich Property". See **Petitioners Exhibit 15**. On June 3, 2003, DEPRM approved the installation of a private sewage disposal system for the proposed lot 2. See **Petitioners Exhibit 14**.

Chapter IV

2004 Comprehensive Maps

By this time, the 2004 Comprehensive Zoning Map Process (CZMP) had commenced. Stepcichs' property was placed into the CZMP at the request of the Planning Board. Their property, along with Pridgeon's, was included for consideration in Issue 3-105, for possible down zoning from RC 4 to RC 7. See **Petitioners Exhibit 10.** On or about 21 January 2004, Stepcich received notice from the Office of Planning in which they were informed that their property was at issue for a zoning change, its potential impact, and the reasons for the Planning Office's request. See **Petitioners Exhibit 10.** Included in the notice was the following paragraph:

> Existing lots in recorded subdivisions would continue to be regulated by the zoning regulations that were in effect at the time the existing lot was created.

Id.

In fact, the County Council did rezone both the Stepcich and the Pridgeon properties to RC 6.

Chapter V

Planning Board

Stepcich pressed on. Armed with the DRC letter of May 2002, the approval by DEPRM, and with the CZMP notice in hand, Stepcich filed with the Planning Board of Baltimore County a request to approve their amendment to the Section III, Windemere plat to approve the subdivision of their lot.

In support of their request, the Director of the Department of Permits and Development Management (PDM) sent a letter, dated 28 May 2004, to the Chairman of the Planning Board in which he confirmed the position of PDM that Section III, Windemere was vested and governed by the laws and regulations in effect at the time of the original plan approval. He concluded that "This includes further subdivision of lots that were created by the original plan, and is controlled by the zoning classification then in effect." See **Petitioners Exhibit 11.**

While the approval of their plan was pending before the Planning Board, the Office of Planning, by letter from Jeffrey Long, Deputy Director, notified Stepcich that the JSPC had denied their request. They appealed.

Chapter VI

Board of Appeals I

In Case No. CBA 04-157, the Board of Appeals reversed the Office of Planning. The Board's decision remanded the case back to the Planning Board.

Chapter VII

Zoning Commissioner

Stepcich, subsequent to the Board's decision in Case No. CBA 04-157, filed a Petition for Special Hearing with the Zoning Commissioner, Case No. 06-419SPH. They requested the Zoning Commissioner confirm that the zoning regulations in place at the time of the original approval of Section III, Windemere governed their proposed subdivision. The Zoning Commissioner agreed in part and disagreed in part. Stepcich and People's Counsel appealed to the Board of Appeals.

While the appeal from the Zoning Commissioner's order was pending, the County Council weighed in.

Chapter VIII

DRC Revisited, Part II

The Council decided to change the rules of vesting as they were to be applied in the County. By Bill No. 24-06, the County Council amended certain sections of the Baltimore County Code and Zoning Regulations to effect the application of vesting in the County. **Petitioners Exhibit 13.** After Bill No. 24-06 was adopted, Stepcich filed a letter with the DRC in which he requested that their proposed re-subdivision be considered a material change. See **Petitioners Exhibit 7**. The DRC denied their request. See **Petitioners Exhibit 8**. Stepcich appealed, Case # CBA 06-020.

Chapter IX

Pridgeon

More Windemere

Pridgeon resides at 6 Stonehurst Road, Section III, Windemere, identified on **Petitioners Exhibit 1** (the record plat for Section III, Windemere) as Lot 3. He also owns parcel B, as also shown on the plat, which is immediately contiguous to Lot 3. David Martin testified that Pridgeon resides at 6 Stonehurst, Lot 3, and proposes a lot line adjustment to allow Parcel B to meet the R-40 or RSC zoning area requirements to permit one house. **T, 4/14/07, p. 12, lines 17-21, p. 13, line 1.** Martin prepared a site plan, **Petitioners Exhibit 20**, which more particularly described the Pridgeon proposal. Lot 3 is 3.43 acres; Parcel B is 0.75 acre. The proposal is to adjust the lot size of Lot 3 to 2.57 acres and Parcel B will then become 1.61 acres. If the lot line adjustment were to be approved, both lots would meet the RSC zoning requirements, and, therefore permit a house on each lot.

Under either R-40 or the RSC zoning, there was sufficient density for Lot 3 to have been subdivided into 3 lots.

Pridgeon is not requesting a subdivision, but a lot line adjustment, which is an exemption to the subdivision regulations.

Chapter X

DRC I

Appellant Pridgeon (hereinafter referred to as "Pridgeon") made application to the DRC in or about August, 2004, prior to the adoption of Bill 24-06, in which he proposed

to move a lot line between two adjacent lots he owns, located in Section III, Windemere. See **Petitioners Exhibit 16.** On or about 2 September 2004, Pridgeon received a letter from the DRC, dated 2 September 2004, in which the DRC concluded that his proposal was governed by the regulations in effect at the time Section III was approved, specifically the JSPC process. Pridgeon was advised to submit a JSPC plan to the Office of Planning and DEPRM, exactly as Stepcich had been told. **Petitioners Exhibit 17.**

Chapter XI

Denial by Office of Planning

Before Pridgeon could submit his JSPC plan to the Planning Board, Jeffrey Long, the Deputy Director of the Office of Planning, similarly as he had done Stepcich notified Pridgeon, by letter dated 3 December 2004, that the JSPC had denied his request for a lot line adjustment because the properties zoning had changed since the original lots were recorded. **Petitioners Exhibit 18.** Pridgeon noted an appeal in timely fashion, Case No. CBA 04-159. This appeal is not presently before the Board.

Chapter XII

DRC Revisited—Part II

After Bill No. 24-06 was adopted, Pridgeon filed a letter with the DRC, in which he requested that the lot line adjustment he proposed in 2004 be considered a material change. See **Petitioners Exhibit 21**. The DRC denied his request. See **Petitioners Exhibit 22**. Pridgeon appealed, Case No. CBA06-019.

ISSUES PRESENTED

While the story tells of a rather tortuous path, the essential issue is not complicated. It's all about the "vesting". The one question common to each appeal is what constitutes "vesting" in Baltimore County?

I. If not a "material change", then what?

II. Is the DRC letter of 2002 to Stepcich a final and binding decision requiring the County to apply the zoning in place at the time Section III, Windemere, subdivision was approved?

III. What constitutes "vesting" for zoning purposes of a previously approved subdivision?

ARGUMENT

"It's all about the Vesting"

Chapter XIII

I. Bill No. 24-06 confirms that the proposed changes are subject to the zoning in place at the time of the original approval.

Bill 24-06 clearly and unambiguously confirms the historical application of vesting, as described by the County Attorney in 1984 and applied by the Courts. *See Petitioners Exhibits E, F, G and H, more particularly referred to below.*

§32-4-262 (1), BCC, as amended by Bill 24-06, now states as follows:

> "Any material amendment to an approved ***non-residential*** development plan shall be reviewed and approved in the same manner as the original plan." (emphasis added)

The Council modified the original language by adding the phrase "non-residential". Commercial and industrial plans are, and have always been, subject to the laws and regulations in place at the time of their original approval.

§32-4-262 (2), as amended by Bill 24-06, now states as follows:

> "Any ***material amendment*** to an approved ***residential development*** plan or plat shall be reviewed in accordance with this title, and with respect to that portion of the original plan or plat to which the amendment pertains, the amendment shall be reviewed for compliance with all current law and regulations, including the development regulations and the zoning regulations." (emphasis added)

The Council modified the original language by deleting "Any other material amendment shall be in accordance with the comprehensive manual of administrative policy" and substituting the language as cited. Only a material amendment is subject to the current **development and zoning regulations.** By doing so, the County Council further confirmed and emphasized its intention to protect the legal sanctity of previously approved plans.

Bill 24-06 continues to permit changes, material or otherwise, to non-residential development, subject to the original regulations in place at the time of the original approval. Bill 24-06 continues to permit ***non-material*** changes to ***residential*** development subject to the original regulations in place at the time of the original approval. (emphasis added)

While Bill 24-06 does not define "material", the County Council makes clear that there is a distinction between what should be controlled by current law and what should be controlled by the law in effect at the time a plan was originally approved.

Chapter XIV

Office of Planning Revisited

Policy vs. Law, The End Game

Notwithstanding, the language of the legislation, Jeffrey Long, Deputy Director of the Office of Planning, testified that the position of the Office of Planning is that there is no distinction between a "material" change and a "refinement". He further testified "that any change to an approved plan would have to be reviewed under the current zoning regulations." **T, 5/15/07, p. 53, lines 6-10**. He admitted that there was not a written much less a legally adopted policy that supports this position. **Id., line 16.** When shown **Petitioners Exhibit 26**, the definitions of "material amendment" and "refinement" contained in PDM's Development Management Policy Manual, Mr. Long further admitted that there is a policy adopted pursuant to the Code of Baltimore County Regulations that defines the terms, and that he is familiar with them. **Id., p. 53, lines 17-21, p. 54, lines 1-11.** He testified as follows:

> Q. Let's talk simply a policy that's been adopted pursuant to the Baltimore County Code of Regulations that says that.
>
> A. I don't think I have to show you a policy. We can look to the law for direction on the laws of vesting.
>
> Q. Let's look at Bill 24-06, to the paragraph I just read. It uses the words "material amendment" Would you not agree that in order to interpret, to define "material amendment", that you would go to the adopted policy in place?
>
> A. No. 24-06, we're happy it was adopted, but in terms of how we apply our position with regard to vesting, particularly with respect to zoning, 24-06 is great, but entirely unnecessary as far as we're concerned. It's icing on the cake.

Id. p 56, lines 10-21, p. 57, lines 1-3.

So, there it is. The law matters, but it really doesn't matter: "We, the Office of Planning, will interpret and apply the law the way we believe it should be, the Holy Grail of development law."

CART MASTER: Bring out your dead!
[clang]
Bring out your dead!
[clang]
Bring out your dead!
[clang]
Bring out your dead!
[clang]
Bring out your dead!
[cough cough...]
[clang]
[...cough cough]
CUSTOMER: Here's one.
CART MASTER: Ninepence.
DEAD PERSON: I'm not dead!
CART MASTER: What?
CUSTOMER: Nothing. Here's your ninepence.
DEAD PERSON: I'm not dead!
CART MASTER: 'Ere. He says he's not dead!
CUSTOMER: Yes, he is.
DEAD PERSON: I'm not!
CART MASTER: He isn't?
CUSTOMER: Well, he will be soon. He's very ill.
DEAD PERSON: I'm getting better!
CUSTOMER: No, you're not. You'll be stone dead in a moment.

CART MASTER: Oh, I can't take him like that. It's against regulations.

Monty Python and the Holy Grail, Scene 2.

[spooky music]
[music stops]
HEAD KNIGHT OF NI: Ni!
KNIGHTS OF NI: Ni! Ni! Ni! Ni! Ni!
ARTHUR: Who are you?
HEAD KNIGHT: We are the Knights Who Say... 'Ni'!
RANDOM: Ni!
ARTHUR: No! Not the Knights Who Say 'Ni'!
HEAD KNIGHT: The same!
BEDEVERE: Who are they?
HEAD KNIGHT: We are the keepers of the sacred words: 'Ni', 'Peng', and 'Neee-wom'! *{It's all about the Vesting!}*

Monty Python and the Holy Grail, Scene 13

The Planning "policy" makes no sense. If a proposed change is not a material change, then the change must be something other than a material change. The law makes a clear distinction. There must be a distinction in practice. If it is not a material change, then it is not subject to the current development and zoning regulations; rather to those that were in effect at time of the original plan approval.

Chapter XV

Office of Planning Revisited, Part II

And then there's Petitioners Exhibit 10, the letter from the Office of Planning in which the Office assured property owners that "existing lots in recorded subdivisions

would continue to be regulated by the zoning regulations that were in effect at the time the existing lot was created." **Petitioners Exhibit 10.**

Of course, Mr. Long testified this doesn't mean what it says it means.

> A. Yes. If you read the last sentence, it says existing lots in recorded subdivisions will continue to be regulated by the zoning regulations that were in effect at the time the existing lot was created. I think you have to focus on two things here.

T, 5/15/07, p. 71, lines 7-11.

> A. I think that the first paragraph is informational and I think a lot of people have read a lot into it.
> Could it have been written better? Absolutely, yes. I think it's giving two pieces of information. There are two separate densities that are allowed in the RC 7—I'm sorry—one for RC 7, one for RC 4.
> However, if you have an existing lot of record that is zoned RC 4, the regulations that are in place, that were in place in 2007, would apply with respect to setbacks and other things like that, but not—certainly not to re-subdivision. We would never say that.
> Q. When you say the regulations were in place in 2007, did you mean in 2004?
> A. 2004.

T, 5/15/07, p. 72, lines 16-21; p. 73, lines 1-8.

> The Witness: Mr. Chairman, I don't think that I am really—and this is a fine point—disagree with what's said in the letter as much as I am critiquing the message that it conveyed.

T, 5/15/07, p. 74, lines 4-7.

> A. I think the statement is unclear. I think that it means to say that if you have a recorded lot in an RC 4 zone, you can put a house on that lot.
> We are not going to suddenly say since the zoning changed to RC 7, you can't do that anymore because of other regulations that apply.

T, 5/1/5/07, p. 74, lines 17-21; p. 75, lines 1-4.

HEAD KNIGHT: We are the keepers of the sacred words: 'Ni', 'Peng', and 'Neee-wom'! {vesting!}

Monty Python and the Holy Grail, Scene 13.

The Office of Planning, according to Mr. Long, would have no problem in applying the area requirements of the zoning in place at the time of the original subdivision approval and not require the application of the current zoning no matter if the current zoning is more stringent. The Office of Planning, however, according to Mr. Long, does have a problem with applying the original zoning if the original zoning would permit a re-subdivision. He can point to no law that permits such a dichotomy. Indeed there is none.

Chapter XVI

"It's All About the Vesting"

People's Counsel

The Board need not go any further than to Bill 24-06. This legislation provides clear direction to the County Council's view of vesting as it had been applied prior to its adoption and how it will be applied now.

By his letter memorandum to the Board, dated 23 May 2007, People's Counsel argues that the Petitioners here are subject to the provisions of Bill 24-06. His letter advances the argument the Petitioners are subject to current laws, both development and zoning. In fact, Bill 24-06 supports Petitioners' arguments as they are more particularly set forth herein. If Bill 24-06 applies, the DRC already determined the proposed changes are ***not*** material; thus, they must be refinements. People's Counsel did not appeal the DRC's decisions that the Petitioners' proposed changes were not material. People's Counsel offered no testimony to rebut the decisions of the DRC. Neither the Office of Planning nor the Protestants offered any evidence to rebut the decisions. Contrary to People's

Counsel's assertion, the instant proposals are refinements, as found by the DRC. No evidence was presented to contradict those decisions. If Bill 24-06 applies, the zoning in effect at the time Windemere was originally approved governs.

Bill 24-06 clearly, unambiguously and most evidently, sets forth the County Council's understanding of how vesting was applied and how it will be applied. Under the changes it adopted in Bill 24-06, the Council continued the historic application of vesting but carved out an exception for any ***residential*** development where a proposed change is ***material***.

No matter that both People's Counsel and the Office of Planning refuse to acknowledge what the County Council recognizes--only the County Council can legislate. The problem for both is that the law speaks for itself, especially when the laws are clear and unambiguous.

In the Matter of the Application of Ranshell Holdings, LLC, CBA 03-225SPH, the Board of Appeals faced this issue. In this case, it would appear from a reading of the facts, both Mr. Holzer, who represented the Protestants, then as now, and People's Counsel took a different position than that which they are taking in the instant matter. Jack Dillon, well known to this Board as an expert in land use and zoning, was presented as an expert witness by the Protestants in the Ranshell case. His whole testimony revolved around the zoning regulations in place and in effect at the time of the approval of the original subdivision. He was quoted by the Board as follows: "...You can't take a lot created in 1977 and then come back in 1979 and then say, 'now we're our own tract,' and re-subdivide under the new regulations...You can't have your foot in both zones.

You have to look at the entire tract." **Ranshell**, opinion, p. 8, *attached hereto as* **Petitioner's Exhibit B.**

The Board then said:

> Dillon then concluded that this development was approved in 1977 under the 1977 regulations and that they have maximized the density that was allowed under the zone at the time and that the subdivision was subsequently recorded. He felt that the grandfather clause was generally meant to provide some insurance to a developer to rely on that their plans were approved and the same protection goes to the people who bought the properties.

Opinion, p. 8.

Ultimately, the Board in Ranshell was "persuaded by the testimony of Mr. Dillon," and applied the density regulations in place at the time the subdivision was originally approved. Opinion, pp. 8-10.

ChapterXVII

II. The letters from the Zoning Office and from the DRC in 2002 are final decisions, applying the laws in place at the time of the original subdivision approval.

The 23 May 2002 letter from the DRC to Stepcich letter speaks for itself. **Petitioners Exhibit 2**. The letter confirmed that the Section III plat was vested and subject to the laws in place at the time of original approval, subject to the original zoning. No appeal was taken by any of the Protestants, People's Counsel or by the County Attorney on behalf of the Office of Planning. Certainly, the Office of Planning knew of the letter, knew of the decision, and elected not to appeal. Go to the Planning Board,

Stepcich and Pridgeon are told. Just as was then required in 1970, Stepcich went to the Planning Board.

The Board of Appeals has consistently held that decisions rendered by the DRC are appealable. No appeal was taken to the May, 2002 letter. The Petitioners relied on the letter and submitted their plan to the Planning Board as required. The DRC decided the vesting issue; the decisions became final and Stepcich and Pridgeon had a right to rely on them. The Office of Planning, the People's Counsel and the Protestants should now be estopped from raising the issue at this time. Further, the Board of Appeals, in Case No. CBA 04-157, resolved the issue, and that decision was not appealed.

Further, the DRC met on Stpecichs' request it and had before it, as did the Office of Planning, the letter to Stepcich from the Zoning Office, dated 8 February 2002, **Petitioners Exhibit 12,** in which the Zoning Office confirmed that Petitioners' proposed changes were protected under the zoning regulations in place at the time of Windemere's original approval. This letter also was not appealed and constitutes a final, non-appealable decision on which the Petitioners relied, as did the DRC.

For the Board to permit the issue clearly resolved by both letters and by the Board of Appeals to be here argued ignores the obvious—the statutory requirement that appeals be taken within thirty days of the appealable event. See United Parcel Service, Inc. v. People's Counsel for Baltimore County, 336 Md 569 (1994), in which the Court defines what constitutes the "operative event" that triggers the "appealable event". The letters from the DRC and Zoning are the "appealable event". The DRC letter was an adjudicatory order issued by an administrative body that effectively approved the

Petitioners' right to rely on the zoning regulations in place at the time Section III, Windemere was originally approved. It further directed Stepcich to proceed before the Planning Board on the issue of subdivision, which was the law in place in 1970. See also Meadows of Greenspring Home Owners Assoc v. Foxleigh Enterprises, Inc. 133 Md App. 510, 758 A2d 611 (2000).

"[The] question [of] whether a judgment, order, or decree is final and appealable is not determined by the name or description which the court below gives it, but is to be decided by the appellate court on a consideration of the essence of what is done thereby." Art Wood v. Wiseburg, 88 Md App 723, 596 A2d 712 (1991), at 726. The DRC letter was conclusive and final.

See also Beth Tfiloh Congregation of Baltimore City, Inc. v. Glyndon Community Assoc, Inc., 152 Md App 97, 831 A2 93 (2003), where the Court, after summarizing the Appellee's position, stated:

> ...because the letter to appellant [Beth Tfiloh] advising that it was not entitled to an exemption "does not make any decision and is not an order." We disagree. While the letter from PDM, arguably, was not an "order", it clearly advised that a final 'decision' had been made.
>
> Beth Tfiloh, at 102.

If the Petitioners are to be held to this standard, so should the Protestants, the People's Counsel and the Office of Planning.

3. Vesting for zoning purposes occurs when a subdivision is approved and a building permit is issued. Vesting in Baltimore County is defined by statute.

Vesting in Baltimore County is defined by statute, not by Common Law. People's Counsel, the County Attorney and the Protestants apply the Common Law in support of their argument that the Petitioner's cannot do what each proposes. In support, they quote from cases decided by the Court of Appeals and Court of Special Appeals in which the Courts deal with vesting. In each, however, vesting is defined in terms of the Common Law. None of these cases is from Baltimore County. No matter the King's men, no matter the King's horses, the doctrine of Common Law vesting is not applicable in Baltimore County. All of the cases sited are inapposite. Vesting in Baltimore County prior to the adoption of Bill 24-06 was defined by statute, §32-4-273 (b), BCC, 2003, and, by Bill 24-06, still is still defined by statute.

Subchapter I

Historic Application of Vesting

The Baltimore County Attorney has historically iterated and reiterated this point. Vesting occurs when a subdivision plan is approved and a permit issued and the result is protection under the subdivision and zoning regulations that controlled when the subdivision plan was originally approved. The statutory history in the County is unambiguous. Indeed, the County Council, by its adoption of Bill 24-06, recognized this history. Bill 24-06 did make changes to the vesting rules to be applied in Baltimore

County, but, in doing so, the Council recognized past statutes and their application. Bill 24-06 addresses what subdivision and zoning regulations a previously approved subdivision is subject to when certain types of changes are proposed. If the change to a previously approved plan is "material", then the current subdivision and zoning regulations are applicable only to the proposed change. See **§32-4-262 (2), Bill No. 24-06, Petitioner's Exhibit 13.** If the proposed change is not "material", then it is clear and obvious that the original subdivision and zoning regulations control.

Vesting is and has been subject to statute in Baltimore County, not the Common Law.

Subchapter II

Vesting 1955-2006

The laws in Baltimore County, since 1955, have continuously and unequivocally addressed this issue. Beginning with the Code of Local Public Laws of Baltimore County, 1955 ed., approved by the County Commissioners and adopted by the State Legislature, the Planning Board and the Department of Public Works were given joint authority to approve all plats. See Title 25, §381, *See attached hereto as* **Petitioners' Exhibit C.** See also Title 25, §387, wherein the Planning Board could approve a plat but could only disapprove a plat after a public hearing. *See attached hereto as* **Petitioners' Exhibit D.** Plats were required to meet "...minimum widths and areas of lots. Such minimums shall coincide with such provisions in the Zoning Regulations for Baltimore County." See Title 25, §382, *See attached hereto as* **Petitioners' Exhibit C.**

The legislative history of the subdivision regulations following the adoption of the Baltimore County Charter is clear and equally unambiguous; the legislative body of this County determined that all developments receiving tentative approval of a preliminary plan by the planning board, much less final approval, are governed by the subdivision and zoning regulations in effect at the time of original approval. *See attached hereto* the County Attorney Opinion, **Petitioners Exhibit E.**

In the instant case, Windemere subdivision did receive tentative approval. See **People's Counsel Exhibit 2.**

Clearly, any change to Section III, originally approved in 1969 and 1970, such as that proposed by the Petitioners here, must be reviewed for approval pursuant to the regulations then in effect.

When Section III was originally approved, the zoning density was permitted pursuant to the RSC classification at one lot per acre. The Petitioners' property is zoned RC 6 today. The RC 6 regulations do not permit either Stepcich or Pridgeon to do what they propose. Their proposals would not meet the RC 6 lot size requirements, thus would not permit the proposed lot area requirements of the RC 6 zone. The RSC zone would. If Section III is "vested" pursuant to the zoning in place at the time of the original approval, then 1 acre lots are permitted. Notwithstanding that the zoning classification has changed, Stepcich is entitled to divide their lot and Pridgeon is entitled to reconfigure his lot line boundaries and have the Section III record plat amended accordingly.

Often Rockville Fuel v. Gaithersburg, 291 A2d 672 (1972), is used to define what the law of vesting is in Maryland. However, this case, and its progenies, set out the test

for the common law doctrine of vested rights. They define the application of the common law doctrine of vesting as having its "constitutional foundation resting upon the legal theory that when a property owner obtains a lawful building permit, commences to build in good faith, and completes substantial construction on property", the property owner's rights to complete and use his property cannot be affected by subsequent changes in laws. See Powell v. Calvert County, 795 A2d 96 (2002). The Court of Appeals has been consistent in that all the component parts of the common law doctrine of vested rights, where applicable, are read conjunctively. In fact, Bill 24-06 partially adopts from this definition a change to the previously recognized doctrine of statutory vesting applicable in Baltimore County by requiring "...a building permit has been issued for any lot in accordance with an approved plan or plat..." Bill 24-06, §32-4-273(d)(2), **Petitioners Exhibit 13.** It is beyond argument that both Stepcich and Pridgeon had building permits, to build their homes. A single permit issued for any lot within the approved plan or plat vests.

Subchapter III

"Use It or Lose It"

The argument the Deputy Director of the Office of Planning presented to the Board of Appeals centered on the notion "use it or lose it". In essence, the substance of his testimony supports the notion that if, for example, a subdivision consists of 6 lots, and building permits are issued and substantial construction occurs on 4 of the lots, and subsequently a more restrictive zoning classification is applied, then the owner or owners of the remaining 2 lots lose any rights granted under the approved subdivision plat and

the less restrictive zoning in effect at the time of the original approval. Each lot must be vested, he argues, pursuant to the common law doctrine of vesting, not just the subdivision, section or parcel thereof, of which the lot is a constituent part. Bill 24-06 provides as follows: "a building permit...issued for any lot..." One permit, one lot, vests the entire subdivision and protects it against future changes in subdivision and zoning regulations.

There is, however, no need for the Petitioners to fit their facts into the "vesting" box, aka as "common law vesting". There is no need to argue that their facts fit within the four walls as constructed by Rockville and in the subsequent line of cases defining this common law doctrine. In Baltimore County, the County Council has historically elected to substitute a statutory scheme in lieu of this common law doctrine of vested rights. And there is nothing in Article 66B or in Article 25A, of the Annotated Code of Maryland, by which it is granted to local subdivisions their rights to regulate local land use, which would prevent a local Charter government from statutorily changing the criteria for vesting. The issue, therefore, is not whether the common law doctrine of vesting applies, but whether Baltimore County's statutory scheme permits what the Petitioners propose under the 1970 subdivision regulations and 1970 zoning regulations.

The Petitioners are not aware of any case law in which the common law doctrine of vesting has been applied to Baltimore County. Petitioners are not aware of any that have ruled a local subdivision does not have the right to adopt language establishing its own rules on vesting. As referred to above, past County Attorneys have opined there is a legislative history in Baltimore County that clearly confirms that the doctrine of common

law vesting is not applicable. They point to the clarity of the intent of County Councils past and present to change the rule.

See **County Attorney's Opinion**, No. 1-84, 17 May 1984, *attached hereto as* **Petitioners Exhibit E.**

Subchapter IV

Legislative History of Vesting or

"Use It or Lose it" Strike I

In Petitioners Exhibit E, after an extensive discussion of the law of vesting, the then County Attorney compares and contrasts the common law doctrine as found in Rockville with the then relevant County laws, which were the same provisions in effect and applicable in 1970, and the same until the adoption of Bill 24-06. The County Attorney answered two questions: (a) what constitutes vesting of development in Baltimore County and, (b) what impact does a change in the zoning classification have on a vested subdivision? In answering these questions, he did a thorough review of the legislative history of County laws and regulations. Significantly, the opinion's conclusions were later adopted by the Circuit Court of Baltimore County in **The Matter of the Application of Westchester, Inc. for Special Hearing Re: Building Permit and Application for Permits, Case No. 10/218/85-CG-1483, 10/8/85,** in which the issues addressed in the opinion were litigated before the Circuit Court, the same issues presented herein. *See attached hereto as* **Petitioners Exhibit F.**

The County Attorney's Opinion was sought by the Director of Planning and the Zoning Commissioner to determine whether to issue building permits under a record plat

that various Protestants argued was no longer valid. The Circuit Court concluded that the law of vesting in Baltimore County was statutorily changed, and the subsequent change in zoning classification had no impact on a previously approved subdivision. The concept of "use it or lose it" was, in effect, firmly rejected by the Circuit Court. The Circuit Court concluded that the development at issue was vested under the laws in effect at the time of the plat's original approval by virtue of public works agreements having been executed and substantial construction having occurred pursuant to those PWA's. Further, the Court concluded that a subsequent change in zoning classification did not impact the validity of the originally approved plat. Therefore, the developer was entitled to building permits for lots not yet developed under the density the original zoning allowed.

Petitioners Exhibit F .

Not satisfied by the Circuit Court's decision, the Protestants appealed to the Court of Special Appeals. In an unreported opinion, the CSA affirmed the Circuit Court. The Court also referred to the County Attorney's Opinion in affirming the Circuit Court's conclusions. **William J. Bauman, et al v. Westchester, Inc. et al, unreported, Court of Special Appeals, per curium, No. 1287, September Term, 1985, 8/12/86.** *See attached hereto as* **Petitioners Exhibit G.**

In the County Attorney Opinion, the Circuit Court decision, and the affirmation by the Court of Special Appeals in the **Bauman** case, the issue was on point to the matter now before this Board. Record plats are protected from subsequent changes in the zoning classification of the property if they have been vested under the statutory scheme set out

under the laws and regulations of Baltimore County. The argument now made by People's Counsel, by the Office of Planning and the Protestants was forever decided.

Subchapter V

"Use It or Lose It" Strike II

Two months prior to the Circuit Court's decision in Westchester, the Circuit Court issued the same opinion in another case involving similar issues. In **Lewis, et al v. Chesapeake Homes, Inc., et al, Case No. 84-CSP-969, 8/2/85**, the Court analyzed the doctrine of common law vesting as defined in Rockville and subsequent cases and found that the development at issue had vested. It first concluded that the criteria enunciated in **Rockville** were satisfied. However, the Circuit Court went on to analyze the vesting statutes adopted by the County Council. The Circuit Court reviewed **Miller v. Forty West Builders, Inc.**, 489 A2d 76 (1985), in which the Court of Special Appeals recognized the difference between planning and zoning but concluded that they were not unrelated concepts. The Circuit Court analyzed the relevant County zoning and development regulations, and concluded that §22-68, of the 1978 BCC, vested zoning rights as well as developmental rights if the development was vested as prescribed in §22-68. The analysis in **Forty West,** the Circuit Court concluded, required all relevant statutes to be read together in order to achieve a clear meaning. The Circuit Court looked at the development laws and the zoning regulations and concluded that a previously approved subdivision was protected under the laws in effect at the time of the original approval, including protection from change in zoning classification. The Circuit Court referred to the 1984 County Attorney's Opinion in support of its conclusions.

See attached hereto as **Petitioners Exhibit H.**

In the 1984 Opinion, **Petitioners Exhibit E,** the County Attorney traced the legislative history of the vesting provisions to reach the conclusion that under the then regulations, a development that had been approved and had a building permit issued was protected under the subdivision and zoning regulations in place at the time of the original approval, the conclusion adopted by the Circuit Court and by the Court of Special Appeals.

Tracing the legislative history of § 22-68, of the 1978 BCC, as amended by Bill No. 56-82, to which the County Attorney and the Courts above refer, shows that §22-68 became §26-216, in the 1988 Baltimore County Code, as amended. §26-216 then became §32-4-273 in the 2003 County Code recodification. The significance of the law is the same: Baltimore County unambiguously adopted by legislative act of the County Council its own definition of what constituted "vesting".

Subchapter VI

"Use It or Lose It" Strike III

In 1993, the County Council yet again revisited the subdivision regulations and created a new system of review and approval of plans and plats. Again, however, just as it did in 1982, the Council continued its commitment to previously approved subdivisions by keeping the exemption, or "savings" language of §22-40 in §26-169. BCC, 1991 ed, amended, recodified as §32-4-104 (b), BCC.

The Council also continued, most importantly, §32-4-273 (b), BCC, 2003, ed., which provided that

(1)...a subdivision plat shall lapse and become invalid for either the entire subdivision or any section or parcel of the subdivision, according to the applicable time limits specified under paragraph (2) of this subsection if the subdivision, section, or parcel has not been developed, as provided under subsection (d) of this section.

Paragraph (d) provided:

A subdivision, section or parcel of the subdivision is considered developed and vested if any of the following has occurred with respect to the subdivision, section, or parcel:

(1) Building permits have been issued; or
(2) Substantial construction on required public improvements or private improvements has occurred on the subdivision, section or parcel in accordance with the applicable regulations and requirements of the department of public works.

These statutory provisions, in the disjunctive, required either a building permit ***or*** substantial construction to vest a subdivision, section or parcel. (emp. added)

Subchapter V

"Use It or Lose It" Loses for Last Time

These statutory provisions contained in the 2003 edition of the BCC were exactly the same, except as to style, as they appeared in the 1978 and 1988 editions of the Code, as amended, to which the County Attorney referred in his opinion. The language of these sections was not changed until 2006, with the adoption of Bill 24-06. What is instructive, and forceful, and what must be emphasized, is the language changed. Bill 24-06 recognized the historic application of vesting and continued it as to changes other than "material changes" to previously approved plans.

Only a material change to an existing plan is subject to the "current law and regulations, including the development regulations and the zoning regulations." If the

proposed change is not "material", then it is subject to the original development and zoning regulations.

EPILOGUE

The County's interpretation of "vesting" has been vested for years.

In letters of advice from the Office of Law to James Dyer, of the Zoning Office, and to Norman Gerber, Director of Planning, dated 24 September 1979 and 10 February 1981, respectively, the County Attorney concluded as follows:

1. Apart from statute, a developer has no vested rights relating to a change of zoning affecting land in an approved subdivision;

2. Pursuant to statutory authority, the zoning regulations insofar as they relate to use, height, area, and density applicable or the development of any plan of approved or tentatively approved plan of subdivision, are the regulations in effect at the time the plan was originally submitted to either the Planning Commission or the Planning Board;

3. As a result of the intervention of statutory law, an approved or tentatively approved plan of subdivision, relative to zoning restrictions concerning use, height, area, and density, as of the time of its submission to the Planning Commission or Planning Board, is insulated from further zoning changes.

See attached hereto as County Attorney Letters of Advice, dated 9/24/79 and 2/10/198, **Petitioners Exhibits I & J.**

In these letters of advice, the then County Attorneys noted that with the adoption of §103.3 of the BCZR, the County Council corroborated its intention to protect previously approved subdivisions, and, certainly, later with the adoption of §22-68 of the 1978 BCC [§32-4-273, 2003 BCC], the County Council underscored its intention to protect previously approved subdivisions. Both letters of advice were referred to in the 1984 County Attorney Opinion.

Even should the Board conclude that Bill 24-06 Is not applicable, the statutory requirements long in place and effective clearly substantiate that the zoning in place at the time of the original approval of a plan governs.

Section III is a vested subdivision pursuant to Baltimore County law; permits were issued and houses built. The Petitioners proposed changes are subject to the zoning in place at the time of the original approval of the Windemere subdivision. They are subject to the RSC, or R-40, zoning then in place and are not subject to the RC 6 zoning in place today.

CONCLUSION

For the above stated reasons, the Petitioners respectfully request that the Board of Appeals of Baltimore County find that:

1. the property owned by the Petitioners Stepcich and Pridgeon is vested under the zoning in place at the time of the original approval of the Windemere subdivision;

2. the Office of Planning must abide by the decisions of the Development Review Committee that the proposals submitted by the Petitioners are not material changes and are therefore subject to the zoning in place at the time of the original approval of the Windemere subdivision.

3. notwithstanding Bill 24-06, the Petitioners Stepcich may subdivide their property pursuant to the zoning in place at the time of the original approval of the Windemere subdivision;

4. notwithstanding Bill 24-06, the Appellant Pridgeon may move the lot lines between lot 3 and Parcel B, as more particularly shown on Petitioner's Exhibit 20;

Respectfully submitted,

Arnold Jablon
Venable, LLP
210 Allegheny Ave.
Towson, Maryland 21285-5517
(410) 494-6298

Certification of Service

IT IS HEREBY CERTIFIED that copies of the foregoing Petitioners' Hearing Memorandum were hand-delivered on this 23rd day of July 2007 to Nancy West, Assistant County Attorney, Old Court House, 400 Washington Ave., Towson, Maryland 21204, to Peter M. Zimmerman, Esq., People's Counsel, 400 Washington Ave., Towson, Maryland 21204, and to J. Carroll Holzer, Esq. 508 Fairmount Ave, Suite 503, Towson, MD 21286.

Arnold Jablon

1/16/07

IN RE:	**RESUBDIVISION** Stepcich Property, Lot 3 Windemere (3 Stonehurst Road)	*	BEFORE THE BALTIMORE COUNTY
	6th Election & 11th Councilmanic Districts	*	BOARD OF
		*	APPEALS
	Legal Owner(s): Mr. & Mrs. Joseph Stepcich	*	CASE NOS.: 06-419-SPH & CBA-04-157

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

IN RE:	**JSPC DECISION** Pridgeon Property, Lot 3 & Parcel B Windemere (6 Stonehurst Road)	*	BEFORE THE BALTIMORE COUNTY
	11th Election & 3rd Councilmanic Districts	*	BOARD OF
		*	APPEALS
	Legal Owner(s): Mr. Richard Pridgeon	*	CASE NO.: CBA-04-159

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

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY'S PRE-HEARING MEMORANDUM

People's Counsel for Baltimore County submits this memorandum to give a preview of these three related cases. These cases present an increasingly common legal question, whether a lot in a subdivision approved years ago in a less restrictive zoning classification can be resubdivided after the County Council has comprehensively reclassified the property to a more restrictive zoning classification which would prohibit the resubdivision (and, indeed, would have prohibited the original subdivision) because of a conflict with density and/or other restrictions.

This is the second time that the Stepcich matter has come to the County Board of Appeals. In Stepcich I, the County Board of Appeals (CBA) remanded the matter to the Planning Board. Despite that, Stepcich went in another direction and filed both a petition

for special hearing with the Zoning Commissioner to determine "vested rights" and an application for a "material" amendment involving a resubdivision with the Development Review Committee (DRC). Pridgeon filed similarly with the DRC for approval of a "material amendment."

Zoning Commissioner (ZC) William Wiseman denied the Stepcich II claim of "vested rights," although his order had some ambiguity. Stepcich appealed. As a precaution, our office filed a protective appeal. The appeal is *de novo*, so the case comes to the CBA as if on a clean slate. Consistent with the ZC Wiseman's decision, PDM Director Timothy Kotroco denied both the Stepcich and Pridgeon requests for "material amendment." These cases are also on appeal *de novo*.

I. The proposed amendments to the Windemere Subdivision and resubdivision of lots conflict with the density, conservancy, and other performance standards of the current R.C. 6 Zone (as well as the previous R.C. 4 Zone in place for many years) and with the density provisions controlling amendments to subdivision plats in the R.C. Zones. There are no "vested rights" to allow such amendments or resubdivisions.

The Stepcich and Pridgeon cases involve the Windemere subdivision in the rural Dulaney Valley area of northeastern Baltimore County. The original 1956 Windemere subdivision plan shows 183 lots on 220 gross residential acres, with a gross residential density of .83. Counsel for the Stepciches and Pridgeon has described Section III, approved in 1970, as consisting of 19 acres, with 4 lots and two parcels approved for development. These complied with the zoning then in place.

With Bill 100, 1970, the County Council established the Rural Deferred Planning (R.D.P) Zone, BCZR 1A00, and Rural-Suburban: Conservation (R.S.C.) Zone, BCZR 1A01. These zones both had a minimum lot requirement of one acre, subject to

satisfaction of percolation tests. The Stepciches and Pridgeon have acknowledged the initial zoning classification of Windemere as R.S.C. It was effective until late 1976.

The Council repealed the R.D.P. and R.S.C. Zones in Bill 98-75 and replaced them with the first set of Resource Conservation Zones --- R.C. 2 Agricultural, R.C. 3 Rural Deferred Planning, R.C. 4 Watershed Protection, and R.C. 5 Rural-Residential. See Security Management v. Baltimore County 104 Md. App. 234 (1995), cert. denied 339 Md. 643 (1995). The Council mapped them in 1976 and at that time reclassified the Windemere area to R.C. 4. In 2004, the Council reclassified this area again to the newer R.C. 6 Rural Conservation and Residential Zone, for which it laid the groundwork in Bill 73-2000. The R.C. 4 Zone limited density to .2 lots per acre and required a conservancy area and satisfaction of performance standards. BCZR 1A03.4, 1A03.5. A tract less than six acres, moreover, could not be subdivided. The present R.C. 6 Zone has a straight .2 density limit and its own set of conservancy area and performance standards. BCZR 1A07.7, 1A07.8.

The entire Windemere subdivision should be considered as the context for application of the zoning law. But from any point of view, it is clear that the entire subdivision tract, Section III, and every lot in it fail to comply with the later enacted R.C. 4 Zone and R.C. 6 Zone .2 density limits, lack the required conservancy area, and do not satisfy the relevant performance standards. Of course, they were not designed to comply with the later enacted and much stronger restrictions.

The property owners nevertheless are making a claim of vested rights. This is unfounded. The Maryland Court of Appeals has established strict requirements for vested rights. The general rule is that a new zoning law applies as soon as it is effective.

The vested rights doctrine does carve out a narrow exception to this rule. It affords relief to property owners who have advanced to a stage where it would be unjust to impose a new law to prohibit a work in progress. The general test is a stiff one. The property owner, often a developer, must have a valid building permit and substantial construction visible to the public. Prince George's County v. Sunrise Dev. LP 330 Md. 297 (1993). At times, Baltimore County has provided by statute that an approved plat and valid building permit would suffice, but Bill 24-06 amended Code Sec. 32-4-273 to conform to the general Maryland doctrine requiring proof of substantial construction. In the present case, either way, there are no vested rights. There are no approved plans for the proposed resubdivisions, much less any building permits or substantial construction.

While the Stepciches and Pridgeon are protected with respect to their existing dwellings, there is no theory of vested rights to allow an approved subdivision to function as a launching pad for new lots to exacerbate the nonconformity with a later enacted zoning law. There is obviously no injustice to the property owners who have purchased the existing lots as they have been laid out and approved. We know of no reported case where an ordinary purchaser of a residential lot has made a claim of vested rights to justify a new lot by way of resubdivision. It is absurd.

Indeed, even if a developer acquires vested rights to a section of a subdivision, there are no vested rights to a separate section. Prince George's County v. Equitable Trust

Co. 44 Md. App. 272 (1979), cited in Sunrise. Similarly, vested rights to a residential development do not translate to vested rights for a marina anticipated to serve the development in the absence of discernible construction progress for the marina. Sterling Homes v. Anne Arundel County 116 Md. App. 206 (1997).

There is more. The Baltimore County Zoning Regulations explicitly prohibit amendment of a final development plan and/or a final subdivision plat in D.R. and R.C. Zones where it would exceed the density allowed for the entire tract. Bill 100, 1970, BCZR 1B01.3.B.2 states,

> "It is the intent of these zoning regulations to prohibit subdivision or resubdivision of portions of a tract in a D.R. Zone in a manner so as to exceed the total number of dwelling or density units allowed under the applicable D.R. Zone(s) for the entire tract."

To incorporate this provision in the Resource Conservation Zone network, Bill No. 98-75 provided in BCZR 1A00.4,

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

The Windemere subdivision and the Stepcich/Pridgeon lots already conflict with and exceed the density limits. It is impermissible to aggravate the conflict.

Bills 100, 1970 and 98-75, of course, predated Bill 24-06, which just confirmed and reinforced the point that all development, new or amended, must comply with current zoning and development regulations. Code Secs. 32-4-104, 32-4-262.

As we explained in Stepcich I, Code Sec. 32-4-104 has for many years required development to comply with current zoning law. Bill 1-92 had provided, as codified in Sec. 32-4-104(c),

"*Present zoning classification.* Proposed development shall be in compliance with the present zoning classification on the property to be developed."

Bill 24-06 retained this subsection, but moved it to subsection (b). Meanwhile, Code Sec. 32-4-114(a) dovetails with Sec. 32-4-104(c) It remains unchanged,

"(a) *Compliance with other county laws required.* Except as otherwise provided in this title, all development shall comply with this title and all other laws or regulations of the county."

Thus, Code Secs. 32-4-104(b) and 32-4-114(a) are mutually reinforcing.

To get around the logical consequences and restrictions of current zoning law, the Stepciches and Pridgeon have made several convoluted and tortured arguments. They seek support from BCZR 103.3. But there is no support for them there. BCZR 103.3 grandfathers existing subdivisions approved prior to a zoning reclassification, but does not extend this protection to amendments or resubdivisions. So, Section 4 of Bill 24-06, which declares the new law to be independent of BCZR 103 and that it "supersedes any vesting that would otherwise would accrue from the zoning or development regulations or other county laws," is just an extra margin of safety to guard against groundless vesting claims.

The Stepciches and Pridgeon also seek to apply Baltimore County subdivision regulations in force in 1970, 1968 Code Secs. 22-33 and 22-60. There is no support for them here either. The subdivision regulations are distinguishable from the more basic zoning law and cannot be used to circumvent zoning or create vested rights to new uses or density. Judge Cathell made sure to deconstruct and prevent such confusion in Remes v. Montgomery County 387 Md. 52 (2005). The 1968 Code provisions are no longer part of the law. But even if they were, they would not support the current resubdivision

proposals. Code Sec. 22-33 allowed the Planning Board or its director to certify an exemption of certain subdivisions from governmental approval relating to subdivision controls. Windemere never obtained any such exemption. Code Sec. 22-60 indicates that the subdivisions then approved would be governed by the subdivision law applicable at the time of approval, but it never furnished an exemption from zoning law.

The present case illustrates the lengths to which property owners go to avoid zoning laws in place for decades. As noted, BCZR 103 itself never functioned to vest a resubdivision. Along with BCZR 1B01.3.B.2, the County Council stated the opposite intent in the laws just discussed. But property owners try doggedly to revive old laws to get more lots and more wealth and more revenue. So, the Council in Bill 24-06 has put what amounts to a triple lock. No one will misunderstand or be deceived.

It is common sense that when the County Council reclassifies property to a more restrictive zoning classification, property owners in an existing subdivision do not have *carte blanche* to expand and to resubdivide lots in a way prohibited by the new zoning classification and density controls. The County Council certainly knew in 1976 that the Windemere subdivision was in place when it reclassified the area to the Watershed Protection Zone, and again in 2004 when it changed the classification to Rural Conservation and Residential Zone. There would have been no point to these legislative actions if the lot owners could operate as if they were in a time machine returning to 1970.

It is absurd to reconstruct a bygone era and rehabilitate a review process for new development in an R.S.C Zone which passed into history thirty years ago. It is pure

speculation, moreover, to say this or that could have, would have, or should have been approved in 1970. What was approved was approved. What's done is done. It is what it is. The current zone says no more, or to quote the Raven, nevermore.

II. Procedural Irregularities

BCZR 1B01.3.B.2 is part of the law governing amendment of final development plans in BCZR 1B01.3. Again, it applies to R.C. Zones by virtue of BCZR 1A00.4. There is no exemption from compliance with this zoning law.

For amendments proposed after the sale of lots, there is a hearing procedure which requires consideration of special exception standards and consistency with the original subdivision plan, as well as the density controls. BCZR 1B01.3.A.7. So far as we can tell, the Stepciches and Pridgeon have not filed the required petitions. The Stepcich petition for special hearing appears to be incomplete, in that it is limited to the "vested rights" issue. Pridgeon has not filed a petition for special hearing.

Indeed, both the Stepciches and Pridgeon filed on March 14, 2006 with the Development Review Committee proposals "to reconfigure lot lines" or for "lot line adjustments." The applications also stated that the requests were for "material amendments" The PDM Director denied these requests on April 12, 2006. Indeed, these requests were entirely improper. The DRC process may not function as cover to violate the zoning laws and avoid development plan hearings.

The timing of the DRC applications is remarkable. Bill 24-06 contains a grandfather clause for requests for material amendment filed prior to March 17, 2006. It may be that the petitioners are looking to this grandfather clause to support their theory

that the antiquated R.S.C. Zoning applies to their resubdivision requests. But it does not. The requirements to satisfy current zoning, tract density limits, and final development plan amendment criteria all predate Bill 24-06. Moreover, the filing with the DRC for a "material amendment" to an approved subdivision plan could not under any circumstances be construed as a grandfather clause with respect to zoning law. Again, Remes serves as a reminder of their different roles in modern land use law.

The property owners have thus attempted to use the DRC to circumvent zoning law. Unless a development plan or amendment complies with zoning law, it does not qualify for development plan review. Here, the procedural problems pale before the main point that the proposals are disqualified by the clear conflict with current zoning law.

Summary

Again, the main point is that the attempts to resubdivide in the 1970s vintage Windemere subdivision conflict with current zoning law of the R.C.6 Zone, and would also have been disallowed in the R.C. 4 Zone mapped in 1976, shortly after the original subdivision approval in the R.S.C. Zone. There is also a conflict with the BCZR 1A00.4, 1B01.3.B.2 density controls. There are no vested rights to resubdivide.

The requests are also irregular procedurally. There should have been filed petitions for special hearing to amend the final development plan. The procedural irregularities threaten to be a distraction from the substantive zoning issues. Fortunately, we are alert enough to identify the problems and bring them to the Board's attention.

Conclusion

The County Board of Appeals should deny the Stepcich Petition for Special Hearing completely. It should also deny the Stepcich and Pridgeon requests for "material amendment" to the approved development plan.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio/PMZ

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of January, 2007, a copy of the foregoing People's Counsel for Baltimore County's Hearing Memorandum was hand-delivered to J. Carroll Holzer, Esquire, Holzer & Lee, 508 Fairmount Avenue, Towson, MD 21286, Nancy West, Assistant County Attorney Office of Law, 400 Washington Avenue, Towson, MD 21204 and Arnold Jablon, Esquire,Venable, LLP, 210 Allegheny Avenue, Towson, MD 21204

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

5/25/06

To: Kristen
5/30/06
W

IN RE: PETITION FOR SPECIAL HEARING * BEFORE THE COUNTY
W/S of Stonehurst Rd, 218'
South of c/l of Windemere Pkwy * ZONING COMMISSIONER
(3 Stonehurst Road)
* OF BALTIMORE COUNTY
6th Councilmanic District
11th Election District *
Joseph A. Stepcich, et ux., Owners
*
Case No. 06-419 SPH

* * * * *

NOTICE OF APPEAL

Mr. and Mrs. Joseph Stepcich, owners of the subject property, by and through their attorney Arnold Jablon, Venable, LLP, feeling aggrieved by the final decision and determination of the Zoning Commissioner of Baltimore County denying the appellants' request to re-subdivide their property in Case No. 06-419 SPH, dated 16 May 2006 and attached hereto and incorporated herein as Exhibit A.

Appellants herewith take exception to that final decision of the Zoning Commissioner as reflected in Exhibit A and appeal to the County Board of Appeals. Appellants submit that the review by the CBA from the final decision of the Zoning Commissioner shall be a hearing *de novo* pursuant to the Baltimore County Charter.

Filed concurrently with this Notice of Appeal is a check made payable to Baltimore County to cover the costs of the appeal.

Respectfully submitted

Arnold Jablon
Venable, LLP
210 Allegheny Ave.
Towson, Maryland 21204
410-494-6298

attorney for appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT copies of the foregoing Notice of Appeal was hand delivered to the Baltimore County Board of Appeals, Basement, Old Courthouse, 400 Washington Ave., Towson, Maryland 21204; and Timothy Kotroco, Director, Department of Permits and Development Management, Towson, Maryland 21204, on this 25th day of May, 2006.

Arnold Jablon.

5/16/06

IN RE: PETITION FOR SPECIAL HEARING West Side of Stonehurst Road, 218' South of c/l of Windemere Parkway **(3 Stonehurst Road)** 11th Election District 6th Council District Joseph A. Stepcich, et ux Petitioners	*	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY Case No. 06-419-SPH

* * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for Baltimore County for consideration of a Petition for Special Hearing filed by the owners of the subject property, Joseph A. Stepcich and his wife Joy Stepcich. The Petitioners are requesting confirmation that the zoning in place at the time of the original approval of a vested subdivision continues as the applicable zoning even if the zoning has subsequently changed. In other words, is a vested subdivision subject to the subdivision regulations and zoning in place at the time of the original approval of the subdivision.

Appearing at the requisite public hearing in support of the request were Arnold Jablon, Esq., with the law firm of Venable, LLP, on behalf of the Petitioners, and Brian Dietz, a registered land surveyor and Joseph Stepcich, the property owner. There were no Protestants or any other interested parties in attendance, however, it is to be noted that Nancy C. West, Assistant County Attorney, entered her appearance and filed a Memorandum of Law with this Zoning Commissioner, on April 14, 2006. Ms. West, on behalf of Baltimore County asserts that "the mere fact the Windemere subdivision plat was approved and recorded in 1970 has absolutely nothing to do with whether an owner of a lot in that subdivision is immunized against subsequent changes in zoning."

ORDER RECEIVED FOR FILING
Date 5-16-06
By

For the reasons set forth below, I respectfully disagree with the County's position, and find that a vested subdivision plat is governed by the development and zoning regulations in force at the time of its approval. This finding is of no comfort to Petitioners however, since what they seek is to re-subdivide their "lot of record," mandating compliance with the R.C. 6 zoning.

Testimony and evidence offered by the Petitioners revealed that they want to subdivide their 5+/- acre lot into two lots. The Petitioners reside at 3 Stonehurst Road, in Phoenix, Maryland, located between Dulaney Valley Road and Manor Road, off of Windemere Parkway. Their lot of record is part of the plat known as "Section III, Windemere". The plat was approved by the Baltimore County Planning Board on February 19, 1970 and subsequently recorded. The Petitioners purchased their lot in 1970, built a home thereon, and have lived there continuously since. The current zoning is R.C.6; the zoning in place at the time of the original approval of their subdivision was Rural Suburban Conservation (RSC). The RSC regulations existing in 1970 permitted a minimum lot size of one acre. If the RSC were to be applied, the Petitioners would be permitted to resubdivide their property; if the R.C.6 regulations apply, they cannot.

Relying on the RSC zoning designation, the Petitioners in or about 2002 began their efforts to gain county approval to divide their property into two lots. The Petitioners have been to the DRC, the Office of Planning, the Planning Board and the County Board of Appeals (CBA). They are now before the Zoning Commissioner. The issue here is not what subdivision regulations are applicable; the CBA has ruled that the subdivision regulations in effect in 1970 govern. The issue is what zoning is applicable; the Board apparently did not decide this issue.

The Office of Law argues that the current zoning is applicable; the Petitioners argue the RSC zone is applicable. As stated above, if the former, the Petitioners will not be able to do what they propose; if the latter, they will.

ORDER RECEIVED FOR FILING
Date 5/19/03
By DRS

As the history of this case and the exhibits submitted will demonstrate, the Petitioners have received mixed messages from county agencies. The Department of Permits and Development Management agreed that the RSC zoning was applicable; the Office of Planning disagrees.

From the evidence presented at the hearing, the Office of Law's position as stated in its Memorandum is at best indecisive given the Office's own historic application of what constitutes vesting. Past opinions by County Attorney's as well as Letters of Advice, introduced into evidence, on this very point unequivocally conclude that a vested subdivision is protected from changes in zoning. (See Petitioner's Exhibits 19, 20 and 21) Historically and consistently, the County by statute has recognized that a subdivision or section or parcel of the subdivision is considered vested if a building permit has been issued or substantial construction on required public improvements or private improvements has occurred. Historically, and consistently prior to this Petitioners' request to resubdivide, as the weight of the evidence presented at this hearing confirms, the County concluded that a vested subdivision is governed by the subdivision regulations and the zoning in place at the time of the original approval of the subdivision. Moreover, in January, 2004, the Office of Planning sent out notices during the Comprehensive Zoning Map Process in which it stated in part:

> "Existing lots in recorded subdivisions would continue to be regulated by the zoning regulations that were in effect at the time the existing lot was created." (Petitioner's Exhibit 7)

The definition of "vesting" in Baltimore County has been consistently interpreted, from the statutes adopted by the County Council, to mean that a previously approved subdivision is governed not only by the subdivision regulations in effect at the time of the original approval but by the zoning then in place.

ORDER RECEIVED FOR FILING
Date 9-1-04
By

Even so, the past practices of County agencies, or opinions of former County Attorneys, are not dispositive of this issue, which presents a pure question of law. Indeed, Baltimore County (unlike a private entity) is not subject to estoppel, and is free to assert the invalidity of prior practices. *Town of Berwyn Heights v. Rogers* 228 Md. 271 (1962); *Lipsitz v. Parr,* 164 Md. 222 (1933).

In this regard, the Baltimore County Office of Law cites Baltimore County Code (B.C.C.) Section 32-4-104(b), which provides that "proposed development shall be in compliance with the present zoning classification on the property to be developed." Under B.C.C. Section 32-4-101(p), "development" is given an expansive meaning, including "the improvement of property for any purpose involving building." Given that Petitioners are clearly proposing to develop their lot (and in fact are subdividing their "lot of record"), it seems inescapable that the present R.C.6 zoning is applicable in this scenario.

Also pertinent (and perhaps dispositive) is Bill No. 24-06, recently adopted by the Baltimore County Council. Under that Bill, which amended B.C.C. Section 32-4-104 and Section 32-4-261, a vested plat is subject to the development and zoning regulations in effect at the time of approval, only "if those regulations were not otherwise subsequently abrogated or superceded by other law." In this case, as noted at the outset, the RSC zoning was "superceded" by the R.C.6 regulation.

Bill 24-06 has another impact which is also detrimental to Petitioners' cause. Specifically, the Bill recites that it is adopted independently of the Baltimore County Zoning Regulation (B.C.Z.R.) 103, and "supercedes and abrogates the rights to the vesting of a development that would otherwise accrue." In my review of the entire case file (including the record from CBA No. 04-157), it would appear as if Petitioners attempt to rely on B.C.Z.R.

ORDER RECEIVED FOR FILING
Date 5-19-06
By

103.1 and 103.3 to bolster their argument that the applicable zoning is that in effect at the time of subdivision approval is no longer persuasive. The aforesaid provisions of Bill No. 24-06 effectively neutered that argument.

Pursuant to the advertisement, posting of the property and public hearing on this Petition held, and for the reasons set forth above, it is my opinion that a vested subdivision is governed by the zoning in place at the time of the original approval; specifically, in the instant case, the Petitioners' lot of record is governed by RSC zoning and not the current zoning of R.C.6.

THEREFORE, IT IS ORDERED, by the Zoning Commissioner for Baltimore County this 16th day of May 2006, that a vested subdivision is governed by the zoning in place at the time of the original approval of the subdivision, and

IT IS FURTHER ORDERED, that any further resubdivision of Petitioners' vested lot of record shall be governed by, and be in compliance with, the present (R.C.6) zoning classification on the property to be developed.

THEREFORE, the Petition for Special Hearing is granted in part and yet denied in part as it relates to any future resubdivision.

Any appeal of this Order shall be taken in accordance with Baltimore County Code Section 32-3-401.

WILLIAM J. WISEMAN, III,
Zoning Commissioner
for Baltimore County

ORDER RECEIVED FOR FILING
Date 5-16-06
By

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

May 16, 2006

WILLIAM J. WISEMAN III
Zoning Commissioner

Arnold Jablon, Esquire
Venable, Baetjer & Howard, LLP
210 Allegheny Avenue
Towson, Maryland 21204

RE: **PETITION FOR SPECIAL HEARING**
W/S Stonehurst Road, 218' S of the c/l Windemere Parkway
(3 Stonehurst Road)
11th Election District – 6th Council District
Joseph A. Stepcich, et ux - Petitioners
Case No. 06-419-SPH

Dear Mr. Jablon:

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

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

Very truly yours,

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:dlw

c: Mr. and Mrs. Joseph A. Stepcich, 3 Stonehurst Road,
Phoenix, Maryland 21131
Mr. Brian Dietz, Professional Land Surveyor,
7867 Oakdale Avenue, Baltimore, Md. 21237
Mr. John Beverungen, County Attorney, and Ms. Nancy West, Assistant County Attorney,
Office of Law, 400 Washington Avenue, Towson Md. 21204
Dr. Eusebia P. Gonzales, 300 Stonehurst Road, Phoenix, Md. 21131
People's Counsel; Case File

1/14/06

RE: PETITION FOR SPECIAL HEARING
3 Stonehurst Road; W/S Stonehurst Road, 218'
S of c/line Windemere Park Way
11th Election & 6th Councilmanic Districts
Legal Owner(s): Joy & Joseph Stepcich
Petitioner(s)

* BEFORE THE

* ZONING COMMISSIONER

* FOR BALTIMORE COUNTY

* CASE NO.: 06-419-SPH

MEMORANDUM OF LAW

Baltimore County, Maryland by its undersigned counsel hereby files this Memorandum of Law, and states as follows:

A. Petitioner is Not Vested and Must Comply With The Present Zoning Classification on the Property

Maryland's highest court on several occasions has recently discussed in great detail the vested rights doctrine, and has set forth definitive guidelines. In *Prince George's County v. Sunrise Development Limited Partnership,* 330 Md. 297 (1993), the court noted:

> The vested rights doctrine has a constitutional foundation and "rests upon the legal theory that when a property owner obtains a lawful building permit, commences to build in good faith, and completes substantial construction on the property, his right to complete and use that structure cannot be affected by any subsequent change of the applicable building or zoning regulations.

Id. at 312 (emphasis added).

In the more recent case of *Marzullo v. Kahl,* 366 Md. 158 (2001), the court considered whether a property owner had a "vested right" to lawfully conduct a business of breeding, raising and selling snakes in an R.C. 4 zone. Ultimately, the Court of Appeals held that the landowner did not have such a right, and its decision was based largely upon the fact that the issuance of the permit for the construction was improper, and thus could not lead to a vested right. In reaching its holding, the *Marzullo* court stated as follows concerning the vested rights doctrine:

> In Maryland it is established that in order to obtain a 'vested right' in the existing zoning use which will be constitutionally protected against a subsequent change

> in the zoning ordinance prohibiting or limiting that use, the owner must (1) obtain a permit or occupancy certificate where required by the applicable ordinance, and (2) must proceed under that permit or certificate to exercise it on the land involved so that the neighborhood may be advised that the land is being devoted to that use.

Id. at 192-93.

Indeed, the *Marzullo* court noted that the vested rights doctrine is analogous to the nonconforming use doctrine, in that both stress the importance of "public knowledge in the neighborhood of the use." *Id.* at 192.

In yet another case that addressed the doctrine, the Court of Appeals adopted the following standard for vesting in the zoning context:

1. There must be the actual physical commencement of some significant and visible construction;

2. The commencement must be undertaken in good faith, to wit, with the intention to continue with the construction to carry it through to completion; and

3. The commencement of construction must be pursuant to a validly issued building permit.

Powell v. Calvert County, 368 Md. 400, 409 (2002).

In addition, Maryland courts on many occasions have noted that there is no different rule of vested rights in scenarios involving special exceptions or subdivision approvals. *See, e.g., Powell,* 368 Md. at 409 ("there is no different rule of vested rights for special exceptions and the like"); *Montgomery County v. Waters Landing Limited Partnership,* 99 Md. App. 1 (1994) ("fact that a piece of property is subdivided does not in and of itself create a vested property interest"); *Washington Suburban Sanitary Commission v. TKU Associates,* 281 Md. 1, 22-23 (1977) (dedication of a right-of-way in connection with a subdivision did not vest rights in the property owner); *Miller v. Forty West Builders,* 62 Md. App. 320, 330 (1985) (party does "not acquire

vested or substantive rights by obtaining…approval of the subdivision plan" under Baltimore County's development regulations).

Indeed, in *Hickory Point Partnership v. Anne Arundel Co.*, 316 Md. 118, 133-34 (1989), the Court of Appeals cited with approval several out of state cases also holding that the approval of a subdivision plat does not confer vested rights upon the land owner. *See, e.g., Dawe v. City of Scottsdale,* 581 P.2d 1136 (Az. 1978) (recording of subdivision plat did not give landowners a vested right to develop unimproved property in accordance with plat and contrary to subsequently enacted subdivision ordinance); *Sherman-Colonial Realty Corp. v. Goldsmith,* 230 A.2d 568, 572 (Conn. 1967) ("mere filing of maps for the subdivision of a parcel of real estate does not necessarily immunize the subject property from the operative affect of subsequent subdivision regulations"); *In re: McCormick Management Company,* 547 A.2d 1319 (Vt. 1988) (filing plats before adoption of zoning ordinance created no vested rights to develop in accordance with those plats and contrary to zoning ordinance).

The Zoning Commissioner recently issued an opinion in a zoning/vesting case, *In re: US Filter Recovery,* Case No. 05-075-SPHXA that is instructive. In that matter the Zoning Commissioner expressly held that one cannot vest, for zoning purposes, without a valid building permit and substantial construction of a project. This was true despite the fact that the Petitioner therein had secured a zoning verification letter from Permits and Development Management and had expended substantial sums of money for infrastructure construction. It had filed a Petition for a Special Hearing seeking approval to continue its operations as a vested land use. In denying the requested relief, the Commissioner held that is was necessary to obtain a special exception and variance in order lawfully operate upon the subject property.

Simply put, the mere fact that the Windemere subdivision plat was approved and

recorded in 1970 has absolutely nothing to do with whether an owner of a lot in that subdivision is immunized against subsequent changes in zoning.

In previous correspondence with the Planning Board, the Protestant relied upon two provisions in support of his argument that he enjoyed "vested rights" in connection with the creation of one additional lot. Specifically, he relied upon County Code §26-169 [now §32-4-104] and BCZR §103.3. Neither provides any support for Protestant's case. Indeed, those sections undercut his argument.

Section 32-4-104 of the Code concerns the applicability of the various development laws and regulations, and specific scenarios are exempted from coverage. Petitioner argues that his rights are "vested by law," (per Code §32-4-104(b)(iv)) and hence he is not subject to the development process set forth in Title 32. First, such reasoning is circular, because Petitioner has not established - nor can he - that he is vested. More importantly, as noted by the Court of Special Appeals, these exceptions in §32-4-104(b) confer certain "grandfathering rights," whereby a developer (if he satisfies one of the exemptions in the section) can follow older, less-onerous development regulations in seeking approval for his project. *Beth Tfiloh Congregation v. Glyndon Comm. Ass'n,* 152 Md. App. 97, 110-11 (2003) (§32-4-104 is a "grandfather" provision allowing developer to adhere to earlier development process). Simply put, this code section deals with "development," and has nothing to do with zoning. On many occasions, our highest court has stressed that zoning and subdivision are separate regulatory entities. *Remes v. Montgomery County,* 387 Md. 52 (2005); *Friends of the Ridge v. BGE,* 352 Md. 645, 648 n.4 (1999) ("subdivision is not zoning"); *Board v. Stephens,* 286 Md. 384 (1979).

32-4-104(c) subject to compliance with present zoning classification

Finally, even if the code section were applicable, as Protestant argues, the text of the statute clearly provides that all proposed development must satisfy present zoning.

Indeed, the County Code expressly states that:

> (c) Present zoning classification. Proposed development shall be in compliance with the present zoning classification on the property to be developed.

BCC §32-4-104(c).

This is in accord with the common law rule, which invariably recognizes that "compliance with applicable zoning regulations is a prerequisite for approval of a development plan." *Wesley Chapel Bluemount Ass'n v. Baltimore County,* 347 Md. 125, 137 (1997). In *Remes,* the Court of Appeals squarely disagreed with a landowner's claim that the sole issue governing approval of a building permit for a new house on a single lot is whether the "development standards" were met. *Id.* at 61. The court held:

> This is not so. Compliance with the requirements of zoning and zoning codes, where they exist, are generally necessary before permits may be issued.

Id. at 62, fn. 6.

While the Windemere subdivision may be "grandfathered" for purposes of determining whether old or new development regulations apply, this determination does not mean that the Petitioner has a constitutionally protected, vested right in the zoning which existed in 1970. *Beth-Tfiloh v. Glyndon Comm. Ass'n,* 152 Md. App. 97, 110-11 (2003). Section 26-169 [now §32-4-104] bestows on a developer the right to further development in accordance with earlier, less onerous development regulations). "Vesting" for zoning purposes is an issue of constitutional dimension, which must be determined by Maryland common law (not County laws or regulations), as set forth in the appellate decisions discussed above. Indeed, in the numerous opinions issued by Maryland appellate courts in the last 35 years (since the seminal case of *Richmond Corp. v. Prince George's County,* 254 Md. 244 (1969)), not once has a court cited or relied upon a county's development laws and/or regulations to determine whether a landowner enjoyed vested

rights. Given that Petitioner has not acquired a valid building permit or begun any construction with respect to the new lot he seeks, he clearly never obtained vested rights for zoning purposes.

It is anticipated that Petitioner will also argue, as he recently has before the County Board of Appeals ("Board") on this matter, that BCZR §103.3 supports his argument of vested rights for zoning purposes. It does not. First and foremost, the section is applicable only to property in R.C.2, R.C.3, R.C.4 and R.C.5 Zones. Petitioner's property is zoned R.C.6. Moreover, even if the section were applicable, it says nothing about subdivision approval conferring vested rights against subsequent zoning changes.

In what has become a recurring theme, counsel for Protestant has advocated a legal position based on the institutional precedent he established in his many years as a department head for Baltimore County. The absurdity of this practice was evident in a case before the Board, namely, In *the Matter of Mary Horner Trust*, CBA 04-114 (opinion attached). Therein, Baltimore County denied a building permit for a new home, and cited the "creeping subdivision doctrine." In a terse opinion, the Board explained the obvious: Baltimore County could not invoke internal policies and rules (like the unwritten "creeping subdivision" policy adopted by Mr. Jablon) to decide matters unless such have been properly adopted and promulgated as law or regulation. The Board found that the "creeping subdivision" policy promulgated by "the Director of Permits and Development Management was arbitrary, capricious and illegal." *Id.* at 5.

On another occasion, the Permits and Development Management office apparently had an internal practice of denying certain development exemptions (otherwise proper under the Baltimore County Code) when the community voiced objection. *Beth Tfiloh,* 152 Md. App. at 116-17. The Court of Special Appeals held that such an internal practice or policy had no effect

when it was contrary to the plain meaning of a statute. *Id.* As such, it is abundantly clear that whatever policy or opinion PADM and its staff espoused, it has no bearing upon a determination of whether a particular property owner enjoys vested rights. That is a question of law for the court.

B. With the Enactment of Bill No. 24-06, the County Council Put To Rest Any Specious Arguments that Petitioner May Make About Vesting.

Although there is an abundance of case law which supports a finding against vesting in the instant case, lest there be any doubt, the County Council enacted Bill No. 24-06. In that bill it amended certain provisions of the development regulations of the Baltimore County Code. Specifically, Section 32-4-273 (d) (2) was amended to provide that a subdivision or parcel of the subdivision is considered vested if:

> A building permit has been issued for any lot in accordance with an approved plan or plat, and inspection by the County confirms that substantial construction has occurred within the subdivision, including any lot, track, section, or parcel thereof, within four years after the date of the final, nonappealable approval of the plan or plat or any extension thereof authorized under Section 32-4-261(A).

Further, the County Council modified the definition of substantial construction in Section 32-4-101(BBB) so that it means:

> Actual construction activity occurring on the ground or building site for which a development plan or plat has been approved that is directly related to the approved plan or plat and is sufficiently substantive and visible and is being pursued to completion with reasonable diligence so as to put the public on notice that the ground or site is being devoted to the construction of a facility or structure.

Clearly, neither the case law nor the recent legislative enactment offers any refuge for the Petitioner herein. Simply stated, there was no vesting.

John E. Beverungen
County Attorney

Nancy C. West
Assistant County Attorney
Baltimore County Office of Law
400 Washington Avenue
Towson, Maryland 21204
(410) 887-4420
Attorneys for Baltimore County, Maryland

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of April 2006, a copy of the forgoing Memorandum of Law was mailed, first class mail, postage prepaid to: Arnold Jablon, Esquire, Venable, LLP, 210 Allegheny Avenue, Towson, MD 21204, attorney for Petitioner(s) and hand-delivered to Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County, Old Court House, Room 47, 400 Washington Avenue, Towson, Maryland 21204.

Nancy C. West
Assistant County Attorney

HOLZER & LEE

LAW OFFICES
J. CARROLL HOLZER, PA
J. HOWARD HOLZER
1907-1989
THOMAS J. LEE
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THE 508 BUILDING
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[redacted]
jcholzer@cavtel.net

July 13, 2007
#7671

Lawrence M. Stahl, Panel Chair
County Board of Appeals
of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

RE: In the Matter of: Stepcich Property
Section III, Windemere Subdivision
Case Nos.: CBA-04-157; CBA-06-019;
CBA-06-020 and 06-419-SPH

Dear Mr. Stahl:

Previously the People's Counsel for Baltimore County prepared a pre-hearing Memorandum dated January 10, 2007. Mr. Zimmerman then followed up after the hearing with a letter dated May 23, 2007 in which he made additional points concerning the issues of law involved herein. On May 31, 2007, I adopted both of the People's Counsel Memorandum.

It is my understanding that Nancy West of the Office of Law also desires to submit a written Memorandum which I will adopt and incorporate as if it were my own in this matter. The Briefs were initially due on Monday, July 16, 2007. I understand that an extension has been given to Ms. West until Monday, July 23, 2007. Please accept this filing as my client's Memorandum on behalf of Long Green Valley Community Association.

Very truly yours,

J. Carroll Holzer

JCH:mlg

LAW OFFICES
J. CARROLL HOLZER, P.A.
508 FAIRMOUNT AVENUE
TOWSON, MARYLAND 21286
(410) 825-6961
FAX (410) 825-4923 / E-MAIL: JCHOLZER@CAVTEL.NET

Facsimile Cover Sheet

To: Lawrence Stahl

From: J. Carroll Holzer/Sterling Leese/Peggy Gilley

Date: July 13, 2007 Time: 9:45 a.m./p.m.

Total Number of Pages Including this Cover: 2

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COUNTY BOARD OF APPEALS

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FILE

FACSIMILE TRANSMITTAL SHEET

TO AND FAX NUMBER:

ARNOLD JABLON, ESQUIRE

FAX : 410-821-0147

J CARROLL HOLZER, ESQUIRE

FAX : 410-825-4923

NANCY C. WEST, ESQUIRE

FAX : 410-296-0931

FROM:

KATHLEEN BIANCO
FAX : 410-887-3182

TELEPHONE : 410-887-3180

DATE:
NOVEMBER 9, 2006

TOTAL NO. OF PAGES INCLUDING COVER:
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Re: POSTPONEMENT – PRIDGEON PROPERTY AND STEPCICH PROPERTY – 11/14/06 AND 11/15/06

URGENT FOR REVIEW FOR YOUR RECORDS PLEASE REPLY PLEASE RECYCLE

PERSONAL AND CONFIDENTIAL

ATTACHED IS A COPY OF THE NOTICE OF POSTPONEMENT SENT OUT THIS DATE IN THE SUBJECT MATTERS, WHICH WILL GRANT THE REQUESTED POSTPONEMENT , PULLING THE CASES FROM THE ASSIGNED DATES OF 11/14/06 AND 11/15/06. NO ONE NEED APPEAR ON THOSE DATES.

AS SOON AS AGREEMENT IS REACHED AS TO AVAILABLE DATES IN JANUARY, A NOTICE OF ASSIGNMENT WILL BE SENT, REASSIGNING THESE MATTERS TO THE AGREED-UPON DATES.

I APOLOGIZE FOR THE LATENESS OF THESE NOTICES AND WOULD HOPE THAT YOU WILL NOTIFY YOUR CLIENTS. I HAD HOPED TO HAVE THE NEW DATES THIS WEEK, THEREBY SENDING ONE NOTICE, PULLING FROM THE NOVEMBER DATES AND REASSIGNING TO JANUARY 2007. HOWEVER, THAT NOTICE WILL BE SENT AS SOON AS POSSIBLE.

kathi

County Board of Appeals of Baltimore County

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

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

November 9, 2006

NOTICE OF POSTPONEMENT

CASE #: 06-419-SPH

IN THE MATTER OF: JOSEPH STEPCICH -Petitioner
3 Stonehurst Road 11th E; 3rd C

5/16/2006 - Z.C.'s Order in which Petition for Special Hearing was granted in part and "yet denied in part as it relates to any future subdivision."

which was scheduled to be heard on 11/15/06 has been **POSTPONED** at the request of Baltimore County and at the request of Counsel for Long Green Valley Assn., et al; **to be reassigned to January dates upon agreement of counsel as to availability.**

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

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

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

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

Kathleen C. Bianco
Administrator

---

c: Appellant : Office of People's Counsel

Counsel for Appellants /Property Owners : Arnold Jablon, Esquire
: Mr. and Mrs. Joseph Stepcich (3 Stonehurst)

Brian R. Dietz

J. Carroll Holzer, Esquire, Counsel for
Carol Trela
Long Green Valley Association

Adrienne True and Kim Ward
Dr. Eusebia Gonzales

Pat Keller, Planning Director
William J. Wiseman III /Zoning Commissioner
Walt Smith, Dev. Manager /PDM
Timothy M. Kotroco, Director /PDM
Nancy C. West, Assistant County Attorney
John E. Beverungen, County Attorney

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County Board of Appeals of Baltimore County

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Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

November 9, 2006

NOTICE OF POSTPONEMENT

CASE #: CBA-06-019 — **IN THE MATTER OF: PRIDGEON PROPERTY**
6 Stonehurst Road DRC 040306 E 11th E; 3rd C

and

CASE #: CBA-06-020 — **IN THE MATTER OF: STEPCICH PROPERTY**
3 Stonehurst Road DRC 040306 D 11th E; 3rd C

4/12/06 – Denial of request to reconfigure lots of record

which was scheduled to be heard on 11/14/06 and 11/15/06 has been **POSTPONED** at the request of Baltimore County and at the request of Counsel for Long Green Valley Assn., et al; **to be reassigned to January dates upon agreement of counsel as to availability.**

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

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

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

Kathleen C. Bianco
Administrator

---

c: Counsel for Appellants /Property Owners : Arnold Jablon, Esquire
Appellants /Property Owners : Mr. Richard Pridgeon (6 Stonehurst)
: Mr. and Mrs. Joseph Stepcich (3 Stonehurst)

David Martin /GW Stephens & Assoc.
Brian R. Dietz

J. Carroll Holzer, Esquire, Counsel for
Carol Trela
Long Green Valley Assn.

Adrienne True and Kim Ward
Dr. Eusebia Gonzales

Office of People's Counsel
Walt Smith, Dev. Manager /PDM
Timothy M. Kotroco, Director /PDM
Nancy C. West, Assistant County Attorney
John E. Beverungen, County Attorney

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Nov. 09 2006 07:45PM

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YOUR FAX NO. : 4108873182

NO.	OTHER FACSIMILE	START TIME	USAGE TIME	MODE	PAGES	RESULT
01	94108254923	Nov. 09 07:43PM	02'15	SND	03	OK

TO TURN OFF REPORT, PRESS 'MENU' #04.
THEN SELECT OFF BY USING '+' OR '-'.

FOR FAX ADVANTAGE ASSISTANCE, PLEASE CALL 1-800-HELP-FAX (435-7329).

SENDING REPORT

Nov. 09 2006 07:42PM

YOUR LOGO : BOARDOFAPPEALS
YOUR FAX NO. : 4108873182

NO.	OTHER FACSIMILE	START TIME	USAGE TIME	MODE	PAGES	RESULT
01	94108210147	Nov. 09 07:41PM	01'39	SND	03	OK

TO TURN OFF REPORT, PRESS 'MENU' #04.
THEN SELECT OFF BY USING '+' OR '-'.

FOR FAX ADVANTAGE ASSISTANCE, PLEASE CALL 1-800-HELP-FAX (435-7329).

SENDING REPORT

Nov. 09 2006 07:40PM

YOUR LOGO : BOARDOFAPPEALS
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NO.	OTHER FACSIMILE	START TIME	USAGE TIME	MODE	PAGES	RESULT
01	94102960931	Nov. 09 07:38PM	01'46	SND	03	OK

TO TURN OFF REPORT, PRESS 'MENU' #04.
THEN SELECT OFF BY USING '+' OR '-'.

FOR FAX ADVANTAGE ASSISTANCE, PLEASE CALL 1-800-HELP-FAX (435-7329).

County Board of Appeals of Baltimore County

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

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

November 16, 2005

FOURTH NOTICE OF POSTPONEMENT

CASE #: CBA-04-159

IN THE MATTER OF: PRIDGEON PROPERTY
Section 6 Windemere – 6 Stonehurst Road Phoenix, MD 21131
11th Election District; 6th Councilmanic District

RE: **JSPC Decision** – Denial of proposed lot line adjustment /amendment to JSPC subdivision plan aka Section III Windemere – 6 Stonehurst Road was DENIED.

12/03/04 – Letter from Deputy Planning Director to Counsel for Property Owners – request for lot line adjustment DENIED; property's zoning has changed since original lot was recorded.

which had been reassigned for hearing on 11/30/05 has been **POSTPONED** at the request of Counsel for Appellant /Property Owner "until such time as *Stepcich* is decided."; TO BE RESET UPON REQUEST.

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

Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code. IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

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

Kathleen C. Bianco
Administrator

c: Counsel for Appellant /Property Owner : Arnold Jablon, Esquire
Appellant /Property Owner : Mr. Richard Pridgeon

Pat Keller, Planning Director
Jeffrey Long, Deputy Planning Director
Caren B. Hoffberger /Planning
Jeff Mayhew, Chief /Community Planning
Lynn Lanham, Chief /Development Review
Timothy M. Kotroco, Director /PDM
John E. Beverungen, Acting County Attorney

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County Board of Appeals of Baltimore County

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

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

December 19, 2006

NOTICE OF ASSIGNMENT

CASE #: 06-419-SPH

IN THE MATTER OF: JOSEPH STEPCICH -Petitioner
3 Stonehurst Road 11th E; 3rd C
5/16/2006 - Z.C.'s Order in which Petition for Special Hearing was granted in part and "yet denied in part as it relates to any future subdivision."

and

CASE #: CBA-04-157

IN THE MATTER OF: STEPCICH PROPERTY, SECTION III
Windmere – 3 Stonehurst Road Phoenix, MD 21131 11th E; 3rd C
RE: **JSPC Decision** – Denial of proposed re-subdivision /amendment to JSPC subdivision plan aka Section III Windemere – 3 Stonehurst Road was DENIED.

and

CASE #: CBA-04-159

IN THE MATTER OF: PRIDGEON PROPERTY
Section 6 Windemere – 6 Stonehurst Road Phoenix, MD 21131 11th E; 3rd C
RE: **JSPC Decision** – Denial of proposed lot line adjustment /amendment to JSPC subdivision plan aka Section III Windemere – 6 Stonehurst Road was DENIED.

ASSIGNED FOR:

WEDNESDAY, JANUARY 10, 2007 at 10:00 a.m. /Day #1 and
THURSDAY, FEBRUARY 1, 2007 at 10:00 a.m. /Day #2

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

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

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

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

Kathleen C. Bianco, Administrator

---

c: Appellant : Office of People's Counsel

Counsel for Appellants /Property Owners : Arnold Jablon, Esquire
: Mr. and Mrs. Joseph Stepcich (3 Stonehurst)
: Mr. Richard Pridgeon (6 Stonehurst)

Brian R. Dietz
J. Carroll Holzer, Esquire, Counsel for
Carol Trela / Long Green Valley Association
Joseph Lee Bishop, Jr., President
Greater Sparks-Glencoe Community Council
Donna Spicer
Adrienne True and Kim Ward
Dr. Eusebia Gonzales
Timothy M. Kotroco, Director /PDM
Pat Keller, Planning Director
William J. Wiseman III /Zoning Commissioner
Walt Smith, Dev. Manager /PDM

Jeffrey Long, Deputy Planning Director
Caren B. Hoffberger /Planning
Jeff Mayhew, Chief /Community Planning
Lynn Lanham, Chief /Development Review
Nancy C. West, Assistant County Attorney
John E. Beverungen, County Attorney

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County Board of Appeals of Baltimore County

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

May 12, 2005

NOTICE OF DELIBERATION

IN THE MATTER OF:

STEPCICH PROPERTY /Section 3 /Windemere
Case No. CBA-04-157

The following date and time has been assigned for deliberation on the procedural issues raised at hearing on 5/11/05:

DATE AND TIME : **THURSDAY, JULY 14, 2005 at 9:00 a.m.**

LOCATION : **Hearing Room 48, Basement, Old Courthouse**

NOTE: Requested Briefs are due on Monday, June 13, 2005
(Original and three [3] copies)

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

Kathleen C. Bianco
Administrator

c: Counsel for Property Owners : Arnold Jablon, Esquire
Property Owners : Mr. and Mrs. Joseph Stepcich

Dr. & Mrs. Eusebio Gonzales
Joseph Lee Bishop, Jr., President
Greater Sparks-Glencoe Community Council
Carol T. Trela, Secretary
Long Green Valley Association
Donna Spicer

Office of People's Counsel
Pat Keller, Planning Director
Jeffrey Long, Deputy Planning Director
Caren B. Hoffberger /Planning
Jeff Mayhew, Chief /Community Planning
Lynn Lanham, Chief /Development Review
Timothy M. Kotroco, Director /PDM
John E. Beverungen, Deputy County Attorney
Jay L. Liner, County Attorney

FYI copy: 2-4-7

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County Board of Appeals of Baltimore County

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

May 12, 2005

Arnold Jablon, Esquire
VENABLE, BAETJER & HOWARD, LLP
210 Allegheny Avenue
Towson, MD 21204

John E. Beverungen
Deputy County Attorney
Baltimore County Office of Law
400 Washington Avenue
Towson, MD 21204

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

RE: *In the Matter of: Stepcich Property/ Section 3, Windemere*
Case No. CBA-04-157

Dear Counsel:

This letter will confirm that written Briefs are due on Monday, June 13, 2005 and, further, that public deliberation on the procedural issues raised at hearing on 5/11/05 has been scheduled for Thursday, July 14, 2005 at 9:00 a.m. In addition, as agreed by all parties on May 11, 2005, the date of August 2, 2005 is being held on the Board's docket for hearing in this matter if needed.

Copies of the Notice of Deliberation and Notice of Assignment are enclosed. Should you have any questions, please call me at 410-887-3180.

Very truly yours,

Kathleen C. Bianco
Administrator

c: Mr. and Mrs. Joseph Stepcich
Dr. & Mrs. Eusebio Gonzales
Joseph Lee Bishop, Jr., President
Greater Sparks-Glencoe Community Council
Carol T. Trela, Secretary
Long Green Valley Association
Donna Spicer
Pat Keller, Planning Director
Jeffrey Long, Deputy Planning Director
Caren B. Hoffberger /Planning
Jeff Mayhew, Chief /Community Planning
Lynn Lanham, Chief /Development Review
Timothy M. Kotroco, Director /PDM
Jay L. Liner, County Attorney

FILE

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County Board of Appeals of Baltimore County

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

May 12, 2005

NOTICE OF DELIBERATION

IN THE MATTER OF:

STEPCICH PROPERTY /Section 3 /Windemere
Case No. CBA-04-157

The following date and time has been assigned for deliberation on the procedural issues raised at hearing on 5/11/05:

DATE AND TIME : **THURSDAY, JULY 14, 2005 at 9:00 a.m.**

LOCATION : **Hearing Room 48, Basement, Old Courthouse**

NOTE: Requested Briefs are due on Monday, June 13, 2005
(Original and three [3] copies)

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

Kathleen C. Bianco
Administrator

---

c: Counsel for Property Owners : Arnold Jablon, Esquire
Property Owners : Mr. and Mrs. Joseph Stepcich

Dr. & Mrs. Eusebio Gonzales
Joseph Lee Bishop, Jr., President
Greater Sparks-Glencoe Community Council
Carol T. Trela, Secretary
Long Green Valley Association
Donna Spicer

Office of People's Counsel
Pat Keller, Planning Director
Jeffrey Long, Deputy Planning Director
Caren B. Hoffberger /Planning
Jeff Mayhew, Chief /Community Planning
Lynn Lanham, Chief /Development Review
Timothy M. Kotroco, Director /PDM
John E. Beverungen, Deputy County Attorney
Jay L. Liner, County Attorney

FYI copy: 2-4-7

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County Board of Appeals of Baltimore County

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400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

February 11, 2005

NOTICE OF ASSIGNMENT

CASE #: CBA-04-157

IN THE MATTER OF: STEPCICH PROPERTY, SECTION III
Windmere – 3 Stonehurst Road Phoenix, MD 21131
11th Election District; 6th Councilmanic District

RE: **JSPC Decision** – Denial of proposed re-subdivision /amendment to JSPC subdivision plan aka Section III Windemere – 3 Stonehurst Road was DENIED.

10/26/04 – Letter from Deputy Planning Director to Counsel for Property Owners -- request for re-subdivision is DENIED.

ASSIGNED FOR: **WEDNESDAY, MAY 11, 2005 at 10:00 a.m.**

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

Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code. IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

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

Kathleen C. Bianco
Administrator

c: Counsel for Property Owners : Arnold Jablon, Esquire
Property Owners : Mr. and Mrs. Joseph Stepcich

Dr. & Mrs. Eusebio Gonzales
Joseph Lee Bishop, Jr., President
Greater Sparks-Glencoe Community Council
Carol T. Trela, Secretary
Long Green Valley Association
Donna Spicer

Office of People's Counsel
Pat Keller, Planning Director
Jeffrey Long, Deputy Planning Director
Caren B. Hoffberger /Planning
Jeff Mayhew, Chief /Community Planning
Lynn Lanham, Chief /Development Review
Timothy M. Kotroco, Director /PDM
John E. Beverungen, Deputy County Attorney
Jay L. Liner, County Attorney

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County Board of Appeals of Baltimore County

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

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

July 15, 2005

NOTICE OF POSTPONEMENT

CASE #: CBA-04-157

IN THE MATTER OF: STEPCICH PROPERTY, SECTION III
Windmere – 3 Stonehurst Road Phoenix, MD 21131
11th Election District; 6th Councilmanic District

RE: **JSPC Decision** – Denial of proposed re-subdivision /amendment to JSPC subdivision plan aka Section III Windemere – 3 Stonehurst Road was DENIED.

10/26/04 – Letter from Deputy Planning Director to Counsel for Property Owners – request for re-subdivision is DENIED.

INASMUCH AS THIS CASE IS AWAITING THE ISSUANCE OF THE BOARD'S ORDER REMANDING THIS MATTER TO THE JSPC AS DETERMINED BY THE BOARD AT ITS PUBLIC DELIBERATION HELD ON 7/14/05, THIS CASE HAS BEEN PULLED FROM THE BOARD'S 8/02/05 HEARING DOCKET; NOT TO BE RESET AT THIS TIME.

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

Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code. IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

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

Kathleen C. Bianco, Administrator

c: Counsel for Property Owners : Arnold Jablon, Esquire
Property Owners : Mr. and Mrs. Joseph Stepcich

Dr. & Mrs. Eusebio Gonzales
Joseph Lee Bishop, Jr., President
Greater Sparks-Glencoe Community Council
Carol T. Trela, Secretary
Long Green Valley Association
Donna Spicer

Office of People's Counsel
Pat Keller, Planning Director
Jeffrey Long, Deputy Planning Director
Caren B. Hoffberger /Planning
Jeff Mayhew, Chief /Community Planning
Lynn Lanham, Chief /Development Review
Timothy M. Kotroco, Director /PDM
John E. Beverungen, Deputy County Attorney
Jay L. Liner, County Attorney

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County Board of Appeals of Baltimore County

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

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

November 9, 2006

NOTICE OF POSTPONEMENT

CASE #: 06-419-SPH

IN THE MATTER OF: JOSEPH STEPCICH -Petitioner
3 Stonehurst Road 11th E; 3rd C

5/16/2006 - Z.C.'s Order in which Petition for Special Hearing was granted in part and "yet denied in part as it relates to any future subdivision."

which was scheduled to be heard on 11/15/06 has been **POSTPONED** at the request of Baltimore County and at the request of Counsel for Long Green Valley Assn., et al; **to be reassigned to January dates upon agreement of counsel as to availability.**

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

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

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

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

Kathleen C. Bianco
Administrator

---

c: Appellant : Office of People's Counsel

Counsel for Appellants /Property Owners : Arnold Jablon, Esquire
: Mr. and Mrs. Joseph Stepcich (3 Stonehurst)

Brian R. Dietz

J. Carroll Holzer, Esquire, Counsel for
Carol Trela
Long Green Valley Association

Adrienne True and Kim Ward
Dr. Eusebia Gonzales

Pat Keller, Planning Director
William J. Wiseman III /Zoning Commissioner
Walt Smith, Dev. Manager /PDM
Timothy M. Kotroco, Director /PDM
Nancy C. West, Assistant County Attorney
John E. Beverungen, County Attorney

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BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

November 1, 2006

JOHN E. BEVERUNGEN, *County Attorney*
Office of Law

VIA HAND DELIVERY
Kathleen C. Bianco, Administrator
Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, MD 21204

RECEIVED
NOV 02 2006
BALTIMORE COUNTY
BOARD OF APPEALS

Re: In the Matter of: Pridgeon Property
Case No. CBA-06-019; and
In the Matter of: Stepcich Property
Case No. CBA-06-020
Hearing Dates: November 14 and 15, 2006 at 10:00 a.m.

Dear Ms. Bianco:

On Monday I received a hearing notice relative to the above captioned consolidated cases. I must respectfully ask for a continuance because of some prior commitments.

I have a long-standing appointment scheduled for most of the day on November 14 at Johns Hopkins Hospital for a series of medical tests for my son, Maxim. Additionally, I am in the midst of preparing for a multi-million dollar arbitration matter with Baltimore City that is scheduled for a hearing in the coming weeks. Accordingly, I would appreciate it if the above referenced matters could be reset on the Board's docket.

I have spoken with Peter Max Zimmerman, the People's Counsel, and Arnold Jablon, attorney for the property owners, and they have no objection to the County's postponement request. However, Mr. Jablon would like this matter to be rescheduled as soon as possible.

Thank you and I apologize for any inconvenience to the Board.

Sincerely yours,

Nancy C. West
Assistant County Attorney

C: Arnold Jablon, Esq.
Peter Max Zimmerman, People's Counsel

IN THE MATTER OF	*	**BEFORE THE**
JOSEPH STEPCICH **3 Stonehurst Road** **Baltimore, Maryland**	*	**COUNTY BOARD**
	*	**OF APPEALS**
	*	**FOR BALTIMORE COUNTY**
	*	**Case No: 06-419-SPH**

* * * * *

ENTRY OF APPEARANCE

Please enter the appearance of the undersigned in the above-referenced case as counsel for Baltimore County, Maryland and forward all notices of future hearings to my attention.

John E. Beverungen
County Attorney

Nancy C. West
Assistant County Attorney
Office of Law
400 Washington Avenue
Towson, Maryland 21204
(410) 887-4420

RECEIVED
NOV 02 2006
BALTIMORE COUNTY
BOARD OF APPEALS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of November 2006, a copy of this Entry of Appearance was mailed, first class mail, postage prepaid, to:

Arnold Jablon, Esquire
Venable, LLP
210 Allegheny Ave.
Towson, MD 21204

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

Nancy C. West
Assistant County Attorney

County Board of Appeals of Baltimore County

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

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

October 27, 2006

NOTICE OF ASSIGNMENT

CASE #: CBA-06-019 — **IN THE MATTER OF: PRIDGEON PROPERTY**
6 Stonehurst Road DRC 040306 E 11th E; 3rd C

and

CASE #: CBA-06-020 — **IN THE MATTER OF: STEPCICH PROPERTY**
3 Stonehurst Road DRC 040306 D 11th E; 3rd C

4/12/06 – Denial of request to reconfigure lots of record

ASSIGNED FOR: **TUESDAY, NOVEMBER 14, 2006 at 10:00 a.m.**

HOLDING 11/15/06 at 10 a.m. to conclude STEPCICH PROPERTY 06-020 – if needed.

LOCATION: Hearing Room 48, Old Courthouse

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

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

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

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

Kathleen C. Bianco
Administrator

c: Counsel for Appellants /Property Owners : Arnold Jablon, Esquire
Appellants /Property Owners : Mr. Richard Pridgeon (6 Stonehurst)
: Mr. and Mrs. Joseph Stepcich (3 Stonehurst)

David Martin /GW Stephens & Assoc.
Brian R. Dietz

Adrienne True and Kim Ward
Dr. Eusebia Gonzales

Office of People's Counsel
Walt Smith, Dev. Manager /PDM
Timothy M. Kotroco, Director /PDM
Nancy C. West, Assistant County Attorney
John E. Beverungen, *County Attorney*

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IN THE MATTER OF:	*	**BEFORE THE**
PRIDGEON PROPERTY **6 Stonehurst Road** **Baltimore, Maryland**	*	**COUNTY BOARD OF APPEALS** **FOR**
and	*	**BALTIMORE COUNTY**
STEPCICH PROPERTY **3 Stonehurst Road** **Baltimore, MD**	*	**Case Nos: CBA-06-019 and CBA-06-020**

* * * * *

ENTRY OF APPEARANCE

Please enter the appearance of the undersigned in the above-referenced case as counsel for Baltimore County, Maryland and forward all notices of future hearings to my attention.

John E. Beverungen
County Attorney

Nancy C. West
Assistant County Attorney
Office of Law
400 Washington Avenue
Towson, Maryland 21204
(410) 887-4420

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BALTIMORE COUNTY
BOARD OF APPEALS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of November 2006, a copy of this Entry of Appearance was mailed, first class mail, postage prepaid, to:

Arnold Jablon, Esquire
Venable, LLP
210 Allegheny Ave.
Towson, MD 21204

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

Nancy C. West
Assistant County Attorney

County Board of Appeals of Baltimore County

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

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

October 27, 2006

NOTICE OF ASSIGNMENT

CASE #: 06-419-SPH

IN THE MATTER OF: JOSEPH STEPCICH -Petitioner
3 Stonehurst Road 11th E; 3rd C

5/16/2006 - Z.C.'s Order in which Petition for Special Hearing was granted in part and "yet denied in part as it relates to any future subdivision."

ASSIGNED FOR: **WEDNESDAY, NOVEMBER 15, 2006 at 10:00 a.m.**

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

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

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

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

Kathleen C. Bianco
Administrator

---

c: Appellant : Office of People's Counsel

Counsel for Appellants /Property Owners : Arnold Jablon, Esquire
: Mr. and Mrs. Joseph Stepcich (3 Stonehurst)

Brian R. Dietz

Adrienne True and Kim Ward
Dr. Eusebia Gonzales

Office of People's Counsel
Walt Smith, Dev. Manager /PDM
Timothy M. Kotroco, Director /PDM
Nancy C. West, Assistant County Attorney
John E. Beverungen, County Attorney

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BOARD OF APPEALS

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HOLZER & LEE

LAW OFFICES

J. CARROLL HOLZER, PA

J. HOWARD HOLZER
1907-1989

THOMAS J. LEE
OF COUNSEL

THE 508 BUILDING

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

November 3, 2006
#7671

HAND-DELIVERED

Ms. Kathleen Bianco
Administrator
Baltimore County
Board of Appeals
400 Washington Avenue, Room 49
Towson, Maryland 21204

RE: Stepcich Property; Case Nos. 06-419-SPH; CBA-06-019 & 020
Hearing Date: November 14 & 15, 2006

Dear Ms. Bianco:

I have just been retained by Ms. Carol Trela, 5433 Patterson Rd., Baldwin, MD 21013; and the Long Green Valley Association, P.O. Box 91, Baldwin, MD 21013 in the above captioned cases scheduled for a hearing on Tuesday and Wednesday, November 14 & 15, 2006. Please herewith enter my appearance in those cases. Additionally, I must also ask for a postponement because I will be in Florida from November 10 through November 15, 2006 for my grandson's first birthday. I would, therefore, look forward to discussing mutually convenient dates to reschedule the hearing that would satisfy the Board of Appeals and counsel.

I appreciate your understanding and cooperation.

Very truly yours,

J. Carroll Holzer

JCH:mlg

cc: Arnold Jablon, Esquire
Office of People's Counsel
LGVA
Ms. Carol Trela

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NOV 0 3 2006
BALTIMORE COUNTY
BOARD OF APPEALS

2-4-7

(7)

County Board of Appeals of Baltimore County

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

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

February 11, 2005

NOTICE OF ASSIGNMENT

CASE #: CBA-04-157

IN THE MATTER OF: STEPCICH PROPERTY, SECTION III
Windmere – 3 Stonehurst Road Phoenix, MD 21131
11th Election District; 6th Councilmanic District

RE: **JSPC Decision** – Denial of proposed re-subdivision /amendment to JSPC subdivision plan aka Section III Windemere – 3 Stonehurst Road was DENIED.

10/26/04 – Letter from Deputy Planning Director to Counsel for Property Owners – request for re-subdivision is DENIED.

ASSIGNED FOR: **WEDNESDAY, MAY 11, 2005 at 10:00 a.m.**

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

Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code. IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

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

Kathleen C. Bianco
Administrator

c: Counsel for Property Owners : Arnold Jablon, Esquire
Property Owners : Mr. and Mrs. Joseph Stepcich

Dr. & Mrs. Eusebio Gonzales
Joseph Lee Bishop, Jr., President
Greater Sparks-Glencoe Community Council
Carol T. Trela, Secretary
Long Green Valley Association
Donna Spicer

Office of People's Counsel – late
Pat Keller, Planning Director
Jeffrey Long, Deputy Planning Director
Caren B. Hoffberger /Planning
Jeff Mayhew, Chief /Community Planning
Lynn Lanham, Chief /Development Review
Timothy M. Kotroco, Director /PDM
John E. Beverungen, Deputy County Attorney
Jay L. Liner, County Attorney

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on Recycled Paper

County Board of Appeals of Baltimore County

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

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

November 9, 2006

NOTICE OF POSTPONEMENT

CASE #: CBA-06-019 — **IN THE MATTER OF: PRIDGEON PROPERTY**
6 Stonehurst Road DRC 040306 E 11th E; 3rd C

and

CASE #: CBA-06-020 — **IN THE MATTER OF: STEPCICH PROPERTY**
3 Stonehurst Road DRC 040306 D 11th E; 3rd C

4/12/06 – Denial of request to reconfigure lots of record

which was scheduled to be heard on 11/14/06 and 11/15/06 has been **POSTPONED** at the request of Baltimore County and at the request of Counsel for Long Green Valley Assn., et al; **to be reassigned to January dates upon agreement of counsel as to availability.**

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

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

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

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

Kathleen C. Bianco
Administrator

---

c: Counsel for Appellants /Property Owners : Arnold Jablon, Esquire
Appellants /Property Owners : Mr. Richard Pridgeon (6 Stonehurst)
: Mr. and Mrs. Joseph Stepcich (3 Stonehurst)

David Martin /GW Stephens & Assoc.
Brian R. Dietz

J. Carroll Holzer, Esquire, Counsel for
Carol Trela
Long Green Valley Assn.

Adrienne True and Kim Ward
Dr. Eusebia Gonzales

Office of People's Counsel
Walt Smith, Dev. Manager /PDM
Timothy M. Kotroco, Director /PDM
Nancy C. West, Assistant County Attorney
John E. Beverungen, County Attorney

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on Recycled Paper

IN RE:	DRC APPEAL	*	BEFORE THE
	Pridgeon Property, Lot 3 & Parcel B Windemere		
	(6 Stonehurst Road)	*	BALTIMORE COUNTY
	11th Election & 3rd Councilmanic Districts	*	BOARD OF
		*	APPEALS
	Legal Owner(s): Mr. Richard Pridgeon		
		*	CASE NO.: CBA-06-019

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

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel for Baltimore County in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

RECEIVED
MAY 17 2006
BALTIMORE COUNTY
BOARD OF APPEALS

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 17th day of May, 2006, a copy of the foregoing Entry of Appearance was mailed to Arnold Jablon, Esquire, Venable, LLP, 210 Allegheny Avenue, Towson, MD 21204, Attorney for Petitioners.

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

Baltimore County Government
Department of Permits and Development Management

111 West Chesapeake Avenue
Towson MD 21204

(410) 887-3321
(410) 887-2877 (fax)

April 24, 2006

Arnold Jablon, Esq.
Venable LLP
210 Allegheny Avenue
Towson, MD 21204

RE: DRC Appeal
6 Stonehurst Road
Pridgeon Property, Lot 3 &
Parcel B Windemere, Sec. III
District: 11 c 3
DRC No.: 040306E

Dear Mr. Jablon:

Please be advised that I am in receipt of your appeal of the above-referenced case, which was filed in this office on April 20, 2006 on behalf of Mr. Richard Pridgeon. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

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

Sincerely,

Timothy Kotroco
Director

TK:kw

c: Mr. Richard Pridgeon
David Martin
People's Counsel
Baltimore County Board of Appeals
File

RECEIVED
MAY 02 2006
BALTIMORE COUNTY
BOARD OF APPEALS

Stepcich Property
Section 3
Windmere – 3 Stonehurst Rd.
Phoenix 21131

CBA-04-157

RE: Denial from Planning Board for a proposed re-subdivision/ amendment to JSPC subdivision plan a.k.a Secton III Windemere - 3 Stonehurst Rd, Phoenix 21131

August 17, 2004	Request by owners, Mr. and Mrs. Joseph Stepcich, to the Planning Board for a proposed re-subdivision, Lot 3 into 2 lots
October 26, 2004	Letter from Jeffrey Long, Deputy Director, Planning to Arnold Jablon, attorney for Petitioners, denying the request for re-subdivision.
November 19	Notice of Appeal filed by Arnold Jablon, on behalf of Mr. and Mrs. Joseph Stepcich, Owners.

ARNOLD JABLON, ESQUIRE
VENABLE, BAETJER & HOWARD, LLP
210 ALLEGHENY AVENUE
TOWSON, MD 21204

Counsel for Appellants

Mr. and Mrs. Stepcich
3 Stonehurst Rd.
Phoenix MD 21131

Appellants

Arnold F. 'Pat" Keller III, Director / Office of Planning
Jeff Long, Deputy Director / Office of Planning
Caren B. Hoffberger / Office of Planning
Jeff Mayhew, Chief, Community Planning
Lynn Lanham, Chief / Development Review
Timothy M. Kotroco, Director / PDM
Jay L. Liner, County Attorney
Amanda Conn, Assistant County Attorney

NOTIFICATION LIST:

DR. AND MRS. EUSEBIO GONZALES
300 STONEHURST ROAD
PHOENIX MD 21131

JOSEPH LEE BISHOP, JR., PRESIDENT
GREATER SPARKS-GLENCOE
COMMUNITY COUNCIL
PO BOX 396
SPARKS, MD 21152

CAROL T. TRELA, SECRETARY
LONG GREEN VALLEY ASSOCIATION
PO BOX 91
BALDWIN MD 21013

DONNA SPICER
8719 EDDINGTON ROAD
BALTIMORE MD 21234

410-665-4322
FAX 410-668-0569

ARNOLD JABLON, ESQUIRE
VENABLE, BAETJER & HOWARD, LLP
210 ALLEGHENY AVENUE
TOWSON, MD 21204
Counsel for Appellants

MR. AND MRS. STEPCICH
3 STONEHURST RD.
PHOENIX MD 21131
Appellants

Development Review Committee Decision
3 Stonehurst Road
Stepcich Property
Brian Dietz– Engineer
11th Election District – 3rd Councilmanic District
DRC No. 040306D

DRC REQUEST FORM

DRC Application, date stamped March 14, 2006, DRC # 040306D (Copy) (1 of 1)
DRC Receipt of DRC Fee of $50.00 dated March 16, 2006 (Copy) (1 of 1)
Letter from Arnold Jablon to Donald Rascoe dated March 14, 2006 (Copy) (2 of 2)
Development Review Committee Application Form Checklist dated March 13, 2006 (Copy) (1 of 1)
DRC Response Letter dated April 12, 2006 from Timothy Kotroco to Mr. Arnold Jablon (Copy)(1 of 1)
Plan: Request for a Material Amendment to the JSPC Plan, etc. of Section III Windemere (1of 1) (Copy)

DRC RESPONSE LETTER

DRC Response Letter dated April 12, 2006 from Timothy Kotroco to Arnold Jablon (Copy) (1 of 1)

NOTICE OF APPEAL

Letter from Arnold Jablon, Esq. to Timothy Kotroco dated April 18, 2006 (Copy)(1 of 1)
Notice of Appeal (Copy)(2 of 2)
Letter from Timothy Kotroco to Mr. Arnold Jablon dated April 12, 2006 (Copy)(1 of 1)

NOTIFICATION LIST (Page 1 of 1)

NOTIFICATION LIST

Mr. and Mrs. Joseph Stepcich, 3 Stonehurst Road, Baltimore, MD 21131
- Appellants/Owner of Property

Arnold Jablon, Esq., Venable, LLP, 210 Allegheny Ave., Towson, MD 21204
-Attorney for Appellants

Brian R. Dietz, 7867 Oakdale Avenue, Baltimore, MD 21237
-Professional Land Surveyor/Listed as Engineer on DRC Application

Timothy Kotroco, Director, Department of Permits and Development Management
Walt Smith, Development Manager

People's Counsel

Please Send: Adrienne Jule 11 Windemere Pkwy
and
M. Kim Ward Balt, MD 21131

Case No. CBA-04-157

In the Matter of: Stepcich Property, Section 3
Windemere – 3 Stonehurst Road Phoenix 21131

RE: JSPC Decision: Denied proposed re-subdivision /amendment to JSPC subdivision plan aka Section II Windermere /3 Stonehurst Road (Joint Subdivision Planning Committee)

10/26/04 – Letter from Jeffrey Long, Deputy Planning Director, to Arnold Jablon, Counsel for Property Owners, denying requested resubdivision.

11/30/04 – Entry of Appearance filed by People's Counsel.

12/10/04 – Entry of Appearance filed by John E. Beverungen, Deputy County Attorney.

1/10/05 – Letter from Donna Spicer 8719 Eddington Road Balto MD 21234 410-665-4322; FAX 410-668-0569; to be notified of hearing dates, etc. File noted.

2/11/05 -Notice of Assignment sent to parties; case assigned for hearing on Wednesday, May 11, 2005 at 10:00 a.m.:

Arnold Jablon, Esquire
Mr. and Mrs. Joseph Stepcich
Dr. & Mrs. Eusebio Gonzales
Joseph Lee Bishop, Jr., President
Greater Sparks-Glencoe Community Council
Carol T. Trela, Secretary
Long Green Valley Association
Donna Spicer
Office of People's Counsel
Pat Keller, Planning Director
Jeffrey Long, Deputy Planning Director
Caren B. Hoffberger /Planning
Jeff Mayhew, Chief /Community Planning
Lynn Lanham, Chief /Development Review
Timothy M. Kotroco, Director /PDM
John E. Beverungen, Deputy County Attorney
Jay L. Liner, County Attorney

5/09/05 – Letter from Office of People's Counsel – setting forth its position regarding the proposal to amend this Windemere subdivision.

5/11/05 – Board convened for hearing (Stahl, Ramsey, Crizer). Counsel for the parties to this matter will file written Briefs for submittal to the Board on the procedural issues raised at hearing; these memos are due on 6/13/05, with deliberation on these limited issues to be assigned for 7/14/05. Should the Board determine that the matter should go forward at this level, the hearing date of August 2, 2005 will be held for said hearing.

5/12/05 – Notice of Deliberation sent to parties this date; deliberation on procedural issues raised at hearing on 5/11/05 assigned for Thursday, July 14, 2005 at 9:00 a.m. FYI copy to 2-4-7.
- Notice of Assignment sent to parties this date; holding Tuesday, August 2, 2005 at 10:00 a.m. for hearing in this matter, if needed. FYI copy to 2-4-7. FYI copy also sent to Caren this date.

6/13/05 – Hearing Memorandum filed by Office of People's Counsel.
-- Appellants' Pre-Hearing Memorandum filed by Arnold Jablon, Esquire, on behalf of Joseph and Joy Stepcich.
-- Memorandum of Law filed by John Beverungen, Esquire, on behalf of Baltimore County, Maryland. Copies to be sent to Mr. Stahl; hand-delivered to Messrs. Ramsey and Crizer 6/15/05.

IN File 2 of 2

7/14/05 – Board convened for public deliberation; decided (1) that the Board does have jurisdiction to hear the appeal in this matter; and (2) that the matter is REMANDED to the JSPC for a hearing and final determination re zoning and approval or denial of request. (4)

7/15/05 – Case pulled from 8/02/05 docket and hearing date; Notice of Postponement sent to parties this date; not to be reset at this time pending outcome of Board's remand to JSPC.

7/14/05 – Board convened for public deliberation; decided (1) that the Board does have jurisdiction to hear the appeal in this matter; and (2) that the matter is REMANDED to the JSPC for a hearing and final determination re zoning and approval or denial of request. (4)

7/15/05 – Case pulled from 8/02/05 docket and hearing date; Notice of Postponement sent to parties this date; not to be reset at this time pending outcome of Board's remand to JSPC.

NOTE: Hold this matter as REMANDED until conclusion /final outcome of related matters pending on appeal to Circuit Court (CASE #: CBA-04-159 and **CASE #: CBA-06-019** and **CASE # 06-020**and **CASE #: 06-419-SPH).**

Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

Room 47, Old CourtHouse
400 Washington Ave.
Towson, MD 21204

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

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

May 9, 2005

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

RECEIVED
MAY 09 2005
BALTIMORE COUNTY
BOARD OF APPEALS

Re: In the Matter of the Stepcich Property
Section III, Windemere Subdivision
Case No.: CBA-04-157

Dear Mr. Stahl:

Enclosed is a copy of a letter dated January 3, 2005 sent to the Planning Board regarding this matter. There, we raised the preliminary concern that the request to amend the Windemere subdivision is subject to the BCZR 1A00.4 and 1B01.3 special hearing/special exception review and requirements to amend a final development plan. The Zoning Commissioner has jurisdiction over that review.

This is a fundamental statutory process which must be followed and exhausted. It appears, therefore, that the CBA does not at this time have jurisdiction or authority to hear this case on the merits. See Queen Anne's Conservation, Inc. v. County Com'rs of Queen Anne's County, 382 Md. 306 (2004), Maryland Reclamation Associates, Inc . v. Harford County, Maryland, 382 Md. 348 (2004). Alternatively, the case is not ripe for CBA review.

In addition to the special hearing/special exception, the request must be reviewed in the development process. This is another jurisdictional issue which may be taken up preliminarily.

In the event this case is ultimately reviewed on the merits, this office's position, stated in more detail in the January 3, 2005 letter, is that the addition of a new lot is subject to the R.C.4 Zone standards and that there are no "vested rights" to this proposed amendment.

Thank you for your consideration.

Sincerely,

Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. Demilio
Deputy People's Counsel

PMZ\rmw

cc: Arnold Jablon, Esquire, Sent Via Fax
John E. Beverungen, Deputy County Attorney
Arnold F. "Pat" Keller, Planning Director and Secretary to Planning Board
William J. Wiseman, Zoning Commissioner

Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

Room 47, Old Courthouse
400 Washington Ave.
Towson, MD 21204

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

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

January 3, 2005

Charles E. Klein, Chairman
Baltimore County Planning Board
401 Bosley Avenue
Towson, Maryland 21204

Re: Section III, Windemere Subdivision, The Stepcich Property

Dear Mr. Klein:

Baltimore County Charter Sec. 524.1 assigns this office to defend the comprehensive zoning maps. See Sycamore Realty Co. v. People's Counsel 344 Md. 57 (1996); People's Counsel v. Crown Development Corp. 328 Md. 303 (1992).

The Planning Board agenda for January 6, 2005 includes the proposal to amend the Windemere subdivision, which includes the "Stepcich" lot. The proposal is to subdivide anew this lot and thus add another lot to the subdivision. A paramount issue involves the zoning reclassification of the property. When originally subdivided, the area was zoned R.S.C., which allowed 1-acre lots. The area has since been rezoned to R.C. 4 (Resource Conservation), a more protective classification. The R.C. 4 zone standards do not allow the proposed new or amended subdivision.

The property owner apparently asserts that "vested rights" allow this proposal. This office disagrees. There is, however, a threshold jurisdictional problem to be addressed. The Planning Board lacks jurisdiction or authority to review subdivision proposals. Many years ago, the Planning Board did perform this function. It terminated, however, with the passage of the 1982 ordinance establishing the County Review Group. Bill 56-82. The CRG was active until replaced by the Zoning Commissioner/Hearing Officer under Bill 1 in 1992. In a nutshell, the Planning Board has no function to perform with respect to the Stepcich property.

In any event, there are no "vested rights" to amend a subdivision in the way proposed. The R.S.C. zone went out of existence in 1976.The addition of a new lot is subject to the R.C. 4 zone, which has been in place for many years. We have, in this context, reviewed BCZR 103.3. It grandfathers a subdivision plat approved by the Planning Board and recorded prior to the

enactment of certain Resource Conservation zones, but does not immunize an amendment or addition from compliance with new law.

It should not be forgotten that County Code § 32-4-114 requires development plans to comply with all other laws of the county, including zoning law. It is consistent with BCZR 600, which confirms that where zoning and other laws are applicable, the most restrictive provision governs. In other words, zoning requirements are minimum requirements.

The proposed new or modified subdivision also constitutes an amendment to a final development plan. It is subject to review in the special hearing/special exception process under BCZR 1A00.4 and 1B01.3.

Because this matter involves zoning issues, the appropriate forum to resolve them is before the Zoning Commissioner in the special hearing process, subject to appeal to the County Board of Appeals. See People's Counsel v. Maryland Marine Mfg. Co. 316 Md. 491 (1989); Board of Child Care v. Harker 316 Md. 683 (1989); Sycamore Realty v. People's Counsel 344 Md. 57 (1996); Marzullo v. Kahl 366 Md. 158 (2001). In that process, the predictable conclusion will be that the law of vested rights is settled; and that there is no substantial basis to argue that vested rights allow the proposed amended or new subdivision.

Sincerely.

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

C. S. Demilio

Carole S. Demilio
Deputy People's Counsel

PMZ/CSD/rmw

cc: Arnold Jablon, Esquire, Via Fax
John E. Beverungen, Esquire, Deputy County Attorney
Arnold F. "Pat" Keller, Planning Director and Secretary to Planning Board
William J. Wiseman, Esquire, Zoning Commissioner

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Jay Liner, Esquire
Office of Law

DATE: September 29, 2004

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

SUBJECT: Letter regarding vesting rights – Stepcich Property – amendment to JSPC subdivision plan a.k.a. Section III, Windemere – 3 Stonehurst Road, Phoenix, MD 21131

Based on our informal discussion last month regarding the above JSPC plan, our office would like to request a response in writing. As per our previous conversation, it was agreed that further subdivision of the lot known as 3 Stonehurst Road would have to meet the requirements of the zoning classification currently in place. Therefore, due to the size of the existing lot no further subdivision could take place. Attached please find a copy of my comments to the Development Review committee dated March 22, 2002.

A response by October 11, 2004 would be very much appreciated.

AFK:cbh

cc: Anthony G. Marchione, Administrative Officer
Jeff Long, Deputy Director, Office of Planning
Caren B. Hoffberger, Office of Planning

BALTIMORE COUNTY, MARYLAND

INTEROFFICE MEMORANDUM

TO: Development Review Committee **DATE:** March 22, 2002

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

SUBJECT: Item Number 032502M, Resubdivision of 3 Stonehurst Road

---

Recommendation: The Office of Planning recommends against the resubdivision of 3 Stonehurst Road. The RC-4 zoning regulations do not allow the resubdivision of lots less than 6 acres in size. The matter before the Development Review Committee on March 25, 2002, DRC#032502M, is a request for a minor subdivision of 3 Stonehurst Road, a 5.15 acre lot recorded in Liber O.T.G. 34 Folio 10, as Lot 1, Section III of Windemere. Windemere is a development approved in 1970 pursuant to the R40 zoning regulations, which allowed one dwelling per 40,000 sq. ft. Windemere has a total of 114 recorded lots on approximately 179 acres. Windemere is currently zoned RC-4, Watershed Protection, which requires a minimum of 6 acres in order to subdivide into two lots. It is the position of the Office of Planning that any resubdivision of lots in a previously recorded plat is subject to current zoning regulations, therefore this lot is not subdividable.

Pertinent sections of the Baltimore County Zoning Regulations and the County Code are as follows.

Section 103.3 In any RC2, RC3, RC4, or RC5, contrary provisions of Subsection 103.1 and other contrary provisions of or pursuant to these regulations notwithstanding, in the case of property covered by a recorded subdivision plat which was approved by the Baltimore County Planning Commission or Board before the effective date of this subsection, and which remains in effect, buildings may be constructed, residential densities and lots may be established, and yards and other open areas may be laid out in accordance with that plan, subject to any conditions of the approval.

Where such a plan has been so approved but does not indicate densities or the situations of buildings or yards or other open spaces, these may be established or situated only in accordance with the standards as prescribed and in force at the time of the lot recordation.

Section 26-169 **Scope of Regulations.**

These regulations shall apply to all development except: (i) such development which, prior to the effective date of this article (June 11, 1982), has received tentative approval of the preliminary plan by the planning board or for which development a valid, unexpired building permit exists, or for which development a current executed public works agreement exists, all of which development shall be governed by the subdivision regulations in effect at the time of said preliminary plan approval, building permit issuance, or public works agreement execution, as the case may be. Proposed development shall be in compliance with the present zoning classification on the subject property: (ii) such development as has received a CRG approval, reclamation plan approval, any other project vested by law or such development for which a CRG plan has been accepted for filing by the department of public works prior to the date of adoption of Bill 1-92, all of which development shall be governed by the subdivision regulations in effect at the time of said approval or acceptance for filing, as the case may be.
(Code 1978, §22-40; Bill No.18, 1990§2; Bill No.1, 1992 §2)

The Office of Planning's position is that a resubdivison of an existing lot of record must comply with current zoning regulations. The "grandfathering provision" in Section 103.3 applies to the lot layout as approved by the Planning Commission or Board. Changes to the layout that result in an increase in density must comply with current regulations. Furthermore, the plat of Windemere had no density calculations indicated, therefore, Section 103.3 states " where such a plan has been so approved but does not indicate densities or the situations of buildings or yards or other open spaces, these may be established or situated only in accordance with the standards as prescribed and in force at the time of recordation. In other words, lots established on that plat are buildable in accordance with prior standards, provided that plat is vested. Newly established lots must comply with current regulations.

Any interpretation that allows this resubdivision has far reaching implications for there is great potential for the resubdivision of old RSC and RDP lots at a density that exceeds current zoning. This is not in keeping with the county's ~~Smart Growth initiatives and~~ Rural Strategy as articulated in Master Plan 2010, and the state and county funded rural preservation efforts in the Piney Run, Coastal, Manor, Gunpowder and Long Green Rural Legacy areas.

Arnold F. 'Pat' Keller, III

AFK:rk

Q Pkeller/Stonehurst Rd Memo032202

IN RE:	DRC APPEAL Stepcich Property, Lot 3 Windemere (3 Stonehurst Road)	*	BEFORE THE BALTIMORE COUNTY
	11th Election & 3rd Councilmanic Districts	*	BOARD OF
		*	APPEALS
	Legal Owner(s): Mr. & Mrs. Joseph Stepcich	*	CASE NO.: CBA-06-020

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

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel for Baltimore County in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

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

RECEIVED
MAY 17 2006
BALTIMORE COUNTY
BOARD OF APPEALS

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 17th day of May, 2006, a copy of the foregoing Entry of Appearance was mailed to Arnold Jablon, Esquire, Venable, LLP, 210 Allegheny Avenue, Towson, MD 21204, Attorney for Petitioners.

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

IN RE:	RESUBDIVISION Stepcich Property, Lot 3 Windemere (3 Stonehurst Road)	*	BEFORE THE
		*	BALTIMORE COUNTY
	6th Election & 11th Councilmanic Districts	*	BOARD OF
		*	APPEALS
	Legal Owner(s): Mr. & Mrs. Joseph Stepcich	*	CASE NO.: CBA-04-157

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

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel for Baltimore County in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. DeMilio

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

RECEIVED
NOV 30 2004
BALTIMORE COUNTY
BOARD OF APPEALS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of November, 2004, a copy of the foregoing Entry of Appearance was mailed to Jeffrey Long, Deputy Director of Planning, 401 Bosley Avenue, New Courts Building, Towson, MD 21204 and to Arnold Jablon, Esquire, Venable, LLP, 210 Allegheny Avenue, Towson, MD 21204, Attorney for Appellants.

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

IN RE: RESUBDIVISION	*	BEFORE THE
Stepcich Property, Lot 3 Windemere (3 Stonehurst Road)	*	BALTIMORE COUNTY
	*	BOARD OF APPEALS
6th Election & 11th Councilmanic Districts	*	CASE NO. CBA-04-157
Legal Owner(s): Mr. & Mrs. Joseph Stepcich	*	

****

ENTRY OF APPEARANCE

Please enter the appearance of John E. Beverungen, Deputy County Attorney, on behalf of Baltimore County, Maryland in the above-captioned matter.

Jay L. Liner
County Attorney

John E. Beverungen
Deputy County Attorney
Baltimore County Office of Law
400 Washington Avenue
Towson, Maryland 21204
(410) 887-4420

RECEIVED
DEC 10 2004
BALTIMORE COUNTY
BOARD OF APPEALS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of December, 2004, a copy of the foregoing Entry of Appearance, was mailed, postage prepaid, to:

Arnold Jablon, Esquire
Venable, LLP
210 Allegheny Avenue
Towson, Maryland 21204
Attorney for Appellants

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

John E. Beverungen

IN THE MATTER OF STEPCICH PROPERTY, SECTION III Windmere	*	BEFORE
	*	BOARD OF APPEALS
	*	
3 Stonehurst Road	*	OF
	*	
11th Election District 6th Councilmanic District	*	BALTIMORE COUNTY
	*	CASE NO. CBA-04-157
	*	

* * * * * * * * *

SUBPOENA

Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on Wednesday, May 11, 2005, at 10:00 a.m., in Room 48, Basement, Old Courthouse, located at 400 Washington Avenue, Towson, Maryland 21204, and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board.

Witness: **Donald Rascoe, Deputy Director**
Baltimore County Department of Permits &
Development Management

Address: **County Office Building**
111 Chesapeake Ave.
Towson, Maryland 21204

General Purpose: for the witness to testify

Requested By: Arnold Jablon, Esquire
Venable LLP
210 Allegheny Avenue
Towson, Maryland 21204
(410) 494-6200

RECEIVED
APR 26 2005
BALTIMORE COUNTY
BOARD OF APPEALS

The witness named above is hereby ordered to so appear before the County Board of Appeals.

Linda B Fluegel
County Board of Appeals of Baltimore County

4/26/05
Date

TO1DOCS1/DHK01/#201400 v1

IN THE MATTER OF STEPCICH PROPERTY, SECTION III Windmere	*	BEFORE
	*	BOARD OF APPEALS
	*	
3 Stonehurst Road	*	OF
	*	
11th Election District 6th Councilmanic District	*	BALTIMORE COUNTY
	*	CASE NO. CBA-04-157
	*	

* * * * * * * * *

SUBPOENA

Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on Wednesday, May 11, 2005, at 10:00 a.m., in Room 48, Basement, Old Courthouse, located at 400 Washington Avenue, Towson, Maryland 21204, and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board.

Witness: **Arnold F. "Pat" Keller, Director**
Baltimore County Office of Planning

Address: **County Courts Building**
401 Bosley Avenue, 4th Floor
Towson, Maryland 21204

General Purpose: for the witness to testify and bring all files and information regarding the property known as the "Stepcich Property" in the possession of the Office of Planning and the Baltimore County Planning Board.

Requested By: Arnold Jablon, Esquire
Venable LLP
210 Allegheny Avenue
Towson, Maryland 21204
(410) 494-6200

RECEIVED
APR 2 1 2005
BALTIMORE COUNTY
BOARD OF APPEALS

The witness named above is hereby ordered to so appear before the County Board of Appeals.

Lawrence B. Fleischer
County Board of Appeals of Baltimore County

4/21/05
Date

TO1DOCS1/DHK01/#201400 v1

RECEIVED
APR 2 1 2005
BALTIMORE COUNTY
BOARD OF APPEALS

IN THE MATTER OF STEPCICH PROPERTY, SECTION III	*	BEFORE THE
	*	BOARD
	*	OF APPEALS FOR
3 Stonehurst Road	*	BALTIMORE COUNTY
6th Councilmanic District 11h Election District	*	CASE NO. CBA-04-157

* * * * * * * * *

RETURN OF PRIVATE PROCESS SERVER

Pursuant to Maryland Rule 2-126(a), I, the undersigned, hereby certify that service of process was executed on Donald Rascoe on the 26th day of April, 2005, by delivering and leaving a copy of the Summons with Julie Sanders.

I further certify that I am over eighteen years of age and am not a party to this action. I do solemnly declare and affirm under the penalties of perjury that the matters and facts set forth herein are true to the best of my knowledge, information and belief.

Amy L. Dontell

Amy L. Dontell

RECEIVED
APR 27 2005
BALTIMORE COUNTY
BOARD OF APPEALS

IN THE MATTER OF STEPCICH PROPERTY, SECTION III	*	BEFORE THE
	*	BOARD
	*	OF APPEALS FOR
3 Stonehurst Road	*	BALTIMORE COUNTY
6th Councilmanic District 11h Election District	*	CASE NO. CBA-04-157

* * * * * * * * *

RETURN OF PRIVATE PROCESS SERVER

Pursuant to Maryland Rule 2-126(a), I, the undersigned, hereby certify that service of process was executed on Pat Keller on the 22nd day of April, 2005, by delivering and leaving a copy of the Summons with Rose Katzenberger.

I further certify that I am over eighteen years of age and am not a party to this action. I do solemnly declare and affirm under the penalties of perjury that the matters and facts set forth herein are true to the best of my knowledge, information and belief.

Amy L. Dontell

Amy L. Dontell

TO1DOCS1/#205905 v1

RECEIVED
APR 26 2005
BALTIMORE COUNTY
BOARD OF APPEALS

COPY

BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF: Stepcich Property - Lot 3
Windmere – Phoenix, MD 21131
Case No.: CBA-04-157

DATE : July 14, 2005

BOARD/PANEL Lawrence M. Stahl
Michael O. Ramsey
Edward W. Crizer, Jr.

RECORDED BY: Linda B. Fliegel/Legal Secretary

PURPOSE: To deliberate where should this matter be, should it be before the Planning Board or before the Board of Appeals?

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

- It was felt that this was an egregious decision that had been made by the Planning Board and that this matter was properly before the Board of Appeals.
- JSPC laws are clear on development issues and they should have been applied by the Planning Board.
- Planning Board was holding off making a decision pending the Board's decision.
- The Dir. of Planning does not have sole authority to deny such request and that all plats are to be reviewed by the Dept.of Public Works as well as the Planning Board.

DECISION BY BOARD MEMBERS: After a review of the facts and law, it was unanimously decided that this matter should be *remanded* back to the Planning Board.

FINAL DECISION: The Board decided to *REMAND* this matter back to the Planning Board for a final determination of the matter.

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

Respectfully Submitted

Linda B. Fliegel

Linda B. Fliegel
County Board of Appeals

Zoning Office
Department of Permits and Development Management
111 West Chesapeake Ave
Towson, Maryland 21204

Zoning Office:

Please be advised that we, the undersigned, have authorized Arnold Jablon, Esq., Venable, LLP, 210 Allegheny Ave., Towson, Maryland 21204, to be our attorney-in-fact and attorney-at-law and on our behalf file the attached petitions for zoning relief. We hereby understand that the relief requested is for property we own and we hereby and herewith acknowledge our express permission for said petitions to be filed on our behalf. The petition(s) filed are for property located at 3 Stonehurst Road, Phoenix, Maryland 21131, property we own.

Joseph A. Stepcich

12/12/05 (Date)

Joy Stepcich

Joy Stepcich

3 Stonehurst Road, Phoenix, Maryland 21131
address

From: Kathleen Bianco
To: Arnold E. Jablon
Date: 7/23/2008 2:20 PM
Subject: RE: Stepcich 04-157

Arnold,

The notation I had was just a handwritten note way back from the start of the cases (at the time the 04-159 was definitely added to the notice with the related cases). There's nothing formal anywhere regarding dismissal of 04-157 - I'll just continue to hold it open as a "remanded" matter - until further notice /request to the contrary.

As for the other two matters, will dismiss upon receipt of your requests.

Thanks for getting back to me.

kathi

>>> "Jablon, Arnold E." <AEJablon@Venable.com> 7/23/2008 2:08 PM >>>
I don't think I agreed to dismiss, I just don't remember. I do remember that for some reason it was not included in the other matters heard by the Board. Everything is on appeal to the Circuit Court, so I would like for this to await a final outcome.

As for Geppi, Carroll wrote a letter to you in reference to dismissal. I agree with him, and I talked with Geppi and I will be filing a line that withdraws the original petitions for variance, which would make the Protestants appeals moot and the whole matter would be resolved.

Finally, the appeal of the WaWa matter scheduled for August 28th will be withdrawn. This is 08-163, of which I had filed a motion to dismiss. The appellant has entered into a covenant agreement with my client, basically adopting the DZ/C's conditions and agreeing to a dismissal of his appeal. All spelled out in the Agreement. I will file a line asking that the appeal be dismissed based on the agreement, and attach a copy of the agreement.

-----Original Message-----
From: Kathleen Bianco [mailto:kbianco@baltimorecountymd.gov]
Sent: Wednesday, July 23, 2008 2:02 PM
To: Jablon, Arnold E.
Subject: Stepcich 04-157

Arnold:

The subject matter was remanded on 7/21/05 - and was not included in the four cases heard and later decided by the Board's January 10, 2008 decision in Stepcich-Pridgeon.

I have a note that we would be getting a dismissal for the CBA-04-157 case -- is that still true? Can that be dismissed?

Thanks for any information you have.

kathi

Kathleen C. Bianco, Administrator
County Board of Appeals
Suite 203, The Jefferson Building
105 W. Chesapeake Avenue

Towson, MD 21204
410-887-3180
410-887-3182 (FAX)
kbianco@baltimorecountymd.gov

****
U.S. Treasury Circular 230 Notice: Any tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of (a) avoiding penalties that may be imposed under the Internal Revenue Code or by any other applicable tax authority; or (b) promoting, marketing or recommending to another party any tax-related matter addressed herein. We provide this disclosure on all outbound e-mails to assure compliance with new standards of professional practice, pursuant to which certain tax advice must satisfy requirements as to form and substance.
****
****
This electronic mail transmission may contain confidential or privileged information. If you believe you have received this message in error, please notify the sender by reply transmission and delete the message without copying or disclosing it.
****

Office of Planning

401 Bosley Avenue, Suite 406
Towson, Maryland 21204
Tel: 410-887-3211 • Fax: 410-887-5862
E-mail: planning@co.ba.md.us

Baltimore County

James T. Smith, Jr., County Executive
Arnold F. 'Pat' Keller, III, Director

December 3, 2004

GW Stephens, Jr. And Associates
Mr. David Martin
1020 Cromwell Bridge Road
Towson, MD 21286-3396

Re: Pridgeon Property, Windemere
6 Stonehurst Road, Parcel B

Dear Mr. Martin:

Based upon a review of the information provided and analysis conducted, the Joint Subdivision Planning Committee, JSPC, has determined that your client's request for a lot line adjustment for the above-referenced lot and Parcel B has been denied as the property's zoning has changed since the original lot was recorded. The RC 4 zone permitted density does not allow for the reconfiguration of these parcels as the total acreage is ±4.18.

Sincerely,

Jeffrey W. Long
Deputy Director

JWL:kma

c: Jay Liner, County Attorney
Tim Kotroco, Director of Permits and Development Management
Amanda Conn, Assist. County Attorney
Pat Keller, Director, Office of Planning
Jeff Mayhew, Chief, Community Planning
Lynn Lanham, Chief, Development Review

W:\DEVREV\LYNN\Pridgeon Property, Windemere.doc

Printed on Recycled Paper

8/6/04 Jeff, Is this the Arnold Jablon issue? Please advise

BALTIMORE COUNTY
DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT

DEVELOPMENT REVIEW COMMITTEE (DRC) APPLICATION

DRC# 082304H
County Use Only

Yes — No response - Hand to Lynn to read.

Filing Date: _____
Stamp in w/PDM date stamp here

This application must be accompanied by the following:

1. **One copy of the completed DRC application form checklist.**
2. **Three copies of this DRC application, completed in full.**
3. **Three copies of a letter of request (attach one to each DRC application).**
4. **Nine copies of the plan folded to 8 ½ x 11 inches.**
5. **$50 fee (check made payable to Baltimore County and non-refundable; do not staple check to request form)**

Material Amendment — Planning review and approval required.

Project Name: Windemere Section III Lot 3/Parcel B PDM File #: _____

Project Address: 6 STONEHURST ROAD Zip Code: 21057 ADC Map #: 20-C-7

Councilmanic District: 3 Election District: 11 Project Acreage: 4.18

Tax Account No(s): 1600003600 and 1600003601 Zoning: RC-5. PC-4

Engineer: GEORGE WM. STEPHENS & ASSOC. Engineer's Phone No.: (410) 825-8120

Applicant: David Martin Applicant's Phone No.: (410) 825-8120

Address: 1020 Cromwell Bridge Road
Towson, MD Zip 21286 Email: dmartin@gwstephens.com

Is this an antenna? ___Yes ✓ No If "Yes" check one of the following: Cellular ___ (CAC) Water Tower ___ (WTC) MonoPole ___ (CFC)

REQUESTED ACTION (TO BE COMPLETED BY THE APPLICANT)

( ) Limited Exemption under Section 26-171 (____) (____)
( ) Material Amendment to the plan
(✓) Plan Refinement
( ) Waiver of public works standards
( ) Requires a Zoning ( ) Special Hearing; ( ) Special Exception; ( ) Variance
( ) Other _____

AUG - 3 2004

This application must be accompanied by a written request. That request must be in the form of a letter, legibly printed or typed, and signed by the applicant. The letter must contain the name, address and telephone number of the applicant and must provide details of the request.

Please note that a DRC application form checklist is available in room 123 of the Baltimore County Office Building and on the Baltimore County web site at www.co.ba.md.us. A copy of that checklist must be completed and included along with this DRC application.

Please see the DRC application form checklist for complete submittal requirements.

c: Council, Planning, DEPRM

2/11/2002

BALTIMORE COUNTY
DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT

Development Review Committee (DRC) Application Form Checklist

All applications to the DRC must include the following:

√ 1. Three copies of the DRC Application.
√ 2. Three copies (one attached to each DRC Application) of a letter of request to the DRC containing the following:
   _____ a. Name, address and phone number of the applicant
   _____ b. Explanation of the request to the DRC.
   _____ c. Signature of the applicant.
√ 3. Nine copies of a plan*** showing the following:
   √ a. A plan title box noting "Plan to accompany DRC request."
   √ b. North arrow.
   √ c. Vicinity map.
   √ d. Election district.
   √ e. Councilmanic district.
   √ f. Property tax account numbers.
   √ g. Site property owner's name and address.
   √ h. Scale of the drawing.
   √ i. Boundaries of the property lines shown in heavy bold lines.
   √ j. Lengths of property lines
   √ k. Area of project site in square feet and acreage.
   _____ l. Proposed structures, heights and dimensions.
   √ m. Setbacks.
   √ n. Location of existing wells and septic systems.
   √ o. Zoning information:
      √ 1. Current zoning on the property.
      NA 2. Case numbers of any zoning hearings.
      NA 3. Dates of zoning orders.
      NA 4. Indication of what was granted or denied by the zoning commissioner.
      NA 5. Copies of zoning orders attached to the DRC Application.

AUG - 3 2004

***Note: For refinements and material changes to previously approved plans you must use copies of the last approved plan to show items 3a-o listed above. Please show all changes in red.

√ 4. One copy of this checklist completed and signed by the applicant or the consultant.
√ 5. Check for $50 payable to Baltimore County, MD (do not staple to forms).

I have reviewed the DRC application and plan using this checklist to insure that the application and plan are complete. I understand that an incomplete application or plan may cause the DRC to delay its action on this request.

Signed David J Martin 8/3/04
Print Name DAVID MARTIN Date

2/12/2002

GEORGE WILLIAM STEPHENS, JR. & ASSOCIATES, INC.
Est. 1940

ENGINEERS • PLANNERS • SURVEYORS
TRANSPORTATION

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VICE PRESIDENTS
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GEORGE H. TWIGG, P.E.

TOWSON, MARYLAND:
20 CROMWELL BRIDGE ROAD
TOWSON, MARYLAND 21286-3396
0) 825-8120
: (410) 583-0288

CAMP, MARYLAND:
TER'S EDGE CORPORATE CAMPUS
0 MILLENNIUM DRIVE, SUITE 100
CAMP, MARYLAND 21017
388) 297-2340
0) 297-2340
(410) 297-2345

ORGETOWN, DELAWARE:
EAST PINE STREET
ORGETOWN, DELAWARE 19947
66) 902-4990
2) 856-4990
(302) 856-4995

OUR WEB SITE AT
w.gwstephens.com

August 3, 2004

Baltimore County Department of Permits &
Development Management
111 West Chesapeake Avenue
Towson, MD 21204

Attention: Development Review Committee

Re: Richard Pridgeon Property
Windemere, Section III, Lot 3
and Parcel B
J.S.P.C. Plan Refinement

Dear Committee Members:

The subject property located at 6 Stonehurst Road, Baltimore, MD is a lot and parcel on an approved J.S.P.C Plan signed in 1956. The property owner desires to adjust the lot line as shown on the accompanying redlined plan and J.S.P.C.

We respectfully submit that this issue is not governed by the current development regulations as defined in Article 32-4-104.(b).(1).(I). of the Baltimore County Code, and merits endorsement by the DRC as a non-material refinement to the J.S.P.C. Plan as shown and in accordance with the development regulations in effect at the time of the plan approval.

Very truly yours,

George William Stephens, Jr.
and Associates, Inc.

David L. Martin, Senior Associate
Director, Land Planning/Landscape Architecture

AUG - 3 2004

DLM:blk

cc: Mr. Richard Pridgeon, file

DRC

INDIVIDUAL RECORD

27-Dec-04

COUNTY COUNCIL DISTRICT 3

COUNCIL: 3 **PDM_NO:** **PROJECT:** Windemere Section III Lot 3 Parcel B

DRC # 082304H **DATE:** 8/23/2004 **LOCATION:** Six Stonehurst Road

PRO_ACTION: The request is for a JSPC refinement for a lot line adjustment.

DRC_ACTION: Material Amendment JSPC **Date action granted:** 8/23/2004

Hold for Zoning Hearing: No **Item #:** **Follow up required:** No **Follow up completed:** No

Hearing Date: **LPC:** **Planning Board:**

Planning's Conditions: Lot line adjustment affects density. Currently zoned RC 4. Adjacent to other property that will go to the Planning Board

Meeting notes:

Redline Changes per OP:

Conditions for CRG signature:

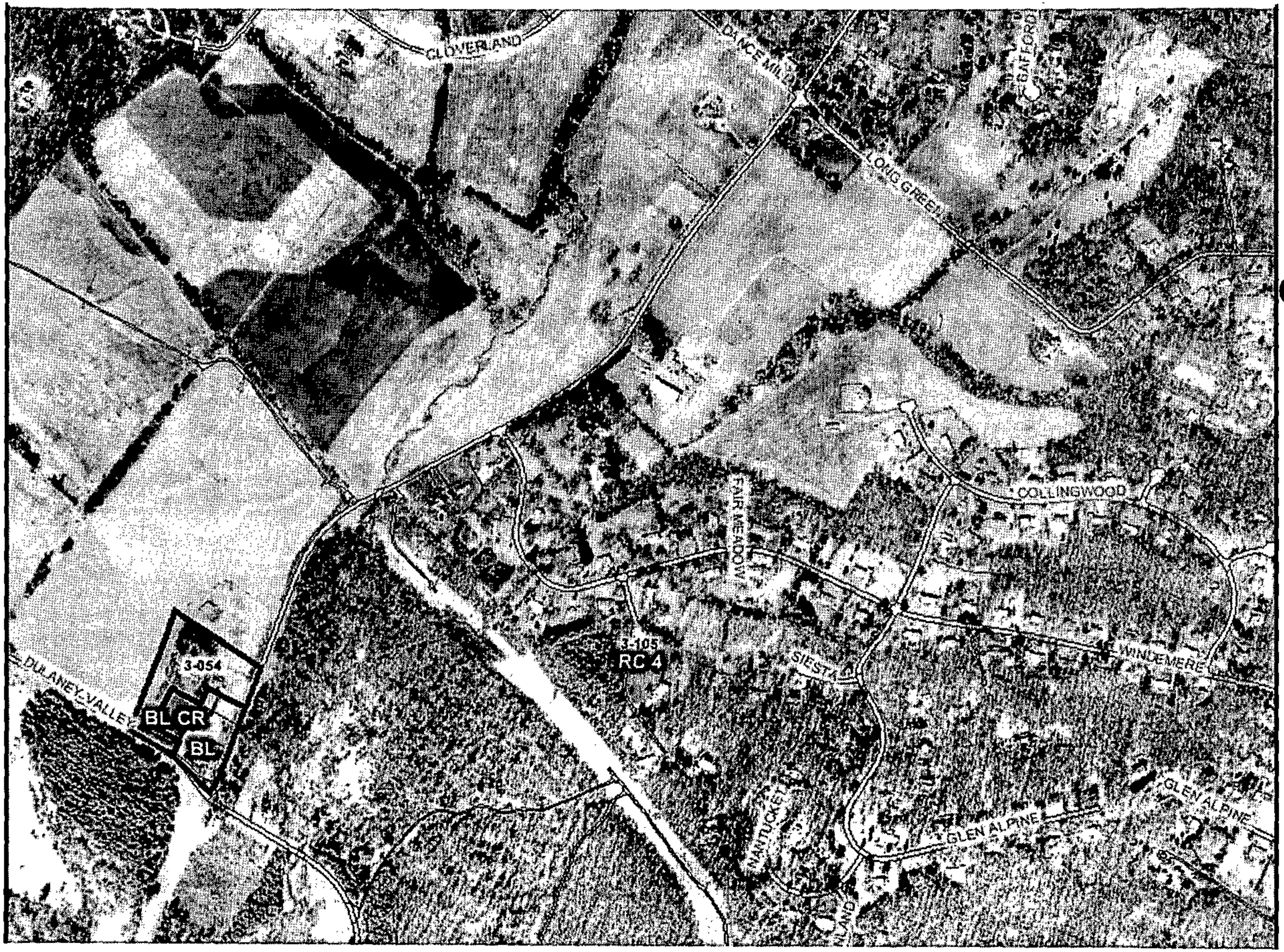
Signature Date: **Signed by:**

Applicant: GWS - David Martin

Address: **Applicant Telephone #:**

Engineer: G. W. Stephens, Jr. & Assoc. **Engineer Telephone #:** (410) 825-8120

Report change in status to Lynn Lanham


GLOVERLAND
DANCE MILL
BAFFORD
LONG GREEN
COLLINGWOOD
FAIR MEADOW
WINDEMERE
SIESTA
GLEN ALPINE
NANTUCKET
DULANEY VALLEY
3-054
BL CR
BL
3-105
RC 4

BALTIMORE COUNTY
BOARD OF APPEALS
410-887-3180
FAX – 410-887-3182

Fax

To:	Rosie	**From:**	Theresa
Fax:	X 5862	**Pages:**	3 incl cover
Phone:		**Date:**	November 24, 2004
Re:	Jablon Appeal	**CC:**	

☐ **Urgent** ☐ **For Review** ☐ **Please Comment** ☐ **Please Reply** ☐ **Please Recycle**

● **Comments:**

Rosie:

I forgot to tell you to have a wonderful Thanksgiving.

It was a pleasure talking to you this morning.

Theresa

11/23/04
Theresa:

Please call Planning and find out who handled the attached appeal and transmitted it to us.

She/he should write a brief letter to the following who were opposed to let them know an appeal has been filed --
Letter to Arnold - appeal received and forwarded to Board - should be cc'd to:

Dr. and Mrs. Eusebio Gonzales
300 Stonehurst Road
Phoenix MD 21131

Joseph Lee Bishop, Jr., President
Greater Sparks-Glencoe Community Council
Post Office Box 396
Sparks, MD 21152

Carol T. Trela, Secretary
Long Green Valley Association
PO Box 91
Baldwin, MD 21013

Could just write to Janice - but copy these folks.

Just tell the appropriate person in Planning that a letter should be sent from them to the opposition in this matter so they know that an appeal has been filed - a copy of that letter should be provided to us.

Also, I believe Exhibit A (final decision - 10/26/04 letter from Jeff Long) is missing from Arnold's appeal in the package sent over by Planning (at least, I couldn't find it) - we have the copy attached to our cc; but that final letter does not appear to have been included in the appeal package. The exhibits sent with the agency file are from the meeting of the DRC. Be sure we keep our copy of Jeff's at the front of the file - as the final decision.

thanks
kasi

Office of Planning

401 Bosley Avenue, Suite 406
Towson, Maryland 21204
Tel: 410-887-3211 • Fax: 410-887-5862
E-mail: planning@co.ba.md.us

Baltimore County

James T. Smith, Jr., County Executive
Arnold F. 'Pat' Keller, III, Director

October 26, 2004

Arnold Jablon, Esq.
Venable, Baejter and Howard LLP
210 Allegheny Avenue
Towson, Maryland 21204

Re: Stepcich Property, Lot 3 Windemere

Dear Mr. Jablon:

Based upon a review of the information provided and analysis conducted, the Joint Subdivision Planning Committee, JSPC, has determined that your client's request to resubdivide the above-referenced lot has been denied as the property's zoning has changed since the original lot was recorded. The RC 4 zone permitted density does not allow for the resubdivision of this existing lot of record.

Please contact me at 410-887-3213 should you have any questions.

Sincerely,

Jeffrey Long
Deputy Director

JWL:rk

CC: Jay Liner, County Attorney
Tim Kotroco, Director of Permits and Development Management
Amanda Conn, Assist. County Attorney
Pat Keller, Director Office of Planning
Jeff Mayhew, Chief, Community Planning
Lynn Lanham, Chief, Development Review

BALTIMORE COUNTY

TRANSMITTAL MEMO

TO: Theresa Shelton

FROM: Rosie Katzenberger #3211 DATE: 11/24/04

SUBJECT: Stefcik Appeal

Theresa:

As I told you we never received a final letter from Arnold Jablon on the denial. After Jeff Long sent out his determination letter date 10/24/04. I have attached a copy of Jeff Longs letter to Mr. Jablon and a copy of the letter that was sent out on 11/24/04 to Arnold Jablon & CC's

Thanks for your help -

FOR YOUR	COMMENTS		TAKE APPROPRIATE ACTION	
	INFORMATION		INVESTIGATE AND REPORT	
	APPROVAL		SUBMITTED PER YOUR REQUEST	
	SIGNATURE		SEE ME	DATE
	TRANSMITTAL			A.M. / P.M.
NOTE AND	FILE			AS SOON AS POSSIBLE
	RETURN TO ME			AT YOUR CONVENIENCE
PREPARE REPLY FOR	MY SIGNATURE		NEED BY	DATE
	YOUR SIGNATURE			A.M. / P.M.

CPS-005

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Office of Planning

401 Bosley Avenue, Suite 406
Towson, Maryland 21204
Tel: 410-887-3211 • Fax: 410-887-5862
E-mail: planning@co.ba.md.us

Baltimore County

James T. Smith, Jr., County Executive
Arnold F. 'Pat' Keller, III, Director

November 24, 2004

Mr. Arnold Jablon, Esq.
Venable, Baeijer and Howard LLP
210 Allegheny Avenue
Towson. Maryland 21204

Re: Resubdivison – Stepcich Property, Lot 3 Windemere

Dear Mr. Arnold:

Please be advised that an appeal of the above-referenced case was filed in this office on November 17, 2004. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

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

I have enclosed a copy of the receipt for the appeal in the amount of two hundred and twenty five dollars ($225.00). If you have any questions concerning this matter, please do not hesitate to call the Board at 410-887-3180.

Sincerely,

Arnold F.'Pat' Keller, III
Director

AFK:rk
Enclosure

c: Dr. and Mrs. Eusebio Gonzales
300 Stonehurst Road
Phoenix, MD 21131

Joseph Lee Bishop, Jr. President
Greater Sparks-Glencoe Community Council
P. O. Box 396
Sparks, MD 21152

Carol T. Trela, Secretary
Long Green Valley Association
P O Box 91
Baldwin, MD 21013

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Baltimore County Government
Department of Permits and Development Management

111 West Chesapeake Avenue
Towson MD 21204

(410) 887-3321
(410) 887-2877 (fax)

April 21, 2006

Arnold Jablon, Esq.
Venable LLP
210 Allegheny Avenue
Towson, MD 21204

RE: DRC Appeal
3 Stonehurst Road
Stepcich Property
District: 11 c 3
DRC No.: 040306D

Dear Mr. Jablon:

Please be advised that I am in receipt of your appeal of the above-referenced case, which was filed in this office on April 20, 2006 on behalf of Mr. and Mrs. Jospeh Stepcich. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

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

Sincerely,

Timothy Kotroco
Director

TK:kw

c: Mr. and Mrs. Joseph Stepcich
Brian R. Dietz
People's Counsel
Baltimore County Board of Appeals
File

RECEIVED
MAY 02 2006
BALTIMORE COUNTY
BOARD OF APPEALS

Baltimore County Government
Department of Permits and
Development Management

111 West Chesapeake Avenue
Towson, MD 21204

410-887-3335

April 12, 2006

Mr. Arnold Jablon
210 Allegheny Avenue
Towson, MD 21204

RE: Stepcich Property
3 Stonehurst Road
DRC Number 040306D, Dist. 11C3

Dear Mr. Jablon:

Pursuant to Article 25A, Section 5 (U) of the Annotated Code of Maryland, and as provided in Section 602 (d) of the Baltimore County Charter, and Sections 32-1-101, 32-3-401, and 32-3-517 of the Baltimore County Code, this letter constitutes an administrative order and decision on the request for issuance, renewal, or modification of a license, permit, approval, exemption, waiver, or other form of permission you filed with this department.

Your request has been submitted for careful review and consideration to the Development Review Committee (DRC), which is composed of representatives from each of those departments involved in land-use decisions. These representatives are designees of the directors of these departments. The purpose of the DRC is to ensure compliance with Section 32-4-106 and Section 32-4-262 of the Baltimore County Code and to make recommendations to the Director, Department of Permits and Development Management (PDM).

The DRC has, in fact, met in an open meeting on April 3, 2006, and has denied your request.

Sincerely,

Timothy Kotroco
Director

TK:DTR:dak
c: file

BALTIMORE COUNTY
DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT

Development Review Committee (DRC) Application Form Checklist

All applications to the DRC must include the following:

✓ 1. Three copies of the DRC Application.
✓ 2. Three copies (one attached to each DRC Application) of a letter of request to the DRC containing the following:
- ____ a. Name, address and phone number of the applicant
- ____ b. Explanation of the request to the DRC.
- ✓ c. Signature of the applicant.

✓ 3. Nine copies of a plan*** showing the following:
- ✓ a. A plan title box noting "Plan to accompany DRC request."
- ✓ b. North arrow.
- ✓ c. Vicinity map.
- ✓ d. Election district.
- ✓ e. Councilmatic district.
- ✓ f. Property tax account numbers.
- ✓ g. Site property owner's name and address.
- ✓ h. Scale of the drawing.
- ✓ i. Boundaries of the property lines shown in heavy bold lines.
- ✓ j. Lengths of property lines
- ✓ k. Area of project site in square feet and acreage.
- ✓ l. Proposed structures, heights and dimensions.
- ✓ m. Setbacks.
- ✓ n. Location of existing wells and septic systems.
- ____ o. Zoning information:
  - ✓ 1. Current zoning on the property.
  - N/A 2. Case numbers of any zoning hearings.
  - N/A 3. Dates of zoning orders.
  - N/A 4. Indication of what was granted or denied by the zoning commissioner.
  - N/A 5. Copies of zoning orders attached to the DRC Application.

***Note: For refinements and material changes to previously approved plans you must use copies of the last approved plan to show items 3a-o listed above. Please show all changes in red.

✓ 4. One copy of this checklist completed and signed by the applicant or the consultant.
✓ 5. Check for $50 payable to Baltimore County, MD (do not staple to forms).

RECEIVED
MAR 13 2006

I have reviewed the DRC application and plan using this checklist to insure that the application and plan are complete. I understand that an incomplete application or plan may cause the DRC to delay its action on this request.

STATE OF MARYLAND
BRIAN RONALD DIETZ
No. 21060
PROFESSIONAL LAND SURVEYOR

Signed Brian Dietz 3-13-06
Date

Print Name BRIAN DIETZ

1/02/2003

BALTIMORE COUNTY
DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT

DEVELOPMENT REVIEW COMMITTEE (DRC) APPLICATION

DRC# 040306D
County Use Only

Filing Date: MAR - 2006
Stamp in w/PDM date stamp here

This application must be accompanied by the following:

1. **One copy of the completed DRC application form checklist.**
2. **Three copies of this DRC application, completed in full.**
3. **Three copies of a letter of request (attach one to each DRC application).**
4. **Nine copies of the plan folded to 8 ½ x 11 inches.**
5. **$50 fee (check made payable to Baltimore County and non-refundable; do not staple check to request form)**

Project Name: STEPCICH PROPERTY PDM File #: _____

Project Address: 3 STONEHURST ROAD Zip Code: 21131 ADC Map #: 20-C-7

Councilmanic District: 3rd Election District: 11 Project Acreage: 5.137 Ac.

Tax Account No(s): 1600003598 Zoning: RC-6

Engineer: BRIAN DIETZ Engineer's Phone No.: 410-661-3160

Applicant: ARNOLD JABLON Applicant's Phone No.: 410 494-6298

Address: 210 ALLEGHENY AVE
TOWSON MD Zip 21204 Email: AJABLON@VERIZON.COM

Is this an antenna? ___Yes X No If "Yes" check one of the following: Cellular ___ (CAC) Water Tower ___ (WTC) MonoPole ___ (CFC)

REQUESTED ACTION (TO BE COMPLETED BY THE APPLICANT)

DENY

( ) Limited Exemption under Section 26-171 (____) (____)
(✓) Material Amendment to the plan
( ) Plan Refinement
( ) Waiver of public works standards
( ) Requires a Zoning ( ) Special Hearing; ( ) Special Exception; ( ) Variance
( ) Other _____
_____

This application must be accompanied by a written request. That request must be in the form of a letter, legibly printed or typed, and signed by the applicant. The letter must contain the name, address and telephone number of the applicant and must provide details of the request.

Please note that a DRC application form checklist is available in room 123 of the Baltimore County Office Building and on the Baltimore County web site at www.co.ba.md.us. A copy of that checklist must be completed and included along with this DRC application.

Please see the DRC application form checklist for complete submittal requirements.

c: Council, Planning, DEPRM

1/02/2003

Baltimore County Government
Department of Permits and
Development Management

111 West Chesapeake Avenue
Towson, MD 21204

410-887-3335

April 12, 2006

Venable, c/o Arnold Jablon
210 Allegheny Avenue
Towson, MD 21204

RE: Lot 3 & Parcel B Windemere, Sec. III
6 Stonehurst Road
DRC Number 040306E, Dist. 11C3

Dear Mr. Jablon:

Pursuant to Article 25A, Section 5 (U) of the Annotated Code of Maryland, and as provided in Section 602 (d) of the Baltimore County Charter, and Sections 32-1-101, 32-3-401, and 32-3-517 of the Baltimore County Code, this letter constitutes an administrative order and decision on the request for issuance, renewal, or modification of a license, permit, approval, exemption, waiver, or other form of permission you filed with this department.

Your request has been submitted for careful review and consideration to the Development Review Committee (DRC), which is composed of representatives from each of those departments involved in land-use decisions. These representatives are designees of the directors of these departments. The purpose of the DRC is to ensure compliance with Section 32-4-106 and Section 32-4-262 of the Baltimore County Code and to make recommendations to the Director, Department of Permits and Development Management (PDM).

The DRC has, in fact, met in an open meeting on April 3, 2006, and has denied your request.

Sincerely,

Timothy Kotroco
Director

TK:DTR:dak
c: file

BALTIMORE COUNTY
DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT

Development Review Committee (DRC) Application Form Checklist

All applications to the DRC must include the following:

✓ 1. Three copies of the DRC Application.
✓ 2. Three copies (one attached to each DRC Application) of a letter of request to the DRC containing the following:
- ✓ a. Name, address and phone number of the applicant
- ✓ b. Explanation of the request to the DRC.
- ✓ c. Signature of the applicant.

✓ 3. Nine copies of a plan*** showing the following:
- ✓ a. A plan title box noting "Plan to accompany DRC request."
- ✓ b. North arrow.
- ✓ c. Vicinity map.
- ✓ d. Election district.
- ✓ e. Councilmanic district.
- ✓ f. Property tax account numbers.
- ✓ g. Site property owner's name and address.
- ✓ h. Scale of the drawing.
- ✓ i. Boundaries of the property lines shown in heavy bold lines.
- ✓ j. Lengths of property lines
- ✓ k. Area of project site in square feet and acreage.
- ✓ l. Proposed structures, heights and dimensions.
- ✓ m. Setbacks.
- ✓ n. Location of existing wells and septic systems.
- ✓ o. Zoning information:
  - ✓ 1. Current zoning on the property.
  - N/A 2. Case numbers of any zoning hearings.
  - N/A 3. Dates of zoning orders.
  - N/A 4. Indication of what was granted or denied by the zoning commissioner.
  - N/A 5. Copies of zoning orders attached to the DRC Application.

RECEIVED
MAR 14 2006
BALTIMORE COUNTY
PERMITS AND DEVELOPMENT MANAGEMENT

***Note: For refinements and material changes to previously approved plans you must use copies of the last approved plan to show items 3a-o listed above. Please show all changes in red.

✓ 4. One copy of this checklist completed and signed by the applicant or the consultant.
✓ 5. Check for $50 payable to Baltimore County, MD (do not staple to forms).

I have reviewed the DRC application and plan using this checklist to insure that the application and plan are complete. I understand that an incomplete application or plan may cause the DRC to delay its action on this request.

Signed David L. Martin, L.A. 3/13/06
Date

Print Name DAVID L. MARTIN

BALTIMORE COUNTY
DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT

DEVELOPMENT REVIEW COMMITTEE (DRC) APPLICATION

DRC# 040306E
County Use Only

RECEIVED
MAR 14 2006
DEPT OF PERMITS AND DEVELOPMENT MANAGEMENT

Filing Date: _____
Stamp in w/PDM date stamp here

This application must be accompanied by the following:

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3. **Three copies of a letter of request (attach one to each DRC application).**
4. **Nine copies of the plan folded to 8 ½ x 11 inches.**
5. **$50 fee (check made payable to Baltimore County and non-refundable; do not staple check to request form)**

Project Name: LOT 3 & PARCEL B WINDEMERE S. III PDM File #: J.S.P.C.

Project Address: 6 STONEHURST RD, BALT Zip Code: 21057 ADC Map #: 20-C-7

Councilmanic District: 3 Election District: 11 Project Acreage: 4.18 +/-

Tax Account No(s): 1600003600, 1600003601 Zoning: R.C. 6

Engineer: A.W. STEPHENS & ASSOC. Engineer's Phone No.: 410-825-8120

Applicant: VENABLE - %ARNOLD JABLON Applicant's Phone No.: 410-494-6298

Address: 210 ALLEGHENY AVENUE
TOWSON, MD Zip 21204 Email: ajablon@venable.com

Is this an antenna? ___ Yes ✓ No If "Yes" check one of the following: Cellular ____ (CAC) Water Tower ____ (WTC) MonoPole ____ (CFC)

REQUESTED ACTION (TO BE COMPLETED BY THE APPLICANT)

( ) Limited Exemption under Section ~~26-171~~ 32-4-104.(6).(1).A) ( ) ( )
(✓) Material Amendment to the plan
( ) Plan Refinement
( ) Waiver of public works standards
( ) Requires a Zoning ( ) Special Hearing; ( ) Special Exception; ( ) Variance
( ) Other _____

Doug

This application must be accompanied by a written request. That request must be in the form of a letter, legibly printed or typed, and signed by the applicant. The letter must contain the name, address and telephone number of the applicant and must provide details of the request.

Please note that a DRC application form checklist is available in room 123 of the Baltimore County Office Building and on the Baltimore County web site at www.co.ba.md.us. A copy of that checklist must be completed and included along with this DRC application.

Please see the DRC application form checklist for complete submittal requirements.

c: Council, Planning, DEPRM

2/11/2002

NOTES:

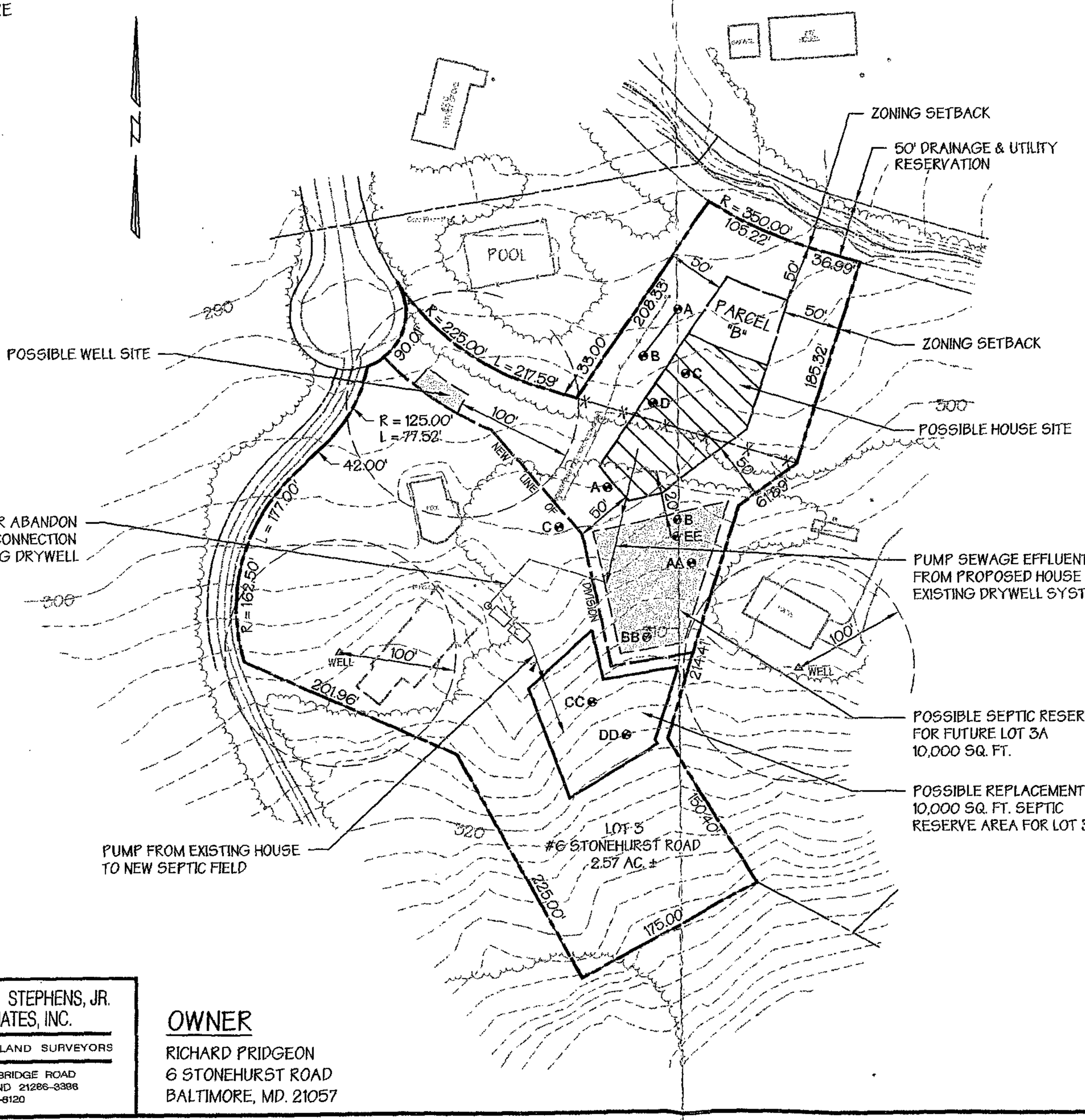
1. SUBDIVISION NAME: WINDEMERE

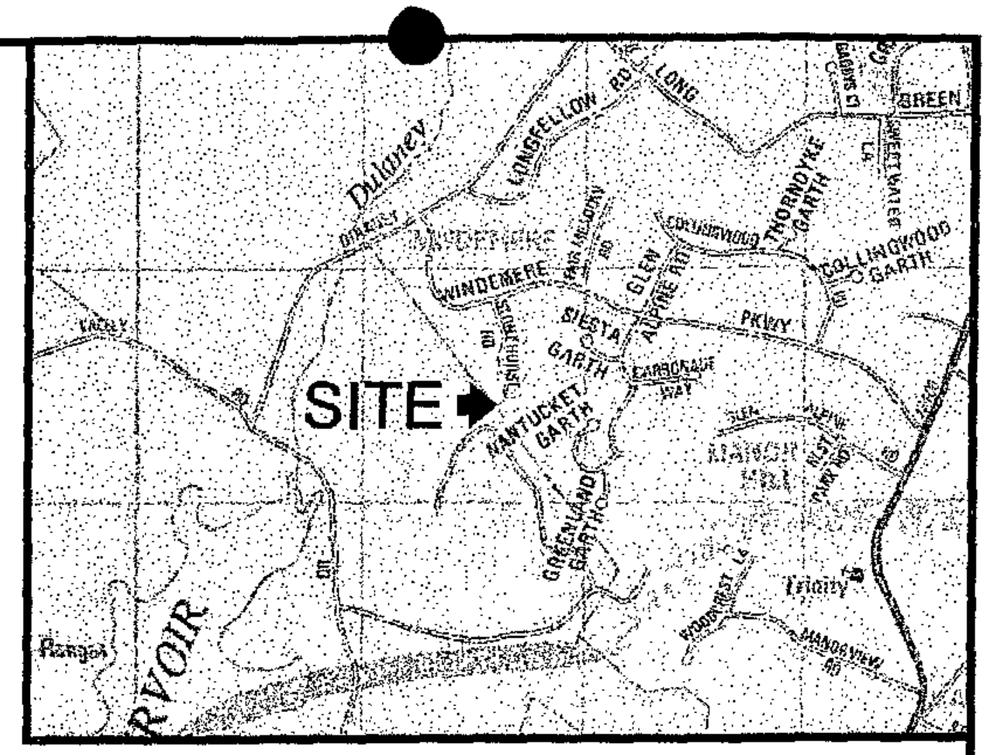
2. OWNER INFORMATION:
   RICHARD PRIDGEON
   6 STONEHURST ROAD
   BALTIMORE, MD 21057

3. ACREAGE:
   EXISTING LOT 3: 3.43 Ac.
   EXISTING PARCEL B: 0.75 Ac.
   PROPOSED LOT 3: 2.57 Ac.
   PROPOSED PARCEL B: 1.61 Ac.

4. TAX MAP: 53; PARCEL 60

5. TAX ACCOUNT NUMBERS
   LOT 3: 1600003600
   PARCEL B: 1600003601





VICINITY MAP

SCALE: 1" = 2000'

RECEIVED
MAR 14 2006
DEPT. OF PERMITS AND DEVELOPMENT MANAGEMENT

EXISTING ZONING: RC 6

PLAN TO ACCOMPANY
DRC REQUEST
LOT 3 and PARCEL "B"
WINDEMERE, SECTION III

11th ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT
SCALE: 1" = 100'

BALTIMORE COUNTY
MARCH 9, 2006

GEORGE WILLIAM STEPHENS, JR. AND ASSOCIATES, INC.
CIVIL ENGINEERS & LAND SURVEYORS
1020 CROMWELL BRIDGE ROAD
TOWSON, MARYLAND 21286-3396
(410) 825-8120

OWNER

RICHARD PRIDGEON
6 STONEHURST ROAD
BALTIMORE, MD. 21057

2-4-7

(7)

Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

Room 47, Old CourtHouse
400 Washington Ave.
Towson, MD 21204

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

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

May 9, 2005

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

RECEIVED
MAY 09 2005
BALTIMORE COUNTY
BOARD OF APPEALS

Re: In the Matter of the Stepcich Property
Section III, Windemere Subdivision
Case No.: CBA-04-157

Dear Mr. Stahl:

Enclosed is a copy of a letter dated January 3, 2005 sent to the Planning Board regarding this matter. There, we raised the preliminary concern that the request to amend the Windemere subdivision is subject to the BCZR 1A00.4 and 1B01.3 special hearing/special exception review and requirements to amend a final development plan. The Zoning Commissioner has jurisdiction over that review.

This is a fundamental statutory process which must be followed and exhausted. It appears, therefore, that the CBA does not at this time have jurisdiction or authority to hear this case on the merits. See Queen Anne's Conservation, Inc. v. County Com'rs of Queen Anne's County, 382 Md. 306 (2004), Maryland Reclamation Associates, Inc . v. Harford County, Maryland, 382 Md. 348 (2004). Alternatively, the case is not ripe for CBA review.

In addition to the special hearing/special exception, the request must be reviewed in the development process. This is another jurisdictional issue which may be taken up preliminarily.

In the event this case is ultimately reviewed on the merits, this office's position, stated in more detail in the January 3, 2005 letter, is that the addition of a new lot is subject to the R.C.4 Zone standards and that there are no "vested rights" to this proposed amendment.

Thank you for your consideration.

Sincerely,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. Demilio

Carole S. Demilio
Deputy People's Counsel

PMZ\rmw

cc: Arnold Jablon, Esquire, Sent Via Fax
John E. Beverungen, Deputy County Attorney
Arnold F. "Pat" Keller, Planning Director and Secretary to Planning Board
William J. Wiseman, Zoning Commissioner

Baltimore County, Maryland

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

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

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

January 3, 2005

Charles E. Klein, Chairman
Baltimore County Planning Board
401 Bosley Avenue
Towson, Maryland 21204

Re: Section III, Windemere Subdivision, The Stepcich Property

Dear Mr. Klein:

Baltimore County Charter Sec. 524.1 assigns this office to defend the comprehensive zoning maps. See Sycamore Realty Co. v. People's Counsel 344 Md. 57 (1996); People's Counsel v. Crown Development Corp. 328 Md. 303 (1992).

The Planning Board agenda for January 6, 2005 includes the proposal to amend the Windemere subdivision, which includes the "Stepcich" lot. The proposal is to subdivide anew this lot and thus add another lot to the subdivision. A paramount issue involves the zoning reclassification of the property. When originally subdivided, the area was zoned R.S.C., which allowed 1-acre lots. The area has since been rezoned to R.C. 4 (Resource Conservation), a more protective classification. The R.C. 4 zone standards do not allow the proposed new or amended subdivision.

The property owner apparently asserts that "vested rights" allow this proposal. This office disagrees. There is, however, a threshold jurisdictional problem to be addressed. The Planning Board lacks jurisdiction or authority to review subdivision proposals. Many years ago, the Planning Board did perform this function. It terminated, however, with the passage of the 1982 ordinance establishing the County Review Group. Bill 56-82. The CRG was active until replaced by the Zoning Commissioner/Hearing Officer under Bill 1 in 1992. In a nutshell, the Planning Board has no function to perform with respect to the Stepcich property.

In any event, there are no "vested rights" to amend a subdivision in the way proposed. The R.S.C. zone went out of existence in 1976.The addition of a new lot is subject to the R.C. 4 zone, which has been in place for many years. We have, in this context, reviewed BCZR 103.3. It grandfathers a subdivision plat approved by the Planning Board and recorded prior to the

enactment of certain Resource Conservation zones, but does not immunize an amendment or addition from compliance with new law.

It should not be forgotten that County Code § 32-4-114 requires development plans to comply with all other laws of the county, including zoning law. It is consistent with BCZR 600, which confirms that where zoning and other laws are applicable, the most restrictive provision governs. In other words, zoning requirements are minimum requirements.

The proposed new or modified subdivision also constitutes an amendment to a final development plan. It is subject to review in the special hearing/special exception process under BCZR 1A00.4 and 1B01.3.

Because this matter involves zoning issues, the appropriate forum to resolve them is before the Zoning Commissioner in the special hearing process, subject to appeal to the County Board of Appeals. See People's Counsel v. Maryland Marine Mfg. Co. 316 Md. 491 (1989); Board of Child Care v. Harker 316 Md. 683 (1989); Sycamore Realty v. People's Counsel 344 Md. 57 (1996); Marzullo v. Kahl 366 Md. 158 (2001). In that process, the predictable conclusion will be that the law of vested rights is settled; and that there is no substantial basis to argue that vested rights allow the proposed amended or new subdivision.

Sincerely.

Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. Demilio
Deputy People's Counsel

PMZ/CSD/rmw

cc: Arnold Jablon, Esquire, Via Fax
John E. Beverungen, Esquire, Deputy County Attorney
Arnold F. "Pat" Keller, Planning Director and Secretary to Planning Board
William J. Wiseman, Esquire, Zoning Commissioner

§ 32-4-104. SCOPE OF TITLE.

(a) *Applicability of title.* Except as provided in subsection (b) of this section, this title shall apply to all development.

(b) *Exceptions.*

(1) This title does not apply to a development that before the effective date of this article, June 11, 1982:

(i) Received tentative approval of the preliminary plan by the Planning Board;

(ii) Has a valid unexpired building permit;

(iii) Has a current executed public works agreement;

(iv) Received a CRG approval, reclamation plan approval, or was otherwise vested by law; or

(v) Where a CRG plan was accepted for filing by the Department of Public Works before the date of adoption of Bill 1-92.

(2) An exempt development under paragraph (1) of this subsection shall be governed by the subdivision regulation in effect at the time:

(i) Of the preliminary plan approval in the case of a development that received tentative approval by the Planning Board;

(ii) The development received a CRG approval, reclamation plan approval, or was otherwise vested by law;

(iii) The valid unexpired building permit was issued;

(iv) The current public works agreement was executed; and

(v) Of the acceptance for filing in the case of a CRG plan that was accepted for filing by the Department of Public Works before the date of adoption of Bill 1-92.

(c) *Present zoning classification.* Proposed development shall be in compliance with the present zoning classification on the property to be developed.

JSPC – JOINT SUBDIVISION PLANNING COMMITTEE

Reviewed plans; advised the Director of Public Works

through 1982 – Planning Board and Planning Commission – final approval of all plans.

Went out but continued as arm of Director of Public Works

Currently – DRC and arm to Director of PDM

DRC recommendations go to Director of PDM

1955 to 1982 (prior to 1982) – exemptions:
- no new lots being added
- no new roads being built

Certified by Planning Director

1955 – 1982 – no refinements, material changes, etc.

1982 – 1991 – Law set out exemptions; same as today

Changes went through the full Planning Board process

CRG Plan – Concept Plan

water	**)**	
stormwater management	**)**	**not to be**
roads	**)**	**shown on**
location of houses	**)**	**plan**

Director of Public Works used JSPC to review plans (CRG)

Meeting scheduled
Chaired by Director of Public Works
Planning Director - Member of Designee

Technical requirements were met – must be approved

new regulations – some exemptions

1986 – Planning created policies /definitions for material change (full process) and refinement (less than that); and non-material change (deleted)

Material change /refinement - decision of DRC

BALTIMORE COUNTY, MARYLAND

INTEROFFICE MEMORANDUM

TO: Development Review Committee **DATE:** March 22, 2002

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

SUBJECT: Item Number 032502M, Resubdivision of 3 Stonehurst Road

---

Recommendation: The Office of Planning recommends against the resubdivision of 3 Stonehurst Road. The RC-4 zoning regulations do not allow the resubdivision of lots less than 6 acres in size. The matter before the Development Review Committee on March 25, 2002, DRC#032502M, is a request for a minor subdivision of 3 Stonehurst Road, a 5.15 acre lot recorded in Liber O.T.G. 34 Folio 10, as Lot 1, Section III of Windemere. Windemere is a development approved in 1970 pursuant to the R40 zoning regulations, which allowed one dwelling per 40,000 sq. ft. Windemere has a total of 114 recorded lots on approximately 179 acres. Windemere is currently zoned RC-4, Watershed Protection, which requires a minimum of 6 acres in order to subdivide into two lots. It is the position of the Office of Planning that any resubdivision of lots in a previously recorded plat is subject to current zoning regulations, therefore this lot is not subdividable.

Pertinent sections of the Baltimore County Zoning Regulations and the County Code are as follows.

Section 103.3 In any RC2, RC3, RC4, or RC5, contrary provisions of Subsection 103.1 and other contrary provisions of or pursuant to these regulations notwithstanding, in the case of property covered by a recorded subdivision plat which was approved by the Baltimore County Planning Commission or Board before the effective date of this subsection, and which remains in effect, buildings may be constructed, residential densities and lots may be established, and yards and other open areas may be laid out in accordance with that plan, subject to any conditions of the approval.

Where such a plan has been so approved but does not indicate densities or the situations of buildings or yards or other open spaces, these may be established or situated only in accordance with the standards as prescribed and in force at the time of the lot recordation.

Section 26-169 **Scope of Regulations.**

These regulations shall apply to all development except: (i) such development which, prior to the effective date of this article (June 11, 1982), has received tentative approval of the preliminary plan by the planning board or for which development a valid, unexpired building permit exists, or for which development a current executed public works agreement exists, all of which development shall be governed by the subdivision regulations in effect at the time of said preliminary plan approval, building permit issuance, or public works agreement execution, as the case may be. Proposed development shall be in compliance with the present zoning classification on the subject property: (ii) such development as has received a CRG approval, reclamation plan approval, any other project vested by law or such development for which a CRG plan has been accepted for filing by the department of public works prior to the date of adoption of Bill 1-92, all of which development shall be governed by the subdivision regulations in effect at the time of said approval or acceptance for filing, as the case may be.
(Code 1978, §22-40; Bill No.18, 1990§2; Bill No.1, 1992 §2)

The Office of Planning's position is that a resubdivison of an existing lot of record must comply with current zoning regulations. The "grandfathering provision" in Section 103.3 applies to the lot layout as approved by the Planning Commission or Board. Changes to the layout that result in an increase in density must comply with current regulations. Furthermore, the plat of Windemere had no density calculations indicated, therefore, Section 103.3 states " where such a plan has been so approved but does not indicate densities or the situations of buildings or yards or other open spaces, these may be established or situated only in accordance with the standards as prescribed and in force at the time of recordation. In other words, lots established on that plat are buildable in accordance with prior standards, provided that plat is vested. Newly established lots must comply with current regulations.

Any interpretation that allows this resubdivision has far reaching implications for there is great potential for the resubdivision of old RSC and RDP lots at a density that exceeds current zoning. This is not in keeping with the county's Smart Growth initiatives and Rural Strategy as articulated in Master Plan 2010, and the state and county funded rural preservation efforts in the Piney Run, Coastal, Manor, Gunpowder and Long Green Rural Legacy areas.

Arnold F. 'Pat' Keller, III

AFK:rk

Baltimore County Government
Department of Permits and
Development Management

111 West Chesapeake Avenue
Towson, MD 21204

410-887-3335

May 23, 2002

Joseph A. Stepcich
Three Stonehurst Road
Phoenix, MD 21131-2439

RE: Stonehurst Road
Three Stonehurst Road
DRC Number 032502M, Dist. 11C6

Dear Mr. Stepcich:

Pursuant to Article 25A, Section 5(U) of the Annotated Code of Maryland, and as provided in Section 602 (d) of the Baltimore County Charter, and Section 26-132 of the Baltimore County Code, this letter constitutes an administrative order and decision on the request for issuance, renewal, or modification of a license, permit, approval, exemption, waiver, or other form of permission you filed with this department.

Your request has been submitted for careful review and consideration to the Development Review Committee (DRC), which is composed of representatives from each of those departments involved in land-use decisions. These representatives are designees of the directors of these departments. The purpose of the DRC is to ensure compliance with Section 26-171 and Section 26-211 of the Baltimore County Code and to make recommendations to the Director, Department of Permits and Development Management (PDM).

The DRC has, in fact, met in an open meeting on April 29, 2002, and made the following recommendations:

The DRC has determined that your project was originally approved by the Joint Subdivision Planning Committee (JSPC). You may process a plan with changes to the last approved JSPC in compliance with JSPC regulations. To submit a JSPC plan for consideration, please contact this office for a transmittal form. It is also necessary to submit a plan to the Office of Planning for further review. Please forward the plan, along with a copy of this DRC letter, to Room 123, County Office Building; 111 West Chesapeake Avenue; Towson, MD 21204.

PET EXH C

I have reviewed the recommendation carefully, and I have determined to adopt the recommendations set forth above. It is this 23rd day of May 2002, ordered and decided that the recommendations of the DRC are hereby adopted.

Should you submit an application for any permits that may be required for this project, your application will be processed subject to the conditions set forth above and any plans, securities, or non-county permits that may be required in accordance with County, State, or Federal regulations.

Sincerely,

Arnold Jablon
Director

AJ:DTR:dak

c: Kristin Weis
File

Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
pdmlandacq@co.ba.md.us

February 8, 2002

Ms. Joy Stepcica
3 Stonehurst Road
Phoenix Maryland 21131
Election District 10

Dear Ms. Stepcica:

RE: Zoning Verification of 3 Stonehurst Road

The property on the site plan you have submitted is zoned R.C.-4

The current subdivision regulations for that zone requires a minimum of (6) six acres to subdivide.

However, you are part of a development know as "Windmere" Section III which was approved by the Baltimore County Planning Board on January 19, 1970. During that time property was zoned R.S.C. which permitted (1) one acre lots.

If the properties in the development were vested, infrastructure construction and houses built on lots, the number of lots per acre as permitted when the development was approved, may possibly be permitted to be used when considering current subdivision.

To verify if the County considers your property to be vested and to determine whether you may proceed with a Minor Subdivision process, or whether you must amend the record plat and follow the full large tract development process. You must contact the Development Management Office to schedule a review before the Development Review Committee, chaired by Mr. Donald Rascoe.

One of the things they will look at is whether your neighbors within the Development have further subdivided their properties since the original subdivision was created.

I trust that the information set forth in this letter is sufficiently detailed and responsive to the request. If you need further information or have any questions, please do not hesitate to contact me at 410-887-3391.

Sincerely,

John R. Alexander
Planner II
Zoning Review

JRA/rjc

Printed with Soybean Ink
on Recycled Paper

PET EXH D

BALTIMORE COUNTY, MARYLAND

INTEROFFICE MEMORANDUM

TO: Development Review Committee **DATE:** March 22, 2002

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

SUBJECT: Item Number 032502M, Resubdivision of 3 Stonehurst Road

---

Recommendation: The Office of Planning recommends against the resubdivision of 3 Stonehurst Road. The RC-4 zoning regulations do not allow the resubdivision of lots less than 6 acres in size. The matter before the Development Review Committee on March 25, 2002, DRC#032502M, is a request for a minor subdivision of 3 Stonehurst Road, a 5.15 acre lot recorded in Liber O.T.G. 34 Folio 10, as Lot 1, Section III of Windemere. Windemere is a development approved in 1970 pursuant to the R40 zoning regulations, which allowed one dwelling per 40,000 sq. ft. Windemere has a total of 114 recorded lots on approximately 179 acres. Windemere is currently zoned RC-4, Watershed Protection, which requires a minimum of 6 acres in order to subdivide into two lots. It is the position of the Office of Planning that any resubdivision of lots in a previously recorded plat is subject to current zoning regulations, therefore this lot is not subdividable.

Pertinent sections of the Baltimore County Zoning Regulations and the County Code are as follows.

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Where such a plan has been so approved but does not indicate densities or the situations of buildings or yards or other open spaces, these may be established or situated only in accordance with the standards as prescribed and in force at the time of the lot recordation.

PET EXH E

Section 26-169 **Scope of Regulations.**

These regulations shall apply to all development except: (i) such development which, prior to the effective date of this article (June 11, 1982), has received tentative approval of the preliminary plan by the planning board or for which development a valid, unexpired building permit exists, or for which development a current executed public works agreement exists, all of which development shall be governed by the subdivision regulations in effect at the time of said preliminary plan approval, building permit issuance, or public works agreement execution, as the case may be. Proposed development shall be in compliance with the present zoning classification on the subject property: (ii) such development as has received a CRG approval, reclamation plan approval, any other project vested by law or such development for which a CRG plan has been accepted for filing by the department of public works prior to the date of adoption of Bill 1-92, all of which development shall be governed by the subdivision regulations in effect at the time of said approval or acceptance for filing, as the case may be.
(Code 1978, §22-40; Bill No.18, 1990§2; Bill No.1, 1992 §2)

The Office of Planning's position is that a resubdivison of an existing lot of record must comply with current zoning regulations. The "grandfathering provision" in Section 103.3 applies to the lot layout as approved by the Planning Commission or Board. Changes to the layout that result in an increase in density must comply with current regulations. Furthermore, the plat of Windemere had no density calculations indicated, therefore, Section 103.3 states " where such a plan has been so approved but does not indicate densities or the situations of buildings or yards or other open spaces, these may be established or situated only in accordance with the standards as prescribed and in force at the time of recordation. In other words, lots established on that plat are buildable in accordance with prior standards, provided that plat is vested. Newly established lots must comply with current regulations.

Any interpretation that allows this resubdivision has far reaching implications for there is great potential for the resubdivision of old RSC and RDP lots at a density that exceeds current zoning. This is not in keeping with the county's Smart Growth initiatives and Rural Strategy as articulated in Master Plan 2010, and the state and county funded rural preservation efforts in the Piney Run, Coastal, Manor, Gunpowder and Long Green Rural Legacy areas.

Arnold F. 'Pat' Keller, III

AFK:rk

Office of Planning

401 Bosley Avenue, Suite 406
Towson, Maryland 21204
Tel: 410-887-3211 • Fax: 410-887-5862
E-mail: planning@co.ba.md.us

Baltimore County

James T. Smith, Jr., County Executive
Arnold F. 'Pat' Keller, III, Director

01/21/2004

MAIORANA JOY L
STEPCICH JOSEPH A
3 STONEHURST RD

PHOENIX MD 21131

Tax Account Number: 11 1600003598

In accordance with Baltimore County Code, 1988, Section 26-123(f), as amended, every four years Baltimore County undergoes a comprehensive zoning process, when any time any property can be requested for a zoning change.

Please be advised that your property, referenced by the Tax Account Number located above, is being considered for a possible zoning change under 2004 CZMP Issue **3-105**. At the of request of **Planning Board**
The description of the property is listed below as well as the existing zoning and requested zoning.

Property Description

IMPS5.158 AC				
3 STONEHURST RD SW				
WINDEMERE				
3		STONEHURST	RD	

Existing Zoning		***Requested Zoning***	
RC 4	20,830.81	RC 7	20,830.817
Total	20,830.81	Total	20,830.817

If approved by the County Council, the requested zoning (RC-7) would reduce the rate of residential subdivision to one lot per twenty-five acres. The existing zoning (RC-4) allows residential subdivision at the rate of one lot per five acres. Existing lots in recorded subdivisions would continue to be regulated by the zoning regulations that were in effect at the time the existing lot was created.

The rezoning request was submitted because the sponsoring Planning Board members consider the RC-7 zone to be more effective than the existing RC-4 zone in protecting the County's watersheds.

The Office of Planning is preparing a Log of Issues that lists all zoning requests. A copy of the current Log of Issues is available on the County Web Page at the following address, which can be accessed at the Baltimore County Libraries.
www.baltimorecountyonline.info/go/czmp

The Planning Board will be holding public hearings on all zoning issues in each Councilmanic District during March 2004. Citizens are welcome to attend and present their comments on these issues at the public hearings. If you are unable to attend the meeting in your Councilmanic District, you may send written comments to:

Baltimore County Office of Planning
Attention Coordinator, 2004 CZMP 401
Bosley Avenue, Suite 406
Towson, MD 21204

Please make certain that all correspondence contains the 2004 CZMP Issue Number listed above.

For additional information or questions, please contact the Office of Planning at 410 887-3480.

PET EXH F

Printed on Recycled Paper

All dwellings must include a two car garage or two car carport.

9. Nothing in these restrictions shall be construed to prohibit future subdivision of any parcel into R-40 residential lots. This means a lot containing at least 40,000 square feet and at least 150 feet wide at the building line.

10. No building shall be located nearer to the front, sides, or rear lot lines than permitted by the requirements of the zoning laws for front yard, side yard and rear yead in an R-40 residential district; even should zoning regulations require less, no building shall be located nearer than fifty feet to the front lot line, nearer than twenty feet to one side lot line and nearer than thirty feet to the other side lot line, and nearer than fifty feet to the rear lot line. No barn shall be nearer than twenty-five feet to any lot line, however no barn shall be built without its location being first approved in writing by Philip O. Tilghman Realty Company.

11. Any failure by any party entitled to enforce any of the covenants, restrictions, conditions, reservations, and agreements herein contained shall in no event be deemed a waiver of the right to do so thereafter as to the same breach, or as to one occurring prior or subsequent thereto.

12. Invalidation of any of these covenants by judgment or court order shall in no wise affect any of the other provisions, which shall remain in full force and effect.

13. It is expressly understood that these restrictions and covenants apply only to the property shown on the Plat of Section III Windemere. These covenants are to run with the land and shall be binding on the parties hereto and all persons claiming by, through or under them, until the first day of January, 1990, at which time said covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument, signed by more than fifty per cent (50%) of the then owners of the lots, (not including mortgagees or ground rent owners) has been recorded agreeing to change said covenants in whole or in part. It shall be lawful for any person, or persons owning any land situate in said Section III, Windemere, to prosecute any proceedings at law or in equity against the person, or persons, violating or attempting to violate any such covenant and either to prevent him, or them, from so doing, or to recover damages or other dues for such violation.

14. Philip O. Tilghman Realty Company, its successors and assigns, retains and reserves the right and power to modify the restrictions contained in Paragraph 2 and ~~8~~ hereof as it deems necessary in its discretion, to adjust to the terrain and to other architectural styles. Any such modification shall be shown by a written instrument recorded among the land records of Baltimore County.

15. Philip O. Tilghman Realty Company further reserves unto itself, its successors and assigns, the right to grant an easement, right-of-way, license or licenses to any persons,

Plt EXH 6

PROPERTY OWNER STATEMENT

We the undersigned owner/s of the property indicated below do not object to the additional one lot revision to Lot 1 Plat III, Windemere as indicated by the "Perc Plan of Stepcich Property" as prepared by Brián Dietz, Professional Land Surveyor #21080.

Property Owner: Sam Rothblum Date: 9/18/03

Property Owner: Charlene Rothblum Date: 9/18/03

Property Owner: Date:

Property:

100 Stonehurst Road
Phoenix, MD 21131 – Baltimore, County, MD
Telephone Number: 410 592 2072

PET EXH H

PROPERTY OWNER STATEMENT

We the undersigned owner/s of the property indicated below do not object to the additional one lot revision to Lot 1 Plat III, Windemere as indicated by the "Perc Plan of Stepcich Property" as prepared by Brian Dietz, Professional Land Surveyor #21080.

Property Owner: Richard N Pridgeon Date: 9/22/03

Property Owner: Patricia H. Pridgeon Date: 9/23/03

Property Owner: Date:

Property:

6 Stonehurst Road

Phoenix, MD 21131 – Baltimore, County, MD

Telephone Number: 410 592 7620

PET EXH I

VENABLE LLP

210 Allegheny Avenue
Post Office Box 5517
Towson, Maryland 21285-5517

Telephone 410-494-6200
Facsimile 410-821-0147

www.venable.com

ARNOLD JABLON
(410) 494-6298

aejablon@venable.com

MAR 14 2006

13 March 2006

Mr. Donald Rascoe, Deputy Director
Department of Permits and Development Management
111 West Chesapeake Ave
Towson, Maryland 21204

Re: Richard Pridgeon Property
Windemere, Section III, Lot 3
and Parcel B
J.S.P.C. Material Amendment

Dear Mr. Rascoe:

This office represents Mr. Richard Pridgeon, the above cited property owner. The subject property, located at 6 Stonehurst Road, Baltimore, MD., is a lot and parcel on an approved J.S.P.C Plan signed in 1956. The property owner desires to adjust the lot line as shown on the accompanying redlined J.S.P.C. plan.

In August of 2004, our client filed a request to the DRC for approval of a lot line adjustment by amendment to the originally approved J.S.P.C. plan. The plan submitted to the DRC was dated August 3rd, 2004.

Subsequently, by letter dated 2 September 2004, the DRC confirmed that my client's property had been part of a subdivision approved by the J.S.P.C. and that he could process his request for a lot line adjustment as shown on his accompanying plan in compliance with J.S.P.C. regulations. He proceeded to do so. On 3 December, 2004, by letter, Mr. Jeffrey Long, Deputy Director, Office of Planning, stated that the J.S.P.C. had denied my client's request for the lot line adjustment because the property's original zoning had changed. On 27 December, 2004, an appeal from Mr. Long's letter was taken to the Board of Appeals, where it is pending.

With the passage of Bill No. 26-04 by the County Council, we believe it appropriate to file the attached plan. Pursuant to this legislation, my client's proposal merits endorsement at the very

least as being in conformity with the regulations in place at the time of the original plan approval or as a material amendment to the previously approved plan, as shown and in accordance with the development and zoning regulations in effect at the time of the original plan approval.

Please accept this request for filing for a material amendment to a previously approved plan, pursuant to §6, of Bill 26-04.

Sincerely,

Arnold Jablon
AEJ/aj

ACCEPTED FOR FILING BY THE DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT

_____ By: _____
DATE PDM

VENABLE LLP

210 Allegheny Avenue
Post Office Box 5517
Towson, Maryland 21285-5517

Telephone 410-494-6200
Facsimile 410-821-0147

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ARNOLD JABLON
(410) 494-6298

aejablon@venable.com

4/24/06 Letter withdrawing appeal filed pdm. E.

18 April 2006

Timothy Kotroco, Esq.
Director, Department of Permits and Development Management
111 West Chesapeake Ave.
Towson, Maryland 21204

Re: Pridgeon Property, Windemere
6 Stonehurst Road, Lot 3 and Parcel B

Dear Mr. Kotroco:

Please be advised that I have been retained to represent Mr. Pridgeon.

Attached hereto is our Notice of Appeal to the County Board of Appeals from your letter to me, dated 12 April 2006, in which the DRC denies Mr. Pridgeon's request to readjust his lot lines in order to make his lot buildable.

Thank you for your attention in this matter.

Sincerely,

Arnold Jablon
AEJ/aj

c: Baltimore County Board of Appeals

RECEIVED
APR 20 2006
BALTIMORE COUNTY
BOARD OF APPEALS

IN RE: RESUBDIVISION Pridgeon Property, Lot 3 & Parcel B Windemere, Sec III 6 Stonehurst Road	*	BEFORE THE COUNTY DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
DRC Number 040306	*	
6th Councilmanic District 11th Election District Owner: Richard Pridgeon	*	

* * * * *

NOTICE OF APPEAL

Mr. Richard Pridgeon, owner of the subject property, by and through his attorney Arnold Jablon, Venable, LLP, feeling aggrieved by the final decision and determination of the Director of the Department of Permits and Development Management denying the appellant's request to reconfigure their lots of record into two buildable lots, said letter of denial dated 12 April 2006 and attached hereto and incorporated herein as Exhibit A.

Appellant herewith takes exception to that final decision of the Director of the Department of Permits and Development Management as reflected in Exhibit A and appeals to the County Board of Appeals. Appellant submits that the review by the CBA from the final decision of a Department Director shall be a hearing *de novo* pursuant to the Baltimore County Charter.

Filed concurrently with this Notice of Appeal is a check made payable to Baltimore County to cover the costs of the appeal.

Respectfully submitted

Arnold Jablon
Venable, LLP
210 Allegheny Ave.
Towson, Maryland 21204
410-494-6298

attorney for appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT copies of the foregoing Notice of Appeal was hand delivered to the Baltimore County Board of Appeals, Basement, Old Courthouse, 400 Washington Ave., Towson, Maryland 21204; and Timothy Kotroco, Director, Permits and Development Management, County Office Bldg, 111 Chesapeake Ave., Towson, Maryland 21204, on this 20th day of April, 2006.

Arnold Jablon.

Baltimore County Government
Department of Permits and
Development Management

111 West Chesapeake Avenue
Towson, MD 21204

410-887-3335

April 12, 2006

Venable, c/o Arnold Jablon
210 Allegheny Avenue
Towson, MD 21204

RE: Lot 3 & Parcel B Windemere, Sec. III
6 Stonehurst Road
DRC Number 040306E, Dist. 11C3

Dear Mr. Jablon:

Pursuant to Article 25A, Section 5 (U) of the Annotated Code of Maryland, and as provided in Section 602 (d) of the Baltimore County Charter, and Sections 32-1-101, 32-3-401, and 32-3-517 of the Baltimore County Code, this letter constitutes an administrative order and decision on the request for issuance, renewal, or modification of a license, permit, approval, exemption, waiver, or other form of permission you filed with this department.

Your request has been submitted for careful review and consideration to the Development Review Committee (DRC), which is composed of representatives from each of those departments involved in land-use decisions. These representatives are designees of the directors of these departments. The purpose of the DRC is to ensure compliance with Section 32-4-106 and Section 32-4-262 of the Baltimore County Code and to make recommendations to the Director, Department of Permits and Development Management (PDM).

The DRC has, in fact, met in an open meeting on April 3, 2006, and has denied your request.

Sincerely,

Timothy Kotroco
Director

TK:DTR:dak
c: file

VENABLE LLP

210 Allegheny Avenue
Post Office Box 5517
Towson, Maryland 21285-5517

Telephone 410-494-6200
Facsimile 410-821-0147

www.venable.com

4/24/06
Linda Street
pending receipt of file from DRC.
K.

ARNOLD JABLON
(410) 494-6298

aejablon@venable.com

18 April 2006

Timothy Kotroco, Esq.
Director, Department of Permits and Development Management
111 West Chesapeake Ave.
Towson, Maryland 21204

Re: Stepcich Property, Windemere
6 Stonehurst Road, Lot 3

Dear Mr. Kotroco:

Please be advised that I have been retained to represent Mr. and Mrs. Stepcich.

Attached hereto is our Notice of Appeal to the County Board of Appeals from your letter to me, dated 12 April 2006, in which the DRC denies my clients' request to resubdivide his property.

Thank you for your attention in this matter.

Sincerely,

Arnold Jablon
AEJ/aj

c: Baltimore County Board of Appeals

RECEIVED
APR 20 2006
BALTIMORE COUNTY
BOARD OF APPEALS

IN RE: RESUBDIVISION Stepcich Property, Lot 3 Windemere, Sec III 6 Stonehurst Road	*	BEFORE THE COUNTY DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
DRC Number 040306 D	*	
6th Councilmanic District 11th Election District Owner: Joseph Stepcich	*	

* * * * *

NOTICE OF APPEAL

Mr. and Mrs. Joseph Stepcich, owners of the subject property, by and through their attorney Arnold Jablon, Venable, LLP, feeling aggrieved by the final decision and determination of the Director of the Department of Permits and Development Management denying the appellants' request to resubdivide their lot of record into two lots, said letter of denial dated 12 April 2006 and attached hereto and incorporated herein as Exhibit A.

Appellants herewith takes exception to that final decision of the Director of the Department of Permits and Development Management as reflected in Exhibit A and appeals to the County Board of Appeals. Appellants submit that the review by the CBA from the final decision of a Department Director shall be a hearing *de novo* pursuant to the Baltimore County Charter.

Filed concurrently with this Notice of Appeal is a check made payable to Baltimore County to cover the costs of the appeal.

Respectfully submitted

Arnold Jablon
Venable, LLP
210 Allegheny Ave.
Towson, Maryland 21204
410-494-6298

attorney for appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT copies of the foregoing Notice of Appeal was hand delivered to the Baltimore County Board of Appeals, Basement, Old Courthouse, 400 Washington Ave., Towson, Maryland 21204; and Timothy Kotroco, Director, Permits and Development Management, County Office Bldg, 111 Chesapeake Ave., Towson, Maryland 21204, on this 20 day of April, 2006.

Arnold Jablon.

Baltimore County Government
Department of Permits and
Development Management

111 West Chesapeake Avenue
Towson, MD 21204

410-887-3335

April 12, 2006

Mr. Arnold Jablon
210 Allegheny Avenue
Towson, MD 21204

RE: Stepcich Property
3 Stonehurst Road
DRC Number 040306D, Dist. 11C3

Dear Mr. Jablon:

Pursuant to Article 25A, Section 5 (U) of the Annotated Code of Maryland, and as provided in Section 602 (d) of the Baltimore County Charter, and Sections 32-1-101, 32-3-401, and 32-3-517 of the Baltimore County Code, this letter constitutes an administrative order and decision on the request for issuance, renewal, or modification of a license, permit, approval, exemption, waiver, or other form of permission you filed with this department.

Your request has been submitted for careful review and consideration to the Development Review Committee (DRC), which is composed of representatives from each of those departments involved in land-use decisions. These representatives are designees of the directors of these departments. The purpose of the DRC is to ensure compliance with Section 32-4-106 and Section 32-4-262 of the Baltimore County Code and to make recommendations to the Director, Department of Permits and Development Management (PDM).

The DRC has, in fact, met in an open meeting on April 3, 2006, and has denied your request.

Sincerely,

Timothy Kotroco
Director

TK:DTR:dak
c: file

VENABLE LLP

210 Allegheny Avenue
Post Office Box 5517
Towson, Maryland 21285-5517

Telephone 410-494-6200
Facsimile 410-821-0147

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ARNOLD JABLON
(410) 494-6298

aejablon@venable.com

23 December 2004

Arnold F. "Pat" Keller, III
Director, Office of Planning
401 Bosley Ave.
Towson, Maryland 21204

Re: Pridgeon Property, Windemere
6 Stonehurst Road, parcel B

Dear Mr. Keller:

Please be advised that I have been retained to represent Mr. Pridgeon.

Attached hereto is our Notice of Appeal to the County Board of Appeals from Mr. Long's letter to G.W. Stephens, jr. & Assoc, dated 3 December 2004, in which the Planning Office purports to deny Mr. Pridgeon's request to a lot line adjustment.

Thank you for your attention in this matter.

Sincerely,

Arnold Jablon
AEJ/aj

c: Baltimore County Board of Appeals

RECEIVED
DEC 28 2004
BALTIMORE COUNTY
BOARD OF APPEALS

RECEIVED
DEC 28 2004
BALTIMORE COUNTY
BOARD OF APPEALS

CBA-04-

IN RE: RESUBDIVISION * BEFORE THE COUNTY
Pridgeon Property, Lot 3 Parcel B
Windemere * OFFICE OF PLANNING
Six Stonehurst Road
*
6th Councilmanic District
11th Election District *
Owner: Richard Pridgeon

* * * * *

NOTICE OF APPEAL

Richard Pridgeon, owner of the subject property, by and through his attorney Arnold Jablon, Venable, LLP, feeling aggrieved by the final decision and determination of the Director of the Office of Planning denying the appellant's request to adjust lot lines between two lots owned by him, said letter of denial dated 3 December 2004 and attached hereto and incorporated herein as Exhibit A.

Appellants herewith take exception to that final decision of the Director of the Office of Planning as reflected in Exhibit A and appeal to the County Board of Appeals. Appellants submit that the review by the CBA from the final decision of a Department Director shall be a hearing *de novo* pursuant to the Baltimore County Charter.

Filed concurrently with this Notice of Appeal is a check made payable to Baltimore County to cover the costs of the appeal.

Respectfully submitted

Arnold Jablon
Venable, LLP
210 Allegheny Ave.
Towson, Maryland 21204
410-494-6298

attorney for appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT copies of the foregoing Notice of Appeal was hand delivered to the Baltimore County Board of Appeals, Basement, Old Courthouse, 400 Washington Ave., Towson, Maryland 21204; and Arnold F. "Pat" Keller, III, Director, Office of Planning, 401 Bosley Ave., New Courts Bldg, Towson, Maryland 21204, on this 23RD day of DECEMBER, 2004.

Arnold Jablon.

Office of Planning

401 Bosley Avenue, Suite 406
Towson, Maryland 21204
Tel: 410-887-3211 • Fax: 410-887-5862
E-mail: planning@co.ba.md.us

Baltimore County

James T. Smith, Jr., County Executive
Arnold F. 'Pat' Keller, III, Director

December 3, 2004

RECEIVED
DEC 0 8 2004
GEORGE WILLIAM STEPHENS JR & ASSOCIATES, INC.

GW Stephens, Jr. And Associates
Mr. David Martin
1020 Cromwell Bridge Road
Towson, MD 21286-3396

Re: Pridgeon Property, Windemere
6 Stonehurst Road, Parcel B

Dear Mr. Martin:

Based upon a review of the information provided and analysis conducted, the Joint Subdivision Planning Committee, JSPC, has determined that your client's request for a lot line adjustment for the above-referenced lot and Parcel B has been denied as the property's zoning has changed since the original lot was recorded. The RC 4 zone permitted density does not allow for the reconfiguration of these parcels as the total acreage is ±4.18.

Sincerely,

Jeffrey W. Long
Deputy Director

JWL:kma

c: Jay Liner, County Attorney
Tim Kotroco, Director of Permits and Development Management
Amanda Conn, Assist. County Attorney
Pat Keller, Director, Office of Planning
Jeff Mayhew, Chief, Community Planning
Lynn Lanham, Chief, Development Review

W:\DEVREV\LYNN\Pridgeon Property, Windemere.wpd

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VENABLE LLP

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aejablon@venable.com

20 May 2004

Hon. Charles Klein, Chairman
Planning Board of Baltimore County
401 Bosley Ave
Towson, Maryland 21204

Re: amendment to subdivision plan known as "Section III, Windemere"

Dear Mr. Klein:

Please be advised that we represent Mr. and Mrs. Joseph A. Stepcich, who reside at 3 Stonehurst Road, Phoenix, Maryland 21131, which is located between Dulaney Valley Road and Manor Road, and off of Windemere Parkway.

Our clients request that the Chairman of the Planning Board approve an amendment to the subdivision plat known as "Section III, Windemere". Our clients propose to subdivide their lot of record into two lots, as is more particularly described on the site plan accompanying this letter and marked as Exhibit A.

The authority of the Planning Board and the Chairman to approve the proposed amendment is founded in Article V. Development Regulations, Division 1., specifically, §26-169, of the Baltimore County Code, 1988 edition, as amended. §26-169 provides as follows:

§26-169. Scope of regulations.

These regulations shall apply to all development except: (i) such development which, prior to the effective date of this article (June 11, 1982), has received tentative approval of the preliminary plan by the planning board or for which a development a valid, unexpired building permit exists, or for which development a current executed public works agreement exists, all of which development shall be governed by the subdivision regulations in effect at the time of said preliminary plan approval, building permit issuance, or public works agreement execution, as the case may be. Proposed development shall be in compliance with the present zoning classification on the subject property; (ii) such development as has received a CRG approval, reclamation plan approval, any other project vested by law or such development for which a CRG plan has been accepted for filing by the department of public works prior to the date of

> adoption of Bill 1-92, all of which development shall be governed by the subdivision regulations in effect at the time of said approval or acceptance for filing, as the case may be.

The proposed amendment to the subdivision known as "Section III, Windemere" is governed by the subdivision regulations in effect at the time it was approved, that an amendment to a plan approved and vested prior to June 11, 1982, is governed by the regulations in effect at the time of original approval, which as further explained below, would be 1970. The applicable and relevant regulations in effect at the time of the approval of the instant subdivision are as follows:

1. §22-33, Baltimore County Code, 1968 edition, as amended;
2. §22-60, Baltimore County Code, 1968 edition, as amended.

Our clients' property is a lot of record as shown on the record plat known as "Section III, Windemere". Our clients' lot, identified as lot 1 on the attached exhibit A, consists of 5.137 acres. The current zoning is RC 4. "Section III, Windemere" received preliminary and tentative approval by the Joint Subdivision Planning Committee (JSPC) on or about December 1969, and subsequently approved by the Baltimore County Planning Board on 19 February 1970. It was recorded in the land records of Baltimore County at Plat Liber 34, folio 10, on or about 24 February 1970. The subdivision consisted of 19.035 acres +/- and was zoned RSC. While the designated number of lots was 19, as permitted by the zoning in place at the time, the subdivision was approved for six lots. 13 density units remained available. See Exhibit B.

3 Stonehurst Road, where my clients reside, is approximately 5.137 +/- acres. As stated above, my clients propose to subdivide their lot into two, on one will be located their existing house. The lot on which their home is located would be 2.448 acres +/- and the other would be 2.689 acres +/-.

The subdivision regulations in effect in 1970 when this subdivision was approved are found in the Baltimore County Code, 1968 edition, as amended. Copies of the relevant law as referred to herein are attached for reference.

Our request for approval is governed by §22-33 of the 1968 Code, which reads as follows:

> §22-33. Exemption of governmental approval of subdivision regulations.

> Any such subdivision regulations may exempt from the requirements of governmental approval, subdivisions wherein the number of new lots is less than a designated number, or plats that do not involve new streets, or such other plats or subdivisions as such ordinance shall designate. In all cases involving such exempted subdivisions, the planning board chairman, or its director, shall certify the exemption on the plat, deed or instrument to be filed with the clerk of the circuit court for recording.

The proposed amendment consists of one new lot, which is less than the designated number of lots as permitted at the time of the approval of the subdivision plat for "Section III, Windemere", and involves no new streets. Clearly, the proposed amendment satisfies the strictures as contained in §22-33

Further, §103.3 of the Baltimore County Zoning Regulations (BCZR) in conjunction with the forecited Code provisions confirms that the laws, zoning and subdivision, in effect when original approval of a plan or plat was granted govern notwithstanding the ever-changing landscape of zoning and subdivision in Baltimore County.

> §103.3 In an R.C.2, R.C.3, R.C.4 or R.C.5 Zone, contrary provisions of Subsection 103.1 and any other contrary provisions of or pursuant to these regulations notwithstanding, in the case of property covered by a recorded subdivision plat which was approved by the Baltimore County Planning Commission or Board before the effective date of this subsection, and which remains in effect, buildings may be constructed, residential densities and lot lines may be established, and yards and other open areas may be laid out in accordance with that plan, subject to any conditions of the approval.
>
> Where such a plan has been so approved but does not indicate densities or the situations of buildings or yards or other open spaces, these may be established or situated only in accordance with the standards as prescribed and in force at the time of the lot recordation.
> The Zoning Regulations applicable to any such development, subdivision or parcel of land as aforesaid shall be the Zoning Regulations in effect at the time such plan, as aforesaid, was originally submitted to the Baltimore County Planning Commission.

The law in Baltimore County has always recognized the inviolability of approved and vested plans and plats. §22-60, of the Baltimore County Code, 1968, as amended, clearly stated this principle and it is restated in §26-169, Code, 1988 edition, as amended.

S22-60. Previously approved subdivisions not affected.

> Nothing herein provided shall be applicable to any final plat of a subdivision which was recorded prior to the effective date of this subdivision, nor shall it be applicable to any preliminary subdivision plan which had tentative approval prior to the effective date of this subdivision.

§22-60 is the precursor to §26-169, Baltimore County Code, 1988 as amended. There is no ambiguity. RSC permitted 1-acre lots, but only 6 were created. Our clients want to create one more. This is entirely consistent and in compliance with the zoning and subdivision regulations then in effect and governing.

The Development Review Committee supported this conclusion in March of 2002. Our clients submitted to the DRC their request to approve the proposed subdivision of their lot. In a letter, dated 23 May 2002, issued subsequent to the public meeting at which the amendment was discussed by representatives of various county agencies, the DRC concluded that "Section III Windemere" was originally tentatively approved by the Joint Subdivision Planning Committee (JSPC) and subsequently approved by the Planning Board, and agreed that my clients could process an amendment to the last approved plan that would be in compliance with subdivision regulations then in effect. My clients were further told that a copy of the amended plan should be submitted to the Office of Planning for review. See Exhibit C. On 8 February 2002, the Zoning Review section of the Department of Permits and Development Management issued a letter confirming that the zoning at the time of the original approval was RSC, which permitted 1-acre lots. See exhibit D

In a memo to the DRC, dated 22 March 2002, the director of the Office of Planning recommended against approval. The director stated the position of the Office of Planning is that "...any resubdivision of lots in a previously recorded plat is subject to current zoning regulations, therefore this lot is not subdividable." See exhibit E.

Interestingly, however, the Office of Planning in its notice to my clients, dated January 21st, 2004, that their property was being considered for a possible zoning change at the request of the Planning Board, noted:

"Existing lots in recorded subdivision would continue to be regulated by the zoning regulations that were in effect at the time the existing lot was created."

See exhibit F.

Finally, in a Declaration, dated September 2nd, 1970, and recorded amongst the Land Records in Liber 5191, Page 243, the developer of "Section III, Windemere", in paragraph 9 provided as follows:

> 9. Nothing in these restrictions shall be construed to prohibit the future subdivision of any parcel into R-40 residential lots. This means a lot containing at least 40,000 square feet and at least 150 feet wide at the building line.

Exhibit G.

The law in 1970, and the law today, recognizes the significance of plan approval and vesting. It is the law.

Pursuant to the law in effect in 1970, as provided for in §26-169, of the Code, 1988 as amended, and §103.3 of the BCZR, we submit to you for approval, as Chairman, and to the Planning Board the amendment to the plan of "Section III, Windemere." This amendment comports with all the requirements as set out in the Code, 1968 as amended. We will be ready and available to answer any questions and to make our presentation. Thank you.

Sincerely,

Arnold Jablon

c: Arnold F. "Pat" Keller, Director and Secretary to the Board
Members, Planning Board of Baltimore County
Timothy M. Kotroco, Director, Permits and Development Management

GREATER SPARKS-GLENCOE COMMUNITY COUNCIL
Post Office Box 396
Sparks, Maryland 21152

August 16, 2004

Mr. Jeffrey Long
Chief, Comprehensive and Community Planning
Baltimore County, Maryland
County Courts Building, Suite 406
401 Bosley Avenue
Towson, Maryland 21204

Re: Letter of Objection to
Stepcich Property subdivision at
6 Stonehurst Road
Phoenix, Maryland 21131

Dear Mr. Long:

Please be advised that the Greater Sparks Glencoe Community Council opposes the proposed subdivision of the property at 6 Stonehurst Road in the Windermere development.

Not only is the plan aesthetically in bad taste, but the engineering of its sewage disposal system is wanting, even though Baltimore County would approve it. In fact, it is apparent to us that this plan is founded in greed and not in good planning for the neighbors in the Windermere subdivision.

The neighbors of 6 Stonehurst Road asked the Community Council to offer an opinion on this plan. We adamantly oppose the plan on principle.

Sincerely,

Joseph Lee Bishop, Jr.
President
CC: Eusebio P. Gonzales, M.D.

RECEIVED
618
OFFICE OF PLANNING

LONG GREEN VALLEY ASSOCIATION
P.O. Box 91
Baldwin, Maryland 21013

Mr. Jeffery Long
Chief, Comprehensive and Community Planning
Baltimore County, Maryland
County Courts Building, Suite 406
401 Bosley Avenue
Towson, Maryland

September 2, 2004

Dear Mr. Long:

This letter, from the Long Green Valley Association, is in support of the position of Dr. Eusebio P. Gonzales to oppose the subdivision of the Stepcich property at 6 Stonehurst Road in Phoenix Maryland.

The board voted unanimously to oppose this development of a subdivision at its special meeting of August 24, 2004. The board was concerned with many issues including an uphill septic, the proximity to the reservoir (wetlands), and the presence of endangered species.

Sincerely,

Carol T. Trela,
Secretary

cc. Dr. E. P. Gonzales

RECEIVED
SEP 21 2004
OFFICE OF PLANNING

1-10-05

To: County Board of Appeals of Baltimore County

Fax 410-887-3182

Please notify of any issue & hearing dates

concerning Case # CBA-04-157

Re: WINDEMERE - STEPCICH property

Thank you —

Donna Spicer
8719 Eddington Rd.
Baltimore, Maryland 21234

Phone 410-665-4322
Fax 410-668-0569

RECEIVED
JAN 10 2005
BALTIMORE COUNTY
BOARD OF APPEALS

IN THE MATTER OF STEPCICH PROPERTY, SECTION 3 WINDMERE – 3 STONEHURST ROAD BRIZENDINE, TRUSTEES PHOENIX, MD 21131 11TH ELECTION DISTRICT 6TH COUNCILMANIC DISTRICT	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
RE: JSPC SUBDIVISION PLAN/DENIAL OF PROPOSED RE-SUBDIVISION / AMENDMENT TO JSPC PLAN	*	CASE NO. CBA-04-157

* * * * * * * * *

ORDER TO REMAND

Statement Of Facts

This matter comes before the Baltimore County Board Of Appeals on appeal from a decision by the Director of the Office of Planning dated October 26, 2004, in which the Appellants' request with the Planning Board of Baltimore County to approve an amendment to the Section III, Windermere plat was denied. Appellants filed an appeal to the Board Of Appeals on November 19, 2005.

Arnold Jablon, Esquire, VENABLE, LLP, represented the Property Owners /Appellants; John E. Beverungen, Deputy County Attorney, appeared on behalf of Baltimore County, Maryland; and Peter M. Zimmerman, People's Counsel for Baltimore County, entered his appearance on behalf of that Office. A hearing was held before the County Board of Appeals on May 11, 2005 and was heard *de novo*. A public deliberation was held on July 14, 2005

Testimony and Evidence

No testimony was heard as to the merits at the May 11, 2005 hearing. The parties by agreement made oral argument and agreed to submit memorandums on the following issues as well as others:

1. Was the letter of October 6, 2004 by the Director of Planning a final order appealable to the County Board of Appeals?

2. Did the Director of Planning have authority to render a decision on the Petitioners' request made to the Planning Board?

This matter arose when the Appellants filed a request with the Planning Board of Baltimore County to approve an amendment to the Section III, Windermere plat. The Planning Board held a hearing on this matter on three occasions; October 21, 2004, November 18, 2004 and January 6, 2005, according to counsel for Appellants. The Director of Planning issued a letter on October 26, 2004 denying Appellants' request. Appellants' filed an Appeal to the Board of Appeals from the Director of Planning's letter of October 26, 2004. The Planning Board at the January 2005 hearing decided not to take any action until the Board of Appeals had rendered a decision on the appeal .

The Board finds that the letter of October 6, 2004 by the Director of Planning was a final order appealable to the Board Of Appeals. The Board of Appeals' jurisdictional authority to hear appeals is granted under § 602 (d) of the *Baltimore County Charter* and Article 25A, Section5 (U) of the *Annotated Code of Maryland*. We find that under *United Parcel Service, Inc., v. People's Counsel for Baltimore County*, 336 Md 569 (1994), the Director Of Planning's letter of October 26, 2004 was an appealable event. We agree with Appellants' counsel that the Director Of Planning's letter of October 26, 2004 was an adjudicatory order issued by an administrative official that effectively denied the Appellants' request.

The Board finds that the Director of Planning did not have authority to render a decision on the Appellants' request. Appellants filed their request with the Planning Board not with the Director of Planning. The request was for plat approval. Under the *Baltimore County Code*, the

Planning Board and Department of Public Works were given joint authority to approve all plats. The Baltimore County Code does not give the Director Of Planning the authority to deny the request made by the Appellants.

ORDER

THEREFORE, it is this 21st day of September, 2005, by the County Board of Appeals of Baltimore County

ORDERED that letter dated October 26, 2004 from the Director of Planning be and is hereby **REVERSED**; And it is further

ORDERED that this matter be and is hereby **REMANDED** to the Baltimore County Planning Board for a final decision as required by statute.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence M. Stahl, Chairman

Michael O. Ramsey

Edward W. Crizer, Jr.

County Board of Appeals of Baltimore County

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

July 21, 2005

Arnold Jablon, Esquire
VENABLE, BAETJER & HOWARD, LLP
210 Allegheny Avenue
Towson, MD 21204

RE: *In the Matter of: Stepcich Property, Section 3*
Windemere /3 Stonehurst Road / Case No. CBA-04-157

Dear Mr. Jablon:

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

Very truly yours,

Kathleen C. Bianco
Administrator

Enclosures

c: Mr. and Mrs. Joseph Stepcich
Dr. & Mrs. Eusebio Gonzales
Joseph Lee Bishop, Jr., President
Greater Sparks-Glencoe Community Council
Carol T. Trela, Secretary
Long Green Valley Association
Donna Spicer
Office of People's Counsel
Pat Keller, Planning Director
Jeffrey Long, Deputy Planning Director
Caren B. Hoffberger /Planning
Jeff Mayhew, Chief /Community Planning
Lynn Lanham, Chief /Development Review
Timothy M. Kotroco, Director /PDM
John E. Beverungen, Deputy County Attorney
Jay L. Liner, County Attorney

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Office of Law

400 Washington Avenue
Towson, Maryland 21204
Tel: 410-887-4420 • Fax: 410-296-0931

James T. Smith, Jr., County Executive
Jay L. Liner, County Attorney

Baltimore County

One of the Best-Managed Counties in America

June 13, 2005

VIA HAND DELIVERY

Kathleen C. Bianco, Administrator
Board of Appeals
400 Washington Avenue
Room 49
Towson, Maryland 21204

RECEIVED
JUN 13 2005
BALTIMORE COUNTY
BOARD OF APPEALS

Re: In the Matter of Stepcich Property, Section III
Windemere - 3 Stonehurst Road
Phoenix, Maryland 21131
Case No.: CSA-04-157

Dear Ms. Bianco:

Enclosed for filing in the above captioned matter please find an original and three copies of Baltimore County, Maryland's Memorandum of Law.

Thank you for your attention to this matter.

Very truly yours,

John E. Beverungen
Deputy County Attorney

JEB:dlm
Enclosures
cc: Arnold Jablon, Esquire (w/enclosure)
Peter Max Zimmerman (w/enclosure)

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IN THE MATTER OF:	*	BEFORE THE
STEPCICH PROPERTY, SECTION III	*	COUNTY BOARD OF APPEALS
	*	OF BALTIMORE COUNTY
Windemere - 3 Stonehurst Road Phoenix, Maryland 21131	*	CASE NO.: CSA-04-157

RECEIVED
JUN 13 2005
BALTIMORE COUNTY
BOARD OF APPEALS

MEMORANDUM OF LAW

Baltimore County, by its undersigned counsel and pursuant to this Board's May 12, 2005 Order, hereby files this Memorandum of Law, and states as follows:

A. Board of Appeals Lacks Jurisdiction

Baltimore County respectfully suggests that the Board does not have jurisdiction over the present controversy, given that the Petitioner has not first sought relief from the Zoning Commissioner by filing a petition for special hearing as required by Baltimore County Zoning Regulations ("BCZR") 1A00.4 and 1B01.3. This failure to exhaust administrative remedies bars Petitioner from seeking relief in this forum. *Brown v. Fire and Police Retirement Systems,* 375 Md. 661, 669 (2003) (exhaustion doctrine requires litigant to first seek relief from administrative agency created to handle such matters); *Maryland Reclamation Assoc., Inc. v. Harford County,* 382 Md. 348 (2004) (exhaustion doctrine requires litigant to first seek relief from administrative agency created to handle such matters).

This case involves a zoning/vesting dispute, and is therefore within the jurisdiction of the Zoning Commissioner. Indeed, the Zoning Commissioner recently issued an opinion in a zoning/vesting case, and the matter is now on appeal to this Board. *In re: US Filter Recovery,* Case No. 05-075-SPHXA. It is understandable why Petitioner strenuously objects to having his case heard in that forum, since the Zoning Commissioner expressly held that one cannot vest, for zoning purposes, without a valid building merit and substantial construction of the project. *Id.*

B. Petitioner is Not Vested and Must Comply With The Present Zoning Classification on the Property

Maryland's highest court on several occasions recently discussed in great detail the vested rights doctrine, and has set forth definitive guidelines. In *Prince George's County v. Sunrise Development Limited Partnership,* 330 Md. 297 (1993), the court noted:

> The vested rights doctrine has a constitutional foundation and "rests upon the legal theory that when a property owner obtains a lawful building permit, commences to build in good faith, and completes substantial construction on the property, his right to complete and use that structure cannot be affected by any subsequent change of the applicable building or zoning regulations.

Id. at 312 (emphasis added).

In the more recent case of *Marzullo v. Kahl,* 366 Md. 158 (2001), the court considered whether a property owner had a "vested right" to lawfully conduct a business of breeding, raising and selling snakes in an R.C. 4 zone. Ultimately, the Court of Appeals held that the landowner did not have such a right, and its decision was based largely upon the fact that the issuance of the permit for the construction was improper, and thus could not lead to a vested right. In reaching its holding, the *Marzullo* court stated as follows concerning the vested rights doctrine:

> In Maryland it is established that in order to obtain a 'vested right' in the existing zoning use which will be constitutionally protected against a subsequent change in the zoning ordinance prohibiting or limiting that use, the owner must (1) obtain a permit or occupancy certificate where required by the applicable ordinance, and (2) must proceed under that permit or certificate to exercise it on the land involved so that the neighborhood may be advised that the land is being devoted to that use.

Id. at 192-93.

Indeed, the *Marzullo* court noted that the vested rights doctrine is analogous to the nonconforming use doctrine, in that both stress the importance of "public knowledge in the neighborhood of the use." *Id.* at 192.

In the most recent case to address the doctrine, the Court of Appeals adopted the following standard for vesting in the zoning context:

1. There must be the actual physical commencement of some significant and visible construction;

2. The commencement must be undertaken in good faith, to wit, with the intention to continue with the construction to carry it through to completion; and

3. The commencement of construction must be pursuant to a validly issued building permit.

Powell v. Calvert County, 368 Md. 400, 409 (2002).

In addition, Maryland courts on many occasions have noted that there is no different rule of vested rights in scenarios involving special exceptions or subdivision approvals. *See, e.g., Powell,* 368 Md. at 409 ("there is no different rule of vested rights for special exceptions and the like"); *Montgomery County v. Waters Landing Limited Partnership,* 99 Md. App. 1 (1994) ("fact that a piece of property is subdivided does not in and of itself create a vested property interest"); *Washington Suburban Sanitary Commission v. TKU Associates,* 281 Md. 1, 22-23 (1977) (dedication of a right-of-way in connection with a subdivision did not vest rights in the property owner); *Miller v. Forty West Builders,* 62 Md. App. 320, 330 (1985) (party does "not acquire vested or substantive rights by obtaining…approval of the subdivision plan" under Baltimore County's development regulations).

Indeed, in *Hickory Point Partnership v. Anne Arundel Co.,* 316 Md. 118, 133-34 (1989), the Court of Appeals cited with approval several out of state cases also holding that the approval of a subdivision plat does not confer vested rights upon the land owner. *See, e.g., Dawe v. City of Scottsdale,* 581 P.2d 1136 (Az. 1978) (recording of subdivision plat did not give landowners a vested right to develop unimproved property in accordance with plat and contrary to subsequently enacted subdivision ordinance); *Sherman-Colonial Realty Corp. v. Goldsmith,* 230

A.2d 568, 572 (Conn. 1967) ("mere filing of maps for the subdivision of a parcel of real estate does not necessarily immunize the subject property from the operative affect of subsequent subdivision regulations"); *In re: McCormick Management Company,* 547 A.2d 1319 (Vt. 1988) (filing plats before adoption of zoning ordinance created no vested rights to develop in accordance with those plats and contrary to zoning ordinance).

Simply put, the mere fact that the Windemere subdivision plat was approved and recorded in 1970 has absolutely nothing to do with whether an owner of a lot in that subdivision is immunized against subsequent changes in zoning.

In previous correspondence with the Planning Board, the Protestant relied upon two provisions in support of his argument that he enjoyed "vested rights" in connection with the creation of one additional lot. Specifically, he relied upon County Code §26-169 [now §32-4-104] and BCZR §103.3. *See,* Exhibit "1." Neither provide any support for Protestant's case. Indeed, those sections undercut his argument.

Section 32-4-104 of the Code concerns the applicability of the various development laws and regulations, and specific scenarios are exempted from coverage. Petitioner argues that his rights are "vested by law," (per Code §32-4-104(b)(iv)) and hence he is not subject to the development process set forth in Title 32. First, such reasoning is circular, because Petitioner has not established - nor can he - that he is vested. More importantly, as noted by the Court of Special Appeals, these exceptions in §32-4-104(b) confer certain "grandfathering rights," whereby a developer (if he satisfies one of the exemptions in the section) can follow older, less-onerous development regulations in seeking approval for his project. *Beth Tfiloh Congregation v. Glyndon Comm. Ass'n,* 152 Md. App. 97, 110-11 (2003) (§32-4-104 is a "grandfather" provision allowing developer to adhere to earlier development process). Simply put, this code

section deals with "development," and has nothing to do with zoning. On many occasions, our highest court has stressed that zoning and subdivision are separate regulatory entities. *Remes v. Montgomery County*, ___ A.2d ___, 2005 WL1115075 (Md. 2005); *Friends of the Ridge v. BGE*, 352 Md. 645, 648 n.4 (1999) ("subdivision is not zoning"); *Board v. Stephens*, 286 Md. 384 (1979).

Finally, even if the code section were applicable, as Protestant argues, the text of the statute clearly provides that all proposed development must satisfy present zoning.

Indeed, the County Code expressly states that:

> (c) Present zoning classification. Proposed development shall be in compliance with the present zoning classification on the property to be developed.

BCC §32-4-104(c).

This is in accord with the common law rule, which invariably recognizes that "compliance with applicable zoning regulations is a prerequisite for approval of a development plan." *Wesley Chapel Bluemount Ass'n v. Baltimore County*, 347 Md. 125, 137 (1997). In *Remes*, decided less than a month ago, the Court of Appeals squarely disagreed with a landowner's claim that the sole issue governing approval of a building permit for a new house on a single lot is whether the "development standards" were met. *Id.* at *4. The court held:

> This is not so. Compliance with the requirements of zoning and zoning codes, where they exist, are generally necessary before permits may be issued.

Id. at *4 n. 6.

While the Windemere subdivision may be "grandfathered" for purposes of determining whether old or new development regulations apply, this determination does not mean that the Petitioner has a constitutionally protected, vested right in the zoning which existed in 1970. *Beth-Tfiloh v. Glyndon Comm. Ass'n*, 152 Md. App. 97, 110-11 (2003) (§26-169 [now §32-4-104] bestows on

a developer the right to further development in accordance with earlier, less onerous development regulations). "Vesting" for zoning purposes is an issue of constitutional dimension, which must be determined by Maryland common law (not County laws or regulations), as set forth in the appellate decisions discussed above. Indeed, in the numerous opinions issued by Maryland appellate courts in the last 35 years (since the seminal case of *Richmond Corp. v. Prince George's County,* 254 Md. 244 (1969)), not once has a court cited or relied upon a county's development laws and/or regulations to determine whether a landowner enjoyed vested rights. Given that Petitioner has not acquired a valid building permit or begun any construction with respect to the new lot he seeks, he clearly never obtained vested rights for zoning purposes.

It is anticipated Petitioner will also argue that BCZR §103.3 supports his argument of vested rights for zoning purposes. It does not. First and foremost, the section is applicable only to property in R.C.2., R.C.3, R.C.4 and R.C.5 Zones. *See,* Exhibit "1." Petitioner's property is zoned R.C.6, as reflected on the attached zoning map. *See,* Exhibit "2." Moreover, even if the section were applicable, it says nothing about subdivision approval conferring vested rights against subsequent zoning changes.

In what has become a recurring theme, counsel for Protestant advocates a legal position based on the institutional precedent he established in his many years as a department head for Baltimore County. The absurdity of this practice was evident in a recent case before this Board. *In the Matter of Mary Horner Trust*, CBA 04-114 (opinion attached). *See,* Exhibit "3." Therein, Baltimore County denied a building permit for a new home, and cited the "creeping subdivision doctrine." In a terse opinion, the Board explained the obvious: Baltimore County could not invoke internal policies and rules (like the unwritten "creeping subdivision" policy adopted by Mr. Jablon) to decide matters unless such have been properly adopted and

promulgated as law or regulation. This Board found that the "creeping subdivision" policy promulgated by "the Director of Permits and Development Management was arbitrary, capricious and illegal." *Id.* at 5.

On another occasion, the PADM office apparently had an internal practice of denying certain development exemptions (otherwise proper under the Baltimore County Code) when the community voiced objection. *Beth Tfiloh,* 152 Md. App. at 116-17. The Court of Special Appeals held that such an internal practice or policy had no effect when it was contrary to the plain meaning of a statute. *Id.* As such, it is abundantly clear that whatever policy or opinion PADM and its staff espoused, it has no bearing upon a determination of whether a particular property owner enjoys vested rights. That is a question of law for the court.

C. Conflict of Interest Arguments

During the preliminary hearing in this matter, Protestant's counsel argued that the Baltimore County Attorney's Office was "conflicted" out of this case, and could not enter its appearance therein. In support of this spurious argument, Petitioner contended that the department heads of PADM and Planning had divergent views on this case, thus creating the conflict.

Contrary to Petitioner's assertion, the undersigned represents Baltimore County (not the Director of PADM and/or Planning) in this matter. Under the Charter, the County is a corporate body that has the power to sue and be sued. Charter §101. Maryland courts have repeatedly emphasized that it is the County, and not any agency or department thereof, which has standing in litigation matters. *See, e.g., Hines v. French,* 157 Md. App. 536, 573 (2004) (county departments "should not be viewed as separate legal entities"); *Boyer v. State,* 323 Md. 558, 572 n. 9 (1991) ("sheriff's department is not an entity capable of being sued").

Finally, the Office of the Attorney General recently issued an opinion touching on these issues. 87 Op. A.G. ____ (2002) (Opinion No. 02-012) (attached as Exhibit "4"). Therein, the Attorney General clarified that it is the County government as a whole which is the County Attorney's client, not any particular department or agency. *Id.* at 4. The opinion expressly noted that departments and units of county government are not distinct clients for purposes of conflict of interest analysis. As such, the Attorney General opined that the Rules of Professional Conduct do not preclude one attorney in the County Attorney's Office from representing one agency or director while another lawyer from the same office provided legal counsel to the Board of Appeals. *Id.* at 7. In rendering its opinion, the Attorney General noted that the "conflicts rules may not apply to government lawyers in the same way they do to attorneys in private practice." *Id.* at 3.

In an earlier opinion, the Attorney General likewise confirmed that "[t]he corporate entity that is St. Mary's County is the client of the St. Mary's County Attorney." 82 Op. A.G.____ (1997) (Op. No. 97-028) (attached as Exhibit "5"). Simply put, there is no conflict, and the undersigned properly represents Baltimore County in this matter.

Jay L. Liner
County Attorney

John E. Beverungen
Deputy County Attorney
Baltimore County Office of Law
400 Washington Avenue
Towson, Maryland 21204
(410) 887-4420
Attorneys for Baltimore County, Maryland

EXHIBIT
tabbies
1

ARTICLE 32. PLANNING, ZONING, AND SUBDIVISION CONTROL / TITLE 4. DEVELOPMENT / SUBTITLE 1. IN GENERAL / § 32-4-104. SCOPE OF TITLE.

§ 32-4-104. SCOPE OF TITLE.

(a) *Applicability of title.* Except as provided in subsection (b) of this section, this title shall apply to all development.

(b) *Exceptions.*

(1) This title does not apply to a development that before the effective date of this article, June 11, 1982:

(i) Received tentative approval of the preliminary plan by the Planning Board;

(ii) Has a valid unexpired building permit;

(iii) Has a current executed public works agreement;

(iv) Received a CRG approval, reclamation plan approval, or was otherwise vested by law; or

(v) Where a CRG plan was accepted for filing by the Department of Public Works before the date of adoption of Bill 1-92.

(2) An exempt development under paragraph (1) of this subsection shall be governed by the subdivision regulation in effect at the time:

(i) Of the preliminary plan approval in the case of a development that received tentative approval by the Planning Board;

(ii) The development received a CRG approval, reclamation plan approval, or was otherwise vested by law;

(iii) The valid unexpired building permit was issued;

(iv) The current public works agreement was executed; and

(v) Of the acceptance for filing in the case of a CRG plan that was accepted for filing by the Department of Public Works before the date of adoption of Bill 1-92.

(c) *Present zoning classification.* Proposed development shall be in compliance with the present zoning classification on the property to be developed.

(1988 Code, § 26-169) (Bill No. 18, 1990, § 2; Bill No. 1, 1992, § 2; Bill No. 79-01, § 2,

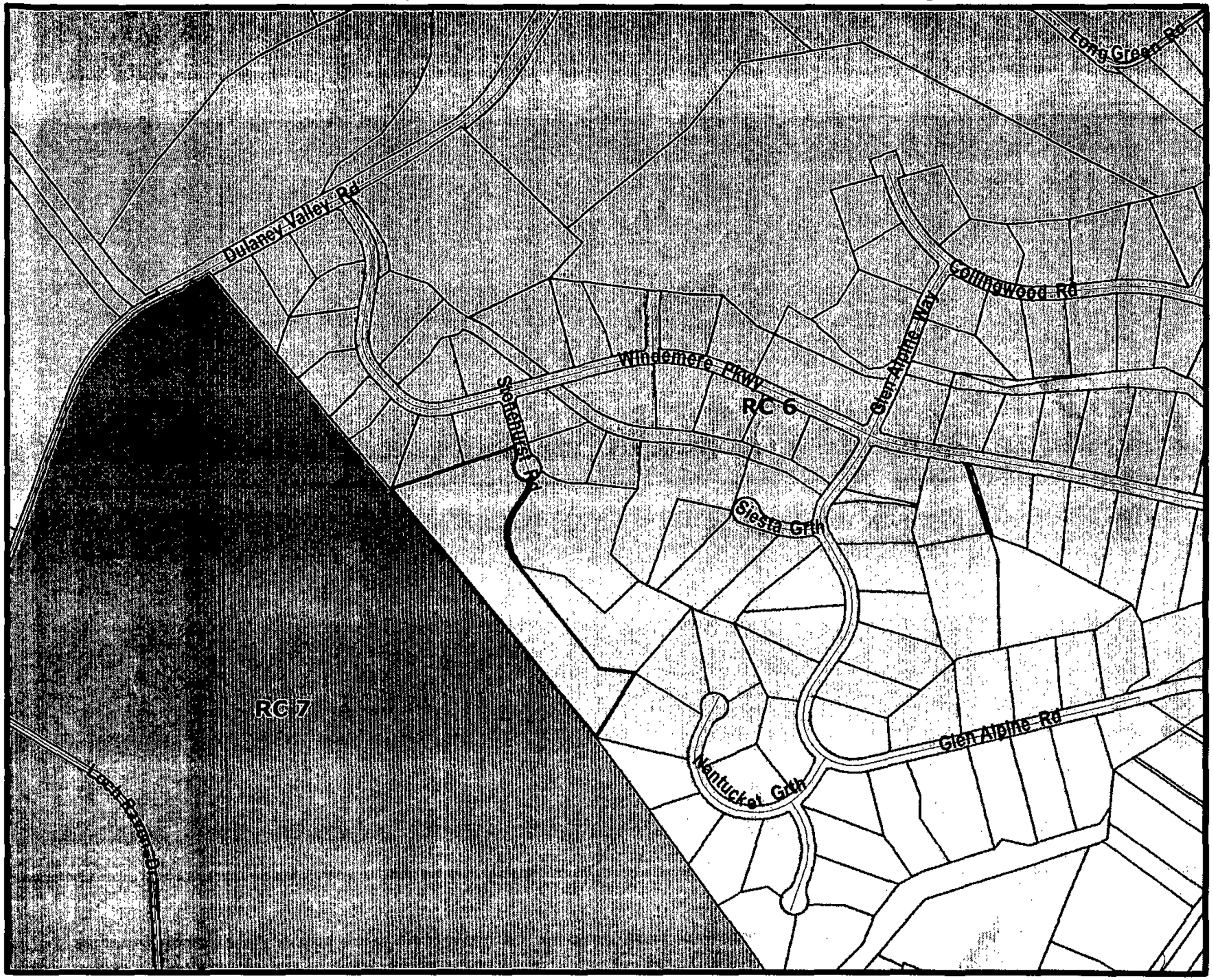
7-1-2004)

***Annotation**–Former § 26-169 (1988) cited in Meadows of Greenspring Homeowners Association, Inc. v. Foxleigh Enterprises, Inc., 133 Md.App. 510, 758 A.2d 611 (2000).*

103.3 In an R.C.2, R.C.3, R.C.4 or R.C.5 Zone, contrary provisions of Subsection 103.1 and any other contrary provisions of or pursuant to these regulations notwithstanding, in the case of property covered by a recorded subdivision plat which was approved by the Baltimore County Planning Commission or Board before the effective date of this subsection, and which remains in effect, buildings may be constructed, residential densities and lot lines may be established, and yards and other open areas may be laid out in accordance with that plan, subject to any conditions of the approval.

Where such a plan has been so approved but does not indicate densities or the situations of buildings or yards or other open spaces, these may be established or situated only in accordance with the standards as prescribed and in force at the time of the lot recordation. [Bill No. 98-1975]

Zoning for Stepcich Property



tabbies

EXHIBIT

2

EXHIBIT

tabbies 3

IN THE MATTER OF MARY HORNER TRUST; JOHN LAWRENCE HANLEY AND AUSTIN WORTHINGTON BRIZENDINE, TRUSTEES 600 AND 602 BELFAST ROAD TAX ACCOUNT NOS. 08-07061080 AND 08-08068170	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
RE: APPEAL OF LETTER WRITTEN BY DIRECTOR, OFFICE OF PERMITS & DEVELOPMENT MANAGEMENT	*	CASE NO. CBA-04-114

* * * * * * * * *

OPINION

Appellants John Lawrence Hanley and Austin Worthington Brizendine, Trustees for the Mary Horner Trust (hereafter referred to as "Trustees") and Lillian Horner, the widow of Peter Paul Horner, and Catherine H. Gemmill appealed the decision of the Baltimore County Department of Permits and Development Management (PDM) which refused to review two minor subdivision plans submitted by the owners for two adjoining parcels of land. The Trustees were represented by Arnold Jablon, Esquire, with Venable, LLP, and Bill Horner and Catherine Gemmill were represented by G. Scott Barhight, Esquire, with Whiteford, Taylor and Preston, LLP. The County was represented by John Beverungen, Assistant County Attorney.

A hearing was held on April 15, 2004, and the parties submitted Briefs on May 3, 2004. A public deliberation was held on May 12, 2004.

Facts

The Trustees for the Mary Horner Trust own property located at 600 Belfast Road, herein referred to as "Parcel 36." Parcel 36 consists of approximately 16 acres and is zoned R.C. 5. In late 2003, the Trustees filed with Baltimore County two alternative plans for the subdivision of Parcel 36. One was a concept plan proposing the subdivision of this parcel into six lots and the other was a minor subdivision plan proposing only three lots.

The Trustees, along with Mrs. Horner and Mrs. Gemmill, also own property located at 602 Belfast Road, herein referred to as "Parcel 37." Parcel 37 consists of approximately 6.5 acres and is zoned R.C. 5.

In late 2003, the owners of Parcel 37 filed a "minor subdivision plan" proposing the subdivision of Parcel 37 into three lots.

At the same time as the above submittals, the owners of Parcel 36 and the owners of Parcel 37 collectively submitted a request to PDM for confirmation that a proposed "lot line adjustment" between the two parcels met the requirements for a limited exemption under § 26-171(a)(9) of the *Baltimore County Code* (BCC). This request package, filed by McKee & Associates, Inc., on behalf of both sets of property owners included a plan identified as "Plan to Accompany DRC Petition No. 602 Belfast Road."

On Parcel 37 there is an existing carriage house, which is estimated to be about 100 years old. The carriage house is included on the Maryland Historical Trust Inventory of Historic Properties. The carriage house crosses the joint property line and encroaches on Parcel 36. In addition to this encroachment, there is also an existing dwelling on Parcel 37 that is located approximately 30 feet from the common property line with Parcel 36. A lot line adjustment was requested to redraw the property lines so that the carriage house is located entirely within the property boundaries of Parcel 37 and to make the setback from the existing dwelling to lot line 50 feet instead of the existing 30 feet, which would bring the dwelling into compliance with the setback required in the R.C. 5 zone. In addition, the lot line adjustment request included the widening of the private drive accessing Parcel 37 to a 30-foot road frontage by taking approximately 0.15 acres from Parcel 36 and incorporating this additional land parcel into Parcel 37. The purpose was to satisfy BCC § 26-266(1) which requires a minimum of 10 feet in width for a lot where three or more lots are involved.

The above-identified plans were submitted to the County on or about December 16, 2003. On or about January 15, 2004, McKee & Associates, Inc., received notification that the Development Review Committee (DRC) had recommended and PDM approved the proposed lot line adjustment as an (a)(9) limited exemption. Subsequently, on February 3, 2004, PDM Director Timothy M. Kotroco notified counsel that Appellants would be prohibited from processing the minor subdivision plans for Parcel 36 and Parcel 37 simultaneously. According to this letter, PDM would permit the processing of only one of these

plans as "a minor subdivision" and the other plan would have to be processed as a "major subdivision plan." Mr. Kotroco apparently concluded that because the property owners jointly filed for a "lot line adjustment" for parcel 36 and parcel 37, the two lots were not separately owned parcels. He stated that, "As a result, development of the two parcels in question meets the definition of 'creeping subdivision" and therefore cannot proceed and will not be processed as two separate "minor subdivisions." Mr. Kotroco based his decision on a 1995 letter from Arnold Jablon, the Director of PDM at that time.

Appellants' witness, Guy Ward, Project Engineer with McKee & Associates, Inc., testified with respect to Mr. Kotroco's decision to prohibit processing the two minor subdivision plans. Mr. Ward testified that he was familiar with the concept known as "creeping subdivision" which was the basis of Mr. Kotroco's decision not to permit the minor subdivisions to proceed. He testified that he was familiar with the Baltimore County development regulations contained within the *Baltimore County Code*, the *Baltimore County Zoning Regulations*, and the Policy Manuals adopted by PDM. According to Mr. Ward's testimony, there are no laws, regulations or policies in Baltimore County that define, describe, or prohibit "creeping subdivision." Mr. Ward's knowledge of the concept came from his past experience and interaction with PDM.

Mr. Ward's understanding of the concept was that Baltimore County wished to prevent property owners from successfully avoiding application of the development regulations by having a property of three lots or less reviewed as a "minor subdivision" only to turn around and re-subdivide those lots again shortly thereafter. In his experience, PDM had not applied this concept to adjoining parcels of land separately described by deed and which had not been subject to prior subdivision. In Mr. Ward's opinion, the concept of "creeping subdivision" was wrongly applied to Parcels 36 and 37 because the two parcels were not jointly owned and there was no common ownership.

John Brizendine, also testifying on behalf of the Appellants, stated that he was one of the two Trustees of the Mary Horner Trust. He stated that the Trustees are the sole owners of Parcel 36 and are two-thirds owners of Parcel 37 with the other one-third being owned by Lillian Horner, widow of Peter Horner,

and Catherine Gemmill. Mr. Brizendine explained that, prior to the various filings, the Trustees had sought and secured the permission of Mrs. Horner and Mrs. Gemmill. Both ladies agreed to proceeding with the request for the lot line adjustment and the minor subdivision of Parcel 37 but would not agree to the subdivision of Parcel 37 into more than three lots. Mr. Brizendine confirmed that Mrs. Horner and Mrs. Gemmill have no interest or ownership in Parcel 36. He confirmed that the two parcels at issue here are not in common ownership.

Christine Rorke, the Project Manager on behalf of PDM, acknowledged that PDM's Director had, in fact, classified the minor subdivisions of Parcel 36 and Parcel 37 as a "creeping subdivision." According to Ms. Rorke, the policy was intended to prevent the subdivision of a single lot of record into three lots, then the re-subdivision of any of the three lots into additional lots. Ms. Rorke did not know if this policy had ever been legally adopted pursuant to the Code and Baltimore County regulations. It was Ms. Rorke's understanding that the "creeping subdivision" policy was expanded in 1995 when the then-director of PDM denied by letter dated September 27, 1995 the processing of two minor subdivisions known as the "Kramer Property" at Seminary and Warwick Avenues. Ms. Rorke surmised that the 1995 letter had expanded the application of the term "creeping subdivision" to include adjoining parcels owned by the same owner. Ms. Rorke acknowledged that the 1995 letter had never been developed into a written policy nor was there any way for the public to have known it existed. She stated that, to her knowledge, no written policy on "creeping subdivision" had ever been drafted other than the Office of Planning and Zoning policy which was issued in 1991. Ms. Rorke confirmed that there is no written policy or law, either in the *Baltimore County Code* or the *Baltimore County Zoning Regulations* which defines or even refers to "creeping subdivision."

Decision

Section 26-135 of the *Baltimore County Code* provides that the Director of PDM has the authority to "make, adopt, promulgate and amend, from time to time, such policies, rules or regulations relating to or in connection with zoning regulations…to carry out and enforce the provisions of this title which are not

inconsistent therewith." However, the rules or regulations must first be made available for review to the Baltimore County Council and must be available to the public within the Zoning Commissioner's Policy Manual. (See BCC § 26-135.)

The undisputed testimony of both the witnesses for the Appellants and for PDM indicate that there is no policy in the Zoning Commissioner's Policy Manual that refers directly or indirectly to "creeping subdivision."

In addition, there has been no rule promulgated with respect to "creeping subdivision" in accordance with BCC § 26-218 which gives authority to the Administrative Officer or his designee to promulgate rules and regulations not inconsistent with law governing the processing of a concept plan, development plan, or action or review associated therewith.

The Board finds that the concept of "creeping subdivision" was not legally adopted under any statutory authority and is not legally effective. However, assuming, for the sake of argument, that the "creeping subdivision" policy was effective, it would not apply in this situation since Parcel 36 and Parcel 37 are not jointly owned. The Trustees for the Mary Horner Trust own the property located at 600 Belfast Road. However, the Trustees along with Mrs. Horner and Mrs. Gemmill also own the property located at 602 Belfast Road known as Parcel 37. It is quite clear that there is no joint ownership of these two parcels of land.

Therefore, the Board will find that the policy known as "creeping subdivision" as promulgated by the Director of PDM was arbitrary, capricious and illegal and cannot be enforced. The Board will reverse the Director of the Department of Permits and Development Management in this matter and will direct that the Department process the minor subdivision plans for review and approval separately and independently from each other.

ORDER

THEREFORE, IT IS THIS 1st day of June, 2004 by the County Board of Appeals of Baltimore County

ORDERED that the decision of the Director of the Department of Permits and Development Management by letter dated February 3, 2004 refusing to process the two separate minor subdivision plans is hereby **REVERSED**; and it is further

ORDERED that the two minor subdivision plans should be processed for review and approval separately and independently from each other.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence S. Wescott, Chairman

Lawrence M. Stahl

Edward W. Crizer, Jr.

EXHIBIT
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2002 WL 2005972 (Md.A.G.)
2002 WL 2005972 (Md.A.G.)
(Cite as: 2002 WL 2005972 (Md.A.G.))

Office of the Attorney General
State of Maryland

*1 Opinion No. 02-012
August 27, 2002

OPINIONS OF THE ATTORNEY GENERAL Cite as 87 Opinions of the Attorney General ____ (2002)

John B. Norris, III, Esquire
County Attorney for St. Mary's County
P.O. Box 653
23115 Leonard Hall Drive
Leonardtown, Maryland 20650

Dear Mr. Norris:

Your predecessor asked whether it would be a "conflict of interest" for one attorney from the Office of the County Attorney to represent a County official or agency in an administrative appeal before the County Board of Appeals while another attorney from that Office advises the Board of Appeals.

Issues of legal ethics, as well as due process concerns, may be raised when two attorneys from the same government office act, respectively, as adviser to an administrative tribunal and as advocate before that tribunal in the same matter. However, in our opinion, those concerns are resolved if the County Attorney's Office employs procedures designed to ensure the fairness of the administrative process. [FN1]

I

Background

A. Board of Zoning Appeals

The St. Mary's County Board of Appeals is established under the zoning enabling law set forth in the Annotated Code of Maryland, Article 66B, § § 4.07, 14.07(d) and the St. Mary's County Comprehensive Zoning Ordinance ("Zoning Ordinance"), § 20.3. [FN2] The Board consists of five members, and one alternate, appointed by the Board of County Commissioners. Zoning Ordinance § 20.3.

The jurisdiction of the Board of Appeals is limited to land use matters. It decides applications for special exceptions, conditional uses, and variances as a matter of first impression. See Article 66B, § 4.07(d)(2), (3); Zoning Ordinance, Figure 20.1. [FN3] In other proceedings, the Board of Appeals acts as an appellate body, reviewing the administrative and enforcement decisions of County officials and agencies. See Article 66B, § 4.07(d)(1); Zoning Ordinance, Figure 20.1; § § 20.3(4), 23.1.

The Board of Appeals conducts quasi-judicial hearings that are open to the public and at which any person may testify. The Chairman of the Board is authorized to administer oaths and compel attendance of witnesses. Zoning Ordinance § 20.3(5).

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We understand that a typical appeal is conducted as a de novo adversarial hearing. The Planning Director presents a planning staff report that outlines the basis for his or her decision. Testimony and other evidence is received from applicants and other interested parties. Witnesses are cross-examined. Closing statements are usually made. In addition, the floor is opened to general public comment.

Following the hearing, the Board of Appeals may affirm, reverse, or modify, in whole or in part, the order or decision under review. [FN4] In addition, the Board may issue its own order or decision as it has "all the powers of the administrative officer from whom the appeal is taken." Article 66B, § 4.07(h); Zoning Ordinance § 20.3(6). A decision of the Board is a final administrative decision that may be appealed to the circuit court. See Article 66B, § 4.08; Zoning Ordinance § § 20.3(7), 23.5.

***2** In light of the complexity of land use decisions and the importance of ensuring proper administrative proceedings, the assistance of counsel is valuable and, in some cases, essential for both the County agencies that participate in the proceedings and the Board of Appeals itself.

B. Office of the County Attorney

The County Attorney's Office is small. In recent years it has consisted of two or three full-time attorneys. The Office represents the Board of County Commissioners, the County governing body, as well as the agencies, boards, and commissions that are part of the County government. Included among those entities are agencies involved in land use - the Board of Appeals, the County Planning Commission, and the Department of Planning and Zoning.

When a decision of a County agency such as the Planning Department is appealed to the Board of Appeals, both the agency and the Board generally require the assistance of counsel. We understand that, typically, the senior attorney in the County Attorney's Office advises the Board of Appeals and another attorney from the Office represents the County agency whose decision is the subject of the appeal. On occasion, however, when the budget permits, the Office of the County Attorney has engaged the services of a contract attorney to advise the Board of Appeals in place of a full-time attorney from the County Attorney's Office.

II

Analysis

We are not aware of any Maryland authority addressing the propriety of one member of a county attorney's office advising a county board of appeals while another attorney from the same office appears as an advocate before the board on behalf of a county agency. Potential conflicts involving attorneys are usually resolved by reference to the ethical rules governing attorneys. In addition, a possible conflict affecting an administrative decision-maker may call into question the fairness of the administrative process and raise due process concerns.

A. Rules of Professional Conduct

The ethical rules governing Maryland attorneys are set forth in the Maryland Rules of Professional Conduct, as adopted by the Court of Appeals. Maryland Rule 16-812, Appendix. There is no question that an attorney for a government entity, such as St. Mary's County, is subject to those rules.

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1. Conflicts of Interest

Rule 1.7 sets forth the general rule on conflicts of interest:

(a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:

(1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and

(2) each client consents after consultation.

(b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:

(1) the lawyer reasonably believes the representation will not be adversely affected; and

*3 (2) the client consents after consultation.

(c) The consultation required by paragraphs (a) and (b) shall include explanation of the implications of the common representation and any limitations resulting from the lawyer's responsibilities to another, or from the lawyer's own interests, as well as the advantages and risks involved.

In some circumstances, even the appearance of a conflict may result in a violation of Rule 1.7. Attorney Grievance Comm'n v. Hines, 366 Md. 277, 292, 783 A.2d 656 (2001).

Subject to limited exceptions, when a lawyer is disqualified under Rule 1.7 from representing a client, other lawyers in the same law firm are also disqualified. See Rule 1.10. [FN5] "Firm" or "law firm" is defined for purposes of the Rules as "a lawyer or lawyers in a private firm, lawyers employed in the legal department of a corporation or other organization and lawyers employed in a legal services organization." Maryland Rules of Professional Conduct, Preamble: Terminology; Rule 1.10 comment (emphasis added). A county attorney's office appears to come within this definition. See Maryland State Bar Association, Committee on Ethics, Ethics Docket 89-3 (concluding that county attorney's office is a "firm" for purposes of Rule 1.10 in addressing conflict involving county attorney's part-time private practice).

2. Application of Conflicts Rules to Government Attorneys

The Maryland Rules of Professional Conduct, however, acknowledge that the conflicts rules may not apply to government lawyers in the same way they do to attorneys in private practice. The introductory section of the rules states that "lawyers under the supervision of [government legal officers] may be authorized to represent several government agencies in intragovernmental legal controversies in circumstances where a private lawyer could not represent multiple private clients. They also may have authority to represent the 'public interest' in circumstances where a private lawyer would not be authorized to do so. These Rules do not abrogate any such authority." Maryland Rules of Professional Conduct, Preamble: Scope. Disqualification by imputation is an area where government law offices have traditionally been afforded different treatment. [FN6] This is due, at least in part, to the nature of the government client.

3. Identifying the Government Attorney's Client

For a government attorney, the "client" may be viewed more broadly than the specific agency or official that the lawyer is representing or advising. Rule 1.13 of the Rules of Professional Conduct concerns organizational clients. It provides that "[a] lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents." Rule 1.13(a). The

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rule further provides that a lawyer representing an organization may also represent its constituents, subject to the conflict rules in Rule 1.7. Rule 1.13(e). The commentary to Rule 1.13 states that, while the rule generally applies to government organizations, the "duties of lawyers employed by the government ... may be defined by statutes and regulation." Rule 1.13 comment. The commentary also acknowledges that "defining precisely the identity of the client and prescribing the resulting obligations of such lawyers may be more difficult in the government context. Although in some circumstances the client may be a specific agency, it is generally the government as a whole." Id. See also 2 Restatement (Third) of the Law Governing Lawyers § 97 Comment c (2000) ("client" of government attorney may vary, depending on circumstances such as terms of attorney's employment, scope and nature of services, particular regulatory arrangements relevant to attorney's work, and history and tradition of the office).

*4 In a prior opinion, this Office discussed the "client" of the St. Mary's County Attorney. 82 Opinions of the Attorney General ___ [Opinion No. 97-028 (December 16, 1997)]. That opinion primarily concerned whether the **County Attorney** could appropriately invoke the **attorney**-client **privilege** to withhold information from public disclosure. Citing Rule 1.13, the opinion concluded that the corporate entity - that is, the **County** government as a whole - is the **County Attorney's** client, that various officials and employees of the **County** are agents of that entity when acting within the scope of their authority, and that, under appropriate circumstances, the **County Attorney** may be required to assert the **attorney**-client **privilege** or other **privileges** on behalf of the **County**. However, that opinion did not address whether the County Attorney might have a conflict in representing diverse units of County government, such as the Board of Appeals and a County department whose decision is at issue before the Board.

In general, a unit of county government, such as a planning department, is considered an agent of the county and not a distinct client for purposes of conflict of interest analysis. However, the courts have recognized an exception to this general rule "when the agency lawfully functions independently of the overall entity." See Civil Service Comm'n of San Diego County v. Superior Court, 163 Cal.App. 3d 70, 78, 209 Cal.Rptr. 159 (1984) (disqualifying county counsel from representing county in dispute with quasi-independent civil service commission that county counsel had also advised); cf. Zoning Hearing Bd. of Uniontown v. City Council of Uniontown, 720 A.2d 166, 168-79 (Pa. Cmwlth. 1998), appeal dismissed, 560 Pa. 556, 746 A.2d 1116 (2000) (municipal zoning board, rather than city council, entitled to select separate counsel because, under Pennsylvania law, zoning board is an adjudicatory tribunal independent of city council). See also Maryland State Bar Association, Committee on Ethics, Ethics Docket No. 88-35 (declining to decide whether there was conflict of interest in attorney's simultaneous representation of both local planning board and local board of zoning appeals, on ground that relationship between the two boards was a question of law beyond the purview of the committee).

While the St. Mary's County Board of Appeals is a County agency, it is not an agent of the County Commissioners in the same respect as the Planning Department. Although the members of the Board of Appeals are appointed by the County Commissioners, the Board is a quasi-judicial body that exercises independent decision-making authority. [FN7] Only a court can reverse a decision of the Board of Appeals.

Thus, a reasonable argument can be made that the Board should be considered a separate client from the Planning Department. If the County Attorney's representation of the Board were "directly adverse to" or "materially limited by"

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the Office's representation of the Planning Department, there likely would be a conflict within the meaning of Rule 1.7. But that conclusion would not resolve the propriety of dual representation.

*5 Even if two government entities are considered separate clients under the Rules of Professional Conduct, other law creating a government law office or describing its duties may authorize or require dual representation. Moreover, the "conflict" addressed by those rules concerns only the possibly divergent interests of the two government entities - a conflict that can be waived by the government entities themselves. The Rules of Professional Conduct do not address the separate issue of fairness to third parties who are involved in an administrative proceeding involving the two entities.

B. Fairness of Administrative Process

The propriety of the simultaneous representation by a government law office of several agencies does not depend entirely on whether possibly distinct agency clients might have divergent interests that the law recognizes. In particular, the propriety of one lawyer from a county attorney's office advising an administrative tribunal, while another lawyer acts as advocate before that tribunal, may depend on whether the dual representation undermines the integrity of the administrative process.

In a 1974 opinion, Attorney General Burch considered whether it was proper for one Assistant Attorney General to act as legal adviser to the State Board of Public Accountancy while another presented evidence before the Board during an administrative proceeding. After reviewing the constitutional role of the Attorney General and a statutory requirement that agencies obtain legal representation from the Attorney General's Office, he concluded that "[t]he roles of presenter of evidence and legal adviser ... are duties imposed by law and without impropriety when there is no unfairness in fact." 59 Opinions of the Attorney General 10, 14 (1974) (emphasis added), citing Reddick v. State Commissioner of Personnel, 213 Md. 195, 200, 131 A.2d 464 (1957). [FN8]

The Court of Special Appeals reached a similar conclusion nine years later in Comm'n on Medical Discipline v. McDonnell, 56 Md. App. 391, 407, 467 A.2d 1072 (1983), rev'd on other grounds, 301 Md. 426, 483 A.2d 76 (1984). In that case, a physician had been sanctioned by the Commission on Medical Discipline following an administrative proceeding. He sought reversal of the sanction on the ground, among others, that the Attorney General's Office had acted as both administrative prosecutor and adviser to the Commission. The Court noted that the dual role of the Attorney General, as both adviser to the Commission and prosecutor of cases before that body, was mandated by the State Constitution and statutes. The Court also noted that the Attorney General had separated the two roles by assigning certain assistants to serve as advisers and other assistants to act as prosecutors in adjudicatory hearings, and by issuing guidelines to ensure that each group was independent of the other. Citing Reddick, the Court held that "[d]epending upon the nature of those guidelines and the extent to which they were followed ..., such separation of functions may have been sufficient to avoid unfairness." 56 Md. App. at 407. See also Consumer Protection Div. v. Consumer Publishing Co., 304 Md. 731, 763, 501 A.2d 48 (1985) (combination of both investigative and adjudicatory functions within the Consumer Protection Division did not violate due process where individuals responsible for adjudicatory function did not participate in investigation stage of proceeding).

*6 A similar conclusion was reached in a California decision, which held that an

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asserted conflict of interest within a government law office would be resolved if appropriate screening mechanisms were adopted. Howitt v. Superior Court, 3 Cal.App.4th 1575, 5 Cal.Rptr.2d 196 (1992). In that case, a deputy sheriff challenged his transfer and suspension before the county employment appeals board, a quasi-independent administrative tribunal charged with adjudicating disputes between the county and county employees. At the hearing, the sheriff's department was represented by the deputy county counsel, while the appeals board was advised by the county counsel. The deputy sheriff sought to have the county counsel disqualified from advising the board.

The California Court of Appeal held that the county counsel's office could represent a county agency in an adversarial hearing while, at the same time, serving as legal adviser for the decision-maker, provided that the representation followed certain guidelines. 3 Cal.App.4th at 1579. The court derived those guidelines, not from the state rules of professional conduct for lawyers, but from due process principles requiring an impartial decision-maker. [FN9] Id. at 1580. The court concluded that *one attorney from* the county counsel's office could advise the administrative decision-maker while another attorney from the same office acted as advocate before the tribunal, "only if there are assurances that the adviser for the decision-maker is screened from any inappropriate contact with the advocate.... [T]he burden of providing such assurances must rest on the law office performing the dual roles..." 3 Cal.App.4th at 1586-87. The court added that the county need not create "functionally separate offices to advocate and advise. It should be sufficient if the lawyer advising the Board has no potential involvement in or responsibility for the preparation or presentation of the case." 3 Cal.App.4 th at 1587 n.4.

C. Summary

In our view, the Rules of Professional Conduct do not preclude one attorney in the County Attorney's Office from representing the County Planning Director or the Planning Department before the Board of Appeals while another attorney from that Office serves as counsel to the Board. Although the County Attorney is not a constitutionally created office, the County Attorney's function *within the County* government is analogous to the role of the Attorney General in State government. In our view, that function justifies a county law office's dual roles in administrative proceedings at the county level, provided there are procedures to ensure the fairness of the administrative process.

To avoid the appearance of a conflict or actual unfairness, the County Attorney's Office could adopt and follow certain protocols when one attorney in the Office acts as adviser to the Board while another represents a county agency in an appeal *before the Board. For* example, such protocols could proscribe ex parte communications between the two attorneys regarding issues of the law or facts related to a particular matter before the Board, provide for each attorney to maintain separate files on Board matters that would not be accessible to the other attorney, and ensure that support staff protect confidentiality. The protocols should be designed to separate the roles of agency advocate and Board adviser and to preserve the integrity of the administrative process.

III

Conclusion

*7 In our view, an attorney in the County Attorney's Office may represent a County official or agency before the Board of Appeals while another attorney in the

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same Office serves as counsel to the Board. However, procedures should be employed to separate the two roles and to ensure the fairness of proceedings before the Board.

Very truly yours,

J. Joseph Curran, Jr.

Attorney General

William R. Varga

Assistant Attorney General

Robert N. McDonald

Chief Counsel

Opinions & Advice

[FN1]. In connection with his request for this opinion, your predecessor also directed us to the St. Mary's County Code of Ethics, Chapter 158 of the St. Mary's County Code, and in particular to § 158-6, captioned "Conflicts of Interest." While it does not appear that this section bears on the question considered in this opinion, interpretation of the County Ethics Code is appropriately vested in the St. Mary's County Ethics Commission, § 158-4, rather than the Office of the Attorney General.

[FN2]. The Zoning Ordinance is available on the County's web site at: http://www.co.saint-marys.md.us/planzone/docs/5-8zoning ordinance/index.htm.

[FN3]. Certain administrative variances may be obtained directly from the Planning Director in lieu of applying to the Board of Appeals. See Zoning Ordinance ___ § 22.5. A person aggrieved by the decision of the Planning Director may appeal to the Board of Appeals. Id., § 22.5(7).

[FN4]. The Board of Appeals is to render a final written decision within 60 days after the hearing. Zoning Ordinance § § 20.3(7), 23.5.

[FN5]. Rule 1.10 reads, in pertinent part:

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rule 1.7

...

(d) A disqualification prescribed by this Rule may be waived by the affected client under the conditions stated in Rule 1.7.

Other portions of the rule concern the imputation of conflicts when an attorney leaves or joins a firm.

[FN6]. Although Rule 1.10 does not explicitly except government attorneys, the official comment notes that "government's recruitment of lawyers would be seriously impaired if Rule 1.10 were applied to the government. On balance, therefore, the government is better served in the long run by the protections stated in Rule 1.11." However, the latter rule only addresses successive government and private practice. (In contrast to the Maryland rule, the comment that follows Rule 1.10, as adopted by the District of Columbia Court of Appeals, explicitly states that the

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definition of "firm" does not extend to a government agency or other government entity.)

[FN7]. A member of the Board of Appeals may be removed by the County Commissioners only for cause, following written charges and an opportunity for a public hearing. See Article 66B, § 4.07(a)(5); see also Zoning Ordinance § 20.3(3).

[FN8]. In Reddick, the Court of Appeals did not find it necessary to decide the dual representation issue, since the Deputy Attorney General involved was present at the hearing as a potential witness rather than as counsel. 213 Md. at 200.

[FN9]. The court reasoned that the ethical rule addressing conflicts of interest was not designed to address the conflict in question. The court noted that a conflict generally may be waived by the informed consent of the parties, but that a waiver by the two agencies involved "does precious little for the remaining party who must face an adversary with unequal access to the tribunal." 3 Cal. App. 4th at 1580.

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1997 WL 819841 (Md.A.G.)
(Cite as: 1997 WL 819841 (Md.A.G.))

Office of the Attorney General
State of Maryland

***1** Opinion No. **97-028**
December 16, 1997

COUNTIES - ATTORNEYS - EVIDENCE - PUBLIC INFORMATION ACT - "CLIENT" OF ST. MARY'S COUNTY ATTORNEY - APPLICATION OF ATTORNEY-CLIENT AND OTHER PRIVILEGES TO DOCUMENTS PREPARED BY COUNTY ATTORNEY

Cite as: 82 Opinions of the Attorney General ___ (1997)

The Honorable Roy Dyson
P.O. Box 229
Great Mills, Maryland 20634

Dear Senator Dyson:

You have requested our opinion concerning the assertion of the attorney-client privilege by the County Attorney for St. Mary's County. Specifically, you ask whether the clients of the county attorney are, as you put it, "the County Commissioners and not the citizens of St. Mary's County." You also ask whether written material prepared by the county attorney for a county agency may be withheld from public disclosure as privileged.

Our opinion is as follows:

1. The corporate entity that is St. Mary's County is the client of the St. Mary's County Attorney. The county commissioners are not individually the clients of the county attorney. However, to the extent that the commissioners and other elected and appointed officials and employees of the county are carrying out the functions of the corporate entity in accordance with law, they are the agents of the client and may be viewed by the county attorney as entitled to speak for the client. Although the county attorney should act with due regard for the public interest, an attorney-client relationship as such does not ordinarily exist between the county attorney and the citizens of the county.

2. A document is not confidential as a matter of law merely because it is prepared by the county attorney. Many documents prepared by the county attorney, however, are privileged because of their content and therefore are not disclosable under the Maryland Public Information Act. [FN1]

I

Identity of the County Attorney's "Client"

Article 25, § 1 of the Maryland Code begins as follows: "The county commissioners of each county in this State are declared to be a corporation ...." The corporate status of the county commissioners is confirmed by the case law. See Neuenschwander v. Washington Suburban Sanitary Comm'n, 187 Md. 67, 48 A.2d 593 (1946); Jay v. County Commissioners, 120 Md. 49, 87 A. 521 (1913). [FN2] Therefore, the attorney for a county represents the corporate entity. [FN3]

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1997 WL 819841 (Md.A.G.)

In the course of representing that corporate entity, a county attorney is subject to the Maryland Rules of Professional Conduct. One of these, Rule 1.13, addresses the responsibility of a lawyer to an organizational client. Under Rule 1.13(a), "a lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents." As the comment to the rule points out, "an organizational client is a legal entity, but it cannot act except through its officers, directors, employees, shareholders and other constituents." In this rule, the term "constituents" does not have the political meaning of those who elect the governing officials. Rather, the term "constituents" refers to those who, in the structure of the organization, are entitled to act for it. When the corporation is a county, these "constituents" include the county commissioners, appointed officials, and employees and agents of the county.

***2** The comment to the rule recognizes that "defining precisely the identity of the client and prescribing the resulting obligations of [government] lawyers may be more difficult in the government context. Although in some circumstances the client may be a specific agency, it is generally the government as a whole. For example, if the act or failure to act involves the head of a bureau, the department of which the bureau is a part or the government as a whole may be the client for the purposes of this rule." In other words, the county attorney must consider the extent to which, under applicable law, the official or employee is authorized to act on behalf of the county. Within the scope of lawful authority, the official or employee is an agent of the corporate entity and is entitled to speak on behalf of, and exercise the privileges of, the client.

Certainly, a county attorney, like other public lawyers, has a responsibility to consider the public interest. As the comment to the rule points out, for example, "when the client is a governmental organization, a different balance may be appropriate between maintaining confidentiality and assuring that [a] wrongful official act is prevented or rectified, for public business is involved." Nevertheless, the county attorney generally does not have an attorney-client relationship with members of the public, for they are neither the corporate entity that is the client nor agents of the county authorized by law to act on its behalf.

II

Attorney-Client Privilege - Invocation

A governmental entity is no less entitled to the protection of the attorney-client privilege than any other client. This protection exists both under the common law and by statute.

The attorney-client privilege has ancient origins and was established as a matter of English common law long before the independence of the United States. See Upjohn Co. v. United States, 449 U.S. 383, 389 (1981); United States v. (Under Seal), 748 F.2d 871, 873 (4th Cir. 1984). As one court observed, "the privilege is intended to encourage the client in need of legal advice to tell the lawyer the truth. Unless the lawyer knows the truth, he or she cannot be of much assistance to the client." Samaritan Foundation v. Goodfarb, 862 P.2d 870, 874 (Ariz. 1993).

In Maryland, the attorney-client privilege has been described as "deeply rooted in the common law." State v. Pratt, 284 Md. 516, 519, 398 A.2d 421 (1979). Therefore, the privilege is preserved under Article 5 of the Declaration of Rights, which declares that "the Inhabitants of Maryland are entitled to the Common Law of England ... according to the course of that Law ...." The common law privilege is

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also given statutory recognition: "A person may not be compelled to testify in violation of the attorney-client privilege." § 9-108 of the Courts and Judicial Proceedings Article.

The common law privilege has always been understood to be available to government agencies. See, e.g., Hearn v. Rhay, 68 F.R.D. 574, 579 (E.D. Wash. 1975) ("Federal courts have uniformly held that the attorney-client privilege can arise with respect to attorneys representing a state."). As the D.C. Circuit recently observed, "In the governmental context, the 'client' may be the agency and the attorney may be an agency lawyer." Tax Analysts v. IRS, 117 F.3d 607, 618 (D.C. Cir. 1997). See also, e.g., In re Grand Jury Subpoena Duces Tecum, 112 F.3d 910 (8th Cir.), cert. denied, 117 S. Ct. 2482 (1997) (recognizing federal government's entitlement to claim attorney-client privilege while rejecting applicability of privilege to notes taken by in-house presidential counsel during meetings with First Lady and her private counsel).

*3 The Maryland Public Information Act ("PIA") likewise recognizes the attorney-client privilege as a basis on which a government agency may withhold documents from public inspection. Under § 10-615(1) of the State Government ("SG") Article, Maryland Code, "a custodian shall deny inspection of a public record or any part of a public record if ... by law, the public record is privileged or confidential." In addition, under SG § 10-618(b), "a custodian may deny inspection of any part of an interagency or intra-agency letter or memorandum that would not be available by law to a private party in litigation with the unit." This somewhat awkward provision, adapted verbatim from the federal Freedom of Information Act, has long been held to incorporate the attorney-client privilege. See generally Annotation, Freedom of Information Act Exemption (5 U.S.C.S. § 552(b)(5)) for Inter-Agency and Intra-Agency Memorandums or Letters as Applicable to Communications to or from Attorneys for the Government, 54 A.L.R. Fed. 280 (1981).

In sum, St. Mary's County, acting through its agents, is entitled to invoke the attorney-client privilege. Unless an official authorized to do so has waived the privilege, the county attorney has a duty to assert it on behalf of the client entity.

III

Attorney-Client Privilege - Scope

"The attorney-client privilege protects confidential communications from clients to their attorneys made for the purpose of securing legal advice or services.... The privilege also protects communications from attorneys to their clients if the communications 'rest on confidential information obtained from the client.'" Tax Analysts v. IRS, 117 F.3d at 618 (quoting In re Sealed Case, 77 F.2d 94, 99 (D.C. Cir. 1984)). See generally Harrison v. State, 276 Md. 122, 135, 345 A.2d 830 (1975). [FN4] Because the client in this situation, the county, is an organization, "the privilege extends to those communications between attorneys and all agents or employees of the organization who are authorized to act or speak for the organization in relation to the subject matter of the communications." Mead Data Central, Inc. v. United States Dep't of Air Force, 566 F.2d 242, 253 n. 24 (D.C. Cir. 1977). Thus, the attorney-client privilege may be invoked for communications between a county attorney and agents of the county in circumstances where there is "actual confidentiality, limited distribution safeguards, real expectations of confidential status, and the functioning of the attorney as counsel to the agency .... Confidentiality must have been both expected at the time and carefully maintained to avoid disclosure." 1 James T. O'Reilly, Federal

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Information Disclosure § 15.14 (2d ed. 1996). [FN5]

The privilege, however, "is not absolute; it does not restrict disclosure of every aspect of what occurs between the attorney and the client." In re Criminal Investigation No. 1/242Q, 326 Md. 1, 11, 602 A.2d 1220 (1992). For example, facts that the attorney may develop independently from sources other than the client are not privileged, even if those facts are included in the lawyer's communication to the client. See Allen v. West Point-Pepperell, Inc., 848 F. Supp. 423, 427-8 (S.D.N.Y. 1994); Smith v. Conway Organization, Inc., 154 F.R.D. 73, 78 (S.D.N.Y. 1994); Carte Blanche (Singapore) P.T.E., Ltd. v. Diners Club Int'l, 130 F.R.D. 28, 33 (S.D.N.Y. 1990). Moreover, a document that is not itself privileged does not gain privileged status merely because it passes through the attorney's hands or is attached to an attorney's communication to the client. See, e.g., Pacamor Bearings, Inc. v. Minebea Co. Ltd., 918 F. Supp. 491, 511 (D.N.H. 1996).

***4** At times, a government lawyer may be assigned the role of articulating an agency's view of the law. If, for example, an agency lawyer provides "neutral, objective analyses of agency regulations," these documents may fall outside the privilege. Coastal States Gas Corp. v. Department of Energy, 617 F.2d 854, 863 (D.C. Cir. 1980). When the attorney in effect becomes the decision maker for the agency, the documents embodying the decision are not privileged. Schlèffer v. United States, 702 F.2d 233 (D.C. Cir. 1983).

IV

Other Privileges

The attorney-client privilege is not the only one that might be available to maintain the confidentiality of documents prepared by a county attorney. As a matter of both common law and the PIA, a county attorney may assert the work-product privilege to keep certain material confidential. In general, "documents ... prepared in anticipation of litigation or for trial" are the attorney's work product. Maryland Rule 2-402(c). This work product is ordinarily not discoverable in civil litigation: "We do not think that discovery in civil cases ... goes to that which is in essence the work product of the attorney accumulated in the preparation of the case." Wagonheim v. Maryland State Board of Censors, 255 Md. 297, 309, 258 A.2d 240 (1969), aff'd, 401 U.S. 480 (1971). The privilege is intended to keep confidential the "attorney's legal strategy, his intended lines of proof, his evaluation of strengths and weaknesses of his case, and the inferences he draws from interviews of witnesses." Sporck v. Peil, 759 F.2d 312, 316 (3d Cir.), cert. denied, 474 U.S. 903 (1985).

In addition, the PIA protects from disclosure client confidences covered by Rule 1.6 of the Maryland Rules of Professional Conduct. This rule prohibits a lawyer from revealing "information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation," and except as otherwise authorized in the rule or other law. If disclosure of information would place a county attorney in violation of Rule 1.6, then the information is "privileged and confidential" for purposes of a request under the PIA. Harris v. Baltimore Sun Co., 330 Md. 595, 625 A.2d 941 (1993).

Finally, a writing from the county attorney might also be exempt from disclosure if it falls within the executive or governmental privilege aspect of SG § 10-618(b). See generally Hamilton v. Verdow, 287 Md. 544, 414 A.2d 914 (1980); 66 Opinions of the Attorney General 98 (1981). This privilege protects materials that

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are deliberative in character and that were created during the process leading up to a decision. See Office of the Attorney General, Public Information Act Manual 24-26 (7th ed. 1997).

V

Conclusion

In summary, it is our opinion that St. Mary's County, as a corporate entity, is the client of the St. Mary's County Attorney, and the County Attorney may, under appropriate circumstances, invoke the attorney-client and other privileges to maintain the confidentiality of documents encompassed by those privileges. [FN6]

Very truly yours,

***5** J. Joseph Curran, Jr.

Attorney General

Jack Schwartz

Chief Counsel Opinions & Advice

[FN1]. The status of documents and other records is determined under the Public Information Act, rather than the St. Mary's County Open Meetings Law, Article 24, Title 4, Subtitle 2.

[FN2]. Likewise, counties that have adopted charter home rule are also corporations. See Article 25A, § 1.

[FN3]. In charter home rule counties, the charter may delineate a more specific role for the county attorney - that is, whether the county attorney represents both the executive and legislative branches of government or only the executive branch. Compare, e.g., § 213 of the Montgomery County Charter with § 403(b) of the Harford County Charter.

[FN4]. Under what is called the "joint defense" or "common interest" rule, the privilege can be preserved for communications not only with clients but also among "persons who share a common interest in litigation" and their attorneys. In re Grand Jury Subpoenas 89-3 & 89-4, John Doe 89-129, 902 F.2d 244, 249 (4th Cir. 1990).

[FN5]. Prudence suggests that documents within the privilege be identified as such. The failure to do so, coupled with unnecessary distribution of the documents, may suggest that confidentiality was not intended. See Jonathan Corp. v. Prime Computer, Inc., 114 F.R.D. 693, 696 n.6 (E.D. Va. 1987); Hardy v. New York News, Inc., 114 F.R.D. 633, 644 (S.D.N.Y. 1987).

[FN6]. Subsequent to your request for an opinion, your office provided material from a constituent that, in the constituent's view, evidenced too broad an assertion of privilege by St. Mary's County when certain documents were requested under the PIA. Because the Attorney General's Office has not been granted authority to adjudicate disagreements about the status of records under the PIA, we must limit ourselves to the guidance provided in this opinion and decline to consider whether the County responded correctly to particular requests for documents.

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END OF DOCUMENT

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June 13, 2005

RECEIVED
JUN 13 2005
BALTIMORE COUNTY
BOARD OF APPEALS

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

Re: In the Matter of the: Stepcich Property
Case No.: CBA-04-157

Dear Chairman Stahl:

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

Thank you for your consideration.

Sincerely,

Peter Max Zimmerman/rmw

Peter Max Zimmerman
People's Counsel for Baltimore County

PMZ\rmw
Enclosures

cc: Arnold Jablon, Esquire
John E. Beverungen, Assistant County Attorney

IN RE:	**RESUBDIVISION**	*	BEFORE THE
	Stepcich Property, Lot 3 Windemere (3 Stonehurst Road)	*	BALTIMORE COUNTY
	6th Election & 11th Councilmanic Districts	*	BOARD OF
		*	APPEALS
	Legal Owner(s): Mr. & Mrs. Joseph Stepcich	*	CASE NO.: CBA-04-157

RECEIVED
JUN 13 2005
BALTIMORE COUNTY
BOARD OF APPEALS

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

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY'S HEARING MEMORANDUM

People's Counsel for Baltimore County submits this memorandum in outline form to assist in the clarification and simplification of the issues. Normally, we would address the procedural issues first, and then move to the merits. In this case, however, an understanding of the merits illuminates the procedural issues.

For the reasons stated below, People's Counsel believes that the Planning Director does not have the authority to make final decisions with respect to the relevant zoning and subdivision issues presented. People's Counsel asks that the County Board of Appeals (a) clarify the distinction between zoning and subdivision issues; (b) remand this case to the Zoning Commissioner for the purpose of conducting a special hearing to review the zoning issues of vested rights and applicable zoning; (c) remand this case to the Zoning Commissioner for special hearing/special exception review the amendment of a final development plan; and (4) determine that the current Zoning Commissioner/Hearing Officer development plan review process applies to subdivision review.

I. Introduction

1. The fundamental issue on the merits involves vested rights. Is the request for a new or additional subdivision of an existing subdivision lot approved February 19, 1970 subject to current R.C. 4 (Watershed Protection) Zone density standards or the zoning in place when the original subdivision was approved?

2. The current R.C. 4 standards do not allow the additional lot because the base lot is not large enough to meet the six-acre minimum required. BCZR 1A03.4.B.1.a. In addition, the current standards pertinent to development of tracts with more than 10 acres include density limits, conservancy area requirements, and performance standards much stricter than the standards in place in 1970. The subdivision, in its entirety, does not meet these current standards. Any further subdivision just magnifies the deviation.

3. Whether or not the current or the original zoning applies, another zoning question is presented. Is the proposed amendment subject to the special hearing/special exception review process for amendments of final development plans under BCZR 1BO1.3? The property owner has not filed for review under that process, which requires a public hearing before the Zoning Commissioner.

4. Separately, there is a question as to what subdivision or development process applies. The Planning Board approved the original plan under a procedure in place under the 1968 Baltimore County Code. The County Council abolished that procedure when it amended the law in Bill 56-82 and created the County Review Group. Subsequently, in Bill 1-92, the Council changed the procedure again and replaced the CRG with the

current development process which centers on a public hearing before the Zoning Commissioner acting as Hearing Officer.

II. Planning, Zoning, and Subdivision Law;
Subdivision Development Must Comply With Zoning Law

5. Land use law includes the distinct concepts and functions of planning, zoning, and subdivision controls. As Judge Smith explained in Board of County Comm'rs v. Gaster 285 Md. 233, 246 (1979):

> "There are three integral parts of adequate land planning, the master plan, zoning and subdivision regulations."

The gist of the opinion is that "zoning is concerned with the use of property," while "planning is broader in concept." Subdivision controls perform the additional function of insuring that there are adequate and suitable public and private facilities to serve the development of large numbers of homes "... which may be said to be built all at one time." (A. Rathkopf, The Law of Planning and Zoning Ch. 71, Sec. 2 (4th Ed. 1979).

6. The threshold inquiry in this field is whether the property's zoning classification allows a proposed land use. If, and only if, the proposal satisfies this test, then the proposal is eligible for development or subdivision review. To be sure, the law may allow both zoning and development review to proceed simultaneously. But satisfaction of zoning requirements is prerequisite to development review and approval. Anderson, American Law of Zoning 4th Sec. 25.21 (1997) states:

> "While the zoning power and authority to review subdivision plats are separate, it seems clear that plats should not be approved which violate existing zoning regulations."

7. The Baltimore County Code is in accord. Article 32 (2004), addresses "Zoning" in Section 3 and "Development" in Section 4. Moreover, Section 32-4-114(a) states:

> "(a) *Compliance with other laws*. Except as otherwise provided in this title, all development shall comply with this title and all other applicable laws or regulations of the county."

8. It is also telling that the transitional provisions (which exempt certain subdivisions previously approved or in process from Title 4 "Development" review) explicitly state, in Code Sec. 32-4-104 (c):

> "(c) *Present zoning classification*. Proposed development shall be in compliance with the present zoning classification to be developed."

III. Approved Plans, Changes in Zoning, and Vested Rights

9. The traditional Maryland Rule is that vested rights accrue only upon a valid building permit and substantial above-ground construction. Otherwise, the land use is subject to the zoning law (regulations and map) in effect at the time of the controversy or litigation. The case law is legion. Yorkdale Corp. v. Powell 237 Md. 121 (1964); Dal Maso v. Board of Co. Comm'rs 264 Md. 691 (1972); Rockville Fuel & Feed v. Gaithersburg 266 Md. 117 (1972); Pemberton v. Montgomery Co. 275 Md. 363 (1975); Prince George's Co. v. Sunrise Dev. L.P. 330 Md. 297 (1993); Sycamore Realty Co. v. People's Counsel 344 Md. 57 (1996); Powell v. Calvert County 368 Md. 400 (2002).

10. To illustrate, the vesting of one section of a subdivision did not vest the entire subdivision in Prince George's County v. Equitable Trust Co. 44 Md. App. 272 (1979). Similarly, the approval of a final subdivision plat, ensuing residential construction, and shoreline grading, bulkhead and revetment work did not vest the right to build a

commercial marina which the developer planned to build in the last phase. Sterling Homes v. Anne Arundel County 116 Md. App. 206 (1997).

11. Unless there is explicit statutory authority, a developer may not amend a subdivision plat thirty-five years later to add residential density which conflicts with current zoning.

IV. Statutory Authority and Interpretation Issues

12. The property owner, Mr. Joseph Stepcich, referred in correspondence to BCZR 103.3, attached. This states, in pertinent part:

> "In an R.C.2, R.C.3, R.C.4 or R.C.5 Zone, contrary provisions of Subsection 103.1 and any other contrary provisions of or pursuant to these regulations notwithstanding, in the case of property covered by a recorded subdivision play which was approved by the Baltimore County Planning Commission or Board before the effective date of this subsection, and which remains in effect, buildings may be constructed, residential densities and lot lines may be established, and yards and other open areas may be laid out in accordance with that plan, subject to any conditions of the approval."

While this protects the rights to develop under the subdivision plat approved prior to the enactment and mapping of the R.C.4 and other stated zones, it does not confer any rights to any amendment or addition of the plat.

13. Indeed, even in the absence of a change in zoning, the amendment of a subdivision plat has been subject to special hearing and special exception review in the Density Residential Zones (Bill 100, 1970) under BCZR 1B01.3, and in the R.C. Zones (Bill 98, 1975) under BCZR 1A00.4. (BCZR attached). This corroborates the legislative intent that amendments to subdivisions are not immune from subsequent legislation.

14. The property owner has also cited Sec. 22-33 of the Baltimore County Code (1968), attached. The argument that this section authorizes the proposed subdivision amendment is specious. Sec. 22-33 has nothing to do with this case. It authorized the county to exempt certain proposed subdivisions from the normal governmental review provided for in Title 22, Article. IV, "Subdivision Control Generally." It did not address zoning (much less provide an exemption, either at that time or in the future. Indeed, then as now, the law addressed zoning separately, in Title 22, Article III, "Zoning," and in the distinct volume of Baltimore County Zoning Regulations. In any event, Code Sec. 22-33 has long since been repealed. It is also noteworthy that all of the Windemere subdivision plats went through the subdivision process and were never "exempt."

15. The property owner's citation of Sec. 22-60 of the 1968 Code is likewise inapposite. This was a transitional provision. It exempted from the then new subdivision law any final plats approved or tentatively approved before the revised controls were in place. This section is not in the current law. Moreover, it has nothing to do with the amendments to subdivisions and the impact of new zoning laws.

16. Code Sec. 32-4-104(a) (2004) is the current transitional provision. It was formerly Code Sec. 26-169 (1992). It is traceable, in turn, to Bill 56, 1982, and Code Sec. 22-40 therein. Its function was primarily to allow the continuation of then existing process for subdivisions in the pipeline when the new legislation established new subdivision controls and procedures. The 1982 Bill established the County Review Group and attendant controls. Under Bill 1, 1992, codified as Code Sec. 26-169, it dealt with the establishment of the current hearing officer process. The most that can be said for this

sequence of legislation is that it exempted certain developments approved or in process from each new version of the subdivision control process. As the law currently puts it under Code Sec, 32-4-104(b)(2):

> "An exempt development under paragraph (1) of this section shall be governed by the subdivision regulation in effect at the time."

Clearly, it was not a grandfather provision with respect to zoning law. Each of the statutory provisions cited is attached as an Exhibit.

17. Again, zoning and subdivision controls are distinct elements of land use law. Code Sec. 32-4-104 does not exempt an approved subdivision from zoning controls. Moreover, the Council in attached Bill 18, 1990, amended Code Sec. 22-40, adding the language to assure compliance with current zoning law. Bill 1, 1992 carried this forward in Code Sec. 26-169, and it survives as Code Sec. 32-4-104(c) now. It also dovetails with Sec. 32-4-104, quoted above. To make a long story short, this section of the Code has never been intended to be a vehicle to confer vested rights from zoning changes.

V. BCZR 1B01.3: Amendments to Development Plans

18. Even if the zoning were unchanged, an amendment to a development plan or plat is subject to review under the special hearing process of BCZR 1B01.3.

19. Enacted as part of Bill 100, 1970, it includes special exception standards and a test of whether the proposal is consistent with the spirit and intent of the original plan.

20.The Windemere Section III final plat clearly fits within the scope of a final development "plan or plat" under this section.

VI. The PDM Director's Letter Dated May 23, 2002

21. Counsel Arnold Jablon, now for the property owner, has made much of the letter he wrote to Mr. Stepcich when PDM Director on May 23, 2002.

22. This letter adopted the DRC recommendation that the proposal be reviewed in the Joint Subdivision Planning Committee process. The so-called JSPC review was part of the process leading to Planning Board review under the law prior to 1982.

23. Whether or not this letter is correct as to the applicable subdivision process, it does not furnish the property owner with an exemption from zoning law.

24. Even if the PDM Director had decided that the proposal is exempt from current zoning, that would have been illegal and not effective under Maryland case law. Such illegal approvals are subject to challenge and do not stand. Lipsitz v. Parr 164 Md. 222 (1933) ; City of Hagerstown v. Long Meadow Shopping Center 264 Md. 481 (1972); Cromwell v. Ward 102 Md. App. 691 (1995); Marzullo v. Kahl 366 Md. 158 (2002).

25. The property owner's claim that this PDM letter is binding is absurd. The appellate courts have consistently overturned illegal permit or other administrative approvals accomplished without a full hearing and opportunity to be heard.

26. The so-called DRC is a one-sided surrogate for the Director of PDM. There is no posting of the property. There is a meeting, but no public hearing. There is no right of citizens to participate or be heard. It involves the Director of PDM, the surrogate DRC, and the applicant. The PDM Director typically, as here, does not explain or give reasons for the decision, and does not notify the public of his decision. Indeed, the letter here was

sent to Mr. Stepcich, with a copy only to Kristin Weis, a PDM staff member. There was no public notice of PDM Director Jablon's letter.

27. Thus, a PDM/DRC approval has no greater dignity than a building permit approval. If the PDM decision is without authority or illegal, it is subject to review in a subsequent hearing process under Lipsitz and its progeny.

28. Under these circumstances, moreover, the process does not bind any outside parties. It does not meet the standards for application of administrative *res judicata* under Batson v. Shifflett 325 Md. 684 (1992).

29. It would also be a violation of principles of procedural due process to give binding effect to a letter from the PDM Director. Maryland Aggregates v. State 337 Md. 658 (1995); Mayor & City Council v. Woodmont County Club 348 Md. 572 (1998).

30. In sum, there is no legal basis to credit the PDM letter with any impact on zoning issues. Nor does it have any binding effect whatsoever. The correctness of its invocation of the JSPC process will be discussed in the next section.

VII. Procedural Issues

31. An understanding of the substantive issues helps resolve the procedural questions. These divide into two branches: zoning procedure and subdivision procedure.

a. Threshold Zoning Procedures

32. Pursuant to Code Sec. 32-3-301, attached, the Zoning Commissioner has the authority to interpret the zoning regulations and to grant special exceptions. This dovetails with BCZR Sections 500.6 and 500.7. These establish the authority of the Commissioner to interpret and enforce the regulations, and with BCZR 1B01.3 and

502.1, which provide authority for the Commissioner to review amendments to development plans and special exception standards.

33. As a prerequisite to subdivision review, the proposed amendment to the Windemere subdivision must satisfy zoning standards. Therefore, the proper reviewing authority or official in this case is the Zoning Commissioner. There is no jurisdiction or authority to review the proposal in the subdivision process until or unless the zoning issues are properly resolved.

34. Nothing in PDM Director Jablon's May 23, 2002 letter did or could legally allow the property to circumvent the zoning process, as he now seeks to do.

35.The Court of Appeals has said many times that statutory zoning procedures must be followed and exhausted in the right way. See Queen Anne's Conservation, Inc. v. County Comm'rs of Queen Anne's County 382 Md,. 306 (2004); Maryland Reclamation Assoc. v. Harford County 382 Md. 348 (2004). Before anything else can occur, the property owner here must follow the statutory zoning process.

b. The Subdivision Process

36. If it were assumed, despite application of current zoning law, that the proposal is eligible for subdivision review, the sensible interpretation is that it should be reviewed in the hearing officer process.

37. There is a preliminary question as to who has authority to make this decision or interpretation. It is submitted that the Zoning Commissioner, in his capacity as Commissioner or Hearing Officer, has the responsibility to make that decision. The Hearing Officer has the authority to review development plans under Code Sec. 32-4-

227(a). This authority extends to procedural as well as substantive issues. The Director of PDM may not usurp the Hearing Officer's to decide which subdivision process applies to the request for to amend a subdivision plat.

38. On the question of which process applies, it is submitted that the proposal to amend the subdivision should be governed by the current development process.

39. It has been assumed, in the past, that the literal language of Sec. 32-4-104, formerly Sec. 26-169, perpetuated the existence of the County Review Group or JSPC process for amendments to plans approved under those respective formats. The Court of Special Appeals has noted this view, most recently in Beth Tfiloh v. Glyndon Comm. Assoc. 152 Md. App. 97 (2003). But this is *dictum*, in that the question of the applicability of earlier processes was not contested. Moreover, the Court of Appeals has never addressed this issue.

40. It is submitted that, in context and in view of the history beginning with Bill 56-82, attached, the legislative purpose was transitional, to apply the existing subdivision procedure to plans then in process.

41. The Court of Appeals has said many times that the literal language of the statute must be viewed in context, and that a statute should be interpreted in light of common sense and to avoid absurd consequences.

42. It is absurd to reconstitute an approving agency which no longer exists or functions in that capacity. In the case of the "JSPC" process leading to Planning Board approval under the 1968 Code, this went out of existence in 1982, twenty-three years ago. In the case of the CRG, it went out of existence thirteen years ago.

43. It makes no sense also to have three different approving agencies for amendments to subdivision plans.

44. It is high time for a close look at this issue, and to bring some order and sense into this process.

45. While Director Jablon's May 22, 2002 letter did refer Mr. Stepcich to the JSPC process, it is incorrect as a matter of law, and is not binding. As noted, the interaction between the property owner and the PDM Director is a closed circuit interaction, which does not involve posting of the property, full public notice, any opportunity of the public to be heard or participate, and any public notice of the decision.

46. Given that the issuance of an illegal building permit is not immune from review in subsequent hearing proceedings (Lipsitz, Cromwell, Marzullo), it is apparent that Director Jablon's letter is not immune from scrutiny.

47. It is a one-sided and distorted view of the law to suggest that a PDM Director letter to a property owner binds the public at large regardless of whether the Director's decision is legal.

c. The Deputy Planning Director's Decision Under Appeal in this Case

48. This brings us to Deputy Planning Director Jeffrey Long's letter of denial dated October 26, 2004 which is the immediate subject of the property owner's appeal.

49. It is ironic that the property owner attacks this letter, while seeking the protection of Director Jablon's letter dated May 22, 2002.

50. Like Mr. Jablon's "decision" as PDM Director, the Deputy Planning Director's decision did not come about in the course of a public hearing process. It was addressed to

Mr. Jablon, now metamorphosed into counsel for the property owner. Copies were sent to other county staff, but not to the public.

51. Like Mr. Jablon's PDM Director letter, the Deputy Planning Director's letter is also subject to scrutiny for legality and effectiveness.

52. A review of the Baltimore County Zoning Regulations and the Baltimore County Code does not disclose any final decision-making jurisdiction or authority for the Planning Director, or the Deputy acting on his behalf.

53. There are two possible ways to view his letter. The first is that it is legally not a true decision, in that his office has no jurisdiction. It is effectively an advisory comment. The second is that it is a decision, but procedurally irregular. Either way, it is not an effective final decision on the merits.

VIII. What the County Board of Appeals Should Do.

54. The CBA should resolve this phase of the litigation and determine the correct procedures so that future litigation can be devoted fairly and efficiently to the merits of the controversy.

55. The CBA should clarify the relationship between core zoning and subdivision issues with respect to the proposal to amend the subdivision plat of Windemere, Section III. The CBA should decide that resolution of the zoning issues is a prerequisite to subdivision review.

56. The CBA should decide that the issues of vested rights and governing zoning law should be determined, in the first instance, by the Zoning Commissioner pursuant to his Special Hearing authority under BCZR 500.6 and 500.7. While the present case did

not originate with the Commissioner, it is within the broad appellate authority of the CBA to direct and remand this case to the Commissioner. Given that the Commissioner has the authority, on his own, to conduct special hearings, we believe that the CBA has the authority to refer a matter back to the Commissioner in a proper case. It is the function of administrative law to resolve controversies in a flexible way, and a remand would be well within the appellate function of the CBA and spirit of administrative law.

57. The CBA should likewise decide that the issue of amendment of the development should be determined, in the first instance, by the Zoning Commissioner under his special hearing/special exception authority under BCZR 1A00.4 and 1B01.3. The remand should include that issue, as well.

58. The CBA should decide that the current Zoning Commissioner/Hearing Officer development review process applies to the proposed subdivision amendment, and may be resolved subsequently or, on a discretionary basis, be combined with the special hearing process to resolve zoning issues.

Postscript: The 2004 Comprehensive Zoning Process

59. After this memorandum was prepared, our office received information that the County Council legislatively rezoned the Stepcich property from R.C. 4 to the R.C. 6 (Rural Conservation and Residential) Zone in the 2004 comprehensive zoning process.

60. This means any development is subject to the standards set forth in BCZR 1A07. This zone has a maximum density of .2. There are also detailed performance standards, including a conservancy area. It does not appear that the proposed plat

amendment of Windemere Section III --- further subdividing the Stepcich property --- conforms to R.C. 6 standards.

61. It is also noteworthy that BCZR 103.3 does not apply to the R.C. 6 zone.

62. In other respects, the memorandum as written above applies to the property under either the R.C. 4 or R.C. 6 classification.

Peter Max Zimmerman

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13 day of June, 2005, a copy of the foregoing People's Counsel for Baltimore County's Hearing Memorandum was mailed to John E. Beverungen, Esquire, Office of Law, 400 Washington Avenue, Towson, MD 21204 and Arnold Jablon, Esquire,Venable, LLP, 210 Allegheny Avenue, Towson, MD 21204

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Baltimore County Zoning Regulations

1998 Edition

Originally printed as amended through July 6, 1998

SERIAL NO. 93

GENERAL CODE PUBLISHERS CORP.
72 Hinchey Road
Rochester, NY 14624

1998

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

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

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

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

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

2. Under the provisions adopted pursuant to the authority of Section 504.2, development in D.R. Zones may be made subject to additional standards of lot area, yard space, open-space distribution, building distribution or other aspects or characteristics of site planning or project design. Such standards shall be based upon specified existing, prospective or stipulated conditions or circumstances of development, and shall be designed to further the specific purposes of this article and the purposes of these zoning regulations in general.

3. Local open space. Local open space tracts in D.R. Zones shall be designed, established and maintained in accordance with the standards, guidelines and procedures set forth in the Baltimore County Local Open Space Manual as enabled in § 32-4-404 of the Baltimore County Code.[4] **[Bill No. 137-2004]**

1B01.3 Plans and plats.

A. Development plans.

1. Purpose. This paragraph is intended:

a. To provide for the disclosure of development plans to prospective residents and to protect those who have made decisions based on such plans from inappropriate changes therein; and

b. To provide for review of residential development plans to determine whether they comply with these regulations and with standards and policies adopted pursuant to the authority of Section 504.

2. Partial development plan. For the purposes of this article, a "partial development plan" is a portion of a final development plan, and a partial or final development plan is "applicable" to a given lot if it covers all property in the subdivision within 300 feet of the given lot, in addition to the lot itself.

3. Subdivision lot sales, development and use subject to partial development plan. No interest in any lot which is in a D.R. Zone and is hereafter created by subdivision of a record lot existing on the effective date of this article or created by consolidation of such lots may be sold unless a final or partial development plan applicable to the lot has been approved as required under Paragraph 6, below; further, no use may be established and no construction may take place on any lot so created except in accordance with such a plan. The provisions of this paragraph shall not apply to Class A assisted living facilities. **[Bill No. 188-1993]**

4. Notice in conveyance. Any party who sells an interest in real property within an area covered by an approved partial or final development plan shall attach to the instrument of sale a notice directing the buyer's attention to the plan (including any amendment) and listing the location of the

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4 Editor's Note: Former Subsection C, Open Space, Building Separation and Other Area Standards, which followed, was repealed by Bill No. 126-1992.

various certified copies which may be publicly inspected (Paragraph 6), together with a listing of the recorded plats covering all portions of the subdivision as a whole. The notice shall also generally apprise the buyer of the rights, requirements and remedies provided under the development plan; those provided under this article and these zoning regulations in general, and those set forth in provisions adopted pursuant to the authority of Section 504, and, to this end, the notice shall be on a form issued by the county and approved by the Office of Law, the Zoning Commissioner, and the Planning Board as being clear and sufficient for the purpose.

5. Forms and content of plans.

   a. Forms. Each partial development plan must be filed both as a separable document or set of documents and as part of a final development plan which includes all partial development plans as approved for other portions of the subdivision. Upon approval, each final development plan thus filed supersedes previous final development plans of the subdivision.

   b. Content. Each partial and final development plan must show: the locations, types and exterior dimensions of all proposed structures and all existing structures to be retained; generalized floor plans to scale; layout of parking facilities; streets and drives giving access to and lying within the tract; existing topography and major vegetation; proposed grading; common amenity open space (including local open space); all additional information that may be required under procedures adopted pursuant to the authority of Section 504; and all additional information which is necessary, as determined by the Director of the Department of Permits and Development Management, to ascertain whether the project will comply with the zoning and subdivision requirements of Baltimore County. The plan shall contain the note that landscaping and screening shall conform to the standards contained in the Baltimore County Landscape Manual adopted pursuant to § 32-4-404 of the Baltimore County Code. **[Bill No. 137-2004]**

6. Initial review and approval procedure. Procedural steps and requirements in the submission and review of various preliminary versions of partial and final development plans shall be as established provisions adopted pursuant to the authority of Section 504 or, in the absence of such provisions, as established by the Office of Planning. In formulating such steps and requirements, the Planning Board or the Office of Planning shall effect maximum coordination between the integration with similar and related steps and requirements in the submission and review of plans pursuant to the subdivision regulations. If the partial and final development plans for a subdivision are approved by the Zoning Commissioner as complying with the zoning regulations, approved by the Director of Planning as being consistent with the subdivision regulations and any subdivision plans filed pursuant thereto, and approved in such other manner as may be prescribed

under provisions adopted pursuant to the authority of Section 504, copies of the plans, certified by the Zoning Commissioner and the Director of Planning as having been so approved, shall be filed with such county or state agencies as they may direct and as may otherwise be required, and shall be retained in the files of the Office of Planning, including the files of the Zoning Commissioner.

7. Amendment of approved development plans. After partial or final development plans have been approved as provided under Paragraph 6, preceding, they may be amended only as provided below:

   a. Amendment prior to sale of interest in nearby property. The development plans may be amended by simple resubmission, or by the submission of appropriate documents of revision, subject to the same requirements as are applied to original plans, if there is no change with respect to any lot, structure or use within 300 feet of a lot or structure which has been sold since the original plans were filed.

   b. Amendment after sale of interest in nearby property or upon demand for hearing. In the case of an amendment not allowed under Subparagraph a, by reason of sale of property within the area, or in case of a demand for hearing by an eligible individual or group, the plans may be amended through special exception procedures, in the manner provided under Section 502 and subject to the following provisions:

      (1) The amendment must be in accord with the provisions of the Comprehensive Manual of Development Policies and with the specific standards and requirements of this article, as determined by the Office of Planning. The Director, on behalf of the Planning Board, shall notify the Zoning Commissioner accordingly. **[Bill No. 29-1995]**

      (2) Only an owner of a lot abutting or lying directly across a street or other right-of-way from the property in question, an owner of a structure on such a lot, or a homes association (as may be defined under the subdivision regulations or under provisions adopted pursuant to the authority of Section 504) having members who own or reside on property lying wholly or partially within 300 feet of the lot in question are eligible to file a demand for hearing. **[Bill No. 29-1995]**

      (3) It must be determined in the course of the hearing procedure that the amendment would be consistent with the spirit and intent of the original plan and of this article. **[Bill No. 29-1995]**

   c. Amendment upon request by owner of lot within subdivision. The Zoning Commissioner may, without a public hearing but with the concurrence of the Director of Planning, amend the plans with respect

to a structure on an individual lot created under the plans and used according to the purpose stated therein, or with respect to such lot, at the request of the lot owner, under the following requirements and conditions:

(1) Reasonable notification, by a standard method established pursuant to the authority of Section 504 and approved by the County Attorney, must be given to the occupants and owners of all real property which is fully or partially situated within 300 feet of the lot in question.

(2) It must be determined that a formal demand for hearing by an eligible individual or group, as described in Paragraph b, has not been filed.

(3) It must be determined that standards adopted under the authority of Section 504, in addition to the specific requirements under these regulations, will not be violated by the amendment.

(4) The Zoning Commissioner and the Director of Planning must certify that the amendment is in keeping with the spirit and intent of this article and other Baltimore County land use and development requirements administered by them, and both must certify that the amendment does not violate the spirit and intent of the original plan.

d. Any amended development plan and any document of amendment of such a plan must be filed with all agencies or officials with whom copies of the original plan have been filed pursuant to paragraph above, and no amendment takes effect otherwise.

B. Final subdivision plat.

1. Purpose. Pursuant to the regulations for D.R. Zones, a portion of a tract of land may be subdivided for development at a higher residential density than the maximum average density permitted, lessening the permitted density of development on the remainder of the tract; or a portion of the tract may be subdivided for development at less than the maximum average density, thus increasing the density at which the remainder of the tract may be developed (Section 1B01.2.A). It is the purpose of this paragraph to assure that these factors will be identified in the sale of any portion of a development tract in a D.R. Zone and, in particular, to prevent the unknowing purchase of a tract which, as a result of such prior subdivision, may not itself be developed at the average gross density specified in the regulations.

2. Effect. No subdivision of a tract or a portion of a tract may be created after the effective date of this article, except as otherwise provided under Section 1B02.3.A.2 unless the final subdivision plat therefore contains a summary showing the total number of dwelling or density units allowed for the entire tract under the applicable D.R. Zones. The summary shall indicate, as appropriate, the number of dwelling or density units utilized by previous

final subdivision plats for portions of the same tract, the number of dwelling or density units contained in the current subdivision plat, and the balance of dwelling or density units allowed for the remainder of the tract under the applicable D.R. Zone(s). It is the intent of these zoning regulations to prohibit subdivision or resubdivision of portions of a tract in a D.R. Zone in a manner so as to exceed the total number of dwelling or density units allowed under the applicable D.R. Zone(s) for the entire tract.

Regulations applicable to any such development, subdivision or parcel of land as aforesaid shall be the Zoning Regulations in effect at the time such plan, as aforesaid, was originally submitted to the Baltimore County Planning Commission.

Provided further, however, that the use and development of land in M.L. Zones shall not be affected by the foregoing provision, but development is permitted in accordance with any preliminary development plan approved by the Office of Planning before the effective date of this further proviso, even though such development may be counter to then-current regulations for M.L. Zones, if, on the fifth anniversary of such effective date, construction either is completed or is substantially commenced and diligently being pursued to completion; otherwise, the regulations generally in effect at the time such use or development is to be established shall control.[29] **[Resolution, November 21, 1956; Bill No. 100-1970]**

103.2 When any public use ceases or when title of unzoned public land passes into private ownership, public land or buildings shall not be used for private purposes until they shall have been zoned in conformance with these regulations.

103.3 In an R.C.2, R.C.3, R.C.4 or R.C.5 Zone, contrary provisions of Subsection 103.1 and any other contrary provisions of or pursuant to these regulations notwithstanding, in the case of property covered by a recorded subdivision plat which was approved by the Baltimore County Planning Commission or Board before the effective date of this subsection, and which remains in effect, buildings may be constructed, residential densities and lot lines may be established, and yards and other open areas may be laid out in accordance with that plan, subject to any conditions of the approval.

Where such a plan has been so approved but does not indicate densities or the situations of buildings or yards or other open spaces, these may be established or situated only in accordance with the standards as prescribed and in force at the time of the lot recordation. **[Bill No. 98-1975]**

103.4 If a subdivision plan or plat approval application to any lot, other than a lot in a planned industrial park, has lapsed under the provisions of § 32-4-273 of the Baltimore County Code, development of that lot in contravention of the use, height, area or other land use or development standards of these regulations may not be undertaken pursuant to the following provisions of these Zoning Regulations: **[Bill Nos. 61-1979; 137-2004]**

Section 103.1
Section 103.3
Section 1A01.3.B.2
Section 1A02.3.B.6
Section 1A03.4.B.4
Section 1A04.3.B.5

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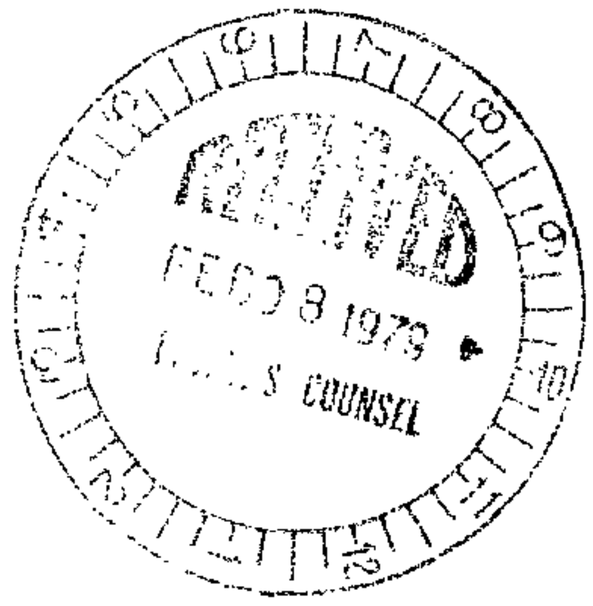
29 **Editor's Note: M.L. Grandfather Clause. This provision (second paragraph) was added by Bill No. 100-1970, which provided (Section 20) that "any amendments herein...shall be effective only upon the adoption by the County Council of any new Zoning Maps on or before March 31, 1971." The subsequent Zoning Maps were passed by the County Council on March 24, 1971. However, the bill also states (Section 21) that "this act shall take effect forty-five days after its enactment." The bill was enacted on August 5, 1970, and the forty-fifth day thereafter was September 19, 1970.**

BALTIMORE COUNTY

CODE

1968



PUBLISHED BY ORDER OF THE COUNTY COUNCIL

These subdivision regulations may include provisions as to the extent to which streets and other ways, water, sewer and drain pipes, local open space tracts and other public facilities shall be provided for, as a condition precedent to approval of the plat. Such regulations may provide for tentative approval of the plat, but any such tentative approval shall be revocable. The subdivision regulations shall be adopted, with amendments of any, and may from time to time thereafter be amended by the county council by ordinance after public hearing. Copies of the subdivision regulations shall be made available to the public, and a reasonable charge therefor may be made. (Bill No. 80, 1960; No. 48, 1963, sec. 2.)

Sec. 22-33. Exemption of governmental approval of subdivision regulations.

Any such subdivision regulations may exempt from the requirements of governmental approval, subdivisions wherein the number of new lots is less than a designated number, or plats that do not involve new streets, or such other plats or subdivisions as such ordinance shall designate. In all cases involving such exempted subdivisions, the planning board chairman, or its director, shall certify the exemption on the plat, deed or instrument to be filed with the clerk of the circuit court for recording. (Bill No. 80, 1960.)

Sec. 22-34. Requirements for subdivisions and plats generally.

(a) In acting upon subdivisions, the planning board shall require, among other conditions in the public interest, that the tract shall be adequately drained, and the streets shall be of sufficient width and suitable grade and suitably located to accommodate the prospective traffic, to provide access for firefighting equipment to buildings and to be coordinated so as to comprise a convenient system, relating properly to the existing street system. Where the planning board after hearing has adopted portions of the master plan with proposals regarding the street system within the proposed subdivision,

public purpose. (Balto. Co. Code, 1958, sec. 44-2. Bill No. 68, 1963. 7-11-49.)

Sec. 22-60. Previously approved subdivisions not affected.

Nothing herein provided shall be applicable to any final plat of a subdivision which was recorded prior to the effective date of this subdivision, nor shall it be applicable to any preliminary subdivision plan which had tentative approval prior to the effective date of this subdivision. (Balto. Co. Code, 1958, sec. 44-2. Bill No. 68, 1963. 7-11-49.)

Subdivision III. Improvements.

Sec. 22-61. Specifications of and supervision by chief engineer.

All improvements required under this article shall be constructed in accordance with the specifications set out in this subdivision and under the supervision of the chief engineer of the department of public works and to his satisfaction. (Balto. Co. Code, 1958, sec. 44-5. 7-11-49.)

Sec. 22-62. Streets generally—To conform with major street plan.

Whenever a tract to be subdivided includes any part of a street or controlled-access motorway indicated on the major street plan, such part shall be suitably incorporated by the subdivider in his layout plan. (Balto. Co. Code, 1958, sec. 44-6. 7-11-49.)

Sec. 22-63. Same—Consideration of tentative plans of planning board for locality.

If tentative plans have been made by the planning board for the locality of the proposed subdivision, the street system of the latter shall give due consideration thereto. (Balto. Co. Code, 1958, sec. 44-7. 7-11-47.)

BALTIMORE COUNTY CODE 1978

1988/89 CUMULATIVE SUPPLEMENT

Containing all additions and amendments to the Baltimore County Code, 1978, through the 1989 Session of the Baltimore County Council, Bill No. 149-89

MUNICIPAL CODE CORPORATION

Tallahassee, Florida 1990

(b) An employee or applicant for employment has the same protections provided in subsection (a) of this section regarding a disclosure which is specifically prohibited by law, if the disclosure is made to the office of state's attorney, the state law department, or the office of state prosecutor. (Bill No. 125, 1986, § 1)

Sec. 21-26. Remedies.

(a) An employee or applicant for employment may charge an appointing authority with a violation of section 21-25(a) of this article by filing a civil action in the circuit court.

(b) If the court finds that a violation of section 21-25(a) has occurred, it may order:

(1) The hiring, reinstatement or promotion of the employee or applicant for employment;

(2) Termination of any suspension or other disciplinary measure;

(3) Deletion of detrimental insertions from the employee's personnel record;

(4) Payment of back wages and benefits;

(5) Payment of reasonable attorney's fees and other litigation costs; or

(6) Any other appropriate relief. (Bill No. 125, 1986, § 1)

TITLE 22

PLANNING, ZONING AND SUBDIVISION CONTROL

Art. I. In General
Art. II. Planning
Art. III. Zoning
Art. IV. Development Regulations of Baltimore County
Div. 1. In General
Div. 2. Development Review and Approval Process
Div. 3. Public and Private Improvements of Development
Div. 4. General Design Standards and Requirements

Div. 5. Reclamation of Property
Div. 6. Chesapeake Bay Critical Area—Interim Development Controls
Art. V. Historical and Architectural Preservation
Art. VI. Agricultural Land Preservation
Art. VII. Commercial District Management Authorities
Art. VIII. Chesapeake Bay Critical Area Requirements

ARTICLE I. IN GENERAL

Sec. 22-1. Definitions.

For the purposes of this title, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Local open space parcel means land provided in residential subdivisions and necessary and desirable for the local recreational needs of residents of such subdivisions for such recreational types of spaces as play lots, local unusual natural scenic beauty, recreational walkways and pathways, and special street center islands; but the term "local open space parcel" shall not include the larger open space park and playfield areas of the type which serve larger than local needs and which are incorporated in the master plan.
(Bill No. 156, 1983, § 2)

Only part of section set out—Section 2 of Bill No. 156, 1983, amended only the definition of "local open space parcel"; hence the remainder of the section is not set out herein.

Sec. 22-2. Office of planning and zoning.

(a) The office of planning and zoning shall be composed of a director of planning and zoning who shall administer the office, a planning board, a zoning commissioner and deputy zoning commissioner. The office shall perform such duties and functions as specified in or required by the laws and regulations of Baltimore County.

(b) The office of planning and zoning shall consist of the following divisions:

(1) General administration.

(2) Comprehensive and community planning.

(3) Current pl

(4) Zoning ad

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ARTICLE IV. DEVELOPMENT REGULATIONS OF BALTIMORE COUNTY*

DIVISION 1. IN GENERAL

Sec. 22-37. Development policies.

(a) All development of land must conform to the master plan and these regulations. Land to be developed should be of such character that it can be used safely for building purposes without danger to health or peril from flood, fire, erosion or other menace.

(b) These regulations are intended to protect and promote public health, safety and welfare and to ensure provision for public facilities, services and amenities. To this end, these regulations are designed and intended to ensure the safety, adequacy and convenience of proposed provisions for the following:

(1) Circulation of motor vehicles, bicycles, and pedestrians, including appropriateness of proposed locations and design of transit facilities, streets and paths to their anticipated functions and to existing facilities;

(2) Water supply, sewerage, storm water drainage, street lighting, fire protection and emergency services, including adequacy of water volume, water pressure and emergency access to all parts of the property;

(3) Community services, including but not limited to schools, parks and other open spaces, recreation areas and facilities, and other amenities for users or occupants of the property and for its neighborhood; and

(4) Prevention of environmental degradation and promotion of environmental enhancement, including adequacy of landscaping and energy conservation measures, and of protection of floodplains, steep slopes, watersheds, wetlands, vege-

*Editor's note—Section 1 of Bill No. 56, 1982, repealed §§ 22-37—22-140, which constituted art. IV of this title; and § 2 enacted a new art. IV, §§ 22-37—22-105. The article was formerly derived from Balto. Co. Code, 1958, §§ 44-1—44-79; Bill No. 80, 1960; Bill No. 48, 1963, § 2; Bill No. 68, 1963; Balto. Co. Code, 1968, §§ 22-32—22-135; Bill No. 32, 1972, § 1; Bill No. 5, 1979, § 1; Bill No. 26, 1979, § 1; Bill No. 61, 1979, §§ 1—3; Bill No. 84, 1980, § 1; Bill No. 121, 1981, §§ 1, 2; and Bill No. 124, 1981, §§ 1, 5.

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. 134, 1989, § 1)

Sec. 22-40. Scope of regulations.

(a) These regulations shall apply to all development except such development which, prior to the effective date of this article [June 11, 1982], has received tentative approval of the preliminary plan by the planning board or for which development a valid, unexpired building permit exists, or for which development a current executed public works agreement exists, all of which development shall be governed by the subdivision regulations in effect at the time of said preliminary plan approval, building permit issuance or public works agreement execution, as the case may be.

(b) In addition to complying with the regulations set forth in sections 22-37 through 22-119, development of land within the critical area as delineated on the official critical area map of Baltimore County as maintained by the zoning commissioner shall comply with the regulations contained in division 6 of this article IV of title 22. (Bill No. 56, 1982, § 2; Bill No. 35, 1988, § 1)

Sec. 22-41. General exemption.

The subdivision of land for agricultural purposes is exempt from these regulations if no new streets are involved. (Bill No. 56, 1982, § 2)

Sec. 22-42. Limited exemptions.

The following development is exempt from division 2 of these regulations:

(1) The building or preparation of land for building for a dwelling for one (1) or two (2) families (i) on a single lot or tract which is not part of a recorded plat, or (ii) on a lot or lots exempt from the lapse provisions of section 22-68.

(2) The building or preparation of land for building on a lot of record lawfully in effect at the time of the building or preparation of the land for building if the lot of record did not result from a subdivision of land exempt under section 22-41.

(3) The construction of one (1) tenant house or the location of one (1) trailer on a farm tract.

County Council of Baltimore County
Maryland

Legislative Session 1982, Legislative Day No. 8

BILL NO. 56-82

Mr. James T. Smith, Jr., Councilman

By the County Council, April 5, 1982

A BILL

ENTITLED

AN ACT concerning

Development Regulations

FOR the purpose of repealing the subdivision regulations of the County and enacting new development regulations to govern the development of all land in the County; defining terms; providing for the process of development approval; imposing certain requirements on developers; providing certain standards for all development; providing for the adoption of additional standards for development; and generally relating to the regulation of the development of land in Baltimore County.

BY repealing

Sections 22-37 through 22-140, inclusive, and the subtitle "Article IV. Subdivision Control Generally"
Title 22 — Planning, Zoning and Subdivision Control
Baltimore County Code, 1978, 1980 Supplement

BY adding

Sections 22-37 through 22-~~104~~ *105*, inclusive to be under the new title "Article IV. Development Regulations of Baltimore County"
Title 22 — Planning, Zoning and Subdivision Control
Baltimore County Code, 1978, 1980 Supplement

BY repealing

Subsection 203.5 and Section 206
Baltimore County Zoning Regulations, as amended

BY adding

Subsection 203.5 and Section 206
Baltimore County Zoning Regulations, as amended

WHEREAS, the Baltimore County Council has received a final report from the Planning Board concerning the subject legislation and has held a public hearing thereon, now, therefore,

SECTION 1. *Be it enacted by the County Council of Baltimore County, Maryland,* that Sections 22-37 through 22-140, inclusive, and "Article IV. Subdivision Control Generally" of Title 22 — Planning, Zoning and Subdivision Control, of the Baltimore County Code, 1978, 1980 Supplement, be and they are hereby repealed in their entirety.

SECTION 2. *And be it further enacted,* that Sections 22-37 through 22-~~104~~ *105,* inclusive, be and they are hereby added to Title 22 — Planning, Zoning and Subdivision Control, of the Baltimore County Code, 1978, 1980 Supplement, to be under the new title "Article IV. Development Regulations of Baltimore County", and to read as follows:

ARTICLE IV. DEVELOPMENT REGULATIONS OF BALTIMORE COUNTY

DIVISION 1. IN GENERAL.

SEC. 22-37. DEVELOPMENT POLICIES.

(A) ALL DEVELOPMENT OF LAND MUST CONFORM TO THE MASTER PLAN AND THESE REGULATIONS. LAND TO BE DEVELOPED SHOULD BE OF SUCH CHARACTER THAT IT CAN BE USED SAFELY FOR BUILDING PURPOSES WITHOUT DANGER TO HEALTH OR PERIL FROM FLOOD, FIRE, EROSION OR OTHER MENACE.

(B) THESE REGULATIONS ARE INTENDED TO PROTECT AND PROMOTE PUBLIC HEALTH, SAFETY AND WELFARE AND TO ENSURE PROVISION FOR PUBLIC FACILITIES, SERVICES AND AMENITIES. TO THIS END, THESE REGULATIONS ARE DESIGNED AND INTENDED TO INSURE THE SAFETY, ADEQUACY AND CONVENIENCE OF PROPOSED PROVISIONS FOR THE FOLLOWING:

WETLAND MEANS:

(1) A PRIVATE WETLAND OR A STATE WETLAND AS DEFINED IN SECTION 9-101 OF THE NATURAL RESOURCES ARTICLE OF THE ANNOTATED CODE OF MARYLAND, AND, IF A PRIVATE WETLAND, AS DELINEATED UNDER THE PROCEDURES OF SECTION 9-301 OF THAT ARTICLE; OR

(2) A WETLAND AS DEFINED IN SECTION 1302, TITLE 16, OF CHAPTER 29 OF THE UNITED STATES CODE ANNOTATED AND AS DESCRIBED IN SECTION 7.752.2 OF VOLUME 7 OF THE CODE OF FEDERAL REGULATIONS; OR

(3) AN AREA NOT DESIGNATED UNDER THESE PROVISIONS BUT WHICH IS INUNDATED OR SATURATED BY SURFACE OR GROUNDWATER AND WHICH SUPPORTS VEGETATION PREDOMINANTLY ADAPTED TO SATURATED SOILS AND WHICH HAS BEEN DESIGNATED AS A WETLAND BY ORDINANCE OF THE COUNTY COUNCIL.

SEC. 22-40. SCOPE OF REGULATIONS.

THESE REGULATIONS SHALL APPLY TO ALL DEVELOPMENT EXCEPT SUCH DEVELOPMENT WHICH, PRIOR TO THE EFFECTIVE DATE OF THIS ACT, HAS RECEIVED TENTATIVE APPROVAL OF THE PRELIMINARY PLAN BY THE PLANNING BOARD OR FOR WHICH DEVELOPMENT A VALID, UNEXPIRED BUILDING PERMIT EXISTS, OR FOR WHICH DEVELOPMENT A CURRENT EXECUTED PUBLIC WORKS AGREEMENT EXISTS, ALL OF WHICH DEVELOPMENT SHALL BE GOVERNED BY THE SUBDIVISION REGULATIONS IN EFFECT AT THE TIME OF SAID PRELIMINARY PLAN APPROVAL, BUILDING PERMIT ISSUANCE OR PUBLIC WORKS AGREEMENT EXECUTION, AS THE CASE MAY BE.

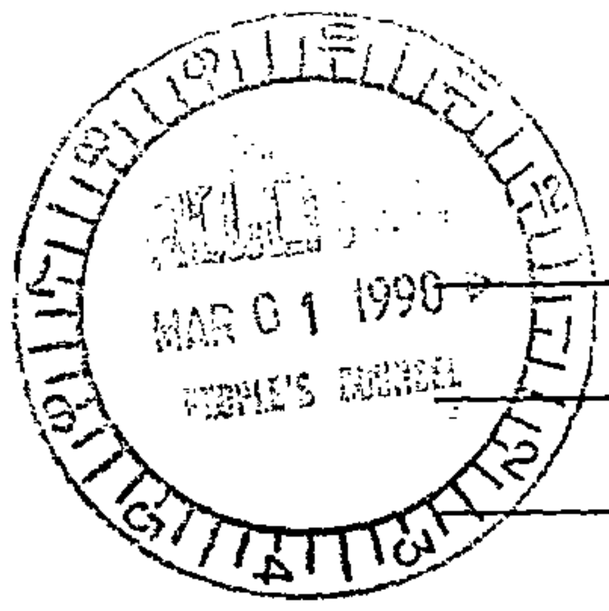
SEC. 22-41. GENERAL EXEMPTION.

THE SUBDIVISION OF LAND FOR AGRICULTURAL PURPOSES IS EXEMPT FROM THESE REGULATIONS IF NO NEW STREETS ARE INVOLVED.

SEC. 22-42. LIMITED EXEMPTIONS.

THE FOLLOWING DEVELOPMENT IS EXEMPT FROM DIVISION 2 OF THESE REGULATIONS:

(1) THE BUILDING OR PREPARATION OF LAND FOR BUILDING FOR A DWELLING FOR ONE OR TWO FAMILIES (I) ON A SINGLE LOT OR TRACT WHICH IS NOT PART OF A



COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 1990, Legislative Day No. 2

Bill No. 18-90

Mr. C. A. Dutch Ruppersberger, III, Councilman
By Request of County Executive

By the County Council, January 16, 1990

A BILL
ENTITLED

AN ACT concerning

Title 22 "Planning, Zoning and Subdivision Control"

FOR the purpose of repealing sections providing for the composition of the Planning Board, appointment of the Planning Board, interim development controls for the Chesapeake Bay Critical Area, including sections establishing legislative findings of fact, legislative intent, definitions, establishment and duration of such controls, official interim map, limits on development activities, limits on reclassifications and special exceptions, on capital improvement projects, on grading activity, limited modification of controls, and for appropriations for the Historic Landmark Commission; of repealing and reenacting sections dealing with the administration of the Office of Planning and Zoning, powers and duties of the Planning Board, establishing the meetings and rules of the Planning Board, the experience and duties of the director of planning and the zoning commissioner, scope of the master plan, required action on specific projects before the planning board, applications for building permits where impacted by master plan, preparation of zoning regulations and zoning maps, authority of zoning commissioner to provide for special hearings, variances and special exceptions, review by the Board of Appeals of zoning commissioner decisions, custody of books and records by the zoning commissioner, validation of zoning regulations, appeals from the zoning commissioner to the Board of Appeals, maintenance of regulations and laws adopted by the County Council, penalty for violations, injunctive relief, civil penalties for zoning violations, scope of development regulations, general exemption from the development regulations, waivers, recording of unapproved plats, fees, compliance with laws and regulations, adding agencies to be notified of plans filed with the CRG, actions taken by the CRG, referral of the CRG plan to the planning board, amendments to the plan, requirements for approval and recordation of the plan, procedure for approval, time limit for validity of plats, extension of the time limit for validity of plats and plans, county participation, security required, slope protections and soils, development of property in RCC, RO, O-1, O-2 zones and CR districts, reclamation development plan, term and appointments to the historic landmark commission, officers of the commission, creation of historic districts, referral of applications for construction or alteration of any structure within a historic district, final historical landmarks list, agricultural land preservation district and sale of easements, official maps of the agricultural land preservation district, applicability of the critical area findings plan, procedure for reviewing findings law, non-tidal and tidal wetlands, buffers, habitat protections areas, and approval of use and occupancy permits; adding a new section dealing with ~~the-authority-of-the-zoning-commissioner-to-adopt policies~~; limited exemptions from the development regulations, preparation of the plan, procedure before the planning board, adoption of the development manuals, and compilation and maintenance of the landmarks list.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter stricken from existing law.
~~Strike-out~~ indicates matter stricken from bill.
Underlining indicates amendments to bill.

BY repealing

Sections 22-3, 22-4, 22-111 through 22-120, 22-167

BY repealing and reenacting

Sections 22-2(a),(b)(4),(c), 22-5, 22-6, 22-11, 22-13, 22-17, 22-18(a),(b),(d), 22-21(b),(e), 22-26, 22-28, 22-30(b),(d), 22-31, 22-32, 22-34, 22-35, 22-36, 22-36.1(a),(b),(c),(d)(4),(e)(1)(3)(4), 22-40, 22-41, 22-42(5),(7), 22-43(a)(first paragraph),(b),(c), 22-45, 22-48, 22-51, 22-55(a), (b)(12), (13-17), (26), (27), (34), 22-57(a), (e), (h), 22-58(g),(h), 22-59(a)(2), 22-63, 22-66 (f)(3), 22-67(b),(c), (d), 22-68(c), 22-68.1(e), 22-70(b), 22-75(a), (c), 22-99 (a), (b), 22-104(c)(2)(first paragraph); 22-105(b)(2),(5), (e), (h), 22-106(c)(1)a., 22-107, 22-144, 22-146, 22-149, 22-159, 22-169, 22-172, 22-173, 22-207, 22-208(b), 22-211, 22-213(c) 22-215(a), 22-219.

BY adding

Sections 22-34.1 , 22-42(9), 22-55(b)(31)VII, (32)XII, (d), 22-60(b)(4), 22-105(b)(6), 22-150(g)

All of Title "Planning Zoning and Subdivision Control" Baltimore County Code, 1978, 1987 Cumulative Supplement, as amended by subsequent bills

SECTION 1. Be it enacted by the County Council of Baltimore County, Maryland, that Sections 22-3, 22-4, 22-111 through 22-120 and 22-167 title "Planning, Zoning and Subdivision Control", Baltimore County Code, 1978, 1987 Cumulative Supplement, as amended, be and they are hereby repealed.

[Sec. 22-3. Planning Board-Composition; voting and nonvoting members.]

[The planning board shall] consist of sixteen (16) members, of whom twelve (12) shall be lay members holding no other salaried position in the county government, and the remaining four (4) members shall be the county executive, the county superintendent of schools, the director of public works and the zoning commissioner, all of whom shall serve ex officio during their official tenures in such offices. The ex officio members of the planning board shall be nonvoting members.]

[Sec. 22-4. Same-Appointment, term and qualifications of lay members.]

[(a) The lay members of the planning board shall, at the time of their appointment and for two (2) years prior thereto, and during their full term of office, be residents of the county and shall be appointed by the county executive in the following manner: One member shall reside in the First or Second Councilmanic District, one shall reside in the Third,

{(3)}(4) The county attorney shall prosecute civil zoning violations in the district court.

ARTICLE IV. DEVELOPMENT REGULATIONS OF BALTIMORE COUNTY

DIVISION I. IN GENERAL

Sec. 22-40. Scope of regulations.

These regulations shall apply to all development except such development which, prior to the effective date of this article (June 11, 1982), has received tentative approval of the preliminary plan by the planning board or for which development a valid, unexpired building permit exists, or for which development a current executed public works agreement exists, all of which development shall be governed by the subdivision regulations in effect at the time of said preliminary plan approval, building permit issuance or public works agreement execution, as the case may be. PROPOSED DEVELOPMENT SHALL BE IN COMPLIANCE WITH THE PRESENT ZONING CLASSIFICATION ON THE SUBJECT PROPERTY.

Sec. 22-41. General exemption.

The subdivision of land for agricultural purposes is exempt from these regulations if no new streets are involved, SUBJECT TO COMPLIANCE WITH ALL APPLICABLE ZONING REGULATIONS.

Sec. 22-42. Limited exemptions.

The following development is exempt from division 2 of these regulations{;} ONLY. COMPLIANCE WITH DIVISIONS 3, 4, and 5 IS REQUIRED AS IS COMPLIANCE WITH ALL APPLICABLE ZONING REGULATIONS.

(5) The resubdivisions or lot line adjustment of industrially zoned OR COMMERCIALLY ZONED parcels of land which have been the subject of a previously approved plan and recorded plat.

(7) The construction of RESIDENTIAL accessory structures{.} OR MINOR COMMERCIAL STRUCTURES.

Sec. 22-43. Waivers.

(a) If the director of planning {and zoning} finds (i) that the size, scope and nature of a proposed development does not justify strict compliance with these regulations, and (ii) that a waiver would be within

BALTIMORE COUNTY CODE

(pp) "Private improvements" means improvements required by the county as a condition of development that are not intended to be dedicated to the county.

(qq) "Public improvements" means improvements required by the county as a condition of development which are intended to be dedicated to the county in fee simple or by other interest in title.

(rr) "Public works agreement" means an agreement between the county and the applicant for the construction of public or private improvements required by the county.

(ss) (1) "Quarry" means any open pit mine from which rock, stone, or minerals are extracted.

(2) "Quarry" does not include a sand or gravel extraction operation.

(tt) "Reclamation development plan" means the written and graphic presentation of the proposed use of a quarry prepared in compliance with division 5 of this article.

(uu) (1) "Reclamation property" means the site of a legally operating quarry and all contiguous or adjacent property in common ownership.

(2) "Reclamation property" includes property that may be separated by public streets and containing a minimum of 300 acres.

(vv) "Residential development" means the development of land for any purpose or use permitted as of right or by special exception in residential zones in accordance with the Baltimore County Zoning Regulations.

(ww) "Right-of-way improvement agreement" means an agreement concerning the installation or construction of all or part of the improvements required by the county.

(xx) "Steep slope" means an area where the natural grade is 25% or greater.

(yy) "Street" means:

(1) (i) any street, avenue, boulevard, road, lane, parkway, freeway, viaduct, bridge or other way, which is an existing state or county highway; or

(ii) a street or way shown on a plat duly filed and recorded in the office of the clerk of the circuit court for the county.

(2) "Street" includes:

(i) the land between the street right-of-way lines, whether improved or unimproved; and

(ii) the pavements, shoulders, curbs and gutters, sidewalks, parking areas and other areas within the street right-of-way lines.

(zz) "Subdivision" means:

(1) the division of property into 2 or more lots; or

(2) the combination of lots, parcels, tracts or other units of property previously divided for the purpose, whether immediate or future, of sale, rental or building development.

(aaa) "Tidal wetland" means all state and private tidal wetlands, marshes, submerged aquatic vegetation, lands and open water affected by the daily and periodic rise and fall of the tide within the Chesapeake Bay and its tributaries, and additional tidal wetlands identified through site inspection by the department of environmental protection and resource management that are subject to the daily and periodic rise and fall of the tide.

(bbb) "Utility agreement" means an agreement concerning the installation or construction of all or part of the improvements required by the county.

(Code 1978, § 22-39; Bill No. 172, 1989, § 2; Bill No. 1, 1992, § 2; Bill No. 173-93, § 3, 11-17-93; Bill No. 8-96, § 3, 3-23-96; Bill No. 49-96, § 15, 7-1-96; Bill No. 38-98, § 4, 6-20-98)

Cross reference—Definitions and rules of construction generally, § 1-2.

Sec. 26-169. Scope of regulations.

These regulations shall apply to all development except: (i) such development which, prior to the effective date of this article (June 11, 1982),

has received tentative approval of the preliminary plan by the planning board or for which development a valid, unexpired building permit exists, or for which development a current executed public works agreement exists, all of which development shall be governed by the subdivision regulations in effect at the time of said preliminary plan approval, building permit issuance, or public works agreement execution, as the case may be. Proposed development shall be in compliance with the present zoning classification on the subject property; (ii) such development as has received a CRG approval, reclamation plan approval, any other project vested by law or such development for which a CRG plan has been accepted for filing by the department of public works prior to the date of adoption of Bill 1-92, all of which development shall be governed by the subdivision regulations in effect at the time of said approval or acceptance for filing, as the case may be.
(Code 1978, § 22-40; Bill No. 18, 1990, § 2; Bill No. 1, 1992, § 2)

Sec. 26-170. General exemption.

The subdivision of land for agricultural purposes is exempt from these regulations if no new streets are involved, subject to compliance with all applicable zoning regulations.
(Code 1978, § 22-41; Bill No. 18, 1990, § 2)

BALTIMORE COUNTY
CODE

VOLUME II

2005 S-3 Supplement contains
Local legislation current through Bill No. 21-05

AMERICAN LEGAL PUBLISHING CORPORATION

432 Walnut Street Cincinnati, Ohio 45202-3909 (800) 445-5588

SUBTITLE 3. VARIANCES

§ 32-3-301. AUTHORITY OF ZONING COMMISSIONER.

(a) *In general.* Except as provided in § 32-3-515 of this title and consistent with the general purpose, intent, and conditions set forth in the Baltimore County Zoning Regulations, upon petition, the Zoning Commissioner may:

(1) Grant variances from area and height regulations;

(2) Interpret the zoning regulations; and

(3) Grant special exceptions.

(b) *Appeal.* A decision of the Zoning Commissioner under subsection (a) of this section may be appealed to the Board of Appeals as provided in this article.

(c) *Conditional or restricted variance.* The Zoning Commissioner may grant a variance with conditions or restrictions that the Zoning Commissioner determines are appropriate for the purpose of protecting the health, safety, or general welfare of the surrounding community.
(1988 Code, § 26-127) (Bill No. 18, 1990, § 2; Bill No. 91, 1990, § 2; Bill No. 1, 1992, § 2; Bill No. 103-02, § 2, 7-1-2004)

§ 32-3-302. SAME – HEARING REQUIRED; NOTICE.

(a) *In general.* Except as provided in §32-3-303 of this subtitle, the Department of Permits and Development Management shall schedule a public hearing on a petition for a variance or special exception for a date not less than 21 days and not more than 90 days after the petition is accepted for filing.

(b) *Notice.*

(1) The Department of Permits and Development Management shall ensure that notice of the time and place of the hearing relating to the property under petition be provided:

(i) By conspicuously posting the notice on the property for a period of at least 15 days before the date of the hearing; and

(ii) By a notice in at least one newspaper of general circulation at least 15 days before the hearing.

§ 32-4-104. SCOPE OF TITLE.

(a) *Applicability of title.* Except as provided in subsection (b) of this section, this title shall apply to all development.

(b) *Exceptions.*

(1) This title does not apply to a development that before the effective date of this article, June 11, 1982:

(i) Received tentative approval of the preliminary plan by the Planning Board;

(ii) Has a valid unexpired building permit;

(iii) Has a current executed public works agreement;

(iv) Received a CRG approval, reclamation plan approval, or was otherwise vested by law; or

(v) Where a CRG plan was accepted for filing by the Department of Public Works before the date of adoption of Bill 1-92.

(2) An exempt development under paragraph (1) of this subsection shall be governed by the subdivision regulation in effect at the time:

(i) Of the preliminary plan approval in the case of a development that received tentative approval by the Planning Board;

(ii) The development received a CRG approval, reclamation plan approval, or was otherwise vested by law;

(iii) The valid unexpired building permit was issued;

(iv) The current public works agreement was executed; and

(v) Of the acceptance for filing in the case of a CRG plan that was accepted for filing by the Department of Public Works before the date of adoption of Bill 1-92.

(c) *Present zoning classification.* Proposed development shall be in compliance with the present zoning classification on the property to be developed.
(1988 Code, § 26-169) (Bill No. 18, 1990, § 2; Bill No. 1, 1992, § 2; Bill No. 79-01, § 2, 7-1-2004)

***Annotation**–Former § 26-169 (1988) cited in Meadows of Greenspring Homeowners Association, Inc. v. Foxleigh Enterprises, Inc., 133 Md.App. 510, 758 A.2d 611 (2000).*

§ 32-4-111. FEES.

The County Administrative Officer may establish the fees to be charged for any function of a county agency under the provisions of this title.
(1988 Code, § 26-177) (Bill No. 18, 1990, § 2; Bill No. 79-01, § 2, 7-1-2004)

§ 32-4-112. RULES OF PROCEDURE.

The directors of the Department of Permits and Development Management and Office of Planning and the Hearing Officer shall adopt and, from time to time, may amend a comprehensive manual of administrative procedures for the review and processing of plans and plats under the provisions of Subtitle 2 of this title.
(1988 Code, § 26-178) (Bill No. 1, 1992, § 2; Bill No. 69-95, § 10, 7-1-1995; Bill No. 79-01, § 2, 7-1-2004)

§ 32-4-113. DELINQUENT ACCOUNTS.

(a) *Payment required before processing.* Before the county may process plans or permits for a proposed development, the applicant shall pay all delinquent accounts of the applicant.

(b) *Exception.* The provisions of subsection (a) of this section do not apply if the applicant disputes the county's claim and posts collateral to satisfy the claim pending resolution of the dispute.
(1988 Code, § 26-179) (Bill No. 79-01, § 2, 7-1-2004)

§ 32-4-114. COMPLIANCE WITH OTHER LAWS AND REGULATIONS.

(a) *Compliance with other county laws required.* Except as otherwise provided in this title, all development shall comply with this title and all other applicable laws or regulations of the county.

(b) *Laws not superseded by this title; exception.* Other laws or regulations of the county that affect development are not superseded by this title unless specifically stated in this title.

(c) *County prohibited from processing if violations exist.* The county may not process plans or permits for a proposed development if the applicant owns or has an interest in property located in the county upon which there exists, at the time of the application or during the processing of the application, a violation of the zoning or development regulations of the county.
(1988 Code, § 26-180) (Bill No. 18, 1990, § 2; Bill No. 79-01, § 2, 7-1-2004)

§ 32-4-115. ENFORCEMENT AND REMEDIES.

(a) *In general.* A permit may not be issued without compliance with this title.

IN RE: RESUBDIVISION * BEFORE THE COUNTY
Pridgeon Property, Lot 3 Parcel B
Windemere * OFFICE OF PLANNING
Six Stonehurst Road
*
6th Councilmanic District
11th Election District *
Owner: Richard Pridgeon

* * * * *

NOTICE OF APPEAL

Richard Pridgeon, owner of the subject property, by and through his attorney Arnold Jablon, Venable, LLP, feeling aggrieved by the final decision and determination of the Director of the Office of Planning denying the appellant's request to adjust lot lines between two lots owned by him, said letter of denial dated 26 October 2004 and attached hereto and incorporated herein as Exhibit A.

Appellants herewith take exception to that final decision of the Director of the Office of Planning as reflected in Exhibit A and appeal to the County Board of Appeals. Appellants submit that the review by the CBA from the final decision of a Department Director shall be a hearing *de novo* pursuant to the Baltimore County Charter.

Filed concurrently with this Notice of Appeal is a check made payable to Baltimore County to cover the costs of the appeal.

Respectfully submitted

Arnold Jablon
Venable, LLP
210 Allegheny Ave.
Towson, Maryland 21204
410-494-6298

attorney for appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT copies of the foregoing Notice of Appeal was hand delivered to the Baltimore County Board of Appeals, Basement, Old Courthouse, 400 Washington Ave., Towson, Maryland 21204; and Arnold F. "Pat" Keller, III, Director, Office of Planning, 401 Bosley Ave., New Courts Bldg, Towson, Maryland 21204, on this 23rd day of December, 2004.

Arnold Jablon.

Office of Planning

401 Bosley Avenue, Suite 406
Towson, Maryland 21204
Tel: 410-887-3211 • Fax: 410-887-5862
E-mail: planning@co.ba.md.us

Baltimore County

James T. Smith, Jr., County Executive
Arnold F. 'Pat' Keller, III, Director

December 3, 2004

RECEIVED
DEC 0 8 2004
GEORGE WILLIAM STEPHENS JR & ASSOCIATES, INC.

GW Stephens, Jr. And Associates
Mr. David Martin
1020 Cromwell Bridge Road
Towson, MD 21286-3396

Re: Pridgeon Property, Windemere
6 Stonehurst Road, Parcel B

Dear Mr. Martin:

Based upon a review of the information provided and analysis conducted, the Joint Subdivision Planning Committee, JSPC, has determined that your client's request for a lot line adjustment for the above-referenced lot and Parcel B has been denied as the property's zoning has changed since the original lot was recorded. The RC 4 zone permitted density does not allow for the reconfiguration of these parcels as the total acreage is ±4.18.

Sincerely,

Jeffrey W. Long
Deputy Director

JWL:kma

c: Jay Liner, County Attorney
Tim Kotroco, Director of Permits and Development Management
Amanda Conn, Assist. County Attorney
Pat Keller, Director, Office of Planning
Jeff Mayhew, Chief, Community Planning
Lynn Lanham, Chief, Development Review

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CBA-04-157

IN RE: RESUBDIVISION * BEFORE THE COUNTY
Stepcich Property, Lot 3 Windemere
* OFFICE OF PLANNING
6th Councilmanic District
11th Election District *
Owner: Joseph Stepcich

* * * * *

NOTICE OF APPEAL

Mr. and Mrs. Joseph Stepcich, owners of the subject property, by and through their attorney Arnold Jablon, Venable, LLP, feeling aggrieved by the final decision and determination of the Director of the Office of Planning denying the appellants' request to resubivide their lot of record into two lots, said letter of denial dated 26 October 2004 and attached hereto and incorporated herein as Exhibit A.

Appellants herewith take exception to that final decision of the Director of the Office of Planning as reflected in Exhibit A and appeal to the County Board of Appeals. Appellants submit that the review by the CBA from the final decision of a Department Director shall be a hearing *de novo* pursuant to the Baltimore County Charter.

This appeal is not to be considered a waiver to any proceeding currently pending on the same matter and issue before the Baltimore County Planning Board.

Filed concurrently with this Notice of Appeal is a check made payable to Baltimore County to cover the costs of the appeal.

RECEIVED
NOV 2 2 2004
BALTIMORE COUNTY
BOARD OF APPEALS

Respectfully submitted

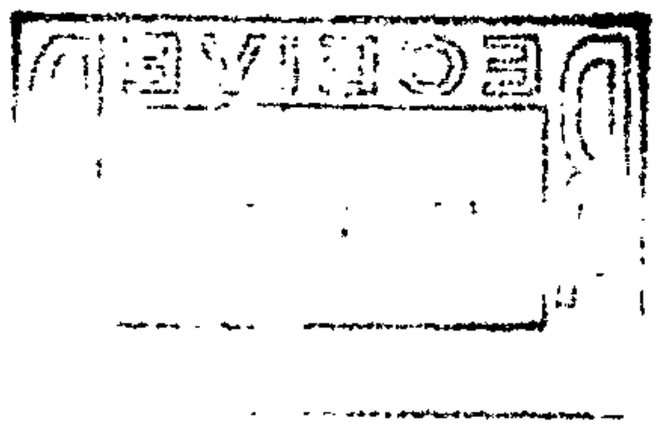
Arnold Jablon
Venable, LLP
210 Allegheny Ave.
Towson, Maryland 21204
410-494-6298

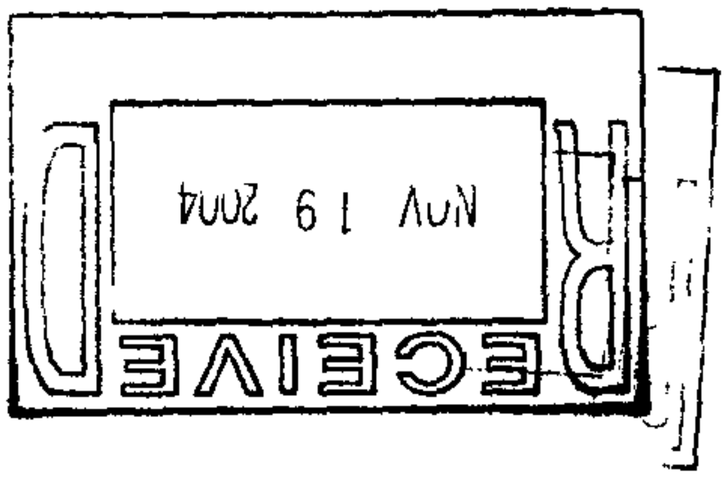
attorney for appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT copies of the foregoing Notice of Appeal was hand delivered to the Baltimore County Board of Appeals, Basement, Old Courthouse, 400 Washington Ave., Towson, Maryland 21204; and Arnold F. "Pat" Keller, III, Director, Office of Planning, 401 Bosley Ave., New Courts Bldg, Towson, Maryland 21204, on this 19 day of NOVEMBER, 2004.

Arnold Jablon.

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NOV 19 2004

IN THE MATTER OF *MARY HORNER TRUST; JOHN LAWRENCE HANLEY AND AUSTIN WORTHINGTON BRIZENDINE, TRUSTEES* 600 AND 602 BELFAST ROAD TAX ACCOUNT NOS. 08-07061080 AND 08-08068170	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
RE: APPEAL OF LETTER WRITTEN BY DIRECTOR, OFFICE OF PERMITS & DEVELOPMENT MANAGEMENT	*	CASE NO. CBA-04-114

* * * * * * * * *

OPINION

Appellants John Lawrence Hanley and Austin Worthington Brizendine, Trustees for the Mary Horner Trust (hereafter referred to as "Trustees") and Lillian Horner, the widow of Peter Paul Horner, and Catherine H. Gemmill appealed the decision of the Baltimore County Department of Permits and Development Management (PDM) which refused to review two minor subdivision plans submitted by the owners for two adjoining parcels of land. The Trustees were represented by Arnold Jablon, Esquire, with Venable, LLP, and Bill Horner and Catherine Gemmill were represented by G. Scott Barhight, Esquire, with Whiteford, Taylor and Preston, LLP. The County was represented by John Beverungen, Assistant County Attorney.

A hearing was held on April 15, 2004, and the parties submitted Briefs on May 3, 2004. A public deliberation was held on May 12, 2004.

Facts

The Trustees for the Mary Horner Trust own property located at 600 Belfast Road, herein referred to as "Parcel 36." Parcel 36 consists of approximately 16 acres and is zoned R.C. 5. In late 2003, the Trustees filed with Baltimore County two alternative plans for the subdivision of Parcel 36. One was a concept plan proposing the subdivision of this parcel into six lots and the other was a minor subdivision plan proposing only three lots.

The Trustees, along with Mrs. Horner and Mrs. Gemmill, also own property located at 602 Belfast Road, herein referred to as "Parcel 37." Parcel 37 consists of approximately 6.5 acres and is zoned R.C. 5.

In late 2003, the owners of Parcel 37 filed a "minor subdivision plan" proposing the subdivision of Parcel 37 into three lots.

At the same time as the above submittals, the owners of Parcel 36 and the owners of Parcel 37 collectively submitted a request to PDM for confirmation that a proposed "lot line adjustment" between the two parcels met the requirements for a limited exemption under § 26-171(a)(9) of the *Baltimore County Code* (BCC). This request package, filed by McKee & Associates, Inc., on behalf of both sets of property owners included a plan identified as "Plan to Accompany DRC Petition No. 602 Belfast Road."

On Parcel 37 there is an existing carriage house, which is estimated to be about 100 years old. The carriage house is included on the Maryland Historical Trust Inventory of Historic Properties. The carriage house crosses the joint property line and encroaches on Parcel 36. In addition to this encroachment, there is also an existing dwelling on Parcel 37 that is located approximately 30 feet from the common property line with Parcel 36. A lot line adjustment was requested to redraw the property lines so that the carriage house is located entirely within the property boundaries of Parcel 37 and to make the setback from the existing dwelling to lot line 50 feet instead of the existing 30 feet, which would bring the dwelling into compliance with the setback required in the R.C. 5 zone. In addition, the lot line adjustment request included the widening of the private drive accessing Parcel 37 to a 30-foot road frontage by taking approximately 0.15 acres from Parcel 36 and incorporating this additional land parcel into Parcel 37. The purpose was to satisfy BCC § 26-266(1) which requires a minimum of 10 feet in width for a lot where three or more lots are involved.

The above-identified plans were submitted to the County on or about December 16, 2003. On or about January 15, 2004, McKee & Associates, Inc., received notification that the Development Review Committee (DRC) had recommended and PDM approved the proposed lot line adjustment as an (a)(9) limited exemption. Subsequently, on February 3, 2004, PDM Director Timothy M. Kotroco notified counsel that Appellants would be prohibited from processing the minor subdivision plans for Parcel 36 and Parcel 37 simultaneously. According to this letter, PDM would permit the processing of only one of these

plans as "a minor subdivision" and the other plan would have to be processed as a "major subdivision plan." Mr. Kotroco apparently concluded that because the property owners jointly filed for a "lot line adjustment" for parcel 36 and parcel 37, the two lots were not separately owned parcels. He stated that, "As a result, development of the two parcels in question meets the definition of 'creeping subdivision" and therefore cannot proceed and will not be processed as two separate "minor subdivisions." Mr. Kotroco based his decision on a 1995 letter from Arnold Jablon, the Director of PDM at that time.

Appellants' witness, Guy Ward, Project Engineer with McKee & Associates, Inc., testified with respect to Mr. Kotroco's decision to prohibit processing the two minor subdivision plans. Mr. Ward testified that he was familiar with the concept known as "creeping subdivision" which was the basis of Mr. Kotroco's decision not to permit the minor subdivisions to proceed. He testified that he was familiar with the Baltimore County development regulations contained within the *Baltimore County Code*, the *Baltimore County Zoning Regulations*, and the Policy Manuals adopted by PDM. According to Mr. Ward's testimony, there are no laws, regulations or policies in Baltimore County that define, describe, or prohibit "creeping subdivision." Mr. Ward's knowledge of the concept came from his past experience and interaction with PDM.

Mr. Ward's understanding of the concept was that Baltimore County wished to prevent property owners from successfully avoiding application of the development regulations by having a property of three lots or less reviewed as a "minor subdivision" only to turn around and re-subdivide those lots again shortly thereafter. In his experience, PDM had not applied this concept to adjoining parcels of land separately described by deed and which had not been subject to prior subdivision. In Mr. Ward's opinion, the concept of "creeping subdivision" was wrongly applied to Parcels 36 and 37 because the two parcels were not jointly owned and there was no common ownership.

John Brizendine, also testifying on behalf of the Appellants, stated that he was one of the two Trustees of the Mary Horner Trust. He stated that the Trustees are the sole owners of Parcel 36 and are two-thirds owners of Parcel 37 with the other one-third being owned by Lillian Horner, widow of Peter Horner,

and Catherine Gemmill. Mr. Brizendine explained that, prior to the various filings, the Trustees had sought and secured the permission of Mrs. Horner and Mrs. Gemmill. Both ladies agreed to proceeding with the request for the lot line adjustment and the minor subdivision of Parcel 37 but would not agree to the subdivision of Parcel 37 into more than three lots. Mr. Brizendine confirmed that Mrs. Horner and Mrs. Gemmill have no interest or ownership in Parcel 36. He confirmed that the two parcels at issue here are not in common ownership.

Christine Rorke, the Project Manager on behalf of PDM, acknowledged that PDM's Director had, in fact, classified the minor subdivisions of Parcel 36 and Parcel 37 as a "creeping subdivision." According to Ms. Rorke, the policy was intended to prevent the subdivision of a single lot of record into three lots, then the re-subdivision of any of the three lots into additional lots. Ms. Rorke did not know if this policy had ever been legally adopted pursuant to the Code and Baltimore County regulations. It was Ms. Rorke's understanding that the "creeping subdivision" policy was expanded in 1995 when the then-director of PDM denied by letter dated September 27, 1995 the processing of two minor subdivisions known as the "Kramer Property" at Seminary and Warwick Avenues. Ms. Rorke surmised that the 1995 letter had expanded the application of the term "creeping subdivision" to include adjoining parcels owned by the same owner. Ms. Rorke acknowledged that the 1995 letter had never been developed into a written policy nor was there any way for the public to have known it existed. She stated that, to her knowledge, no written policy on "creeping subdivision" had ever been drafted other than the Office of Planning and Zoning policy which was issued in 1991. Ms. Rorke confirmed that there is no written policy or law, either in the *Baltimore County Code* or the *Baltimore County Zoning Regulations* which defines or even refers to "creeping subdivision."

Decision

Section 26-135 of the *Baltimore County Code* provides that the Director of PDM has the authority to "make, adopt, promulgate and amend, from time to time, such policies, rules or regulations relating to or in connection with zoning regulations…to carry out and enforce the provisions of this title which are not

inconsistent therewith." However, the rules or regulations must first be made available for review to the Baltimore County Council and must be available to the public within the Zoning Commissioner's Policy Manual. (See BCC § 26-135.)

The undisputed testimony of both the witnesses for the Appellants and for PDM indicate that there is no policy in the Zoning Commissioner's Policy Manual that refers directly or indirectly to "creeping subdivision."

In addition, there has been no rule promulgated with respect to "creeping subdivision" in accordance with BCC § 26-218 which gives authority to the Administrative Officer or his designee to promulgate rules and regulations not inconsistent with law governing the processing of a concept plan, development plan, or action or review associated therewith.

The Board finds that the concept of "creeping subdivision" was not legally adopted under any statutory authority and is not legally effective. However, assuming, for the sake of argument, that the "creeping subdivision" policy was effective, it would not apply in this situation since Parcel 36 and Parcel 37 are not jointly owned. The Trustees for the Mary Horner Trust own the property located at 600 Belfast Road. However, the Trustees along with Mrs. Horner and Mrs. Gemmill also own the property located at 602 Belfast Road known as Parcel 37. It is quite clear that there is no joint ownership of these two parcels of land.

Therefore, the Board will find that the policy known as "creeping subdivision" as promulgated by the Director of PDM was arbitrary, capricious and illegal and cannot be enforced. The Board will reverse the Director of the Department of Permits and Development Management in this matter and will direct that the Department process the minor subdivision plans for review and approval separately and independently from each other.

ORDER

THEREFORE, IT IS THIS 1st day of June, 2004 by the County Board of Appeals of Baltimore County

ORDERED that the decision of the Director of the Department of Permits and Development Management by letter dated February 3, 2004 *refusing to process* the two separate minor subdivision plans is hereby **REVERSED**; and it is further

ORDERED that the two minor subdivision plans should be processed for review and approval separately and independently from each other.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence S. Wescott, Chairman

Lawrence M. Stahl

Edward W. Crizer, Jr.

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

DATE: July 26, 2004

TO: Timothy Kotroco, Director
Permits & Development Management
Attn.: David Duvall

FROM: Theresa R. Shelton
Board of Appeals

SUBJECT: **CLOSED APPEAL CASE FILES**

The following case(s) have been finalized and the Board of Appeals is closing the copy of the appeal case file(s) and returning the file(s) and exhibits (if applicable) attached herewith.

BOARD OF APPEALS CASE NUMBER	***PDM FILE NUMBER***	**NAME**	**LOCATION**
CBA-04-114	***TAX ACCOUNTS 08-07061080 AND 08-08068170***	Mary Horner Trust	600 and 602 Belfast Road
	See letter from Tim Kotroco dated 2/3/2004		
CBA-03-142	***See letter from Arnold Jablon dated April 14, 2003***	KARMA ACADEMY GROUP HOME	4202 HOLBROOK ROAD

Attachment: SUBJECT FILE(S) / EXHIBIT(S) ATTACHED;

NOTES:

1. SUBDIVISION NAME: WINDEMERE

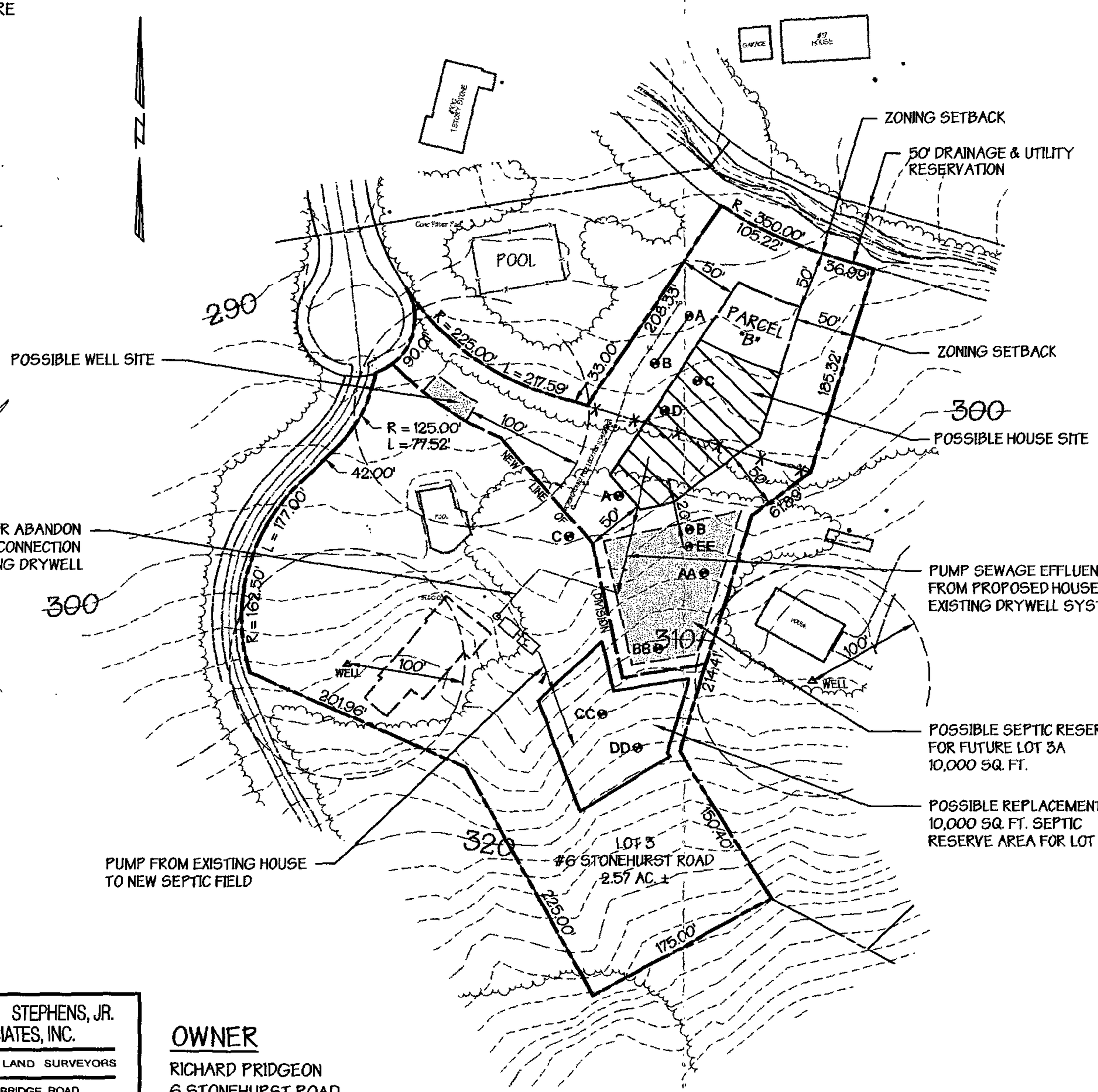
2. OWNER INFORMATION:
   RICHARD PRIDGEON
   6 STONEHURST ROAD
   BALTIMORE, MD 21057

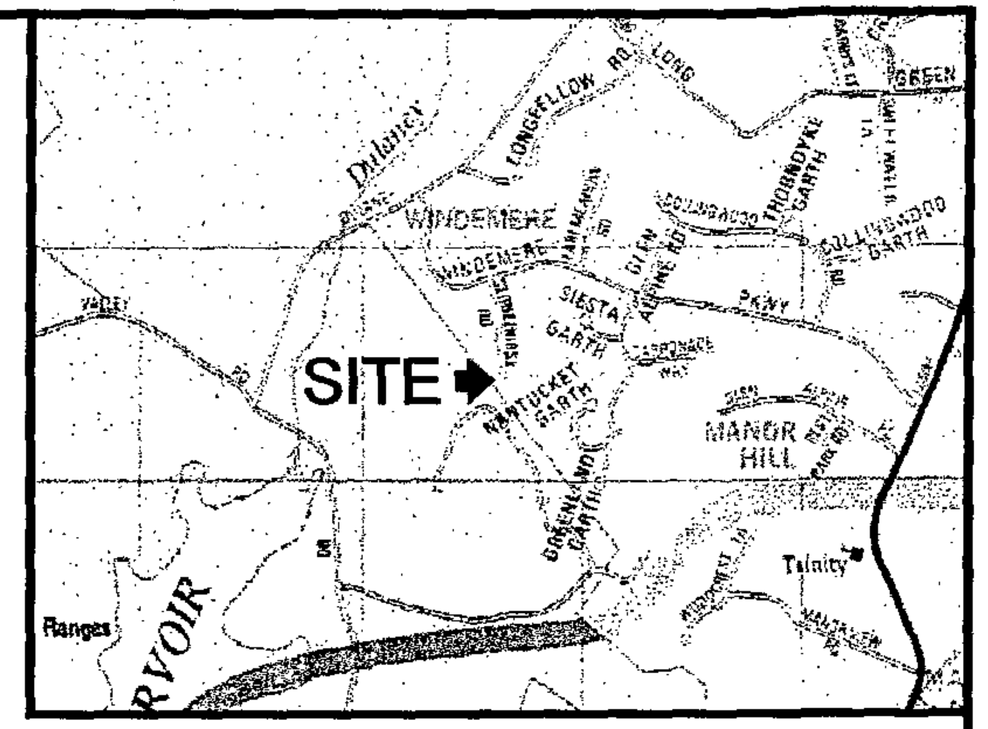
3. ACREAGE:
   EXISTING LOT 3: 3.43 Ac.
   EXISTING PARCEL B: 0.75 Ac.
   PROPOSED LOT 3: 2.57 Ac.
   PROPOSED PARCEL B: 1.61 Ac.

4. TAX MAP: 53; PARCEL 60

5. TAX ACCOUNT NUMBERS
   LOT 3: 1600003600
   PARCEL B: 1600003601

3.43
.75
4.18 acres





VICINITY MAP
SCALE: 1" = 2000'

EXISTING ZONING: RC5

PLAN TO ACCOMPANY
DRC REQUEST
LOT 3 and PARCEL "B"
WINDEMERE, SECTION III

11th ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT
SCALE: 1" = 100'

BALTIMORE COUNTY
AUGUST 3, 2004

GEORGE WILLIAM STEPHENS, JR. AND ASSOCIATES, INC.
CIVIL ENGINEERS & LAND SURVEYORS
1020 CROMWELL BRIDGE ROAD
TOWSON, MARYLAND 21286-3396
(410) 825-8120

OWNER
RICHARD PRIDGEON
6 STONEHURST ROAD
BALTIMORE, MD. 21057

FILE: 9869DRCpercplan080204.s01

IN RE: RESUBDIVISION * BEFORE THE COUNTY
Stepcich Property, Section III Windemere
3 Stoenhurst Road * BOARD OF APPEALS
Phoenix, Md 21131
* OF BALTIMORE COUNTY
6th Councilmanic District
11th Election District

RECEIVED
JUN 13 2005
BALTIMORE COUNTY
BOARD OF APPEALS

* Case No.: CBA 04-157

* * * * * *

APPELLANTS' PRE-HEARING MEMORANDUM

Appellants Joseph and Joy Stepcich, by Arnold Jablon with Venable, LLP, their attorney, hereby submit this Hearing Memorandum for consideration by the County Board of Appeals.

INTRODUCTION

Appellants filed this appeal for the purpose of having the Board of Appeals reverse the decision of the Deputy Director of the Office Planning to deny the Appellants' request to subdivide their property. The Appellants had requested the Planning Board to review and approve the subdivision of their lot into two lots. However, the Planning Board refused to proceed until this appeal was resolved. The Appellants request the Board to find that the Director or Deputy Director of the Office of Planning does not have the authority to deny the Appellants request to subdivide and to order the Director or the Chairman of the Planning Board to certify the amendment to the record plat known as "Section III, Windemere" to the Clerk of the Circuit Court or, in the alternative, to order the Planning Board to process for review for approval the subject amendment.

This Memorandum is being prepared at the request of the Board of Appeals, and is unusual in that its preparation and presentation are pre-fact finding by the Board. Its purpose is to identify and clarify the issues and to propose the remedies sought. While no testimony has been presented, it must be emphasized that the legal analysis and conclusions presented must be read in consideration and within the context of the testimony that would otherwise be presented during the course of the hearing on the merits. Thus, certain liberties are taken and supporting information is presented as if given in testimony.

By way of background, the Appellants reside at 3 Stonehurst Road, in Phoenix, Maryland 21131, which is located between Dulaney Valley Road and Manor Road, off of Windemere Parkway. The Appellants property is a lot of record identified as lot "1" , now known as 3 Stonehurst Court, on the plat known as "Section III, Windemere" (hereinafter referred to as "Section III"), said plat attached hereto and marked for identification as **Appellant's Exhibit (App Exh) 1**. The plat was approved by the Baltimore County Planning Board on 19 February 1970.and recorded amongst the Land Records of Baltimore County on 24 February 1970 in OTG 34, Folio 10. The lot consists of 5.137 acres. The Appellant Joseph Stepcich purchased lot 1 in or about 1970, built his home on or about 1972 and has resided therein continuously to this date. The lot was purchased subject to a Declaration recorded by the owner and developer of Section III, executed on 2 September 1970 and recorded at Liber 5191, Page 243 of the Land Records, which provides in pertinent part, in paragraph 9, page 3, that "Nothing in these restrictions shall be construed to prohibit future subdivision of any parcel into R-40

residential lots. This means a lot containing at least 40,000 square feet and at least 150 feet wide at the building line." See **App Exh 2**.

Section III consisted of 19.035 +/- acres at the time of its approval in 1970 and was zoned RSC. The RSC zone permitted a *minimum lot size* of 1 acre. Section III had sufficient density under the RSC regulations for 19 lots; however, 4 lots and 2 parcels were requested and approved. Subsequently, the property was rezoned and is currently zoned RC 4.

The Appellants in early 2002 asked the Zoning Office to verify that lot 1 could be subdivided. In its response, dated 8 February 2002, the Zoning Office advised that the subdivision regulations and zoning governing a proposed subdivision were that which were in place at the time of the original approval, in 1970. The letter suggested that the Appellant file with the Development Review Committee (hereinafter referred to as "DRC") to determine whether the subdivision was vested. See **App Exh 3**. The Appellants then filed with the DRC for approval to subdivide. On or about 22 March 2002, the Director of the Office of Planning responded to the DRC that the Office of Planning recommended against the "resubdivision" of 3 Stonehurst Road. The Director concluded that "Changes to the layout that result in an increase in density must comply with current regulations. Furthermore, the plat of Windemere had no density calculations indicated, therefore, §103.3 states 'where such a plan has been so approved but does not indicate densities or the situations for buildings or yards or other open spaces, these may be established or situated only in accordance with the standards as prescribed and in force at the time of recordation.' In other words, lots established on that plat are buildable in

accordance with prior standards, provided that plat is vested. Newly established lots must comply with current regulations." **App Exh 4.**

On 23 May 2002, the Development Review Committee by letter to the Appellants issued its final decision as follows:

"The DRC has determined that your project was originally approved by the Joint Subdivision Planning Committee (JSPC). You may process a plan with changes to the last approved JSPC in compliance with JSPC regulations. To submit a JSPC plan for consideration, please contact this office for a transmittal form. It is also necessary to submit a plan to the Office of Planning for further review."

See **App. Exh 5**.

No appeal ensued from this decision.

Based on the information provided and the decision rendered by the DRC, the Appellants proceeded to have prepared and then submitted to the Department of Environmental Protection and Resource Management (DEPRM) a "Perc Plan of Stepcich Property". See **App Exh 6**. On June 3, 2003, DEPRM approved the installation of a private sewage disposal system for the proposed lot 2. See **App Exh** 7. By this time, the 2004 Comprehensive Zoning Map Process had commenced. This is the quadrennial rezoning process during which recommendations would be made to the County Council for changes to zoning designations on thousands of acres, which would culminate in September of 2004 by vote of the County Council on these recommendations for incorporation into the official zoning maps of the County.

Indeed, the Appellants' property was placed into the Comprehensive Zoning Map Process (CZMP) at the request of the Planning Board. The Appellants' property was included for consideration in Issue 3-105, for possible down zoning from its current RC 4 to RC 7. On or about 21 January 2004, the Appellants received notice from the Office of Planning in which it was explained to them that their property was at issue for a zoning change, its potential impact, and the reasons for the request. Included in the notice was the following paragraph:

> If approved by the County Council, the requested zoning (RC 7) would reduce the rate of residential subdivision to one lot per twenty five acres. The existing zoning (RC 4) allows residential subdivision at the rate of one lot per five acres. Existing lots in recorded subdivisions would continue to be regulated by the zoning regulations that were in effect at the time the existing lot was created.

See **App Exh 8.**

Thereafter, and based on the DRC letter of May 2002 and with the CZMP notice in hand, the Appellants filed with the Planning Board of Baltimore County a request to approve an amendment to the Section III, Windemere plat. See **App Exh 9**. In this letter to the Chairman of the Planning Board, the Appellants explained why the Planning Board had jurisdiction and requested approval of the proposed division of lot 1 into 2 lots.

On or about 28 May 2004, the Director of the Department of Permits and Development Management sent a letter to the Chairman of the Planning Board in which he confirmed the position of the Department of Permits and Development Management that the instant subdivision was vested and governed by the laws and regulations in effect at the time of the original plan approval. He concluded that "This includes further

subdivision of lots that were created by the original plan, and is controlled by the zoning classification then in effect."

See **App Exh 10**.

The instant matter was heard by the Planning Board on three occasions—21 October 2004, 18 November 2004, and 6 January 2005.

Prior to the 6 January Planning Board meeting, Appellants were notified by letter to Counsel, dated 26 October 2004, from the Deputy Director of Planning, in which he denied, on behalf of the JSPC, the Appellant's request to subdivide their property. See **App Exh 11.**

An appeal from this letter ensued.

At the 6 January meeting, the Planning Board decided not to take any action until the Board of Appeals heard the appeal. See **App Exh 12.**

While the above may represent a somewhat tortuous path, the issues may be clarified and delineated in a more simplified manner, as follows.

ISSUES PRESENTED

1. Is the letter from the Deputy Director of the Office of Planning, dated 26 October 2004, an adjudicatory order subject to appeal to and review by the Board of Appeals?
2. Does the Deputy Director have the authority on behalf of the JSPC to deny the Appellants proposed division of their lot?
3. What constitutes "vesting" of a previously approved subdivision?
4. What remedies are available to the Board of Appeals?

ARGUMENT

I. THE LETTER FROM THE DEPUTY DIRECTOR WAS AN ADJUDICATORY ORDER, SUBJECT TO REVIEW.

§602 (d) of the Baltimore County Charter grants to the Board of Appeals the broad jurisdictional authority set out by Article 25A, §5 (U), Annotated Code of Maryland, otherwise known as the Express Powers Act. Both provide the right of appeal to the Board from an adjudicatory order.

While the People's Counsel raises in a somewhat cursory manner a jurisdictional issue, he admits that the appeal had to be taken in order to protect Appellants' interests. His argument, as does the Appellants', goes to the result of the Board's decision on this issue. In order to arrive at that point, it is important that the Board determines that the letter was appealable.

In United Parcel Service, Inc. v. People's Council for Baltimore County, 336 Md 569 (1994), the issue revolved around a zoning dispute concerning whether a particular use was a warehouse, permitted as of right in the involved zone, or a trucking facility, which required a special exception. In this case, UPS had applied for and received a building permit. Subsequent to the commencement of construction, some two months after the issuance of the permit, a concerned citizen wrote to the Zoning Commissioner that UPS was required to have a special exception and none had been granted. The Zoning Commissioner responded that a special exception was not required and that a building permit had already been issued. No appeal from the issuance of the building permit was ever taken. An appeal to the Board from the Zoning Commissioner's letter

was taken. In UPS, the Court of Appeals considered the issue whether the Zoning Commissioner's letter constituted an "appealable event" within the meaning of Article 25A, §5(U), which had been incorporated by reference into §602 (d) of the Charter. The Court ruled that the subject letter was not an "appealable event". ***The appealable event in UPS was the issuance of the permit, not the response from the zoning commissioner, an administrative official, who had reaffirmed that the permit had been properly issued.*** (Emphasis added). The Court said:

> The "decision" which is the subject of [the] Appeals…is not a final administrative decision, order or determination. It is at most a reiteration or reaffirmation of the final administrative decision or order of the department granting the original Use and Occupancy Certificate…

UPS involved the issuance of a permit. The appealable event, the "approval" or "other form of permission" and the "decision" of the Zoning Commissioner occurred when the building permit was approved and issued., which had occurred some two months before the flurry of letters. The issue before the Court was not a dispute about an adjudicatory order, rather an attempt by the Protestants to elevate a responsive letter to the level of an adjudicatory order, which the Court of Appeals rejected. The appealability of an action pursuant to Article 25A, §5(U), the Express Powers Act, and §602 (d), of the Baltimore County Charter, is determined on the occurrence of an "operative event".

The "operative event" in the instant matter is the letter from the Deputy Director. This letter is an "appealable event" within the parameters established by the Court in UPS. It is an adjudicatory order issued by an administrative official that effectively denied Mr. Stepcich's right to, at the very least, proceed before the Planning Board or, at

the very worst, subdivide his property. There cannot be a more obvious "appealable events."

In Meadows of Greenspring Home Owners Assoc v. Foxleigh Enterprises, Inc., 133 Md App. 510, 758 A2d 611 (2000), the issue before the Court of Special Appeals involved an appeal from a letter issued by the Director of the Department of Permits and Development Management. In his letter, the Director affirmed a recommendation of the DRC to require the subject project to proceed as a material change to a previously approved plan through the old CRG process. The immediate issue was what regulations were applicable. The Director concluded that it was the regulations in effect at the time of the plan's original approval. The appellants, however, wanted the project to be reviewed under the current development regulations, which had succeeded the CRG review and approval process. The question similarly as in UPS was whether the letter from the Director constituted an "appealable event". In this case, the Court concluded that the Director's "...letter was not an 'operative event' that determined that Foxleigh's [Meadows] proposed plan will be granted a license or permit, and did not determine the conditions or scope of that license or permit. Rather, the letter merely informed Foxleigh that the proposed plan must be reviewed by the CRG." The appealable event would be, the Court concluded, the action ultimately taken by the CRG, see Id, 516. There was, the Court concluded, not yet a final action that could be appealed. See also Art Wood v. Wiseburg, 88 Md App 723, 596 A2d 712 (1991).

In the instant matter, the letter from Mr. Long was not advice, not informational, other than to admit that the subdivision regulations in effect in 1970 were the operative

regulations. It was a final action that summarily ended the Appellants' quest to subdivide.

"[The] question [of] whether a judgment, order, or decree is final and appealable is not determined by the name or description which the court below gives it, but is to be decided by the appellate court on a consideration of the essence of what is done thereby." Art Wood, at 726. Whether the letters of the Director and of the Chairman were appealable is to be decided by this Court after consideration of their impact on the rights of the Appellants.

In both UPS and Meadows, the letters were informational; in the instant matter the letter was conclusionary and final.

Further, the Court of Special Appeals again took up the issue of when does a letter from the Director become appealable, in Beth Tfiloh Congregation of Baltimore City, Inc. v. Glyndon Community Association, Inc., 152 Md App 97, 831 A2 93 (2003). Once again, the Director of the Department of Permits and Development Management was the cause and the source of controversy. In Meadows, the controversy surrounded the issue of when a change to a previously approved plan was a refinement or a material change and which development process it would be subject to. The significance was the development review and approval process used. In Beth Tfiloh, the issue was whether the proposed change was an "exemption" to the requirements of development plan approval, the current process. The Court was not asked to determine which process the project should be subject to. In this case, the Director of accepted the DRC's recommendation to deny the applicant's request to be exempted from the current

development process because it was a "lot of record", which is one of the enumerated exemptions in the Baltimore County Code. Beth Tfiloh appealed. The Director's letter was ruled by the Board of Appeals to be an "appealable event" and reversed the Director, finding that Beth Tfiloh's proposal was exempted from the review and approval process. An appeal was then taken to the Circuit Court, which reversed the Board, basing its decision on Meadows. An appeal followed to the Court of Special Appeals, which then reversed the Circuit Court. The Court concluded the letter was appealable.

UPS involved the issuance of a permit; Meadows involved a material change to a previously approved development plan; Beth Tfiloh involved an exemption to the development regulations. The appellee, a community association, in Beth Tfiloh argued that the Director's letter was not an "operative event" and not appealable. The argument it employed was the same as that adopted in Meadows and, thus, it argued an appeal from the Director's letter should not be permitted. The Court after summarizing the Appellee's position stated:

> ...because the letter to appellant [Beth Tfiloh] advising that it was not entitled to an exemption "does not make any decision and is not an order." We disagree. While the letter from PDM, arguably, was not an "order", it clearly advised that a final 'decision' had been made. Foxleigh [Meadows] is inapposite because it did not concern the denial of an exemption. This is of crucial importance because article 25A, §5 (U), allows the Board to hear appeals from the "denial...of any exemption..." In contrast to the specific language in §5 (U) allowing an appeal to the Board from the denial of an exemption, nothing in §5 (U) allowed an appeal from the type of ruling sought to be reviewed in Foxleigh.

Beth Tfiloh, at 102.

In the instant matter, when the Deputy Director denied the Appellants the right to subdivide, the "scope" of the denial was obvious and definitive. See Beth Tfiloh, at 98. Its finality is indisputable.

The letter did not merely inform the Appellants and their counsel that the proposed subdivision of their lot into two lots was being denied but it justified the denial by referring to the law in effect at the time of the original plat approval to support the denial! The denial was disingenuous to say the least. The letter did not "merely" inform of a denial, it was the denial. The letter was not an explanation of previous actions taken, but was an adjudicatory order declaring finality to the Appellants' request. Surely, this letter is exactly what the Court in Beth Tfiloh described as an "appealable event", granting to the Board the jurisdiction to hear Appellants' appeal from the denial of the Deputy Director on behalf of the JSPC to permit the division of Appellants lot into 2 lots.

II. THE DEPUTY DIRECTOR DID NOT HAVE THE AUTHORITY ON BEHALF OF THE JSPC TO DENY THE APPELLANTS PROPOSED DIVISION OF THEIR LOT

In the Code of Local Public Laws of Baltimore County, 1955 ed., approved by the County Commissioners and adopted by the State Legislature, the Planning Board and the Department of Public Works were given joint authority to approve all plats. See Title 25, §381, **App Exh 13**. See also Title 25, §387, wherein the Planning Board could approve a plat but could only disapprove a plat after a public hearing. **App Exh 14.** Plats were required to meet "...minimum widths and areas of lots. Such minimums shall coincide with such provisions in the Zoning Regulations for Baltimore County." See Title 25,

§382, **App Exh 13.** Title 25, §383, provided that subdivisions would be exempt from the subdivision regulations if the

> …number of new lots is less than a designated number, or plats that do not involve new streets, or such other plats of subdivisions as such ordinance shall designate. In all cases involving such exempted subdivisions, the Planning Board Chairman, or its Director, shall certify the exemption on the plat, deed or instrument to be filed with the Clerk…for recording.

App Exh 15.

As shown below, this provision was still the law in 1970, when Section III was approved. The County Commissioners in addition to the authority given to the Planning Board and the Department of Public Works established the Joint Subdivision Planning Committee (JSPC), see Title 25, §384, **App Exh 15.** The JSPC was to process and approve plats, and consisted of representatives of the Office of Planning and of the Department of Public Works, and its approvals were to be in addition to those required by the Planning Board and Public Works.

In 1958, by then a Charter County, the County Council adopted the 1958 County Code, that included changes to the then existing subdivision regulations, see Title 23, §§23-17, et. seq. BCC, 1958 ed., as amended. §23-19 continued the exemptions provided in Title 25, §383, of the 1955 Code, verbatim. Further, §23-20 continued the JSPC. See **App Exh 16.**

The County Council, however, by Bill No. 80-1960, abolished the JSPC when it adopted changes to the subdivision regulations it had adopted in the 1958 Code. No longer was the Department of Public Works required to approve a plat, although it had the authority to require a public works agreement. The Planning Board had exclusive

authority to approve a plat. Even with all the changes, the Council chose to maintain the exemption provision that had been first adopted in the 1955 Code. Relevant sections of Bill 80-1960 attached hereto as **App Exh 17.**

The legislative history of the subdivision regulations is clear and absolutely unambiguous; the legislative body of this County determined that all developments receiving tentative approval of a preliminary plan by the planning board, much less final approval, "shall be governed by the subdivision regulations in effect at the time of the preliminary plan approval…" See below for a thorough review of this history.

This protection first adopted in 1963, broadened in 1977, 1979, and 1982, as set out below, was re-adopted in 1993, and is still the law of this County. Clearly, an amendment to Section III, which was originally approved in 1969 and 1970, must be reviewed for approval pursuant to the regulations then in effect. The law as adopted and contained in the 1968 Baltimore County Code governs.

§22-33, 1968 BCC, as amended, continued the exemption language, as follows:

> Any such subdivision regulations may exempt from the requirements of governmental approval, subdivisions wherein the number of new lots is less than a designated number, or plats that do not involve new streets, or such other plats or subdivisions as such ordinance shall designate. In all cases involving such exempted subdivisions, the planning board chairman, or its director, shall certify the exemption on the plat, deed or instrument to be filed with the clerk of the circuit court for recording.

App Exh 18. There are no references to the JSPC.

Indeed, there is no disagreement by the Office of Planning to this proposition, but the Director's conclusion in his memo to the DRC contradicts what he admits the law provided. The Director had no independent authority to approve or disapprove a plan

other than to certify an amendment as an exemption to the development review and approval process. The Director certainly did not have any authority to speak for the JSPC. Neither the Office of Planning nor the Director, or Deputy Director, had such independent authority under the laws in effect in 1970, as found in the 1968 BCC, as amended. The Director in the instant matter could not make a decision on behalf of the JSPC to deny the amendment because the JSPC was abolished in 1960.

At most, the Director could review a proposed amendment to a previously approved plan or plat to determine whether it satisfied the exemptions contained in §22-33, of the 1968 Code. Equal and separate authority resided with the Chairman of the Planning Board. Their only authority was to determine whether the amendment complied with the specific criteria set out in §22-33 of the 1968 BCC. If there was compliance, the Director or the Chairman was required to certify the exemption on the amended plat to be recorded. Alternatively, if the criteria were not met, then only the Planning Board could approve or disapprove the amendment pursuant to the regulations in effect at the time of the original approval.

Here, the Appellants' amendment complies with the criteria established in §22-33 of the 1968 BCC. The criteria are set out in the disjunctive. The amendment is exempt if the number of new lots is less than a designated number, or plats that do not involve new streets, or such other plats or subdivisions as designated in the law. First, the proposed amendment does not involve new streets. Thus, §22-33 is satisfied. Second, only 1 new lot is proposed, and, while there were no designated number of lots on the approved plat, the zoning then in place permitted 19 lots and only 4 lots and 2 parcels were approved.

III. THE APPROVED PLAT OF SECTION III, WINDEMERE IS VESTED AND IS GOVERNED BY THE SUBDIVISION AND ZONING REGULATIONS IN EFFECT AT THE TIME OF ITS ORIGINAL APPROVAL

The Board of Appeals has consistently held that decisions rendered by the DRC, as they are set out in its infamous letters, are appealable. The 23 May 2002 letter speaks for itself. **App Exh 5**. The letter confirmed that the Section III plat was vested and subject to the laws in place at the time of original approval, subject to the original zoning. No appeal was taken. Certainly, the Office of Planning knew of the letter, knew of the decision, and elected not to appeal. No appeal was taken. The decision as set out in the letter was final. The issue of what zoning governs was decided and the Office of Planning, the People's Counsel and the County Attorneys Office should now be estopped from raising this as an issue. The ***only issue*** should be whether the proposed subdivision of the Appellants' property should be approved as an exemption under pursuant to §22-33 of the 1968 Code or whether the Planning Board must have a hearing to determine whether the proposal complies with the subdivision regulations in effect at the time of the original approval.

When Section III was originally approved, the zoning density was permitted pursuant to the RSC classification at one lot per acre. The Appellants' property is zoned RC 4 today. The RC 4 regulations do not permit a subdivision of a lot less than 6 acres, and, as the existing lot is 5 +/- acres, the RC 4 would not permit further division. The RSC zone would. If Section III is "vested" pursuant to the zoning in place at the time of the original approval, then RSC controls. Notwithstanding that the zoning classification

has changed, the Appellants are entitled to divide their lot and have the Section III record plat amended accordingly.

The Appellants' purpose in going to the Director and to the Planning Board was to have either the Director or the Chairman of the Planning Board certify their proposed subdivision to the originally approved Section III to the Clerk of the Circuit Court, as provided in §22-32 of the 1968 BCC. The issue now revolves around the question of "vesting"

The seminal case on vesting in Maryland is Rockville Fuel v. Gaithersburg, 291 A2d 672 (1972), in which the Court of Appeals set out the test for the common law doctrine of vested rights. Rockville and its progeny define the application of the common law doctrine of vesting as having its "constitutional foundation resting upon the legal theory that when a property owner obtains a lawful building permit, commences to build in good faith, and completes substantial construction on property", the property owner's rights to complete and use his property cannot be affected by subsequent changes in laws. See Powell v. Calvert County, 795 A2 96 (2002). The Court of Appeals has been consistent in that all the component parts of the common law doctrine of vested rights must be read conjunctively.

The argument the Director of the Office of Planning presented to the Planning Board centered on the notion "use it or lose it". He argued if a subdivision consists of 6 lots, and building permits are issued and substantial construction occurs on 4 of the lots, and subsequently a more restrictive zoning classification is applied, then the owner or owners of the remaining 2 lots lose any rights granted under the approved subdivision

plat and the less restrictive zoning in effect at the time of the original approval. Each lot must be vested, pursuant to the common law doctrine of vesting, not just the subdivision, section or parcel thereof, of which the lot is a constituent part.

There is, however, no need for the Appellants to fit their facts into the "vesting" box heretofore adopted by the Appellate Courts of this State or argue that these facts fit within the four walls as constructed by Rockville and in the subsequent line of cases defining this common law doctrine. In Baltimore County, the County Council has elected to substitute a statutory scheme in lieu of this common law doctrine of vested rights. And there is nothing in Article 66B or in Article 25A, of the Annotated Code of Maryland, which grant local subdivisions their rights to regulate local land use or prevents a local Charter government from statutorily changing the criteria for vesting. Baltimore County has done just that. The issue, therefore, is not whether the common law doctrine of vesting applies to the instant matter, but whether Baltimore County's statutory scheme permits what the Appellants propose under the 1970 subdivision regulations and 1970 zoning classification.

The question to the Board in regard to this issue is whether or not the proposed division of the Appellants' single lot is subject to the current RC 4 zone requirements, as the Director determined, or the RSC zone requirements as they existed in 1970.

The Appellants are not aware of any case law in which the common law doctrine of vesting has been applied that involve Baltimore County. None have ruled that a local subdivision does not have the right to adopt language establishing its own rules on vesting. As past County Attorneys have opined, in Baltimore County there is a

legislative history that clearly confirms that the doctrine of common law vesting is not applicable. They point to the clarity of the intent of County Councils past and present to change the rule.

See County Attorney's Opinion, No. 1-84, 17 May 1984, **App Exh 19.**

In his opinion after an extensive discussion of the law of vesting, the then County Attorney compares and contrasts the common law doctrine as found in Rockville with the then relevant County laws, which are the same provisions currently in effect and applicable. He answers two questions: (a) what constitutes vesting of development in Baltimore County and, (b) what impact does a change in the zoning classification have on a vested subdivision? In answering these questions, he did a thorough review of the legislative history of County laws and regulations. Significantly, the opinion's conclusions were later adopted by the Circuit Court of Baltimore County in **The Matter of the Application of Westchester, Inc. for Special Hearing Re: Building Permit and Application for Permits, Case No. 10/218/85-CG-1483, 10/8/85,** in which the issues addressed in the opinion were litigated before the Circuit Court, the same issues presented herein.

The County Attorney's Opinion was sought by the Director of Planning and the Zoning Commissioner to determine whether to issue building permits under a record plat that various Protestants argued was no longer valid. The Zoning Commissioner adopted the conclusions of the County Attorney and an appeal was taken to the Board of Appeals by those opposed to the issuance of the permits. The Board of Appeals reversed the Zoning Commissioner. An appeal to the Circuit Court then ensued. The Circuit Court

concluded that the law of vesting in Baltimore County was statutorily changed, and the subsequent change in zoning classification had no impact on a previously approved subdivision. The concept of "use it or lose it" was in effect firmly rejected by the Circuit Court. The Circuit Court concluded that the development at issue was vested under the laws in effect at the time of the plat's original approval by virtue of public works agreements having been executed and substantial construction having occurred pursuant to those PWA's. Further, the Court concluded that a subsequent change in zoning classification did not impact the validity of the originally approved plat. Therefore, the developer was entitled to building permits for lots not yet developed under the density the original zoning allowed.

See attached App Exh 20.

Not satisfied by the Circuit Court's decision, the Protestants appealed to the Court of Special Appeals. In an unreported decision, the CSA affirmed the Circuit Court. The Court also referred to the County Attorney's Opinion in affirming the Circuit Court's conclusions. **William J. Bauman, et al v. Westchester, Inc. et al, unreported, Court of Special Appeals, per curium, No. 1287, September Term, 1985, 8/12/86. See attached App. Exh 21.**

In the County Attorney Opinion, the Circuit Court decision, and the affirmation by the Court of Special Appeals in the **Bauman** case are directly on point to the matter now before this Board. Record plats are protected from subsequent changes in the zoning classification of the property if they have been vested under the statutory scheme set out under the laws and regulations of Baltimore County. The common law doctrine of

vesting is not applicable but has been superseded by legislative act of the County Council.

Interestingly, just two months prior to the Circuit Court's decision in Westchester, the Circuit Court of Baltimore County issued an opinion in another case involving similar issues. In **Lewis, et al v. Chesapeake Homes, Inc., et al, Case No. 84-CSP-969, 8/2/85**, the Court analyzed the doctrine of common law vesting as defined in Rockville and subsequent cases and found that the development at issue had vested. It first concluded that the criteria enunciated in **Rockville** were satisfied. However, the Circuit Court went on to analyze the vesting statutes adopted by the County Council. The Circuit Court reviewed **Miller v. Forty West Builders, Inc.,** 489 A2d 76 (1985), in which the Court of Special Appeals recognized the difference between planning and zoning but concluded that they were not unrelated concepts. The Circuit Court analyzed the relevant County zoning and development regulations, and concluded that §22-68, of the 1978 BCC, vested zoning rights as well as developmental rights if the development was vested as prescribed in §22-68. The analysis in **Forty West,** the Circuit Court concluded, required all relevant statutes to be read together in order to achieve a clear meaning. The Circuit Court looked at the development laws and the zoning regulations and concluded that a previously approved subdivision was protected under the laws in effect at the time of the original approval, including protection from change in zoning classification. The Circuit Court referred to the 1984 County Attorney's Opinion in support of its conclusions.

See **App Exh 22.**

In 1963, by Bill No. 68-1963, the Council adopted legislation establishing comprehensive standards governing local open space requirements as a condition precedent for the approval of residential subdivision. This is important because the legislation provided these requirements would not be applicable to any final plat of a subdivision recorded prior to the effective date of the subdivision, and was not applicable to any preliminary subdivision plan that had tentative approval prior to the effective date of the subdivision. See §22-60, BCC, 1968 ed., as amended. **App Exh 23.** The Council legislated a "savings" provision (a legislative enactment protecting in some way previously approved plans and plats from future changes in law and regulation). These provisions vested these previously approved subdivisions. This language was the precursor to the "savings" or "vesting" language the Council later adopted in 1982, Bill No. 56-82.

In 1982, the County Council repealed most of the subdivision regulations then contained in the Baltimore County Code, 1978 ed., and enacted an entirely new system for the review and approval of subdivision plans and plats. See Bill No. 56-82, codified in BCC, 1978 ed, as amended. No longer did the Planning Board approve or disapprove plans and plats. A County Review Group was created in its stead. As noted above, the Council adopted a "savings provision", language that specifically exempted certain development from the applications of the new subdivision regulations, as follows:

> These regulations shall apply to all development except such development which, prior to the effective date of this Article (June 11, 1982), has received tentative approval of the preliminary plan by the Planning Board, or for which development a valid, unexpired building permits exists, or for which development a current executed Public Works Agreement exists, all of which development shall be governed by the

> subdivision regulations in effect at the time of said preliminary plan approval, building permit issuance, or Public Works Agreement execution, as the case may be.

See §22-40, 1978 BCC, as amended. **App Exh 24.**

If §22-60, 1968 BCC, as amended, could be interpreted only to exempt previously approved subdivision plats from the new open space requirements set out in Bill 68-1963, there could now be no mistake that by adopting §22-40, 1978 BCC, as amended (Bill 56-82), the County Council intended all subdivision plans and plats approved prior to June 11, 1982 to be exempted from all of the subdivision regulations then adopted. The Council confirmed its commitment to protect previously approved subdivisions from prospective changes in the law. But, even the vesting provisions adopted in Bill 56-82 were not original. The County Council had adopted legislation in 1977 and 1979 that reflected it's recognition that protection of previously approved subdivisions from future change was warranted. Bill 12-77, referred to then as the "Interim Development Control Act", granted vested rights to previously approved subdivisions. Bill 61-79 continued and reaffirmed the provisions contained in Bill 12-77. A subdivision plat would essentially lapse and be considered invalid if the property remained "undeveloped" for a period of five years. Under the provisions of these bills, however, a test was created to determine whether or not a plat was "undeveloped", e.g. a building permit was not issued or substantial construction on required public improvements had not occurred. (emp added) See Bill 12-77, pp 40-42, and Bill 61-79, pp 160-161, attached hereto as **App Exh 25 (a) and (b).** If any of the conditions occurred, the subdivision was vested.

The County Council decided by legislative mandate to change the common law definition of vesting and decided "...that a Developer should have a vested right to proceed with his development if he has secured building permits or if there has been substantial construction on required public improvements." See **App Exh 19,** referred to above, the Opinion of the then County Attorney in which he traced the legislative history of the "savings" clauses included in Bill No. 56-82.

In 1993, the County Council yet again revisited the subdivision regulations and created a new system of review and approval of plans and plats. Again, however, just as it did in 1982, the Council continued its commitment to previously approved subdivisions by keeping the exemption, or "savings" language of §22-40 in §26-169. BCC, 1991 ed, amended, and now §32-4-104 (b), BCC.

Under current law, the analyses cited above still control and are as valid today as they were twenty and more years ago in Baltimore County. §32-4-273 (b), BCC, 2003, ed., provides that

> (1)...a subdivision plat shall lapse and become invalid for either the entire subdivision or any section or parcel of the subdivision, according to the applicable time limits specified under paragraph (2) of this subsection if the subdivision, section, or parcel has not been developed, as provided under subsection (d) of this section.

Paragraph (d) states that:

> A subdivision, section or parcel of the subdivision is considered developed and vested if any of the following has occurred with respect to the subdivision, section, or parcel:
>
> (1) Building permits have been issued; or
> (2) Substantial construction on required public improvements or private improvements has occurred on the subdivision, section or parcel in

accordance with the applicable regulations and requirements of the department of public works.

These statutory provisions, in the disjunctive, require either a building permit or substantial construction to vest a subdivision, section or parcel.

The statutory provisions contained in the 2003 edition of the BCC are exactly the same, except as to style, as they appeared in the 1978 and 1988 editions of the Code, as amended.

Notwithstanding any other provisions of the BCZR or the County Code to the contrary, these provisions when read in conjunction with §32-4-104, BCC, 2003 ed, as amended, support the Appellants' contention that their proposed amendment to Section III must be governed by the laws and regulations in effect when Section III was originally approved.

Rather than being in the conjunctive, the law since 1977 sets out the criteria to vest in the disjunctive.

§ 22-68, of the 1978 BCC, as amended by Bill No. 56-82, to which the County Attorney and the Courts above refer, became §26-216, in the 1988 Code, as amended. §26-216 then became §32-4-273 in the recent Code recodification, of 2003. The significance of the law is the same: Baltimore County unambiguously adopted by legislative act of the County Council its own definition of what constitutes "vesting".

In addition, there are two provisions in the BCZR, §§ 103.1 and 103.3, that must also be read in conjunction with the vesting provisions cited above.

§103.1 is as follows:

These regulations shall apply as of the date of their adoption but the provisions pertaining to use, height, area and density of population shall not apply to any development, subdivision or parcel of land, the preliminary plan for which was originally submitted to the (then) Baltimore County Commission (now Planning Board) and approved or tentatively approved (including any approval subject to any condition or conditions) under the then existing official procedure in Baltimore County, prior to the adoption of these Regulations. The zoning regulations applicable to any such development, subdivision or parcel of land as aforesaid shall be the zoning regulations in effect at the time such plan, as aforesaid, was originally submitted to the Baltimore County Planning Commission...

§103.3 is as follows:

In an RC 2, RC 3, RC 4, or RC 5 Zone, contrary provisions of Subsection 103.1 and any other contrary provisions of or pursuant to these regulations notwithstanding, in the case of property covered by a recorded subdivision plat which was approved by the Baltimore County Planning or Board before the effective date of this subsection, and which remains in effect, building may be constructed, residential densities and lot lines may be established, and yards and other open areas may be laid out in accordance with that plan, subject to any conditions of the approval.

Where such a plan has been so approved but does not indicate densities or the situations of buildings or yards or other open spaces, these may be established or situated only in accordance with the standards as prescribed and in force at the time of the lot recordation.

In reaching their conclusions, the Circuit Courts in Westchester and Chesapeake Homes cited §103.1 of the Baltimore County Zoning Regulations (BCZR) in support. This section specifically provides for the protection from subsequent changes to the zoning classification of property where a plat was previously approved. The Office of Planning recognized the applicability of this section, as well as §103.3, when it sent out the CZMP notices, referred to above. See **App Exh 8**. In §103.3, to which the Director

referred in his recommendation to the DRC, **App Exh 4**, the County Council further evidenced its intent to protect previously approved plans. While §103.3 specifically protects such plans in the RC zones, there is nothing in its content that would contradict or be in conflict with §103.1. Both sections provide the proof of the County Council's intention to protect previously approved development from subsequent change.

In a letters of advice from the Office of Law to James Dyer, of the Zoning Office, and to Norman Gerber, Director of Planning, dated 24 September 1979 and 10 February 1981, respectively, the County Attorney then opined as follows:

> 1. Apart from statute, a developer has no vested rights relating to a change of zoning affecting land in an approved subdivision;
> 2. Pursuant to statutory authority, the zoning regulations insofar as they relate to use, height, area, and density applicable or the development of any plan of approved or tentatively approved plan of subdivision, are the regulations in effect at the time the plan was originally submitted to either the Planning Commission or the Planning Board;
> 3. As a result of the intervention of statutory law, an approved or tentatively approved plan of subdivision, relative to zoning restrictions concerning use, height, area, and density, as of the time of its submission to the Planning Commission or Planning Board, is insulated from further zoning changes.

See County Attorney Letters of Advice, dated 9/24/1979 and 2/10/81, **App Exh 26 and App Exh 27.**

In these letters of advice, the then County Attorneys noted that with the adoption of §103.3 of the BCZR, the County Council corroborated its intention to protect previously approved subdivisions, and, certainly, later with the adoption of §22-68 of the 1978 BCC, the County Council underscored its intention to protect previously approved subdivisions. Both letters of advice were referred to in the 1984 County Attorney Opinion.

Finally, in Feinberg v. Southland Corp, 301 A2d 6 (1973), the Court of Appeals looked to §103.1 of the BCZR. Southland owned land zoned ML. Prior to 1970, the zoning regulations permitted those non-residential uses as permitted in the BR zone in the ML zone. Then, in 1970, with the adoption of Bill 100-70, all BR uses were prohibited in the ML except as otherwise protected by §103.1, which provided in pertinent part "...use and development of land in ML zones shall not be affected by the foregoing provision, but development is permitted in accordance with any preliminary development plan approved by the Office of Planning and Zoning before the effective date...". This paragraph was new, added to §103.1 by Bill 100. Thus, BR uses were prohibited by the new zoning laws unless Southland was protected by §103.1. Southland had in fact acquired approval of a plan prior to the effective date of the paragraph in §103.1. The Court of Appeals looked to the statutory language and the protection §103.1 provided. The Court concluded that the change in zoning was not applicable here because of the "savings" clause. The Court looked to the statutory application, the legislative intent, the "savings" clause, and ruled that the change in zoning regulations was not applicable. Southland was protected.

Section III is a vested subdivision pursuant to Baltimore County law; permits were issued and houses built. The question at issue is what impact a subsequent change in zoning has on a previously approved, prior to 1982, plat?

The answer is none!

IV. THE REMEDIES AVAILABLE TO THE BOARD OF APPEALS.

The Appellants request the Board to:

1. Find that the Director/Deputy Director did not have the authority to deny the Appellants' amendment to the Section III, Windemere plat; and
2. Order the Director or the Chairman of the Planning Board to certify to the Clerk of the Circuit Court the amendment to the subject plat as an exemption pursuant to §22-33, 1968 BCC, as amended; or
3. Remand to the Planning Board for it to review and determine whether §22-33 is applicable or, if not, hold a hearing to approve or deny the proposed amendment pursuant to the laws in effect when Section III, Windemere was originally approved.

This appeal ensued from the Deputy Director's letter of 26 October 2004, in which he on behalf of the JSPC denied the Appellants' request to subdivide their lot. People's Counsel seems to agree the Director/Deputy Director did not have this authority. People's Counsel, however, disagrees with Appellants as to the remedy. He suggests remand to the Zoning Commissioner for a hearing to be held on the zoning issue. However, People's Counsel misses the mark and the point. Appellants were directed by the appropriate County agencies to the Planning Office, which in turn determined that it was to the Planning Board the Appellants must go. At no time did the Zoning Office or the Planning Office ever suggest, direct or recommend that the Appellants should proceed before the Zoning Commissioner.

In fact, the Zoning Office had determined that the RSC zoning classification controlled, the zoning in place when the plat was originally approved. Why would the Appellants go to the Zoning Commissioner? For what purpose? The DRC accepted and decided that the plat was vested under the zoning in place in 1970. No appeal was taken

from this finding. The decision became final and binding, so, again, why would the Appellants question what they already had?

Notwithstanding the finality of the DRC decision, there is no requirement in any of the "vesting" or "savings" provisions in the BCC, as amended over these past many years, that require what the People's Counsel suggests. The Zoning Commissioner simply does not have jurisdiction in this particular matter, over this particular set of facts. The law set out the process, and the Appellants followed the law.

If the Board considers a remand, then it must be to the Planning Board. There is nothing is pending before the Zoning Commissioner; but this matter is pending before the Planning Board, which refuses to consider the Appellants' request until this Board rules on this appeal.

The appeal from the letter is obviously de novo. While the fact finding held by the Board on such an appeal is conducted as if there was no hearing or fact finding below, the Board is not bound to legislative bromides or remedies as to its decision-making. It has the authority to affirm, reverse, or remand. If it remands, the matter should be remanded to the appropriate agency for further review and decision-making. No case law can be identified on point, and it, therefore, can be presumed that the answer is so obvious that no case law has been needed. And, certainly, the Board has remanded to various agencies in the past from other than development plan hearings. However, if a remand to an agency is ordered, then there must be a nexus between the issue and the agency to which the remand is ordered. The nexus here is the Planning Board because it

is before the Planning Board that this matter is now pending and which is awaiting the decision of this Board.

The essential point of this appeal, it must be emphasized, is to present to the Board questions of law for its interpretation, not questions of fact, which have not been questioned. Based on the law, the Appellants seek the Board's concurrence that the Director was in error and he, or the Chairman, should be directed to certify the amendment, as stated above. Resolution does not require a remand.

If this Board should determine that a remand is warranted, for whatever reason, then it can only be to the Planning Board. It is the Planning Board that has the ultimate and final authority to review and approve subdivision plans and plats under the laws in effect when Section III was originally approved, which laws required the Board to determine whether the proposed plan or plat complied with the requisite zoning classification on which the subdivision was proposed. This is a case where planning and zoning marry, if not become engaged. See Forty West, supra.

CONCLUSION

For the above stated reasons, the Appellants respectfully request that the Board of Appeals of Baltimore County reverse the Director/Deputy Director of the Office of Planning, conclude that the Director/Deputy Director do not have authority to deny the Appellants' request to subdivide their lot, and order that the Director, or the Chairman of the Planning Board, certify to the clerk of the circuit court for recordation the proposed amendment to Section III, Windemere record plat. Or, in the alternative, the Board reverse the Director/Deputy Director and remand the request to subdivide to the Planning

Board for further review subject to the subdivision laws and zoning classification in effect at the time of the original approval.

Respectfully submitted,

Arnold Jablon
Venable, LLP
210 Allegheny Ave.
Towson, Maryland 21285-5517
(410) 494-6298

Certification of Service

IT IS HEREBY CERTIFIED that a copy of the foregoing Appellants' Post-Hearing Memorandum was hand-delivered on this 13th day of June 2005 to John E. Beverungen, Deputy County Attorney, Old Court House, 400 Washington Ave., Towson, Maryland 21204, and to Peter M. Zimmerman, Esq., People's Counsel, 400 Washington Ave., Towson, Maryland 21204.

Arnold Jablon

THIS DECLARATION, made this 2nd day of SEPTEMBER, 1970, by PHILIP O. TILGHMAN REALTY COMPANY, a body corporate of the State of Maryland.

WHEREAS, Philip O. Tilghman Realty Company is the owner of a tract of land situate in the Eleventh Election District of Baltimore County, Maryland, being shown on a Plat entitled "Section [illegible], Wi[illegible]", recorded among the land records of Baltimore County in Plat Book O.T.G. No. 34, folio 10; and

WHEREAS, said PHILIP O. TILGHMAN REALTY COMPANY has developed and improved said tract of land by causing it to be subdivided into lots as shown on said Plat, and desires to make said tract of land and all the lots into which it is subdivided subject to a uniform scheme or plan of development by subjecting same to the covenants, agreements, easements, reservations, restrictions and conditions hereinafter set forth; and

NOW, THEREFORE, THIS DECLARATION WITNESSETH: that PHILIP O. TILGHMAN REALTY COMPANY, for itself, its successors and assigns does hereby covenant and declare that all of the lots shown on said Plat shall be and are subject to a uniform scheme or plan of development and to the following covenants, agreements, easements, restrictions, reservations and conditions, viz:

1. The land and each building plot shall be used for residential purposes only, and no structure of any kind whatsoever shall be erected, altered, placed or permitted to remain thereon except detached dwellings for not more than one family, not exceeding 2½ stories in height, a private garage or carport; and on lots of 2½ acres or more in size, one barn is permitted. No provisions contained herein shall operate to exclude or prevent professional persons, such as physicians or dentists, from practicing their professions on said property on a part-time basis when they maintain a regular office elsewhere.

2. Fences shall not be more than five feet high and shall be constructed of wood, aluminum or similar material in the style of split rail, board or ranch fencing or similar thereto. No metal page fence shall be erected along the perimeter of the lot, but same may be used inside the lot. Privacy screens along porches, patios, pools and the like may be solid and more than five (5) feet high.

3. No cows, chickens or livestock of any kind whatsoever may be kept, or maintained, on any lot or in any dwelling or building erected thereon, or any owner or occupant be permitted to keep more than two cats and two dogs on any lot, except that three horses or ponies may be kept on each lot, provided such lot is no less than 2½ acres in size. (Baltimore County may regulate the right to keep horses or ponies).

4. No trailer, basement, tent, shack, garage, barn or other outbuilding erected or maintained on any building plot

EXH 2

shall at any time be used as a residence temporarily or permanently, nor shall any structure of a temporary character be used as a residence.

5. No noxious or offensive trade or activity shall be carried on upon any lot nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

6. No building or other structure shall be commenced, erected or maintained nor shall any addition to or change or alteration therein be made until plans and specifications showing the nature, kind, shape, heights, materials, floor plans, color scheme, location of the structure and grading plan of plot to be built upon shall have been submitted to and approved in writing by Philip O. Tilghman Realty Company or its successors or assigns. Philip O. Tilghman Realty Company shall have the right to refuse to approve any such plans or specifications or plans or grading plan which are not suitable or desirable in its opinion for aesthetic or other reasons, and in so passing upon such plans, specifications and grading plan it shall have the right to take into consideration the suitability of the property, building or other structure and of materials of which it is to be built, to the site upon which it is proposed to erect the same, the harmony thereof with surroundings and effect of buildings or other structure or roadway as planned on outlook from adjacent or neighboring property.

7. No signs for advertising purposes shall be erected or placed on any plot in this subdivision, except a "For Sale" and "For Rent" sign, and the developers' directional or other signs during the course of construction.

8. The minimum size for dwellings to be erected on any lot, as measured from the outside of the exterior walls and excluding garages and carports are as follows:

(a) For a one-story dwelling or rancher, 1500 square feet first floor area.

(b) For a one and one-half story dwelling, 1200 square feet of first floor area, with dormers or other windows on the front of the half story.

(c) For a split-level dwelling, a minimum of 1500 square feet for the completed area of the intermediate and ground levels.

(d) For a two story dwelling, 1000 square feet on both first and second floors. For a total of at least 2000 square feet.

(e) The maximum size for a barn is 1000 square feet on ground level and two stories in height.

On Lot No. 2 on the aforesaid plat no house or other building shall be built in front of (north of) a straight line drawn from the beginning of the N. 28 degrees 37' 53" W. 456 feet line of said lot to the beginning of the N. 28 degrees 37' 53" W. 225 feet line of said lot.

All dwellings must include a two car garage or two car carport.

9. Nothing in these restrictions shall be construed to prohibit future subdivision of any parcel into R-40 residential lots. This means a lot containing at least 40,000 square feet and at least 150 feet wide at the building line.

10. No building shall be located nearer to the front, sides, or rear lot lines than permitted by the requirements of the zoning laws for front yard, side yard and rear yead in an R-40 residential district; even should zoning regulations require less, no building shall be located nearer than fifty feet to the front lot line, nearer than twenty feet to one side lot line and nearer than thirty feet to the other side lot line, and nearer than fifty feet to the rear lot line. No barn shall be nearer than twenty-five feet to any lot line, however no barn shall be built without its location being first approved in writing by Philip O. Tilghman Realty Company.

11. Any failure by any party entitled to enforce any of the covenants, restrictions, conditions, reservations, and agreements herein contained shall in no event be deemed a waiver of the right to do so thereafter as to the same breach, or as to one occurring prior or subsequent thereto.

12. Invalidation of any of these covenants by judgment or court order shall in no wise affect any of the other provisions, which shall remain in full force and effect.

13. It is expressly understood that these restrictions and covenants apply only to the property shown on the Plat of Section III Windemere. These covenants are to run with the land and shall be binding on the parties hereto and all persons claiming by, through or under them, until the first day of January, 1990, at which time said covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument, signed by more than fifty per cent (50%) of the then owners of the lots, (not including mortgagees or ground rent owners) has been recorded agreeing to change said covenants in whole or in part. It shall be lawful for any person, or persons owning any land situate in said Section III, Windemere, to prosecute any proceedings at law or in equity against the person, or persons, violating or attempting to violate any such covenant and either to prevent him, or them, from so doing, or to recover damages or other dues for such violation.

14. Philip O. Tilghman Realty Company, its successors and assigns, retains and reserves the right and power to modify the restrictions contained in Paragraph 2 and ~~3~~ hereof as it deems necessary in its discretion, to adjust to the terrain and to other architectural styles. Any such modification shall be shown by a written instrument recorded among the land records of Baltimore County.

15. Philip O. Tilghman Realty Company further reserves unto itself, its successors and assigns, the right to grant an easement, right-of-way, license or licenses to any persons,

individuals, body corporate or municipality to install and maintain pipe lines and pole lines, with appurtenances necessary thereto, for public utilities, or quasi putlic utilities, or to grant such other licenses or permits as may be deemed necessary for the improvement of said development in, over, through, upon, and across any and all of the streets, and in, over, through, upon, and across each and every lot in the easement areas shown on the plats aforesaid; and in a ten foot wide strip of land along the rear lines of each lot, and electric lines and poles along the side lines of said lots. And further, PHILIP O. TILGHMAN REALTY COMPANY reserves unto itself, its successors and assigns, drainage easements as shown on the aforesaid plat. PHILIP O. TILGHMAN REALTY COMPANY further reserves unto itself, its successors and assigns, the right to dedicate any and all of said roads, streets, etc., to public use.

AS WITNESS the corporate seal of Philip O. Tilghman Realty Company and the signature of Philip O. Tilghman, its President, this 2nd day of SEPTEMBER, 1970.

ATTEST: PHILIP O. TILGHMAN REALTY COMPANY

Angela M. Phillips — By Philip O. Tilghman
Angela M. Phillips — Philip O. Tilghman, President

STATE OF MARYLAND
BALTIMORE City to wit:

I HEREBY CERTIFY, that on this 2nd day of September 1970, before me, the subscriber, a Notary Public of the State of Maryland, in and for Baltimore City, personally appeared Philip O. Tilghman who acknowledged himself to be the President of Philip O. Tilghman Realty Company, a corporation, and that he as such President, being authorized to do so, executed the aforesaid instrument for the purposes therein contained, by signing in my presence the name of the corporation by himself as such President.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Angela M. Phillips
Angela M. Phillips Notary Public

My Commission expires:
July 1, 1974

Rec'd. for record JUN 8 1971 at 9:16 A.M.
Per Orville T. Cosnell, Clerk
Mail to Philip O. Tilghman
Receipt No. 11805

TRANSFER TAX NOT REQUIRED
6-2-71
Walter R. Richardson
Director of Finance
Per Alma M Knellsen
Authorized Signature

OU11**** #15229 2 11-8-NH
OU11**** #5229 2 11-8-NH

Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
pdmlandacq@co.ba.md.us

February 8, 2002

Ms. Joy Stepcica
3 Stonehurst Road
Phoenix Maryland 21131
Election District 10

Dear Ms. Stepcica:

RE: Zoning Verification of 3 Stonehurst Road

The property on the site plan you have submitted is zoned R.C.-4

The current subdivision regulations for that zone requires a minimum of (6) six acres to subdivide.

However, you are part of a development know as "Windmere" Section III which was approved by the Baltimore County Planning Board on January 19, 1970. During that time property was zoned R.S.C. which permitted (1) one acre lots.

If the properties in the development were vested, infrastructure construction and houses built on lots, the number of lots per acre as permitted when the development was approved, may possibly be permitted to be used when considering current subdivision.

To verify if the County considers your property to be vested and to determine whether you may proceed with a Minor Subdivision process, or whether you must amend the record plat and follow the full large tract development process. You must contact the Development Management Office to schedule a review before the Development Review Committee, chaired by Mr. Donald Rascoe.

One of the things they will look at is whether your neighbors within the Development have further subdivided their properties since the original subdivision was created.

I trust that the information set forth in this letter is sufficiently detailed and responsive to the request. If you need further information or have any questions, please do not hesitate to contact me at 410-887-3391.

Sincerely,

John R. Alexander
Planner II
Zoning Review

JRA/rjc

EXH 3

Printed with Soybean Ink
on Recycled Paper

BALTIMORE COUNTY, MARYLAND

INTEROFFICE MEMORANDUM

TO: Development Review Committee **DATE:** March 22, 2002

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

SUBJECT: Item Number 032502M, Resubdivision of 3 Stonehurst Road

---

Recommendation: The Office of Planning recommends against the resubdivision of 3 Stonehurst Road. The RC-4 zoning regulations do not allow the resubdivision of lots less than 6 acres in size. The matter before the Development Review Committee on March 25, 2002, DRC#032502M, is a request for a minor subdivision of 3 Stonehurst Road, a 5.15 acre lot recorded in Liber O.T.G. 34 Folio 10, as Lot 1, Section III of Windemere. Windemere is a development approved in 1970 pursuant to the R40 zoning regulations, which allowed one dwelling per 40,000 sq. ft. Windemere has a total of 114 recorded lots on approximately 179 acres. Windemere is currently zoned RC-4, Watershed Protection, which requires a minimum of 6 acres in order to subdivide into two lots. It is the position of the Office of Planning that any resubdivision of lots in a previously recorded plat is subject to current zoning regulations, therefore this lot is not subdividable.

Pertinent sections of the Baltimore County Zoning Regulations and the County Code are as follows.

Section 103.3 In any RC2, RC3, RC4, or RC5, contrary provisions of Subsection 103.1 and other contrary provisions of or pursuant to these regulations notwithstanding, in the case of property covered by a recorded subdivision plat which was approved by the Baltimore County Planning Commission or Board before the effective date of this subsection, and which remains in effect, buildings may be constructed, residential densities and lots may be established, and yards and other open areas may be laid out in accordance with that plan, subject to any conditions of the approval.

Where such a plan has been so approved but does not indicate densities or the situations of buildings or yards or other open spaces, these may be established or situated only in accordance with the standards as prescribed and in force at the time of the lot recordation.

Section 26-169 **Scope of Regulations.**

These regulations shall apply to all development except: (i) such development which, prior to the effective date of this article (June 11, 1982), has received tentative approval of the preliminary plan by the planning board or for which development a valid, unexpired building permit exists, or for which development a current executed public works agreement exists, all of which development shall be governed by the subdivision regulations in effect at the time of said preliminary plan approval, building permit issuance, or public works agreement execution, as the case may be. Proposed development shall be in compliance with the present zoning classification on the subject property: (ii) such development as has received a CRG approval, reclamation plan approval, any other project vested by law or such development for which a CRG plan has been accepted for filing by the department of public works prior to the date of adoption of Bill 1-92, all of which development shall be governed by the subdivision regulations in effect at the time of said approval or acceptance for filing, as the case may be.
(Code 1978, §22-40; Bill No.18, 1990§2; Bill No.1, 1992 §2)

The Office of Planning's position is that a resubdivison of an existing lot of record must comply with current zoning regulations. The "grandfathering provision" in Section 103.3 applies to the lot layout as approved by the Planning Commission or Board. Changes to the layout that result in an increase in density must comply with current regulations. Furthermore, the plat of Windemere had no density calculations indicated, therefore, Section 103.3 states " where such a plan has been so approved but does not indicate densities or the situations of buildings or yards or other open spaces, these may be established or situated only in accordance with the standards as prescribed and in force at the time of recordation. In other words, lots established on that plat are buildable in accordance with prior standards, provided that plat is vested. Newly established lots must comply with current regulations.

Any interpretation that allows this resubdivision has far reaching implications for there is great potential for the resubdivision of old RSC and RDP lots at a density that exceeds current zoning. This is not in keeping with the county's Smart Growth initiatives and Rural Strategy as articulated in Master Plan 2010, and the state and county funded rural preservation efforts in the Piney Run, Coastal, Manor, Gunpowder and Long Green Rural Legacy areas.

Pat Keller

Arnold F. 'Pat' Keller, III

AFK:rk

Q:\Pkeller\Stonehurst Rd Memo032202

Baltimore County Government
Department of Permits and
Development Management

111 West Chesapeake Avenue
Towson, MD 21204

410-887-3335

May 23, 2002

Joseph A. Stepcich
Three Stonehurst Road
Phoenix, MD 21131-2439

RE: Stonehurst Road
Three Stonehurst Road
DRC Number 032502M, Dist. 11C6

Dear Mr. Stepcich:

Pursuant to Article 25A, Section 5(U) of the Annotated Code of Maryland, and as provided in Section 602 (d) of the Baltimore County Charter, and Section 26-132 of the Baltimore County Code, this letter constitutes an administrative order and decision on the request for issuance, renewal, or modification of a license, permit, approval, exemption, waiver, or other form of permission you filed with this department.

Your request has been submitted for careful review and consideration to the Development Review Committee (DRC), which is composed of representatives from each of those departments involved in land-use decisions. These representatives are designees of the directors of these departments. The purpose of the DRC is to ensure compliance with Section 26-171 and Section 26-211 of the Baltimore County Code and to make recommendations to the Director, Department of Permits and Development Management (PDM).

The DRC has, in fact, met in an open meeting on April 29, 2002, and made the following recommendations:

The DRC has determined that your project was originally approved by the Joint Subdivision Planning Committee (JSPC). You may process a plan with changes to the last approved JSPC in compliance with JSPC regulations. To submit a JSPC plan for consideration, please contact this office for a transmittal form. It is also necessary to submit a plan to the Office of Planning for further review. Please forward the plan, along with a copy of this DRC letter, to Room 123, County Office Building; 111 West Chesapeake Avenue; Towson, MD 21204.

EXH 5

I have reviewed the recommendation carefully, and I have determined to adopt the recommendations set forth above. It is this 23rd day of May 2002, ordered and decided that the recommendations of the DRC are hereby adopted.

Should you submit an application for any permits that may be required for this project, your application will be processed subject to the conditions set forth above and any plans, securities, or non-county permits that may be required in accordance with County, State, or Federal regulations.

Sincerely,

Arnold Jablon
Director

AJ:DTR:dak

c: Kristin Weis
File

Department of Environmental Protection and Resource Management

401 Bosley Avenue, Suite 416
Towson, Maryland 21204

James T. Smith, Jr., County Executive
David A.C. Carroll, Director

Ground Water Management

Baltimore County

One of the Best-Managed Counties in America

410-887-2762
Fax: 410-887-4804

June 3, 2003

Mr. Joseph Stepcich
3 Stonehurst Road
Baltimore, Md. 21131

RE: 3 Stonehurst Road, Stepcich Property, Lots 1 & 2, D-11

Dear Mr. Stepcich,

A representative of this office, Clare M. Brunner, R.S., conducted soil evaluations on 01/10/2003 regarding the above-referenced lot(s).

Based on the evaluations and the master plan dated 05/12/2003, **APPROVAL** will be granted for the installation of a private sewage disposal system. Soil percolation tests will be ***valid for a period of five (5) years from the date of tests, approval letter or record plat, whichever is most recent***. At the expiration of this period of time, the results will become **VOID** without notice to that effect having been given by the Approving Authority.

It should be noted, there is an area designated on the site plan for the sewage disposal system and expansion thereof. Under no circumstances shall any permanent structures above or below ground, be permitted within this area. Also, no underground electric lines, water pipes, gas lines, etc., shall be permitted in the septic reserve area.

The following are comments that concern persons developing property:

- Where water wells are to be used as a source of water supply, the Baltimore County Code, (Title 35, Article 2, Sec. 35-41), requires that a well meeting the minimum recovery rate of one gallon per minute be drilled prior to issuance of a building permit.

- Water well yield test reports shall be valid for a period of three years from the date of the yield test. At the expiration of that period of time, a retest must be performed and the report submitted to this office prior to issuance of a building permit.

EXH 7

- In order to subdivide this property, the owner or developer will be required to comply with the subdivision regulations of the State of Maryland and Baltimore County. **PLEASE NOTE**: For subdivisions of 11 or more lots a Water Appropriation Permit application must be submitted for review. This permit must then be issued by the Maryland Department of the Environment, Water Management Administration before final approval of the subdivision. Questions regarding the subdivision process should be directed to Mr. R. Bruce Seeley, R.S., in the Development Coordination Section at 410-887-5859.

Attached is a copy of the original soil evaluation data for the above-referenced lots.

If you have any questions regarding this matter, please contact this office between 8:30 - 9:30 a.m.

Sincerely,

J. Robert Powell, R.S.
Soil Evaluation Program

CHESAPEAKE
BAY PARTNER COMMUNITY

1997 Gold Award Recipient

Attachments

J:\PERC LETTERS\2003 PERC LETTERS\Approval Letters\Stonehurst Road, 3, Lots 1&2,6-03-03.doc

Office of Planning

401 Bosley Avenue, Suite 406
Towson, Maryland 21204
Tel: 410-887-3211 • Fax: 410-887-5862
E-mail: planning@co.ba.md.us

Baltimore County

James T. Smith, Jr., County Executive
Arnold F. 'Pat' Keller, III, Director

01/21/2004

MAIORANA JOY L
STEPCICH JOSEPH A
3 STONEHURST RD

PHOENIX MD 21131

Tax Account Number: 11 1600003598

In accordance with Baltimore County Code, 1988, Section 26-123(f), as amended, every four years Baltimore County undergoes a comprehensive zoning process, when any time any property can be requested for a zoning change.

Please be advised that your property, referenced by the Tax Account Number located above, is being considered for a possible zoning change under 2004 CZMP Issue **3-105**. At the of request of **Planning Board**
The description of the property is listed below as well as the existing zoning and requested zoning.

Property Description

IMPS5.158 AC
3 STONEHURST RD SW
WINDEMERE

3		STONEHURST	RD	

Existing Zoning		***Requested Zoning***	
RC 4	20,830.81	RC 7	20,830.817
Total	20,830.81	Total	20,830.817

If approved by the County Council, the requested zoning (RC-7) would reduce the rate of residential subdivision to one lot per twenty-five acres. The existing zoning (RC-4) allows residential subdivision at the rate of one lot per five acres. Existing lots in recorded subdivisions would continue to be regulated by the zoning regulations that were in effect at the time the existing lot was created.

The rezoning request was submitted because the sponsoring Planning Board members consider the RC-7 zone to be more effective than the existing RC-4 zone in protecting the County's watersheds.

The Office of Planning is preparing a Log of Issues that lists all zoning requests. A copy of the current Log of Issues is available on the County Web Page at the following address, which can be accessed at the Baltimore County Libraries.
www.baltimorecountyonline.info/go/czmp

The Planning Board will be holding public hearings on all zoning issues in each Councilmanic District during March 2004. Citizens are welcome to attend and present their comments on these issues at the public hearings. If you are unable to attend the meeting in your Councilmanic District, you may send written comments to:

Baltimore County Office of Planning
Attention Coordinator, 2004 CZMP 401
Bosley Avenue, Suite 406
Towson, MD 21204

Please make certain that all correspondence contains the 2004 CZMP Issue Number listed above.

For additional information or questions, please contact the Office of Planning at 410 887-3480.

VENABLE LLP

210 Allegheny Avenue
Post Office Box 5517
Towson, Maryland 21285-5517

Telephone 410-494-6200
Facsimile 410-821-0147

www.venable.com

ARNOLD JABLON
(410) 494-6298

acjablon@venable.com

20 May 2004

Hon. Charles Klein, Chairman
Planning Board of Baltimore County
401 Bosley Ave
Towson, Maryland 21204

Re: amendment to subdivision plan known as "Section III, Windemere"

Dear Mr. Klein:

Please be advised that we represent Mr. and Mrs. Joseph A. Stepcich, who reside at 3 Stonehurst Road, Phoenix, Maryland 21131, which is located between Dulaney Valley Road and Manor Road, and off of Windemere Parkway.

Our clients request that the Chairman of the Planning Board approve an amendment to the subdivision plat known as "Section III, Windemere". Our clients propose to subdivide their lot of record into two lots, as is more particularly described on the site plan accompanying this letter and marked as Exhibit A.

The authority of the Planning Board and the Chairman to approve the proposed amendment is founded in Article V. Development Regulations, Division 1., specifically, §26-169, of the Baltimore County Code, 1988 edition, as amended. §26-169 provides as follows:

§26-169. Scope of regulations.

These regulations shall apply to all development except: (i) such development which, prior to the effective date of this article (June 11, 1982), has received tentative approval of the preliminary plan by the planning board or for which a development a valid, unexpired building permit exists, or for which development a current executed public works agreement exists, all of which development shall be governed by the subdivision regulations in effect at the time of said preliminary plan approval, building permit issuance, or public works agreement execution, as the case may be. Proposed development shall be in compliance with the present zoning classification on the subject property; (ii) such development as has received a CRG approval, reclamation plan approval, any other project vested by law or such development for which a CRG plan has been accepted for filing by the department of public works prior to the date of

EXH 9

> adoption of Bill 1-92, all of which development shall be governed by the subdivision regulations in effect at the time of said approval or acceptance for filing, as the case may be.

The proposed amendment to the subdivision known as "Section III, Windemere" is governed by the subdivision regulations in effect at the time it was approved, that an amendment to a plan approved and vested prior to June 11, 1982, is governed by the regulations in effect at the time of original approval, which as further explained below, would be 1970. The applicable and relevant regulations in effect at the time of the approval of the instant subdivision are as follows:

1. §22-33, Baltimore County Code, 1968 edition, as amended;
2. §22-60, Baltimore County Code, 1968 edition, as amended.

Our clients' property is a lot of record as shown on the record plat known as "Section III, Windemere". Our clients' lot, identified as lot 1 on the attached exhibit A, consists of 5.137 acres. The current zoning is RC 4. "Section III, Windemere" received preliminary and tentative approval by the Joint Subdivision Planning Committee (JSPC) on or about December 1969, and subsequently approved by the Baltimore County Planning Board on 19 February 1970. It was recorded in the land records of Baltimore County at Plat Liber 34, folio 10, on or about 24 February 1970. The subdivision consisted of 19.035 acres +/- and was zoned RSC. While the designated number of lots was 19, as permitted by the zoning in place at the time, the subdivision was approved for six lots. 13 density units remained available. See Exhibit B.

3 Stonehurst Road, where my clients reside, is approximately 5.137 +/- acres. As stated above, my clients propose to subdivide their lot into two, on one will be located their existing house. The lot on which their home is located would be 2.448 acres +/- and the other would be 2.689 acres +/-.

The subdivision regulations in effect in 1970 when this subdivision was approved are found in the Baltimore County Code, 1968 edition, as amended. Copies of the relevant law as referred to herein are attached for reference.

Our request for approval is governed by §22-33 of the 1968 Code, which reads as follows:

> §22-33. Exemption of governmental approval of subdivision regulations.

> Any such subdivision regulations may exempt from the requirements of governmental approval, subdivisions wherein the number of new lots is less than a designated number, or plats that do not involve new streets, or such other plats or subdivisions as such ordinance shall designate. In all cases involving such exempted subdivisions, the planning board chairman, or its director, shall certify the exemption on the plat, deed or instrument to be filed with the clerk of the circuit court for recording.

The proposed amendment consists of one new lot, which is less than the designated number of lots as permitted at the time of the approval of the subdivision plat for "Section III, Windemere", and involves no new streets. Clearly, the proposed amendment satisfies the strictures as contained in §22-33

Further, §103.3 of the Baltimore County Zoning Regulations (BCZR) in conjunction with the forecited Code provisions confirms that the laws, zoning and subdivision, in effect when original approval of a plan or plat was granted govern notwithstanding the ever-changing landscape of zoning and subdivision in Baltimore County.

> §103.3 In an R.C.2, R.C.3, R.C.4 or R.C.5 Zone, contrary provisions of Subsection 103.1 and any other contrary provisions of or pursuant to these regulations notwithstanding, in the case of property covered by a recorded subdivision plat which was approved by the Baltimore County Planning Commission or Board before the effective date of this subsection, and which remains in effect, buildings may be constructed, residential densities and lot lines may be established, and yards and other open areas may be laid out in accordance with that plan, subject to any conditions of the approval.
>
> Where such a plan has been so approved but does not indicate densities or the situations of buildings or yards or other open spaces, these may be established or situated only in accordance with the standards as prescribed and in force at the time of the lot recordation.
> The Zoning Regulations applicable to any such development, subdivision or parcel of land as aforesaid shall be the Zoning Regulations in effect at the time such plan, as aforesaid, was originally submitted to the Baltimore County Planning Commission.

The law in Baltimore County has always recognized the inviolability of approved and vested plans and plats. §22-60, of the Baltimore County Code, 1968, as amended, clearly stated this principle and it is restated in §26-169, Code, 1988 edition, as amended.

S22-60. Previously approved subdivisions not affected.

> Nothing herein provided shall be applicable to any final plat of a subdivision which was recorded prior to the effective date of this subdivision, nor shall it be applicable to any preliminary subdivision plan which had tentative approval prior to the effective date of this subdivision.

§22-60 is the precursor to §26-169, Baltimore County Code, 1988 as amended. There is no ambiguity. RSC permitted 1-acre lots, but only 6 were created. Our clients want to create one more. This is entirely consistent and in compliance with the zoning and subdivision regulations then in effect and governing.

The Development Review Committee supported this conclusion in March of 2002. Our clients submitted to the DRC their request to approve the proposed subdivision of their lot. In a letter, dated 23 May 2002, issued subsequent to the public meeting at which the amendment was discussed by representatives of various county agencies, the DRC concluded that "Section III Windemere" was originally tentatively approved by the Joint Subdivision Planning Committee (JSPC) and subsequently approved by the Planning Board, and agreed that my clients could process an amendment to the last approved plan that would be in compliance with subdivision regulations then in effect. My clients were further told that a copy of the amended plan should be submitted to the Office of Planning for review. See Exhibit C. On 8 February 2002, the Zoning Review section of the Department of Permits and Development Management issued a letter confirming that the zoning at the time of the original approval was RSC, which permitted 1-acre lots. See exhibit D

In a memo to the DRC, dated 22 March 2002, the director of the Office of Planning recommended against approval. The director stated the position of the Office of Planning is that "...any resubdivision of lots in a previously recorded plat is subject to current zoning regulations, therefore this lot is not subdividable." See exhibit E.

Interestingly, however, the Office of Planning in its notice to my clients, dated January 21 , 2004, that their property was being considered for a possible zoning change at the request of the Planning Board, noted:

"Existing lots in recorded subdivision would continue to be regulated by the zoning regulations that were in effect at the time the existing lot was created."

See exhibit F.

Finally, in a Declaration, dated September 2nd, 1970, and recorded amongst the Land Records in Liber 5191, Page 243, the developer of "Section III, Windemere", in paragraph 9 provided as follows:

> 9. Nothing in these restrictions shall be construed to prohibit the future subdivision of any parcel into R-40 residential lots. This means a lot containing at least 40,000 square feet and at least 150 feet wide at the building line.

Exhibit G.

The law in 1970, and the law today, recognizes the significance of plan approval and vesting. It is the law.

Pursuant to the law in effect in 1970, as provided for in §26-169, of the Code, 1988 as amended, and §103.3 of the BCZR, we submit to you for approval, as Chairman, and to the Planning Board the amendment to the plan of "Section III, Windemere." This amendment comports with all the requirements as set out in the Code, 1968 as amended. We will be ready and available to answer any questions and to make our presentation. Thank you.

Sincerely,

Arnold Jablon

c: Arnold F. "Pat" Keller, Director and Secretary to the Board
Members, Planning Board of Baltimore County
Timothy M. Kotroco, Director, Permits and Development Management

Department of Permits and Development Management

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

arnold's copy

Baltimore County

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

28 May 2004

Hon. Charles Klein, Chairman
Planning Board of Baltimore County
401 Bosley Ave.
Towson, Maryland 21204

Re: proposed amendment to "Section III, Windemere"

Dear Mr. Klein:

Arnold Jablon of Venable, LLP represents Joseph Stepcich, who has submitted to you, as Chairman of the Planning Board, a proposed subdivision of his lot into 2 lots. Mr. Stepcich's lot is part of a previously approved subdivision, known as "Section III, Windemere", that was tentatively approved by the Joint Subdivision Planning Committee (JSPC) in or about 1969 and approved by the Planning Board in 1970, and then vested.

The laws and regulations in effect at the time of an original plan's approval govern approvals of changes to previously approved subdivision plans. The County Code and the Baltimore County Zoning Regulations require the application of the zoning classification and subdivision regulations in effect at the time of the original plan approval when amendments to previously approved plans are proposed. This includes further subdivision of lots that were created by the original plan, and is controlled by the zoning classification then in effect.

The proposed subdivision of Mr. Stepcich's lot within "Section III, Windemere" is therefore governed by the zoning classification and the subdivision regulations in effect in 1969 and 1970 when "Section III, Windemere" was approved.

Sincerely,

Timothy Kotroco

Timothy M. Kotroco
Director

EXH 10

Office of Planning

401 Bosley Avenue, Suite 406
Towson, Maryland 21204
Tel: 410-887-3211 • Fax: 410-887-5862
E-mail: planning@co.ba.md.us

Baltimore County

James T. Smith, Jr., County Executive
Arnold F. 'Pat' Keller, III, Director

October 26, 2004

Arnold Jablon, Esq.
Venable, Baejter and Howard LLP
210 Allegheny Avenue
Towson, Maryland 21204

Re: Stepcich Property, Lot 3 Windemere

Dear Mr. Jablon:

Based upon a review of the information provided and analysis conducted, the Joint Subdivision Planning Committee, JSPC, has determined that your client's request to resubdivide the above-referenced lot has been denied as the property's zoning has changed since the original lot was recorded. The RC 4 zone permitted density does not allow for the resubdivision of this existing lot of record.

Please contact me at 410-887-3213 should you have any questions.

Sincerely,

Jeffrey Long
Deputy Director

JWL:rk

CC: Jay Liner, County Attorney
Tim Kotroco, Director of Permits and Development Management
Amanda Conn, Assist. County Attorney
Pat Keller, Director Office of Planning
Jeff Mayhew, Chief, Community Planning
Lynn Lanham, Chief, Development Review

Minutes

January 6, 2005

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

Acting Chair, Randall Cogar called the regularly scheduled meeting of the Baltimore County Planning Board to order at 4:10 p.m. The following Board members were:

Present	Not Present
Mr. Aaron E. Dock, Sr.	Mr. Gordon K. Harden, Jr.
Mr. Edward A. St. John	Ms. Sharon W. Paul
Mr. Dorothy Foos	
Dr. Robert Gregory	
Mr. Gordon K. Harden, Jr.	
Mr. Sy R. Goldstein	
Mr. Paul Miller	
Mr. Dennis P. Hoover	
Mr. Wayne C. McGinnis	
Mr. Ellwood A. Sinsky	
Mr. R. Craig Witzke, Jr.	

County staff present included Arnold F. 'Pat' Keller, III (Secretary to the Board), Jeff Mayhew, Caren Beth Hoffberger, and Curtis Murray.

Review of today's Agenda

The Advance Tentative Agenda was amended to delete items #2 and # 5.

The Advance Tentative Agenda and the Revised Agenda are filed as Appendix A-1.

Minutes of the November 18, 2004 meeting

Mr. Hoover moved the approval of the draft minutes as mailed. The motion was seconded by Mr. Parker, and was passed by acclamation. Absent were Mr. Harden and Ms. Paul.

The approved minutes are filed as Appendix A-2.

Mr. Cogar stated that Ms. Amanda Conn, Assistant County Attorney in the Baltimore County Office of Law, is present to provide legal counsel to the Board. This will require a closed session. Mr. Parker moved to close the meeting to consult with counsel to obtain said legal advice on a legal matter, pursuant to Section 10-508(a) of the State

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Government Article of the Annotated Code of Maryland. The motion was seconded by Ms. Foos, and passed by acclamation. Absent were Mr. St. John, Mr. Harden and Ms. Paul. The members proceeded to Room 403 to seek legal advice regarding the "Stepcich" property.

The Board returned, and reconvened the open meeting at 4:35 p.m. Mr. Jablon, counsel for the "Stepcich" property owners, asked the Chairman if he could be heard. Mr. Jablon explained that he filed an appeal because otherwise the time to be able to appeal would have run out before this first Planning Board meeting in January, 2005. He will now ask the Board of Appeals to remand the case back to the Planning Board. Mr. Cogar informed Mr. Jablon that the Board was not voting on the "Stepcich" matter at this time. The Board has concluded that the Board of Appeals must hear the case in its entirety (starting from scratch)(de novo).

Items for initial or continued discussion

1. Annual review of the Basic Services Maps - Mr. Thomas of Public Works explained that the County zoning regulations require an annual review of the Basic Services Maps and that includes transportation, water, and sewer deficiencies. Regarding transportation, E or F rated intersections effect the opportunity for development to occur. When a driver waits more than two signal cycles to get through an intersection there are performance issues that should be addressed. Currently the intersection at Liberty Road and Washington Avenue has improved to a D level and that is due to significant recent State road improvements. Also, two new intersections have reached the list – Middle River at Pulaski and Rt. 43 at Honeygo Blvd. Both are operating at a D level.

   Water deficient areas are generally old water systems constructed before 1960. The County is conducting on-going cleaning and lining projects and has just corrected #78. There are no new areas of water deficiency.

   Regarding sewer issues the Richlyn Manor wastewater treatment plant is an on-going issue. Ten new areas are not deficient but because the County is being proactive, in order to prevent backups during wet weather; a six-year schedule of maintenance is being developed. These areas are not capacity issues just routine maintenance matters.

   The Basic Services Maps materials are filed as Appendix B.

Items for vote by the Planning Board

2. Master Plan Amendment - Amend the Baltimore County Master Plan 2010 to allow for public water and sewer extensions outside the URDL for Critical Areas Growth Allocations and Public Health - Mr. Keller reviewed with the Board that the request for water and sewer outside the Urban Rural Demarcation Line (URDL) is warranted but the County and certainly the Planning Board wants to preserve the URDL. Mr. Keller requested that after the public hearing this

before taking action necessitating the expenditure of any public funds incidental to the location, character or extent of one or more projects thereof, shall refer action involving such specific project or projects to the Planning Board for review and recommendation, and shall not act thereon without such recommendation or until 45 days after such reference shall have elapsed without such recommendation. This requirement shall apply to action by a housing, parking, highway, or other authority, redevelopment agency, school board, or other similar public agency, Federal, State, or County.

1955, ch. 610, sec. 454.

378. The County Commissioners of Baltimore County may by resolution provide for the reference of any other matter or class of matters to the Planning Board for review and recommendation, before final action is taken thereon and with or without provision that final action thereon shall not be taken until the Planning Board has submitted its report, or until a specified period of time has elapsed without such report having been made.

1955, ch. 610, sec. 455.

379. Whenever the Planning Board, pursuant to this sub-title shall have made a recommendation to another official County agency, such recommendation may be overridden only by a two-thirds vote of the full membership of such other agency. Where the agency shall have overridden a recommendation of the Planning Board, the action of such agency shall not become final until the Board of County Commissioners shall by majority vote approve its action in overriding the recommendation of the Planning Board.

1955, ch. 610, sec. 456.

380. The Planning Board shall have full power and authority to make such investigations, maps, reports, and recommendations in connection therewith, relating to the planning and physical development of the County, as it deems desirable. The Planning Board shall biennially prepare a 6-year capital improvement program for streets, highways, water and sewer facilities, storm drains, buildings, parks, playgrounds, schools and other public facilities and structures. The Planning Board shall use the facilities

of the Department of Public Works and other County agencies for the collection of data and shall receive the recommendations from all County departments concerning their capital improvement needs before the 6-year Capital Improvement Program is prepared. The Planning Board shall consult with the Department of Public Works, the Board of Education and other using agencies before final action is taken on the 6-year Capital Improvement Program. The 6-year capital program, after approval by the Planning Board, shall be submitted to the County Commissioners not later than March 1, 1956, and each even numbered year thereafter. The Planning Board shall also submit not later than March 1, 1956, and each even numbered year thereafter, recommendations for the capital program for the following two years to the County Commissioners.

1955, ch. 610, sec. 457.

381. The County Commissioners of Baltimore County may be ordinance provide for the regulation of sub-divisions within the County by requiring approval of all plats by the Planning Board and the Department of Public Works before such plats may be filed with the Clerk of the Circuit Court for recording, and may authorize and empower the Planning Board and the Department of Public Works to review plats in accordance with sub-division regulations, requirements and standards adopted by the County Commissioners as hereinafter provided, and may further fix filing fees to be paid for by any applicant for sub-division approval.

1955, ch. 610, sec. 458.

382. The Planning Board shall prepare regulations governing the subdivision of land throughout Baltimore County, including but not limited to standards for approving the design of subdivisions, requirements for the submission of subdivision plats and the procedure to be followed by subdividers. Such regulations may provide for the proper arrangement of streets, in relation to other existing planned streets and to the Master Plan, for adequate and convenient open spaces for traffic, recreation, utilities, access of fire-fighting apparatus, light and air, and for the avoidance of congestion of population, including minimum widths and areas of lots. Such minimums shall coincide with such provisions in the Zoning Regulations for Baltimore County.

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rights-of-way or flood areas in fee, required for final approval of any plat and deemed essential to the public welfare.

(d) Before final approval of subdivisions the County Commissioners may require, in accordance with the subdivision regulations, the execution of a Public Works Agreement for any or all of the following improvements it may deem to be necessary or appropriate: street grading, pavement, gutters, curbs, sidewalks, street lighting, shade trees, surveyor's monuments, water mains, culverts, storm sewers, sanitary sewers or other means of sewage disposal, drainage structures, and such other subdivision improvements as the County Commissioners may find necessary in the public interest. The Public Works Agreement shall set forth the amount of the funds required to be paid by the County and the developer or owner of the subdivision.

1955, ch. 610, sec. 463.

387. (a) Final plats of subdivisions shall conform to the standards prescribed by Article 17, Section 71 and 72, of the Annotated Code of Maryland (1951 Edition, as amended). A final plat shall be deemed to have been submitted when an application for approval has been delivered to the office of the Planning Board in conformance with the printed requirements governing the submission of subdivision plats.

(b) The Planning Board may approve or after hearing disapprove a plat. If the Planning Board disapproves any plat, the findings and reasons for such disapproval shall be stated upon the records of the Planning Board, and the applicant shall be given a copy.

(c) Where approval of a plat, map or plan of land is required by any officer or body of the County, including the Board of Health, Department of Public Works, Board of Education and Board of Recreation, under the provisions of any other law or ordinance, such approval shall be certified on the plat before the final plat shall be approved as a prerequisite to its acceptance for filing by the Clerk of the Circuit Court.

(d) The Planning Board shall take action under this section within 45 days after submission of the final plat for approval, or within such further time as the applying party may agree to. Otherwise such plat shall be deemed to have been given favorable approval. Such approval by default, however, shall not be valid unless all necessary prerequisites for approval of a final plat have been fulfilled by the applicant.

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1955, ch. 610, sec. 464.

388. The final approval by the Planning Board of a plat shall expire 90 days from the date of such approval, unless within the period such plat shall have been duly filed by the owner or his agent with the Clerk of the Circuit Court for recording. The Planning Board for good cause shown may extend the time for plat filing for a period not to exceed 90 days.

1955, ch. 610, sec. 465.

389. No plat shall be accepted for filing by the Clerk of the Circuit Court for Baltimore County until it has been approved by the Planning Board and such approval has been endorsed on the instrument in such manner as the Board of County Commissioners may designate. It shall be the duty of the Clerk of the Circuit Court for Baltimore County to notify the Planning Board in writing within three days of the filing of any plat approved by the Planning Board, identifying such plat by its title, date of filing and official number.

1955, ch. 610, sec. 466.

390. If any person shall be aggrieved by the action of the Planning Board, an appeal may be taken to the Circuit Court for Baltimore County within 30 days after the date of action by the Planning Board. The said Court shall hear all appeals without the intervention of a Jury and shall have power to affirm, modify or reverse in part or in whole any decision appealed from and may remand any case for the entering of a proper order or for further proceedings, as the Court shall determine. Upon the hearing of such appeal, the decision of the Planning Board shall be presumed by the Court to be proper and to best serve the public interest; the burden of proof shall be upon the Appellant to show that the decision complained of was against the public interest and that the Planning Board's discretion in rendering its decision was not honestly and fairly exercised, or such decision was arbitrary, or procured by fraud, or unsupported by any substantial evidence, or was unreasonable,

These Subdivision Regulations may include provisions as to the extent to which streets and other ways, water, sewer and drain pipes and other public facilities shall be provided for, as a condition precedent to approval of the plat. Such Regulations may provide for tentative approval of the plat, but any such tentative approval shall be revocable. The Subdivision Regulations shall be adopted, with amendments if any, and may from time to time thereafter be amended by the Board of County Commissioners by resolution after public hearing. Copies of the Subdivision Regulations shall be made available to the public, and a reasonable charge therefor may be made.

1955, ch. 610, sec. 459.

383. Any such Subdivision Regulations may exempt from the requirements of governmental approval, subdivisions wherein the number of new lots is less than a designated number, or plats that do not involve new streets, or such other plats of subdivisions as such ordinance shall designate. In all cases involving such exempted subdivisions, the Planning Board Chairman, or its Director, shall certify the exemption on the plat, deed or instrument to be filed with the Clerk of the Circuit Court for recording.

1955, ch. 610, sec. 460.

384. The County Commissioners of Baltimore County may appoint a Joint Committee for the processing and approval of subdivision plats. The Joint Committee shall consist of representatives of the office of Planning and the Department of Public Works and shall be known as the Joint Subdivision Planning Committee. The approvals of the Joint Subdivision Planning Committee shall be in addition to those required by the Planning Board and the Department of Public Works.

1955, ch. 610, sec. 461.

385. The Joint Subdivision Planning Committee shall establish such rules and regulations as they may consider necessary for proper public notice regarding proposed subdivisions and hearing thereon.

1955, ch. 610, sec. 462.

386. (a) In acting upon subdivisions, the Planning Board shall require, among other conditions in the public interest,

that the tract shall be adequately drained, and the streets shall be of sufficient width and suitable grade and suitably located to accommodate the prospective traffic, to provide access for fire-fighting equipment to buildings and to be coordinated so as to comprise a convenient system, conforming to the official map, or if there is no official map, relating properly to the existing street system. Where the Planning Board after hearing has adopted portions of the Master Plan with proposals regarding the street system within the proposed subdivision, the Board may require that the streets shown conform in design and in width to the proposals shown on the Master Plan. No street shall be less than 50 feet within right of way lines and shall be of such width as may be required in the subdivision regulations or as shown on the Master Plan or Official Map of the County.

(b) The Planning Agency shall further require that all lots shown on the plats shall be adaptable for the intended purposes without danger to health or peril from flood, fire, erosion, or other menace.

(c) If portions of the Master Plan contain proposals for drainage rights-of-way, flood areas in fee, schools, parks, or playgrounds within the proposed subdivision or in its vicinity, or if standards for the allocation of portions of subdivisions for drainage rights-of-way, flood areas in fee, school sites, park and playground purposes have been adopted, before approving subdivisions the Planning Board may further require that such drainage rights-of-way, flood areas in fee, school sites, parks or playgrounds be shown in locations and of sizes suitable to their intended uses. The County Commissioners shall be permitted to reserve the location and extent of school sites, public parks and playgrounds shown on the Master Plan or any part thereof for a period of one year after the approval of the final plat or within such further time as agreed to by the applying party. Unless during such one-year period or extension thereof, the County Commissioners or Board of Education as the case may be, shall have entered into or approved a contract to purchase, or instituted condemnation proceedings according to law, for said school site, park or playground, the subdivider shall not be bound by the proposals for such areas shown on the Master Plan. This provision shall not apply to the streets and roads, drainage

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Article II. Subdivision Control.

Sec. 23-17. Authority to require approval of plats before filing; filing fees.

The county may by ordinance provide for the regulation of subdivisions within the county by requiring the approval of all plats by the planning board and the department of public works before such plats may be filed with the clerk of the circuit court for recording, and may authorize and empower the planning board and the department of public works to review plats in accordance with subdivision regulations, requirements and standards adopted by the county as hereinafter provided, and may further fix filing fees to be paid for by any applicant for subdivision approval. (Balto. Co. Code, 1955, sec. 381. 1955, ch. 610, sec. 457.)

Sec. 23-18. Subdivision regulations prepared by planning board.[5]

The planning board shall prepare regulations governing the subdivision of land throughout the county, including but not limited to standards for approving the design of subdivisions, requirements for the submission of subdivision plats and the procedure to be followed by subdividers. Such regulations may provide for the proper arrangement of streets, in relation to other existing planned streets and to the master plan, for adequate and convenient open spaces for traffic, recreation, utilities, access of fire-fighting apparatus, light and air, and for the avoidance of congestion of population, including minimum widths and areas of lots. Such minimums shall coincide with such provisions in the zoning regulations for the county.

These subdivision regulations may include provisions as to the extent to which streets and other ways, water, sewer and drain pipes and other public facilities shall be provided for, as a condition precedent to approval of the plat. Such regulations may provide for tentative approval of the plat, but any such tentative approval shall be revocable. The subdivision regulations shall be adopted, with amendments if any, and may from time to time thereafter be amended by the county by resolution after public hearing. Copies of the subdivision regulations shall be made available to the public, and a reasonable charge therefor may be made. (Balto. Co. Code, 1955, sec. 382. 1955, ch. 610, sec. 458.)

5. Board of Commissioners v. Oxford Development Co., 209 Md. 377, 121 A. (2nd) 241, held that the language of this section does not require tentative approval of a subdivision plan and therefore a writ of mandamus issued against the board of county commissioners pursuant to this section was improperly issued.

Sec. 23-19. Exemption of governmental approval of subdivision regulations.

Any such subdivision regulations may exempt from the requirements of governmental approval, subdivisions wherein the number of new lots is less than a designated number, or plats that do not involve new streets, or such other plats or subdivisions as such ordinance shall designate. In all cases involving such exempted subdivisions, the planning board chairman, or its director, shall certify the exemption on the plat, deed or instrument to be filed with the clerk of the circuit court for recording. (Balto. Co. Code, 1955, sec. 383. 1955, ch. 610, sec. 459.)

Sec. 23-20. Joint subdivision planning committee — Appointment; approval of plats; composition.

The county may appoint a joint committee for the processing and approval of subdivision plats. The joint committee shall consist of representatives of the office of planning and the department of public works and shall be known as the joint subdivision planning committee. The approvals of the joint subdivision planning committee shall be in addition to those required by the planning board and the department of public works. (Balto. Co. Code, 1955, sec. 384. 1955, ch. 610, sec. 460.)

Sec. 23-21. Same—Rules and regulations regarding proper public notice, etc.

The joint subdivision planning committee shall establish such rules and regulations as they may consider necessary for proper public notice regarding proposed subdivisions and hearing thereon. (Balto. Co. Code, 1955, sec. 385. 1955, ch. 610, sec. 461.)

Sec. 23-22. Requirements for subdivisions and plats generally.

(a) In acting upon subdivisions, the planning board shall require, among other conditions in the public interest, that the tract shall be adequately drained, and the streets shall be of sufficient width and suitable grade and suitably located to accommodate the prospective traffic, to provide access for fire-fighting equipment to buildings and to be coordinated so as to comprise a convenient

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violation, including abutting and adjacent property owners, whether specially damaged or not, may maintain an action in, the circuit court for the county for an injunction enjoining the erection, construction, reconstruction, alteration, repair or use of buildings, structures and land in violation of zoning regulations and restrictions adopted purusant to this title.

ARTICLE IV. SUBDIVISION CONTROL

Sec. 23-31. Subdivision Regulations.

The planning board from time to time shall prepare and submit to the county council for its approval or disapproval recommendations for the amendment or supplement to regulations governing the subdivision of land throughout the county, now codified in Title 44 of this Code, including but not limited to standards for approving the design of subdivisions, requirements for the submission of subdivision plats and the procedure to be followed by subdividers. Such regulations may provide for the proper arrangement of streets, in relation to other existing planned streets and to the master plan, for adequate and convenient open spaces for traffic, recreation, utilities, access of fire-fighting apparatus, light and air, and for the avoidance of congestion of population, including minimum widths and areas of lots. Such minimums shall coincide with such provisions in the zoning regulations for the county.

These subdivision regulations may include provisions as to the extent to which streets and other ways, water, sewer and drain pipes and other public facilities shall be provided for, as a condition precedent to approval of the plat. Such regulations may provide for tentative approval of the plat, but any such tentative approval shall be revocable. The subdivision regulations shall be adopted, with amendments if any, and may from time to time thereafter be amended by the county council by ordinance after public hearing. Copies of the subdivision regulations shall be made available to the public, and a reasonable charge therefor may be made.

Sec. 23-32. Exemption of governmental approval of subdivision regulations.

Any such subdivision regulations may exempt from the requirements of governmental approval, subdivisions wherein the number of new lots is less than a designated number, or plats that do not involve new streets, or such other plats or sub-

divisions as such ordinance shall designate. In all cases involving such exempted subdivisions, the planning board chairman, or its director, shall certify the exemption on the plat, deed or instrument to be filed with the clerk of the circuit court for recording.

Sec. 23-33. Requirements for subdivisions and plats generally.

(a) In acting upon subdivisions, the planning board shall require, among other conditions in the public interest, that the tract shall be adequately drained, and the streets shall be of sufficient width and suitable grade and suitably located to accommodate the prospective traffic, to provide access for fire-fighting equipment to buildings and to be coordinated so as to comprise a convenient system, relating properly to the existing street system. Where the planning board after hearing has adopted portions of the master plan with proposals regarding the street system within the proposed subdivision, the board may require that the streets shown conform in design and in width to the proposals shown on the master plan. No street shall be less than fifty feet within right of way lines and shall be of such width as may be required in the subdivision regulations or as shown on the master plan for the county.

(b) The planning board shall further require that all lots shown on the plats shall be adaptable for the intended purposes without danger to health or peril from flood, fire erosion or other menace.

(c) Before final approval of subdivisions the director of public works may require, in accordance with the subdivision regulations, the execution of a public works agreement for any or all of the following improvements it may deem to be necessary or appropriate: Street grading, pavement, gutters, curbs, sidewalks, street lighting, shade trees, surveyor's monuments, water mains, culverts, storm sewers, sanitary sewers or other means of sewage disposal, drainage structures, and such other subdivision improvements as the county may find necessary in the public interest. The public works agreement shall set forth the amount of the funds required to be paid by the developer or owner of the subdivision.

Sec. 23-34. Approval or disapproval of plats.

(a) Final plats of subdivisions shall conform to the standards prescribed by Annotated Code of Maryland Article 17, sections 59 and 60. A final plat shall be deemed to have been

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submitted when an application for final approval has been delivered to the office of the planning board in conformance with the printed requirements governing the submission of subdivision plats.

(b) The planning board may approve or after hearing disapprove a plat. If the planning board disapproves any plat, the findings and reasons for such disapproval shall be stated upon the records of the planning board, and the applicant shall be given a copy.

(c) Where approval of a plat, map or plan of land is required by any officer or body of the county, including the board of health, department of public works, board of education and board of recreation, under the provisions of any other law or ordinance, such approval shall be certified on the plat before the final plat shall be approved as a prerequisite to its acceptance for filing by the clerk of the circuit court.

(d) The planning board shall take action under this section within forty-five days after submission of the final plat for approval, or within such further time as the applying party may agree to. Otherwise such plat shall be deemed to have been given favorable approval. Such approval by default, however, shall not be valid unless all necessary prerequisites for approval of a final plat have been fulfilled by the applicant.

Sec. 23-35. Expiration of final approval of plat.

The final approval by the planning board of a plat shall expire ninety days from the date of such approval, unless within the period such plat shall have been duly filed by the owner or his agent with the clerk of the circuit court for recording. The planning board for good cause shown may extend the time for plat filing for a period not to exceed ninety days.

Sec. 23-36. Prerequisites to acceptance for filing of plats; notification of filing.

No plat shall be accepted for filing by the clerk of the circuit court for the county until it has been approved by the planning board and such approval has been endorsed on the instrument in such manner as the planning board may designate. It shall be the duty of the clerk of the circuit court to notify the planning board in writing within three days of the filing of any plat approved by the planning board, identifying such plat by its title, date of filing and official number.

Sec. 23-37. Appeal to circuit court from decision of planning board.

If any person shall be aggrieved by the action of the planning board on final plats of subdivisions under section 23-36 of this Article, an appeal may be taken to the circuit court for the county within thirty days after the date of action by the planning board. The court shall hear all such appeals without the intervention of a jury and shall have power to affirm, modify or reverse in part or in whole any such decision from and may remand any case for the entering of a proper order or for further proceedings as the court shall determine. Upon the hearing of such appeal, the decision of the planning board shall be presumed by the court to be proper and to best serve the public interest; the burden of proof shall be upon the appellant to show that the decision complained of was against the public interest and that the planning board's discretion in rendering its decision was not honestly and fairly exercised, or such decision was arbitrary, or procured by fraud, or unsupported by any substantial evidence, or was unreasonable, or that such decision was beyond the powers of the planning board and was illegal.

Sec. 23-38. Appeal to court of appeals from circuit court.

An appeal may be taken to the court of appeals of the state from any decision of the circuit court for the county reviewing the decision of the planning board. In such cases, the court of appeals shall not award costs of the appeal against any party to the appeal except the appellant.

Sec. 23-39. Sale, transfer, etc., of any land in unapproved plat.

(a) If before approval of a plat has been obtained, any person transfers, sells or agrees to sell, as owner or agent, any land which forms a part of a subdivision on which, by ordinance, the planning board is required to act, such person shall be subject to a fine not to exceed one hundred dollars or to imprisonment for not more than thirty days, and each parcel, plat or lot so disposed of shall be deemed a separate violation.

(b) In addition to the foregoing, the county may institute and maintain a civil action to set aside and invalidate any conveyance made pursuant to such a contract or sale.

(c) In any such action the transferee, purchaser or grantee shall be entitled to a lien upon a portion of the land from which

the subdivision was made that remains in the possession of the subdivider, his assigns or successors, to secure the return of any deposit made or purchase price paid, and also a reasonable search fee, survey expense and title closing expense, if any. Any such action must be brought within two years after the date of the recording of the instrument of transfer, sale or conveyance of the land, or within six years if unrecorded.

(d) In addition to the foregoing, if the conditions in any public works agreement executed in accordance with the provisions of section 23-33 paragraph (c) of this Code have been violated, the county may institute proceedings in the circuit court for the county for the specific enforcement of the public works agreement and for injunctive relief to prohibit the sale or other disposition of any land which forms a part of the subdivision to which the public works agreement pertains, pending the outcome of such litigation.

Sec. 23-40. Certificate of approval of subdivision—Application.

The prospective purchaser, prospective mortgager or any other person interested in any land which forms part of a subdivision, or which, since the first day of October, 1955, formed part of such a subdivision, may apply in writing to the proper official or, if such official is unknown to the applicant, then to the secretary to the county executive for the issuance of certificate certifying whether or not such subdivision has been approved by the planning board. Such application shall contain a diagram showing the location and dimension of the land to be covered by the certificate and the name of the owner thereof.

Sec. 23-41. Certificate of approval of subdivision—Issuing official certificates and time of issuance; duplicates.

The county executive may designate some other county offical as the official who shall make and issue such certificates, and the official so designated shall issue such certificate within fifteen days after the receipt of such written application and the fees therefor. Such official shall keep a duplicate copy of each certificate, consecutively numbered, including a statement of the fees charged, in a binder as a permanent record of his office.

Sec. 23-42. Certificate of approval of subdivision—Rights under certificates.

Any person who shall acquire for a valuable consideration an interest in the lands covered by any such certificate of approval of a subdivision in reliance upon the information therein contained shall hold such interest free of any right, remedy or action which could be prosecuted or maintained by the county pursuant to the provisions of this title.

Sec. 23-43. Certificate of approval of subdivision—Contents.

Each such certificate shall be designated a "certificate as to approval of subdivision of land", and shall certify:

(1) That there exists in the county a duly established planning board which meets regularly ~~on a monthly or more frequent basis~~ and that there is an ordinance controlling subdivision of land, adopted under the authority of this title.

(2) Whether the subdivision or resubdivision, as it relates to the land shown in said application has been approved by the planning board, and, if so, the date of such approval.

(3) Whether such subdivision or resubdivision, if the same has not been approved, is exempt from the requirement of approval as provided in this title.

Sec. 23-44. Certificate of approval of subdivision—Applications addressed to county.

Any such application addressed to the secretary to the county executive shall be deemed to be addressed to the proper designated official and the county shall be bound thereby to the same extent as though the same was addressed to the designated official.

Sec. 23-45. Fees.

All fees payable for the issuance of such certificates shall be collected by the county in accordance with the billing and collection procedures in effect at the time of payment.

Sec. 23-46. Certificate of approval of subdivision—Effect of failure to issue.

If the official designated to make and issue any such certificate fails to issue the same within fifteen days after receipt of an application and the fees therefor, any person acquiring an

interest in the lands described in such application shall hold such interest free of any right, remedy or action which could be prosecuted or maintained pursuant to the provisions of this title.

SECTION 2. And be it further enacted, that the titles and captions to the various sections of this Bill are included therein solely for the purpose of more convenient reference and shall not be deemed a part of the law for any other purpose.

SECTION 3. And be it further enacted, that if any Article, section or provision of this Bill shall be held unconstitutional, invalid or inapplicable to any person or circumstance, then it is intended and declared by the county council of Baltimore County that all other Articles, sections or provisions thereof and their application to all other persons and circumstances shall be separable and shall not be affected by any such decision.

SECTION 4. And be it further enacted, that this Bill may be cited and referred to by its short title, "The 1960 Planning and Zoning Reorganization Bill."

SECTION 5. And be it further enacted, that this Bill shall take effect forty-five days after its enactment.

Enacted: June 10, 1960.

BILL No. 81

(This Bill Withdrawn)

BILL No. 82

AN ACT, to add new section 41-38.1 to the Baltimore County Code, 1958, title "Pensions and Retirement", sub-heading "Employees' Retirement System", to provide that members of the regular fire and police bureaus applying for admission to the employees' retirement system of Baltimore County need not be examined by the medical board created in section 41-38 of this title, provided such members have passed the physical examination required by Special Regulation 2.02 of section

22-3.2 of the Cumulative Supplement of 1959 of the Baltimore County Code, 1958.

SECTION 1. Be it enacted by the County Council of Baltimore County, Maryland, that a new section 41-38.1 be and it is hereby added to the Baltimore County Code, 1958, title "Pensions and Retirement", sub-heading "Employees' Retirement System", said new section to read as follows:

Sec. 41-38.1—Notwithstanding anything to the contrary contained in section 41-38 of this Code, members of the regular fire and police bureaus applying for admission to the employees' retirement system of Baltimore County need not be examined by the medical board created in section 41-38 of this title, provided such members have passed the physical examination required by Special Regulation 2.02 of section 22-3.2 of the Cumulative Supplement of 1959 of the Baltimore County Code, 1958.

SECTION 2. And be it further enacted, that this Act shall take effect forty-five days after its enactment.

Enacted: June 10, 1960.

BILL No. 83

AN ACT, to repeal as obsolete section 28-6 of the Baltimore County Code, 1958, title "Roads, Bridges, Sidewalks and Storm Water Drainage".

WHEREAS, Article VII of the Baltimore County Charter, title "Budgetary and Fiscal Procedures", contains provisions which are deemed to be inconsistent with the special provisions contained in said section 28-6 relating to general and special road and bridge funds; and

WHEREAS, section 1111 of the Baltimore County Charter repealed public local laws of Baltimore County to the extent that they are inconsistent with the provisions of the Charter; and

WHEREAS, the provisions of said section 28-6 of said Code are deemed to be inconsistent with said Charter; now, therefore

SECTION 1. Be it enacted by the County Council of Baltimore County, Maryland, that section 28-6 of the Baltimore County

These subdivision regulations may include provisions as to the extent to which streets and other ways, water, sewer and drain pipes, local open space tracts and other public facilities shall be provided for, as a condition precedent to approval of the plat. (Such regulations may provide for tentative approval of the plat, but any such tentative approval shall be revocable.) The subdivision regulations shall be adopted, with amendments of any, and may from time to time thereafter be amended by the county council by ordinance after public hearing. Copies of the subdivision regulations shall be made available to the public, and a reasonable charge therefor may be made. (Bill No. 80, 1960; No. 48, 1963, sec. 2.)

Sec. 22-33. Exemption of governmental approval of subdivision regulations.

Any such subdivision regulations may exempt from the requirements of governmental approval, subdivisions wherein the number of new lots is less than a designated number, or plats that do not involve new streets, or such other plats or subdivisions as such ordinance shall designate. In all cases involving such exempted subdivisions, the planning board chairman, or its director, shall certify the exemption on the plat, deed or instrument to be filed with the clerk of the circuit court for recording. (Bill No. 80, 1960.)

Sec. 22-34. *Requirements* for subdivisions and plats generally.

(a) In acting upon subdivisions, the planning board shall require, among other conditions in the public interest, that the tract shall be adequately drained, and the streets shall be of sufficient width and suitable grade and suitably located to accommodate the prospective traffic, to provide access for fire-fighting equipment to buildings and to be coordinated so as to comprise a convenient system, relating properly to the existing street system. Where the planning board after hearing has adopted portions of the master plan with proposals regarding the street system within the proposed subdivision,

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BALTIMORE COUNTY
OFFICE OF LAW
TOWSON, MARYLAND 21204
494-4420

MALCOLM F. SPICER, JR.
COUNTY ATTORNEY

MAY 17 AM
By
May 17, 1984

Honorable Donald P. Hutchinson,
County Executive
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Norman E. Gerber, Director
Office of Planning & Zoning
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401 Bosley Avenue
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Re: Westchester
Opinion #1-84

Gentlemen:

This Office has received inquiries from all of you concerning the status of the development known as Westchester and particularly the status of that Plat entitled "Amended Plat of a Portion of Plat 4, Section 2, Westchester" recorded among the Plat Records of Baltimore County in Plat Book EHK, Jr. 41, folio 16 on March 14, 1977 (the "Plat").

The controversy surrounding this development came to the surface when the Developer, The Stefanowicz Corporation, applied for building permits to construct approximately 108 apartment units as shown on the Plat. At the time this Plat was originally approved by the Baltimore County Planning Board and at the time of its recordation, the subject property, which contains approximately 18.9 acres, was zoned D.R. 5.5. A new comprehensive zoning map for the First Councilmanic District was adopted by Bill #184-80, effective December 11, 1980. By that new map the subject property was downzoned to D.R. 2 and D.R. 3.5.

The ultimate question to be decided is what effect, if any, does the 1980 Comprehensive Rezoning (from D.R. 5.5. to D.R. 2 and D.R. 3.5) have on the developer's ability to proceed with his previously approved and recorded Plat.

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The subdivision known as "Westchester" has a long and extensive history. It is not necessary for purposes of this Opinion to recite in detail that long and extensive history, but it will suffice to highlight certain important events which occurred during the course of development.

The Public Works Agreement for that portion of Westchester which includes the subject property was approved by the County Executive on January 24, 1975. The Agreement is known as Public Works Agreement #17404. The Agreement provided for the Developer to construct Bathhurst Road for a length of 630 feet, St. Johnsbury Road for a length of 620 feet, Stoneham Court for a length of 180 feet and the construction of Drawde Court for a length of 200 feet. In addition to the construction of the public roads previously mentioned, the Developer was required and did construct public water and sewer in the beds of those roads, as well as appropriate storm drains. In addition, the Developer constructed a sewer line running through the proposed apartment development from Bathhurst Road to Drawde Court. Sewer lines amounted to approximately 1660 feet, water lines amounted to approximately 1720 feet, storm drains amounted to approximately 1630 feet and the total street paving amounted to approximately 1630 feet. All of these public improvements were constructed at the Developer's full cost and expense and in accordance with County standards. Installation of public utilities was completed in October of 1978 and they, along with the roads referred to, were conveyed to the County by Deed dated April 19, 1979. All of the public improvements required by PWA #17404 were completed by the Developer in a timely fashion at a cost of approximately $180,000. All of the roads and public utilities have been conveyed to Baltimore County for public maintenance. Notwithstanding that the public improvements required under the Public Works Agreement had been completed in the fall of 1978 and accepted by the County in 1979, the Developer did not proceed with the construction of the planned apartment units and interior private road and utilities systems. The precise reason or reasons for the delay are not entirely clear although they are probably attributable in part, at least, to the financial difficulties of the Developer and the sewer moratorium in the Patapsco drainage area. The Stefanowicz Corporation commenced a Chapter 11 proceeding in the Federal Bankruptcy Court which eventually resulted in the approval of a plan of reorganization.

Renewed interest in proceeding with the apartment development began to occur in early 1982 when the Developer's attorney had a meeting with representatives of the Office of Planning and Zoning concerning the approval of building permits for 108 apartment units. At this time the property was in the Patapsco Sewer Moratorium Area and although the development had received approval for 108 connections in 1978 that approval had lapsed and it was

initially doubted that the Developer would qualify for an allocation under the provisions of the Growth Management legislation that had taken effect in November of 1979. By letter dated March 15, 1982 the Developer's attorney was advised that there was no sewer capacity available in the Patapsco area for this apartment development and that the prior application for a Reserve Capacity Use Certificate, which had been made in connection with a revised Plat of Westchester proposing the development of 55 townhouses, was no longer valid. As the revised plat for the 55 townhouses was never taken to final approval and record Plat, the Reserve Capacity Use Certificate was void. The correspondence of March 15, 1982 referred to a revised Plat of Westchester, Section 2, Plat 4 for 55 townhouses. This revised Plat of the subject property had been submitted to the County in May of 1979, but was subsequently abandoned by the Developer and never pursued to final approval. The revised Plat indicated 55 townhouses on the same property which had previously been covered by the record Plat indicating 108 apartment units. The correspondence of March 15, 1982 pointed out to the Developer's attorney that as the Plat for 55 townhouses was not approved and recorded and, in view of the fact that the zoning of the subject property was changed in December of 1980, the 55 townhouse development could not proceed under current regulation. There was no mention in that letter that the 108 apartment units which had been approved and recorded was in anyway affected by the zoning change. At this point the Developer was concerned to say the least. He had been told that he could not proceed with 55 townhouses as the zoning had been changed and that he could not proceed with his 108 apartment unit development because there was no sewer capacity available in the Patapsco area. In order to obtain some form of relief for the Developer, his attorneys filed a lawsuit against Baltimore County and the Director of Planning & Zoning in April of 1982. This action was commenced in order to obtain a Writ of Mandamus and Injunctive Relief. Specifically, the Plaintiff, The Stefanowicz Corporation, was requesting that the Director of Planning & Zoning be directed to issue Reserve Capacity Use Certificates for the apartment development and, as ancillary relief, enjoin the County from voiding the subject Plat because it was vested.

After the filing of this lawsuit the Department of Public Works and the Office of Planning & Zoning extensively reviewed this development and the subject property to determine its status and rights under the Growth Management legislation and under the recently adopted Development Regulations which took effect on June 11, 1982. After considering the fact that all of the public improvements required under the PWA had been completed many years prior to this time it was determined that the subject Plat which indicated 108 apartment units was "vested" and had no expiration

date. By letter dated December 1, 1982 the Director of Planning and Zoning wrote to the Developer's attorney and stated, in part, as follows:

> "I have determined that the amended plat of Westchester, Plat 4, Section 2 (EHK, Jr. 41, folio 16) which contains 108 apartment units and was recorded March 14, 1977, is vested and has no expiration date. This decision was based on a review of all required improvements for this subdivision. All necessary sewer and water mains have been built. All easements have been deeded to the County, including Bathhurst Road. In addition, varying percentages of streets, curb and gutter, grading and storm water management improvements had been constructed."

This decision was not made in a vacuum but was made after consultation with the Department of Public Works and with the Office of Law. The Department of Public Works, by inter-office memo dated October 28, 1982, advised the Office of Planning & Zoning that they had reviewed the Public Works requirements for the subject subdivision and found that all required public improvements have been completed and accepted by Baltimore County. In conclusion, the Department of Public Works indicated that they were of the opinion that the subdivision met the grandfather requirements of the Baltimore County Code. Copies of the letter dated December 1, 1982 and the memo of October 28, 1982 are attached to this Opinion and marked as Exhibits #1 and #2, respectively.

As a result of these conclusions and based upon the advice of the Office of Law, the litigation which had been filed was settled and an Order of Dismissal was filed in the case file.

Following the issuance of the letter of December 1, 1982 it was assumed by all parties concerned that the Plat was vested and that the development could proceed, subject only to the availability of sewer allocations in the Patapsco area. At no time during the history of this project and specifically, at no time subsequent to December of 1980, had there been any suggestion that the completed apartment development of 108 units could not proceed because of any change in the zoning classification. The Office of Planning & Zoning was quick to point out to the Developer that his revised plan for 55 townhouses could not proceed because it had not obtained record Plat status prior to the change in the zoning classification. There was never any mention or suggestion that the apartment development could not proceed because of the change in zoning classification. In February of 1983 the Developer's attorney wrote to the Department of Public

Works concerning this development. The letter begins by stating as follows:

> "As a result of Baltimore County's recent decision to allow my client, The Stefanowicz Corporation, to proceed in the development of the above-captioned property, as per letter of authorization from Norman Gerber, Director of Planning, dated December 1, 1982 (copy of which is attached hereto) I would request your consideration and approval to the following items:
>
> 1. That 108 building permits be approved by Baltimore County for construction and sale of condominium type apartments at such time that sewer allocations are approved by Baltimore County.
>
> 2. That the record plat dated March 14, 1977 recorded in plat book EHK, Jr. 41, 16 and development plan approved September 21, 1971 be recognized and accepted for the development of said subject site."

The letter then goes on to list several other items for which the Developer was requesting approval. A complete copy of this correspondence is attached hereto and marked as Exhibit #3. In response to the letter of February 3, 1983, the Department of Public Works wrote to the Developer's attorney by letter dated February 22, 1983. This letter indicates that the Department of Public Works and the Current Planning section of the Office of Planning & Zoning are in agreement with all items in his letter except for items #6 and #7. Items #6 and #7 dealt with adjustment of building sizes and adjustments of the grading study. A copy of this letter is attached hereto and marked as Exhibit #4. In June of 1983 the Office of Planning and Zoning issued Reserve Capacity Use Certificate #529 in the name of Westchester Apartments, which allocated 32,400 gallons of sewer allocation for 108 apartment units. This Use Certificate has no expiration date. See B.C.Z.R. §4A.02.3.G.5.

This brief factual scenario of the history of the Westchester subdivision brings us up to the present time. The Developer has applied for permits to construct the apartment buildings as indicated on the recorded Plat and questions have been raised by County agencies, as well as neighboring property owners, as to whether or not the changes in the comprehensive rezoning of the subject property would prohibit the development now shown on the recorded Plat for this portion of the Westchester subdivision. There is little, if any, dispute involving the

facts surrounding the development of this property and the only major legal issue to be decided is whether or not this property has achieved a "vested status" and thereby entitled to proceed in accordance with the Plat notwithstanding that the zoning has been changed.

The law in Maryland is clear. Absent statutory protection, land included in a Plat approved by the Planning Board and recorded is as vunerable to change in the Zoning Regulations as all other land in the County. The mere delineation of lots on a map of subdivision carries with it not guarantee that the land can be developed in accordance with the Plat. Unless protected by statute, the filing of an approved subdivision plat does not establish a non-conforming use of the platted land which protects it from subsequent zoning changes and no right to the continuance of an existing zoning classification is gained by the preparation and preliminary work, no matter how extensive. See Anderson, American Law of Zoning, §23.23 "Effect of approval on power to rezone" pp. 96-98. Maryland case law is in fundamental agreement with this proposition. In the case of Rockville Fuel & Feed Co. v. City of Gaithersburg, 266 Md. 117 (1972), the Court of Appeals of Maryland stated the well established rule that, in the absence of statutory intervention, for a property owner to obtain a "vested right" in the existing zoning classification which will be Constitutionally protected against subsequent change, the property owner must 1) obtain a permit where required and 2) must proceed under that permit to exercise it on the land involved so that the neighborhood may be advised that the land is being devoted to that use. This rule has been applied in prior, as well as subsequent cases, from the Court of Appeals. See Rupp v. Kline & Sons, 230 Md. 573 (1963); Stewart Petroleum Co. v. Bd. of Co. Com'rs of St. Mary's Co., 276 Md. 435 (1975); County Council for Montgomery Co. v. District Land Corp., 274 Md. 691 (1975); City of Baltimore v. Crane, 277 Md. 198 (1976); and Washington Suburban Sanitary Commission v. T.K.U. Associates, 281 Md. 1 (1977).

It is unnecessary to analyze the particular facts of the Westchester subdivision in light of the principals enunciated by the cited cases in view of the fact that it is the Opinion of this Office that the County Council has, by legislative enactment, altered the rules set forth in those cases in connection with subdivision Plats and Plans.

It should be noted, if only in passing, that from 1955 until at least 1977 and possibly longer, the Office of Planning and Zoning, as well as the Zoning Commissioners in Office during those years, interpreted and applied §103.1 of the Baltimore County Zoning Regulations to essentially insulate a subdivision plat which

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which had received tentative approval from the Baltimore County Planning Board from subsequent changes to the use, height, area and density accomplished by either zoning text amendments or comprehensive rezoning maps. The effect of this interpretation was to give a Developer a vested right to proceed with his tentative plan notwithstanding that the zoning may have been changed prior to the issuance of permits and the commencement of construction. Previous letters of advice from this Office, dated September 24, 1979 and February 10, 1981 have indicated that the ambiguity that may have existed in §103.1 has been resolved by long standing administrative interpretation and practice which has received wide acceptance and which has been acquiesed in by the County Council, the legislative branch of Baltimore County. While I personally have doubts that the administrative interpretation given to §103.1 in the past is the correct interpretation of that Section, it is unnecessary to delineate my reasons for disagreement with that interpretation in view of the subsequent legislation adopted by the County Council.

Prior to 1977, Baltimore County did not definitively provide a period of time after which a recorded Plat would lapse. While §103.1 of the Zoning Regulations has been interpreted to give a vested right to plats which had received tentative approval from the Planning Board, that legislation did not provide a period of time after which those rights would lapse.

Bill #12-77, commonly referred to as the Interim Development Control Act, was the first clear legislative recognition and the first legislative granting of vested rights to subdivisions which had received either final or tentative approval. This legislation set forth the circumstances and conditions under which a Developer could achieve a vested right to proceed with his development notwithstanding a subsequent change in the zoning classification. This Act was codified in §22-16 of the Baltimore County Code, 1978 and in paragraph (h)(3) of §22-16 the County Council provided as follows:

> "(h) Vested Rights.
>
> (3) Record subdivision plats protected for five years.
>
> Record subdivision plats (whether recorded prior to or subsequent to the effective date of this Act for any subdivision, section or parcel thereof, hereinafter defined as two or more continguous lots in the same ownership of said subdivision) shall be deemed to have lapsed and have been revoked for either the entire

subdivision or any section or parcel thereof, where the applicable subdivision, section or parcel thereof remains undeveloped for a period of five years from the effective date of this act or five years after the date of recording the final subdivision plat whichever is later.

Upon such lapse and revocation of the record plat, a new application for tentative and final subdivision approval for such undeveloped subdivisions, section or parcel thereof, shall be submitted to the Planning Board, prior to any development or issuance of building permits for reapproval, in accordance with the applicable provisions of the County zoning ordinance and subdivision regulations in force at the time of said reapplication."

The Section then goes on to list the circumstances under which a subdivision would be considered undeveloped. One of those conditions was the lack of substantial construction on required public improvements pursuant to the applicable regulations and requirements of the Department of Public Works.

The language of this Section is clear and unambiguous. A record Plat is protected for five (5) years from changes in both zoning and subdivision regulations. If, at the end of five (5) years, a Plat is still undeveloped then it lapses and must be resubmitted for approval in accordance with the then "applicable provisions of the County zoning ordinance and subdivision regulations." Copies of the pertinent Sections of Bill #12-77 are attached hereto and marked as Exhibit #5.

This Section was continued in essentially its same forum when Bill #61-79 was passed by the County Council. Bill #61-79 provided in its title that it was "To provide, with certain exceptions, for a limitation on time on which subdivision approvals are valid." Under the provisions of Bill #61-79 a record subdivision Plat would lapse and be considered invalid if the property remained undeveloped for a period of five (5) years from April 16, 1977 or five (5) years after the date of recording the plat, whichever was later. The same test, originally adopted by Bill #12-77, to determine whether or not a Plat was "undeveloped" was continued in the 1979 legislation.

Bill #56-82 passed by the County Council on April 19, 1982, enacted by the County Executive on April 27, 1982 and effective on June 11, 1982 repealed all previous Subdivision Regulations and adopted a comprehensive system for development approval in Baltimore

County. Included within the provisions relating to the approval process and standards for development were provisions substantially similar to those which had been in existence since 1977 and which provided a means whereby a Developer could be assured that he would have a reasonable period of time to complete his development. Section 22-68 of the current Development Regulations sets forth the time limit for validity of subdivision plats. Section 22-68(a) provides that a subdivision Plat will lapse and become invalid if it has not been developed in accordance with the time limit set forth. In connection with a Plat which was recorded prior to the effective date of the new regulations, §22-68(a)(1) provides that it will expire five (5) years after recordation or on April 16, 1982, whichever is later unless it has been "developed." Development is defined in subsection (c) of that Section to be either the issuance of building permits or substantial construction on required public or private improvements on such subdivision. Clearly, the Plat under consideration in this case has met the test of substantial construction on required public improvements and clearly it achieved its developed status prior to its otherwise scheduled expiration date of April 16, 1982. All of the public improvements required by the applicable regulations and requirements of the Department of Public Works have been completed in connection with the Westchester apartment development and all of the improvements were completed in 1978 and accepted by the County in 1979.

The County Council of Baltimore County has, since at least 1977, chosen to recognize that it takes a substantial expenditure of funds to go through the various regulations of Baltimore County in the subdivision process and that a Developer should be given a reasonable period of time to achieve a developed status for his property without running the risk of losing his investment by change in the Zoning Regulations or zoning classification. That recognition has come in the form of giving a Developer a five (5) year period of time (now eight (8) years for plans approved after the effective date of the new Development Regulations) within which to develop his property. The County Council has chosen, by legislative enactment, to change the rule of law enunciated in the line of Maryland cases cited in this Opinion and has decided that a Developer should have a vested right to proceed with his development if he has secured building permits or if there has been substantial construction on required public improvements.

The legislative history of Bill #56-82 supports this conclusion. In discussing the new Development Regulations recommended by the Planning Board, the County Council had before it the analysis of the regulations prepared by Thomas Peddicord,

Esquire, Legislative Draftsman for the County Council. In discussing the Planning Board recommendations dealing with the time limit for validity of Plats, Mr. Peddicord pointed out to the County Council on page two (2) of his report, as follows:

> "Absent statutory intervention, a record subdivision plat is valid only at the time of approval and recordation. The right to develop in accordance with the County's approval vests only when a building permit or occupancy certificate is obtained and some visible effort to begin construction takes place. If, before that vesting occurs, a change of zoning takes place effecting land in the approved subdivision, the developer's rights are nill.
>
> However, §103.1 of the zoning regulations insulates the approved subdivision from subsequent zoning changes by providing that the regulations in effect at the time the subdivision plan was originally submitted for approval are the applicable regulations for the approved subdivision. Then, in 1979, the Council enacted the sunset provision of §22-44.1. The effect is that the zoning requirements in effect at the time a subdivision is recorded are preserved against subsequent zoning changes for a period coextensive with the statutory sunset period.
>
> The draft then adds the additional factor of a longer period of validity if the developer has executed a Public Works Agreement."

Clearly, the County Council was aware of the administrative interpretation that had been given to §103.1 of the Zoning Regulations for approximately 25 years and clearly the County Council was aware of the intended effect of the provisions relating to the validity of subdivision plats.

Any doubt about the intended effect of the various provisions for protection of record Plats contained in the Development Regulations adopted by Bill #56-82 is further removed by reference to the Final Report of the Baltimore County Planning Board adopted October 1, 1981 and submitted to the County Council on October 6, 1981. On page iii of that Report, the Planning Board, in its discussion of major issues, states as follows:

> "Interim Development Control Legislation, enacted in April 1977, deemed recorded plats to have lapsed after five years. This five year plat provision was reconfirmed with the enactment of the growth management legislation,

but again emerged as an issue in discussions of the development regulations. The Planning Board is concerned that five years is not a sufficient period of time for subdivisions to be protected considering the development costs involved with required public improvements. After lengthy discussions, the Planning Board has recommended that subdivisions for which a Public Works Agreement is require should have a ten year plat life. Subdivisions for which Public Works Agreements are not required will continue to lapse after five years if not developed."

A subsequent Report prepared for the County Council and entitled "Development Regulations, Policy Decisions on Public Concerns, Part II" prepared by Thomas Peddicord, Esquire, Legislative Draftsman for the County Council, contains further discussions on this issue and suggests to the Council several options, one of which was to repeal both §103.1 B.C.Z.R. and §22-44.1 of the County Code and provide no specific period of validity for approved plats. It is pointed out to the Council that repeal of these provisions would then allow for the application of the general law of Maryland as set forth in the previously cited cases. The Council did not choose this option but instead retained the vesting provisions now contained in the County Code. Statutory protection to development plans is not unique to Baltimore County. Rathkopf, in his treatise, The Law of Zoning & Planning, Chapter 50 "Vested Rights" discusses similar provisions which have been adopted by various jurisdictions throughout the County.

It is clear that the County Council intended, by the enactment of §22-68 to protect a record Plat from subsequent changes in the Zoning Regulations and to give to the Developer a vested right to proceed with his development if at the end of that five (5) year period (for plats recorded prior to June 11, 1982) he has met the test of being "developed" as defined in §22-68(c)(2).

In conclusion, therefore, it is the Opinion of this Office that The Stefanowicz Corporation is entitled to receive building permits allowing the construction of 108 apartment units in the Westchester subdivision and as indicated on the Plat recorded among the Plat records of Baltimore County, notwithstanding that the zoning classification of the property has been changed.

Very truly yours,

Malcolm F. Spicer, Jr.
County Attorney

MFS:JR:eh

cc: B. Melvin Cole, County
Administrative Officer
Phyllis C. Friedman, Peoples' Counsel

IN THE MATTER OF THE APPLICATION OF WESTCHESTER, INC. FOR SPECIAL HEARING RE BUILDING PERMIT AND APPLICATION FOR PERMITS NW/S BATHURST ROAD, 95' N. OF WESTCHESTER ROAD 1st DISTRICT	*	IN THE
	*	CIRCUIT COURT
	*	FOR
	*	BALTIMORE COUNTY
Case No. 85-7 SPH and Case No. CBA-84-132	*	10/218/85-CG-1483

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MEMORANDUM OPINION AND ORDER

This case came before the Court on September 17, 1985, on the appeal of Westchester, Inc. (Westchester). Westchester appeals a Baltimore County Board of Appeals Opinion and Order dated March 28, 1985, later confirmed by its Order of May 7, 1985, following hearing on Appellant's Motion for Reconsideration.

This case was heard by the County Board of Appeals on appeal by Protestants (Appellee) from an Opinon and Order of the Zoning Commissioner of Baltimore County which authorized the issuance of certain building permits to Westchester. Protestants also appealed the actual issuance of the permits by the Department of Licenses and Permits of Baltimore County.

Although the facts of this case are lengthy and complex, those central to the dispute are not contested. The dispute involves the development of that subdivision located in the First District of Baltimore County known as Westchester. This property was originally purchased by a predecessor to the Appellant in 1967. The development of the property was initially to include only

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single family homes. In 1970, the Baltimore County Council adopted Bill No. 100 which facilitated greater flexibility in residential development through the device of cluster development. Under this Bill, developers were allowed to take unused zoning density from one portion of a development tract and add it to the permitted zoning in another area of the tract.

The previous developer of the Westchester subdivision, the Stefanowicz Corporation, utilized the provisions of Bill 100 and gained approval from the Baltimore County Board of Appeals for a development plan. This plan contained an apartment complex which was to be surrounded by single family dwellings. The Board ruled that the final development plan was valid in an Order dated October 12, 1973. In 1975, the Stefanowicz Corporation negotiated and received approval for a public works agreement. In 1977, an amended record plat was filed which clearly showed the 108 unit apartment complex. The public improvements were completed in October of 1978 and were conveyed to the County by Deed dated April 19, 1979. By 1978, when many of the public improvements had been placed, the single family lots were being sold. The purchasers were aware of the proposed apartment complex as it appeared in the record plat and in fact, several purchasers signed a statement attesting to that knowledge.

The Baltimore County Council, in the comprehensive map process of 1980, downshifted the zoning of the Westchester property from D.R. 5.5 to D.R. 2 and D.R. 3.5, with some D.R. 5.5. This downshift in zoning has created the current controversy because it raises the issue of whether the record plat of 1977 remains valid in spite of the downshift. If the development plan has vested,

then it should be protected against subsequent changes in zoning. Otherwise, the downshift of 1980 renders the development plan void.

Much of the problem arising in this case stems from the developer's inability to obtain the proper sewer allocation. Because the Patapsco Watershed was experiencing a sewer deficiency during this time (the late 70's and early 80's), sewer allocations were difficult to obtain. The needed sewer allocation was granted and then withdrawn as the developer was put on a waiting list. Amidst some apparent confusion, the developer was dropped from the waiting list.

Suit was filed in 1982 in the Baltimore County Circuit Court by the developer to protect the 1977 record plat from being voided and to compel the issuance of sewer allocations. On December 1, 1982, an opinion was elicited from the Director of Planning and Zoning which declared that the subdivision development plan vested and reinstated the developer's waiting list status for sewer allocations. Relying on this opinion, Westchester purchased the property from the bankruptcy proceedings which reorganized the Stefanowicz Corporation. The sewer allocations were finally obtained in June, 1983. Additionally, the developer obtained utility permits for the subdivision. Further grading work was performed and private utilities were installed under the approved permits during 1983 and 1984. Final building permits were granted to the developer on July 30, 1984. The protestants, the homeowners surrounding the proposed apartment complex, appealed the issuance of the permit to the County Board of Appeals. Although formal opinions

of both the County Attorney and the Zoning Commissioner (after a special hearing) determined the subdivision plat to have vested, the County Board of Appeals ruled otherwise.

Thus, as previously stated, the issue in this case is whether the record plat filed in 1977 is vested. Appellant advances several different legal theories in support of its argument for vesting. One theory is that under common law the subdivision record plat is vested. All parties involved in the case have agreed that the proper standard to apply is found in Rockville Fuel & Feed Co. v. City of Gaithersburg, 266 Md. 117, 291 A.2d 672 (1972). The Court in Rockville Fuel quoted an earlier case, The Richmond Corporation v. Board of County Commissioners for Prince George's County, 254 Md. 244, 255 A.2d 398 (1969), for the general law in regard to "vested rights" in an existing zoning case:

> In Maryland it is established that in order to obtain a 'vested right' in the existing zoning use which will be constitutionally protected against a subsequent change in the zoning ordinance prohibiting or limiting that use, the owner must (1) obtain a permit or occupancy certificate where required by the applicable ordinance and (2) must proceed under that permit or certificate to exercise it on the land involved so that the neighborhood may be advised that the land is being devoted to that use.

The standard thus contains two prongs: a permit prong and what has sometimes been referred to as a substantial construction prong. In the discussion that follows the Court's quotation of the standard, it is clear that the permit required must be a building permit. Insomuch as no building permits in the present case were obtained until after the land improvements were made, the record

plat of 1977 fails to vest as it does not satisfy the permit requirement. Furthermore, the cases which discuss the substantial construction requirement as to when construction commences, all speak of the actual building or structure involved not preliminary land improvements. For these reasons, the Court agrees with the County Board of Appeals that Appellant's record plat does not vest under common law.

Appellant also argues that the plat vests under two different statutory provisions. The first statutory basis for vesting involves the question of the applicability of a provision of the Baltimore County Code, § 22-68. Section 22-68, in pertinent part, provides:

> (a) Unless extended pursuant to the provisions of section 22-68.1, a subdivision plat shall lapse and be invalid for either the entire subdivision or any section or parcel thereof, if such subdivision, section or parcel has not been developed, as defined in subsection (c), in accordance with the following time limits as applicable:
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> . . .
>
> (c) A subdivision, section or parcel thereof is hereby defined as developed if any of the following has occurred with respect to such subdivision, section or parcel:
>
> (1) Building permits have been issued; or
>
> (2) Substantial construction on required public or private improvements has occurred on such subdivision, section or parcel pursuant to the applicable regulations and requirements of the department of public works.

There is no question that § 22-68 is currently the law in Baltimore County. The Board of Appeals observed that if the 1977 record plat was governed by § 22-68, then it would be vested. (Opinion p. 7). The Board, however, concluded that

§ 22-40 of the Code provides that § 22-68 applies only to development plats recorded after the date of the new regulations, June 11, 1982. (Opinion, p. 9.).

Section 22-40 provides:

> These regulations shall apply to all development except such development which, prior to the effective date of this article [June 11, 1982], has received tentative approval of the preliminary plan by the planning board or for which development a valid, unexpired building permit exists, or for which development a current executed public works agreement exists, all of which development shall be governed by the subdivision regulations in effect at the time of said preliminary plan approval, building permit issuance or public works agreement execution, as the case may be. (Bill No. 56, 1982, § 2).

The Board of Appeals ruled that the clear and unambigious language of § 22-40 precludes the application of § 22-68 to the Westchester development. Appellees further argue that § 22-68 does not apply because it is a subdivision regulation and thus has no bearing on a zoning question. Appellee notes that Article 3 of Title 22 of the Baltimore County Code is captioned "Zoning" whereas Article 4 (which contains both § 22-40 and § 22-68) of Title 22 is captioned "Development Regulations". Appellees thus argue that § 22-68 insulates recorded plats from changes in development regulations only and does not insulate recorded plats from changes in zoning regulations. There is nothing implicitly or explicitly in the Code, however, to support this argument. Appellees also argue that zoning is a nondelegatable legislative function, while subdivision control is a delegated administrative function.

The Court acknowledges the differences between the concepts of zoning, planning and subdivision regualtion. See E.g. Board of County Commissioners v. Gaster, 285 Md. 233, 401 A.2d 666 (19.)

Board of County Commissioners v. Stephens, 286 Md. 384, 408 A.2d 1017 (1979); Miller v. Forty West Builders, 62 Md. App. 320, 489 A.2d 26 (1985). All these cases quote 1 E. Yokley, Zoning Law and Practice § 1-2 (4th ed. 1978) which comments:

> ...[Z]oning is almost exclusively concerned with use regulation, whereas planning is a broader term and indicates the development of a community, not only with respect to streets, parks, civic beauty, industrial and commercial undertakings, residential developments and such other matters affecting the public convenience and welfare as may be properly embraced within the police power.
>
> . . .
>
> There are three integral parts of adequate land planning, the master plan, zoning, and subdivsiion. (emphasis added).

The caption under Title 22 of the Baltimore County Code confirms this integration: "Planning, Zoning and Subdivison Control". Thus, while the comparison of any of these component parts of land planning may to some degree be likened to comparing apples and oranges, it is clear that they all belong in the same basket. It is thus necessary to consider the articles of Title 22 as an integrated whole, not as subdivided parts existing in isolation.

This requires a close scrutiny of § 22-40 and § 22-68. Section 22-40, captioned simply "scope of regulations", serves to make the new regulations apply to all developments except those which have taken significant steps towards development prior to the date of the new regualtions. The new regulations in these cases are thus primarily intended to be prospective only in order to provide protection to those developments. If read in isolation, however, the general decree of § 22-40 would negate the similar yet more specific protection of § 22-68. There is nothing in

§ 22-68 to indicate that the protection it offers is to be prospective only. Most importantly, the legislative history of § 22-68 indicates the contrary. It is axiomatic to state that the polestar of statutory interpretation is to ascertain and carry out the real intent of the legislature when it enacts a statute. See E.g. Harbor Island Marina v. Calvert Co., 286 Md. 303, 407 A.2d 738 (1979). The legislative history of § 22-68 is thoroughly recounted in an opinion written by the County Attorney which is dated May 17, 1984. The opinion traces the history of several statutory provisions that the County, through the Office of Planning and Zoning as well as the County Council, utilized to provide protection through vesting for subdivision plats in which some steps toward development had been taken. The opinion notes that from 1955 to (at least) 1977, the Office of Planning and Zoning interpretated § 103.1 of the Baltimore County Zoning Regulations to insulate subdivision plats which had received tentative County Board approval from subsequent zoning changes. The effect of this interpretation was to vest the developer's plan. The County Council also passed the Interim Development Control Act, formerly codified at § 22-16 of the County Code, which set forth certain circumstances under which a development would vest. Finally, in 1982, the County Council repealed all previous subdivision regulations and passed the development regulations (which include § 22-68) now in effect. In his opinion, the County Attorney notes that since at least 1977 the Baltimore County Council has chosen to recognize that it takes a substantial expenditure of funds to comply with the various County regulations in the subdivision process and that a developer should be given a reasonable period of time to achieve a developed status for his property without running the

risk of losing his investment by changes in the zoning classification. (Opinion, p. 9). The Opinion further indicates that the County Council purposely chose to change the Maryland line of case law concerning vesting institute less stringent requirements for vesting. (Opinion, p. 9). Noting further details the legislative history of § 22-68, the County Attorney concluded that § 22-68 was intended to apply to plats recorded prior to June 11, 1982, the effective date of the new subdivision development regulations.

This Court agrees with the County Attorney's opinion. The Court finds after considering the background of legislative history and circumstances, that the County Council would not have enacted § 22-68 if it did not intend for it to apply to cases prior to the effective date of the new subdivison regulations that otherwise meet its requirements.

In addition to § 22-68, Appellant argues that § 103.1 serves as a statutory basis for the vesting of the Westchester record plat of 1977. Section 103.1 provides:

> These Regulations shall apply as of the date of their adoption but the provisions pertaining to use, height, area and density of population shall not apply to any development, subdivision or parcel of land, the preliminary plan for which was originally submitted to the (then) Baltimore County Planning Commission, (now Planning Board) and approved or tentatively approved (including any approval made subject to any condition or conditions) under the then existing official procedure in Baltimore County, prio to the adoption of these Regulations. The zoning regulations applicable to any such development, subdivision or parcel of land as aforesaid shall be the zoning regulations in effect at the time such plan, as aforesaid, was originally submitted to the Baltimore County Planning Commission.
>
> Provided further, however, that the use and development of land in M.L. zones shall not be affected by the foregoing provision, but development is permitted in accordance with

> any preliminary development plan approved by the Office of Planning and Zoning before the effective date of this further proviso, even though such development may be counter to then-current regulations for M.L. zones, if, on the fifth anniversary of such effective date, construction either is completed or is substantially commenced and diligently being pursued to completion; otherwise, the regulations generally in effect at the time such use or development is to be established shall control.
> (footnotes omitted).

The Court finds that the clear and unambigious language indicates that it was intended to apply only to cases prior to the date of its enactment, 1955. The Board of Appeals, the Zoning Commissioner, and the County Attorney all seem to concur in this assessment. The Office of Zoning and Planning for some reason, however, interpreted § 103.1 as providing vesting protection for developers for some 30 years past the date of enactment (1955). The Court agrees that § 103.1 itself does not serve to vest the record plat of 1977. Any reliance by Appellants on the County's interpretation of § 103.1 only affects the issue of estoppel. The Board of Appeals opinion correctly noted that notwithstanding the incorrect interpretation of § 103.1 by zoning officials since 1955, there arises the issue as to whether equitable estoppel is available to Appellant. (Opinion, p. 14).

Under Maryland law, equitable estoppel is defined as:

> the effect of the voluntary conduct of a party whereby he is absolutely precluded, both at law and in equity, from asserting rights which might have perhaps otherwise existed, either of property, of contract, or of remedy, as against another person, who has in good faith relied upon such conduct, and has been led thereby to change his position for the worse, and who, on his part, acquires some corresponding right, either of property, of contract, or of remedy.

Dixon v. Process Corp., 38 Md. App. 644, 382 A.2d 893 (1978) quoting 3 J. Pomeroy, A Treatise on Equity Jurisprudence § 804 (5th ed. 1941).

Whether the doctrine is to be applied in a given case is dependent soley upon the particular facts and circumstances of that case. Rodgers v. John, 131 Md. 455, 102 A. 549 (1917). The facts of this case cry out for an application of the doctrine. The Court finds it impossible to accept the conclusion of the Board of Appeals that there was a lack of reliance and no change of position by the developer as a result of the County's assurances that the record plat of 1977 was vested. (Opinion p. 16, 17). Only after extensive negotiations and communications with the County (which concluded in the assurance that the record plat was vested), did Appellant purchase the Westchester property out of bankruptcy. The negotiations were far from casual or informal. The developer filed suit against the County in 1982 and the centerpiece of the settlement of that action was the assurance that the plat with the 108 unit apartment complex was vested. This was set forth in a formal opinion by the Director of the Office of Planning and Zoning.

It should be further noted that the property's zoning density was downshifted in 1980 with no notice to the property owner. Although notice is now required in such cases, it was not in 1980.

The Court is also unable to accept the Board of Appeals' conclusion that equitable estoppel is unavailable to Appellant because of a lack of activity in developing the property. The Board of Appeals itself noted that the sewer allocation process which prevented the developer from securing the necessary hookups was "with some justification" blamed for the inactivity from sometime

in 1979 unti 1982. While the Board ultimately found that the developer did not "actively" seek the allocations, the affirmative action that the developer failed to take has not been revealed by the Board or Appellee.

While it may be true that Appellant might be able to develop the property in some other way consistent with the current zoning, it does not follow that to disallow the vesting of the plat would not still be highly inequitable. The Zoning Commissioner, after a hearing, also concluded in his opinion that the 30 year old interpretation of § 103.1 was incorrect. The Commissioner nonetheless found that Appellant acted in good faith reliance on that interpretation and other assurances by the County. The Commissioner thus ruled that under the circumstances of this case, to make the new interpretation retroactive would be "highly inequitable and oppressive". (Opinion, P. 9).

This Court conludes that in view of the considerable money and effort expended by Appellant by reason of justified, good faith reliance, coupled with the substantial change of position by the developer, the application of equitable estoppel is required in this case.

When a reviewing court examines a factual decision reached by an administrative agency, it must determine whether reasoning minds could reasonably reach that conclusion by direct proof or by permissible inference from the facts and the record before the agency. If the conclusion could be reached then it is based upon substantial evidence and the court has no power to reject that conclusion. See E.g. Commission on Human Relations v. Washingt County Community Action Council, Inc., 59 Md. App. 451, 476 A.2d 222 (19

Furthermore, in applying this substantial evidence test, a court may not substitute its judgment for that of the members of the administrative agency from which the appeal is taken. Bullock v. Pelham Wood apts., 283 Md. 505, 390 A.2d 1119 (1978).

It has been noted, however, that the standard of review for a finding of law is not so limited. While the view taken by administrative officials is strong and persuasive, it may be disregarded for strong and argent reasons. Miller v. Forty West Builders, 62 Md. App. 320, 489 A.2d 76 (1985) citing Baltimore Building Construction Trades v. Barnes, 290 Md. 9, 427 A.2d 979 (1981).

For the above reasons, it is therefore ADJUDGED and ORDERED on this 8th day of October, 1985, that the Order of the County Board of appeals of March 28, 1985, and its Order of May 7, 1985 on reconsideration thereof are reversed.

Austin W. Brizendine

AUSTIN W. BRIZENDINE
Judge

Copies sent to:

John B. Gontrum, Esquire
Malcolm Spicer, Esquire
C. Victor McFarland, Esquire

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UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

NO. 1287

September Term, 1985

WILLIAM J. BAUMAN, et al.,

v.

WESTCHESTER, INC., et al.

Adkins
Bell, R.M.
Wenner,

JJ.

PER CURIAM

Filed: August 12, 1986

EXH 21

On October 8, 1985 the Circuit Court for Baltimore County (Brizendine, J.) filed an opinion and order which reversed an order of the Board of Appeals for Baltimore County, and reinstated an order of the Baltimore County Zoning Commissioner which directed the issuance of five building permits to Westchester, Inc. (appellee), a Baltimore County developer. Walter J. Bauman, et al. (appellants), a group of homeowners opposed to the issuance of the building permits, have appealed to this Court. For reasons explained below, we shall affirm the judgment of the circuit court.

The facts, although somewhat complex, are essentially undisputed. At issue is the development of an eight-acre parcel of land located in the Westchester subdivision in western Baltimore County. The property was originally purchased in 1967 by the Stefanowicz Corporation, the predecessor in title to the appellee. At that time its development was to include only single family homes.

In 1970 the Baltimore County Council adopted Bill No. 100, which substantially rewrote many of the county's zoning ordinances and provided for greater flexibility in residential development through the use of cluster development.[1] At that time the subject property was zoned D.R. 5.5 for maximum permissible density. In 1973 the Stefanowicz Corporation received

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1 "Cluster development" is a zoning technique which provides for greater flexibility and variation in housing, in the development of large tracts of land. It allows a developer to take unused density from one portion of a tract and add it to the permitted density in another portion of the tract. See 82 Am. Jur. 2d, Zoning and Planning, § 106.

approval from the Board of Appeals for Baltimore County (the "Board") of a development plan for eighteen and one-half acres utilizing the cluster concept. The plan consisted of a 108-unit apartment complex surrounded by single family homes. A record plat was filed early in 1975. In 1977 an amended plat was filed which made minor changes in the earlier plat. No changes were made, however, in the number of units planned, and the apartment buildings were clearly shown on the plat.

In January of 1975 the Stefanowicz Corporation entered into a public works agreement with the County. Pursuant to that agreement, the Stefanowicz Corporation constructed public streets, sewer lines, water lines, storm drains, sediment control facilities and other incidental improvements on the property, at substantial expense to the corporation. The public improvements were completed by late 1978, and conveyed to the County in April, 1979

In the meantime work was begun on the single family homes shown on the plat. By 1978 sales of those homes had begun. The buyers were told of the proposed apartment complex shown on the record plat and several of them signed statements which attested to their being advised of the proposed development plans.

At that time no construction on the apartment buildings had begun. The reasons for the delay in construction of the apartment buildings are somewhat unclear, but it appears that it was due partially to the developer's financial difficulties and partially to the developer's inability to obtain the proper sewer allocations. The property is located in the Patapsco Watershed which was experiencing a sewer deficiency at that time, making

sewer allocations difficult to obtain. For reasons which are not quite clear in the record, the developer was dropped from the waiting list for sewer allocations.

The Baltimore County Council, in the comprehensive map process of 1980, downshifted the permissible density on the subject property from D.R. 5.5 to D.R. 2 and D.R. 3.5, with some D.R. 5.5. This downshift in zoning created the current controversy as to whether the 1977 plat is still valid.

In 1982, the Stefanowicz Corporation filed suit in the Circuit Court for Baltimore County to protect the 1977 record plat from being voided and to compel the issuance of sewer allocations. An opinion was elicited from the Director of Planning and Zoning which stated that the development plan had vested and reinstated the developer on the waiting list for sewer allocations. As a result, the lawsuit against the County was dismissed.

In reliance on the opinion of the Director of Planning and Zoning, Westchester, Inc. purchased the property from the bankruptcy proceedings which reorganized the Stefanowicz Corporation. The sewer allocations were then obtained along with utility permits for the subdivision. Further grading of the property was done and private utilities were installed under the permits. Westchester, Inc., received final building permits on July 30, 1984. The appellants, the homeowners surrounding the site for the apartment buildings, appealed the issuance of the permits to the County

Board of Appeals. Although both the County Attorney and the Zoning Commissioner were of the opinion that the subdivision plat had vested, the Board ruled otherwise. On appeal to the Circuit Court for Baltimore County, the court found itself in agreement with the County Attorney and the Zoning Commissioner and reversed the ruling of the County Board of Appeals. Unhappy with that result, the homeowners have brought the case to this court.

Although appellants pose numerous questions in their brief, many of them were not raised below and thus will not be considered here. Rule 1085. The questions that are properly before us are all rephrasings of the central issue in this appeal: Have the developer's rights to develop the subject property according to the plans contained in the 1977 recorded plat vested so as to insulate the property against the subsequent downshift in permitted density?

Professor Rathkopf defines "vested rights" in this context as follows:

> A vested right is the right to initiate or continue the establishment of a use or construction of a structure which, when completed, will be contrary to the restrictions or regulations of a zoning ordinance or an amendment to it which has become effective in the meantime. The particular nonconforming use or structure will continue after the effective date of the ordinance or amendment as a vested right.

4 Rathkopf, The Law of Zoning and Planning, § 50.01 (4th ed. 1986). The Court of Appeals has held that such rights may be acquired where (1) the landowner has obtained a valid permit; and (2) in reliance upon the permit, the owner has made a substantial beginning in construction and in committing

the land to the permitted use before the change in the zoning ordinance. O'Donnell v. Bassler, 289 Md. 501, 425 A.2d 1003 (1981); Rockville Fuel and Feed Co. v. City of Gaithersburg, 266 Md. 117, 291 A.2d 672 (1972); Richmond Corporation v. Board of County Commissioners for Prince George's County, 254 Md. 244, 255 A.2d 398 (1969). Under this rule it is insufficient to show substantial expenses incurred in preparation for building, such as fees for studies and development plans or expenses for grading and clearing, and excavation; rather, the owner must show the commencement of construction of the structure itself. Steuart Petroleum Co. v. Board of County Commissioners, 276 Md. 435, 347 A.2d 854 (1975); County Council of Montgomery County v. District Land Corporation, 274 Md. 691, 337 A.2d 712 (1975); Ross v. Montgomery County, 252 Md. 497, 250 A.2d 635 (1969). While the Court of Appeals has acknowledged that the application of this rule may be less onerous in other jurisdictions, it has declined to relax it in this state. Steuart Petroleum Co. v. Board of County Commissioners, supra; County Council of Montgomery County v. District Land Corporation, supra; see generally, Rathkopf, supra, § 50.03. In the case sub judice, no building permits were issued after the improvements had been made. Furthermore, in spite of the completion of the public works and the incurring of substantial expenses by the appellee, no construction has yet begun on the actual apartment buildings. Thus, the appellee has not met either requirement of the standard enunciated by the Court of Appeals and can claim no vested rights under a common law theory.

The most vigorously disputed question in this appeal, however, is whether the plat had vested under the statutory provisions of the Baltimore County Code. Section 22-68 of the Code provides, in pertinent part:

> (a) Unless extended pursuant to the provisions of section 22-68.1, a subdivision plat shall lapse and be invalid for either the entire subdivision or any section or parcel thereof, if such subdivision, section or parcel has not been developed, as defined in subsection (c), in accordance with the following time limits as applicable:
>
> ...
>
> (c) A subdivision, section or parcel thereof is hereby defined as developed if any of the following has occurred with respect to such subdivision, section or parcel:
>
> (1) Building permits have been issued; or
>
> (2) Substantial construction on required public or private improvements has occurred on such subdivision, section or parcel pursuant to the applicable regulations and requirements of the department of public works.

This statute was enacted in 1982, as a part of the regulations adopted by the Baltimore County Council in Bill No. 56-82. Bill No. 56-82 included new legislation encompassing § 22-37 through § 22-105 of the Baltimore County Code entitled "Article IV. Development Regulations of Baltimore County".

Notwithstanding the seemingly clear application of the language of § 22-68 to the subject property, the County Board of Appeals concluded that the statute was not controlling in this case. This conclusion was based on the Board's interpretation of § 22-40 (also enacted in 1982 as a part of Bill No. 56-82) which sets forth the scope of Article IV, the Developmental Regulations. Section 22-40 reads as follows:

> These regulations shall apply to all development except such development which, prior to the effective date of this article [June 11, 1982], has received tentative approval of the preliminary plan by the planning board or for which development a valid, unexpired building permit exists, or for which development a current executed public works agreement exists, all of which development shall be governed by the subdivision regulations in effect at the time of said preliminary plan approval, building permit issuance or public works agreement execution, as the case may be.

Under the Board's interpretation of § 22-40, the case turned on the statutes in existence in 1975, the year the public works agreement was executed. In 1975 there was no "saving" statutes in effect, and thus the Board ruled that the subdivision plat had not vested. As we have noted, the Circuit Court disagreed with the Board's interpretation and application of the statutes, as do we.

Section 22-40, a more general provision, serves to make the new regulations apply to all developments except those which had taken significant steps toward development prior to the effective date of the new regulations. The new regulations are primarily intended to be prospective in order to provide protection to those developments. If

read in isolation, the more general language of § 22-40 would seem to negate the similar but more specific protection in § 22-68. The statutes must be read as part of an integrated whole, however, and not as isolated parts. Nothing in § 22-68 indicates that the Baltimore County Council intended it to apply only prospectively. Furthermore, the legislative history of § 22-68, as recounted in the Opinion of the County Attorney in the record below, indicates to the contrary. The County Attorney notes that § 22-68 and its predecessor statutes were enacted by the County Council in recognition of the fact that it takes a substantial expenditure of funds to proceed through various county regulations in the subdivision process, and that a developer should be given a reasonable period of time to achieve a developed status for this property without running the risk of losing his investment through a change in the zoning regulations.

Additionally, the Board also ignored the effect of the predecessor statutes to § 22-40. In 1977 the County Council enacted Bill No. 12-77, known as the Interim Development Act. Section 22-15.1(L)(3) of that Act provided essentially that record subdivision plats, whether recorded prior to or after the enactment of Bill No. 12-77, would lapse and become invalid if they were undeveloped after five years from the later of the date of the enactment or the date of recordation. The statute further provided that where substantial construction on required public improvements had occurred, the subdivision would be considered "developed". This provision was repealed and reenacted in substantially the same form in 1979, in Bill

No. 61-79. Thus it seems clear from the history of the present § 22-68 and its predecessors, the statutes were enacted to provide protection for precisely the type of development that is at issue in this case. The subdivision plat vested by virtue of the substantial construction (indeed, it may be more accurate to say the completed construction) of the public improvements under the public works agreement, as provided in § 22-68 and its predecessor statutes.[2]

As a final comment, the circuit court noted that, even absent the statutory intervention of § 22-68, the facts of this case cry out for an application of the doctrine of equitable estoppel. Equitable estoppel is defined as:

> ... the effect of the voluntary conduct of a party whereby he is absolutely precluded both at law and in equity, from asserting rights which might perhaps otherwise have existed, either of property, of contract, or of remedy, as against another person, who has in good faith relied upon such conduct, and has been led thereby to change his position for the worse and who on his part acquires some corresponding right, either of property, of contract, or of remedy.

Knill v. Knill, ___ Md. ____ (No. 39, Sept. Term, 1985, filed 6/27/86, Slip. Op. at 9), quoting from 3 J. Pomeroy, Equity Jurisprudence, § 804 (5th ed. 1941). The appellants have strongly opposed the application of this doctrine in favor of the developer on the ground that there was insufficient detrimental reliance by the developer on the actions of the county officials to call for an application of estoppel. They have,

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2 We note further that § 22-40 speaks only of executory public works agreements. It would be somewhat strange to provide protection for those subdivisions where the public works agreements are simply executory, and not for those where the public works agreements have been fully performed.

however, missed the most essential point. While we may be inclined to agree that an estoppel could be invoked against the County under these facts, we do not see how estoppel can be invoked against the neighboring landowners. It was not their conduct upon which the appellee relied. See generally, Rathkopf, supra, § 50.04. The appellee presented a good argument for the application of estoppel - it simply had the wrong party on the opposing side of this case.

JUDGMENT AFFIRMED.

COSTS TO BE PAID BY APPELLANTS.

VESTED RIGHTS

CHARLES LEWIS and ROXANNE LEWIS, CHARLES T. KINDRED and GAIL KINDRED, PETER V. SCHUKAS, WILLIAM KUBIET and ELEANOR KUBIET, WILLIAM BUCHTA and SUSANNE BUCHTA, JOHN BENT and FRANCES BENT, ELLA KUBIET and WILLIAM KUBIET,	*	IN THE
Plaintiffs	*	CIRCUIT COURT FOR
vs.	*	
NORMAN GERBER, DIRECTOR, DEPT. OF PLANNING & ZONING, BALTIMORE COUNTY; HAROLD J. PISTEL, P.E., DIRECTOR, DEPT. OF PUBLIC WORKS, BALTIMORE COUNTY; WILLIAM T. HACKETT, CHAIRMAN, COUNTY BOARD OF APPEALS, BALTIMORE COUNTY; CHESAPEAKE HOMES, INC.; TED ZALESKI, DIRECTOR, DEPT. OF PERMITS and LICENSES, BALTIMORE, MD.; BALTIMORE COUNTY;	*	BALTIMORE COUNTY
Defendants	*	CASE NO. 84-CSP-969

****

MEMORANDUM OPINION AND ORDER

This case came before the Court on May 27, 1985 on Plaintiffs, et al, as well as Defendant's (Chesapeake Homes) Motion for Partial Summary Judgment on the issue of whether Chesapeake Homes obtained vested rights in the zoning of a parcel of property which they sought to develop. Also heard at this time was Baltimore County's Motion for Summary Judgment as to the duty of the Office of Zoning to issue building permits pursuant to an approved plat where legislation to amend existing zoning regulations was pending.

This is an action for injunctive relief filed by Plaintiffs who are residents of Relay, located in Baltimore County, Maryland. Plaintiffs (hereafter Residents) seek an injunction against the continued construction and

EXH 22

development of a parcel of property known as Huntsmoor South. The Huntsmoor South property encompasses approximately 50 acres in Baltimore County and is adjacent to Interstate 95. Suit was filed against various Baltimore County officials, as well as various Baltimore County Governmental Agencies. The purpose of the suit is to enjoin the continued development in Huntsmoor South, as well as to enjoin the continued issuing of development permits and to compel the revocation of previously issued permits. The owner and developer of Huntsmoor South, Chesapeake Homes (hereafter Chesapeake) intervened in the action and became a party Defendant in an attempt to protect its rights as the developer of Huntsmoor South.

A chronology of the facts relative to the development of Huntsmoor South is as follows. In November of 1982, Chesapeake submitted development plans to the County Review Group (C.R.G.) in order to develop the subdivision. On February 10, 1983, pursuant to two public hearings, C.R.G. granted final approval of the plan for development. The plan provided for construction of the subdivision in an existing D.R. 10.5 zoning classification. On May 7, 1984 the Department of Public Works approved the development of storm water management Pond No. 1. The final development plan was approved on July 6, 1984. Plans for storm water management pond No. 2 were approved by the Department of Public Works on July 24, 1984. On September 27, 1984, Chesapeake recorded a final subdivision development plat for Huntsmoor South in the D.R. 10.5 zone. Upon recording the subdivision plat, Chesapeake obtained building permits on November 20, 1984 and work was begun on the site on December 3, 1984.

On May 31, 1983, Residents requested a down-zoning of the Huntsmoor South property from D.R. 10.5 to D.R. 3.5. and presented their request to the Planning Board on November 16, 1983. On February 7, 1984, the Planning Board decided to recommend a change in the zoning of Huntsmoor South from D.R. 10.5 to D.R. 3.5

On June 20, 1984, public hearings were held before the Baltimore County Council on zoning issues relating to the down-zoning of Huntsmoor South. The County Council retired the Huntsmoor South issue on September 10, 1984 by accepting the Planning Board's recommendation for down-zoning the property to D.R.3.5. On November 13, 1984, the County Council voted to downshift the zoning from D.R. 10.5 to D.R. 3.5 which became effective on January 10, 1985.

As of the effective date of the down-zoning, January 10, 1985, Chesapeake's pre-construction and construction efforts consisted of clearing and grading the Huntsmoor South property, construction of two sediment control ponds, pouring of several concrete footings, delivery of cement blocks and bales of hay, erection of silt fencing as well as a trailer "hook-up" on the construction site. The total expenditure for the pre-construction and construction efforts was Eight Hundred Seventy-Eight Thousand, Five Hundred Twenty-Nine Dollars ($878,529.00).

The issue is whether Chesapeake obtained vested rights in the D.R. 10.5 zoning classification of Huntsmoor South. This has been addressed by the parties from two perspectives. First, whether Chesapeake obtained vested rights pursuant to the Common Law of Maryland; secondly, whether Chesapeake statutorily obtained vested rights pursuant to Baltimore County Code, Section 22-68 (1983 Cum. Supp.). Both will be considered herein.

In order to determine whether pursuant to Maryland's Common Law, Chesapeake obtained vested rights in the D.R. 10.5 zoning classification, it will be necessary to review the pertinent Maryland case law. Because the variant facts of the applicable cases have yielded different holdings, the Court believes it useful, if not necessary, to review the facts and holdings in those cases in order to properly explain its rationale in the application of the law to the facts at issue in this case.

The first case in a line of cases which addresses the issue of when construction commences, thereby resulting in a developer/property owner obtaining a vested right in the existing zoning, is Rupp, et al., Trustees, v. Earl H. Cline & Sons, Inc., et al, 230 MD 573 (1962). The Rupp court defines commencement of a building as "a manifest commencement of some work or labor on the ground which everyone can readily see and can recognize as the commencement of a building and the work done must have been begun with the intention and purpose then formed to continue the work until the completion of the building." The majority rule concerning vesting, which is stated in Rathkopf Law of Zoning and Planning, 3rd Edition, Volume 2, Chapter 57-6, Section 3 and which has been consistently followed by Maryland's Courts is that ...

> "a landowner will be held to have acquired a vested right to continue the construction of a building or structure and to initiate and to continue a use despite a restriction contained in an ordinance where prior to the effective date of the ordinance in reliance upon a permit theretofore validly issued he has in good faith made a substantial change of position in relation to the land, made substantial expenditures or has incurred substantial obligations....."

In Rockville Fuel and Feed Co., Inc. v. City of Gaithersburg, Maryland, 266 MD 117 (1972) the language used by the court concerning vesting is that a vested right can only result when a lawful permit is obtained by the owner of the property and in good faith the owner proceeds with such construction under the permit as would advise the public that the developer had made a substantial beginning to construct the building and commit the use of the land to the permission granted.

With these general rules in mind, we now turn to the contentions of the parties in this case. Residents argue Chesapeake did not obtain common law vesting for two reasons. The first reason asserted by Residents is that

Chesapeake did not perform substantial construction as required under the case law of Maryland; the second reason is that because Chesapeake knew of the potential down-zoning of Huntsmoor South and continued with development of the property in accordance with the building permits, it did not act in good faith.

As to the issue of substantial construction, the facts in the case of Ross, et al. v. Montgomery County, Maryland, et al., 252 MD 497 (1968) were that a landowner had a building permit to construct a then permitted apartment complex and that he had poured one footer in an attempt to maintain the validity of his building permit; however, the footer was filled in the very next day. The Ross court held that the landowner did not acquire any vested rights in the zoning classification. The court found that the landowner did not in good faith begin actual construction with the intention to complete the building prior to the expiration of the building permit as required by Rupp because the footer was filled in the day after it had been dug.

Addressing the issue of monies expended in anticipation of construction, the Ross court, although being cognizant that Fifty-Six Thousand Dollars ($56,000.00) had been expended on architectural fees, found that the amount was not substantial in the absence of actual construction. Furthermore, the court noted that this was not a situation where a valid permit had been revoked by operation of an ordinance which affected a re-zoning repugnant to the use for which the permit had been issued. This was a case where the permit had expired for want of construction and with that expiration any vested right which may have existed was nullified.

In Rockville Fuel, the petitioner's purchased a parcel of property for the exclusive purpose of building a concrete plant. The City of Gaithersburg opposed the construction of the plant and litigation resulted from that opposition. Rockville Fuel petitioned for a special exception pursuant to the zoning ordinance

which then included such plants as a permitted use. The Board of Appeals of the City of Gaithersburg denied Rockville's request for a special exception. The case ultimately wound up in the Court of Appeals which reversed the Court of Special Appeals and the Board of Appeals and remanded the case for further proceedings to enable Rockville Fuel to obtain a special exception and build the concrete plant. Subsequent to the decision by the Court of Appeals, the City applied for a zoning amendment for the sole purpose of eliminating the concrete plant as a permitted use and thereby including it as a prohibited use. The Mayor subsequently approved the ordinance granting the zoning amendment and accordingly disapproved Rockville's request for a special exception. Rockville subsequently initiated suit on the basis that it had acquired vested rights to construct the concrete plant as a result of the Court of Appeals decision. At no time did Rockville ever obtain a building permit and at no time did Rockville begin construction. Accordingly, the Court found that Rockville Fuel had not acquired a vested right in the prior zoning and it further stated that such a vested right could only result when a lawful permit was obtained and the owner in good faith had proceeded with such construction under it as would advise the public that the owner had made a substantial beginning to construct the building and commit the use of the land to the permission granted.

In Pemberton v. Montgomery County, Maryland, 275 MD 363 (1975), the Exxon Corporation sought to construct a gasoline station under a special exception. Approximately one (1) day before the end of the period granting the special exception, Exxon pursuant to a building permit, constructed a retaining wall, dug a trench, installed horizontal steel rods and then poured five (5) to six (6) yards of concrete into the excavation for footings. In determining whether substantial construction had begun, the Pemberton court, relying on the two-pronged test enumerated in Rupp, distinguished the case from Ross because

in Ross the footer was filled in the day after it was dug, and accordingly, the Court found that the second aspect of the Rupp test had not been met in that the requisite intent to continue construction was absent. The Court further stated that Pemberton was comparable to Ross to the limited extent that the same type of work was performed, i.e., excavation and construction of footings. The Pemberton court upheld the Board's decision that there was sufficient evidence of digging and cement work on the retaining wall foundation and accordingly upheld the Board's finding that Exxon had acquired vested rights.

The last in the line of cases relating to substantial construction is Steuart Petroleum Co., et al. vs. Board of County Commissioners of St. Mary's County, 276 MD 435 (1975). The Steuart Petroleum Co. sought to build a refinery; they applied for and were granted a permit authorizing construction of a warehouse. The permit covered construction of a foundation pad for processing and utility. At no time during the application process was there any reference to a proposed refinery. The County subsequently revoked the permit stating the permit could in no way be construed as pertaining to the construction of anything except the foundation pad. The day before the expiration of the permit, Steuart's contractor poured six (6) concrete footings for a pad on which a transformer was to be located. As the work progressed, it was determined that the footings had been improperly sited and they were ultimately incorporated in the foundation for the warehouse. The court held that pouring of the six (6) footings for the pad was not the commencement of construction because the footings were located in the wrong place and were ultimately covered by the warehouse.

As in Ross, the Steuart court noted that substantial preliminary commencement construction expenditures were made. The expenditures included One

Hundred Seventy-Five Thousand Dollars ($175,000.00) for a feasibility and design study and Eighty Two Thousand Five Hundred Dollars ($82,500.00) for an environmental impact study. However, the court stated that these expenditures were not sufficient to support its claim of a vested right because as in Ross where the Fifty-Six Thousand Dollars ($56,000.00) was expended for architectural fees, the expenditures were not substantial due to an absence of actual construction.

In applying the facts of the instant case to Rupp and the line of cases following it, the Court believes the law in this case to be less difficult than the facts. In accordance with the two-pronged Rupp test for determining commencement of construction, the Court believes that Chesapeake's procurement of five (5) building permits out of twelve (12) for plat A; three (3) building permits out of nine (9) for plat B; zero (0) building permits out of twenty-three (23) for plat C; five (5) building permits out of twelve (12) for plat D, as well as the digging of footings and the pouring of concrete for two (2) of the buildings, staking out of buildings, construction of two (2) sediment control ponds, substantial clearing and grading, the "hook-up" of an on-site construction trailer, erection of silt fencing and placement of bales of hay is sufficient to meet both prongs of the test. Accordingly, the Court finds that Chesapeake had commenced construction prior to the effective date of the down-zoning on January 10, 1985.

Furthermore, the Court finds that, pursuant to Ross and Rockville, Chesapeake began construction with the good faith intention to complete it in compliance with both their approved developmental plan and their subsequently issued building permits. This finding is evidenced by Chesapeake's expenditure, in connection with the development of Huntsmoor South, of over Eight Hundred

Seventy Thousand Dollars ($870,000.00) as of January 10, 1985 (the effective date of the down-zoning). The Court finds that because the aforementioned expenditures were coupled with the presence of actual construction, Chesapeake has made a substantial change of position in relation to the land and has therefore met the test for obtaining vested rights as stated by Rathkopf and as followed by the Maryland Courts. Accordingly, the Court finds that Chesapeake obtained vested rights in the D.R. 10.5 zoning classification pursuant to Maryland's Common Law.

As to Residents' argument that Chesapeake acted in bad faith by continuing the development of Huntsmoor South while possessing knowledge of pending down-zoning legislation, the Court finds that the good faith requirement enunciated by the Rupp Court is the good faith intent to complete the project started. Assuming arguendo, however, that Residents' good faith argument is meritorious, the Court notes that in none of the Maryland cases cited by counsel is there any indication that a developer's attempt to obtain vested rights in an existing zoning classification where down-zoning legislation is pending constitutes bad faith. The good faith considerations noted in Ross, Rockville and Steuart Petroleum, all address the issue of whether a developer, in good faith, initiated actual construction with the intent and purpose of completing said construction or whether the developer began the construction in bad faith, merely to obtain vesting.

Inasmuch as the Court has found that Chesapeake has obtained vesting in the D.R. 10.5 zoning classification as a result of commencing substantial construction prior to the effective date of the down-zoning, it is not necessary for the Court to determine whether vesting may have accrued under Section 22-68 of the Baltimore County Code. However, because the issue of whether this section of the Code vests zoning has arisen, the Court believes that a resolution of the issue should be made.

Section 22-68 provides in pertinent part that:

> (a) 'A subdivision plat shall lapse and be invalid ... ... if such subdivision ... has not been developed, as defined in subsection C, in accordance with the following time limits ...:
>
> (3) Any plat ... approved after the effective date of these regulations shall expire eight (8) years after the approval of the plan pertinent to which the plat was prepared."
>
> (c) "A subdivision ... is hereby defined as developed if any of the following has occurred ...:
>
> (1) Building permits have been issued; or
> (2) Substantial construction or required public or private improvements has occurred ... pursuant to the applicable regulations and requirements of the Department of Public Works. ..."

Accordingly, upon obtaining building permits or upon performing substantial construction, §22-68 permits a developer to maintain the validity of the subdivision plat for a period of eight (8) years after its approval.

Residents note that Article 4 in which §22-68 appears is captioned "Development Regulations of Baltimore County" as opposed to Article 3 which is captioned "Zoning Regulations." Accordingly, argue Residents, §22-68 by its own terms insulates recorded plats from changes in development regulations only and does not insulate recorded plats from changes in zoning regulations.

The Court recognizes the difference between zoning and planning. Board of County Commissioners vs. Gaster, 285 MD 233 (1979) states that zoning is concerned with the use of property but planning is broader in concept. Additionally, Judge Bishop in Miller v. Forty West Builders, Inc., No. 947 Sept. Term (1984) quoting from 1 - E Yokley Zoning Law and Practice, Section 1-2 (4th ed. 1978) describes the concepts as follows:

> "... Let us say that zoning is almost exclusively concerned with the use regulation whereas planning is a broader term and indicates the development of a community not only with respect to the uses of land and buildings but also with respect to streets, parks, civic beauty, industrial and commercial undertakings, residential developments and such other matters affecting the public convenience and welfare as may be properly embraced within the police power."

Accordingly, inasmuch as development regulations encompass the broader aspect of the development of a community with respect to its uses, i.e., with respect to its zoning, it becomes evident that §22-68 vests developmental regulations as well as zoning regulations for a duration of eight (8) years after approval of the plan pursuant to which the approved plat was prepared.

The Maryland Court of Special Appeals has most recently expressed their position regarding the relationship between zoning and regulation in the Forty West Builders, Inc. case. In Forty West, the Court stated that:

> "There are three integral parts of adequate land planning, the Master Plan, zoning and subdivision regulations.....
>
> Although this case arose within the context of approval of a subdivision plan, ..., it also involves zoning. Accorndingly, we hold that the term 'zoning petition' was intended to be broad enough to include subdivision plans submitted to the C.R.G. for approval.
>
> Approval by the C.R.G. will necessarily entail review of and compliance with the applicable zoning regulations."

The language used by the Court of Appeals indicates that zoning and planning, although having distinct meanings, are not wholly unrelated concepts, and effectively, they are synonymous when considered in the context of C.R.G. approval of subdivision plans such as those at issue in this case.

In addition to the Forty West case, the legislative context within which §22-68 was adopted, is indicative of the intent of the statute. The legislative

history of §22-68 is addressed in an opinion written by the County Attorney on May 17, 1984 known as the Westchester Opinion. The opinion notes that from 1955 until at least 1977, the Office of Planning and Zoning, as well as the Zoning Commissioner's office, interpreted §103.1 of the Baltimore County Zoning Regulations to essentially insulate a subdivision plat which had received tentative approval from the Baltimore County Planning Board. The effect of this interpretation was to give a developer a vested right to proceed with his tentative plan notwithstanding that the zoning may be changed prior to the issuance of permits and prior to the commencement of construction. The County Attorney went on further to indicate that the interpretation of §103.1 had been adopted by the County Council.

The opinion further indicates that in 1977 the County Council passed the Interim Development Control Act, codified at §22-16 of the Baltimore County Code 1978. That legislation set forth the circumstances and conditions under which a developer could receive a vested right to proceed with his development notwithstanding a subsequent change in the zoning classification. Specifically, §22-16 (h) 3 expressly provided the developer with the vested right to proceed with development for five (5) years notwithstanding subsequent down-zoning.

In 1982 the County Council enacted §22-68 which repealed all previous subdivision regulations and established the development regulations now in effect. Said section established an eight (8) year period for development following plan approval. In his opinion, the County Attorney notes that since at least 1977 the County Council of Baltimore has chosen to recognize that it takes a substantial expenditure of funds to go through the various regulations of Baltimore County in the subdivision process and that a developer should be given a reasonable period of time to achieve a developed status for his property without running the risk of losing his investment by changes in the zoning classification.

The opinion goes on to state that the County Council has chosen by legislative enactment to change the rule of law enunciated in the line of Maryland cases cited in this opinion and has decided that a developer should have a vested right to proceed with his development if he has secured building permits or if there has been substantial construction on required public improvements.

Pursuant to the most recent assessment by the Court of Appeals concerning the interplay between zoning and planning, and given the legislative history of the enactment of §22-68, it is the opinion of this Court that the section vests zoning rights as well as developmental rights in the owner of property, provided said owner meets the requisite elements for such vesting.

The final motion for consideration is Baltimore County's Motion for Summary Judgment on the issue of whether applications for building permits conforming to current zoning regulations should be issued by the Zoning Office even though they proposed a use contrary to an enacted but not effective amendment to existing zoning regulations. Residents contend that Chesapeake's awareness of potential down-zoning and Chesapeake's knowledge of the comprehensive re-zoning by the 1984 Comprehensive Map should have inhibited Chesapeake's application for its building permits. The County's position is that if an application for a permit conforms to a then existing zoning regulation, it is encumbent on the County to issue the permit. The denial of the permit, pending the effectiveness of the amendment to the zoning regulation is, according to the County, beyond the powers delegated to it.

In the case of Baltimore County v. Security Mortgage Corp., 227 MD 234 (1961), the Security Management Corporation brought suit for declaratory judgment and injunctive relief pursuant to the County's refusal to approve recordation of

subdivision plats. The Court held that a municipal agency can exercise only so much of the police power as may be expressly granted or necessarily implied to it, and that if the action taken exceeds that power, the action is void. The Annotated Code of Maryland, Article 25 A, Section 5, (1957) enumerates the express powers provided to the counties. Section 5 contains no provision granting the County authority to refuse an application for a building permit where the intended use conforms to what is then the controlling zoning regulations. Accordingly, the Court believes that if the County were to deny the issuance of building permits pending the effectiveness of an amendment to existing zoning regulations such an act would be beyond the powers delegated to it.

In Baltimore Planning Commission vs. Victor Development Co., Inc., 261 MD 387 (1970), a Petition for Mandamus was filed by the Victor Development Co. when the Planning Commission rejected the approval of a development plan that complied with the legal requirements for its approval. The Court held that a refusal by the Baltimore County Planning Commission to approve a subdivision development plan where the plan appeared to have complied in all respects with the rules, regulations and requirements for its approval, was not within the Commission's authority. Similarly, in this case, the County was confronted with a situation where a request for building permits was made in accordance with the approval of a developmental plan that complied with the then existing zoning regulations. As the court in Ross stated in addressing the issue of how a change in zoning regulations enacted while litigation was pending would affect the determination of the suit, "The case must be determined under the law as it currently exists." Similarly, the Court finds that the County had to act under the law as it existed at the time Chesapeake sought their building permits. Therefore, the Court finds

that the County had no authority to reject Chesapeake's request for their building permits.

Accordingly, it is this 2nd day of August, 1985, by the Circuit Court for Baltimore County,

ORDERED that Plaintiffs' et al. Motion for Partial Summary Judgment* (Paper No. 30) be and is hereby DENIED, and it is further;

ORDERED that Defendant's (Chesapeake Homes, Inc.) Motion for Partial Summary Judgment (Paper No. 33) be and is hereby GRANTED, and it is further;

ORDERED that Defendant's (Baltimore County) Motion for Summary Judgment (Paper No. 35) be and is hereby GRANTED, and it is further;

ORDERED that Defendant's (Chesapeake Homes, Inc.) Motion to Strike the Memorandum filed on behalf of Kubiet and Spencer (paper No. 38) be and is hereby GRANTED.

*Plaintiffs' allegation of numerous design defects on Chesapeake's construction of Huntsmoor South is still pending.

A. Owen Hennegan

A. OWEN HENNEGAN, JUDGE

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public purpose. (Balto. Co. Code, 1958, sec. 44-2. Bill No. 68, 1963. 7-11-49.)

Sec. 22-60. Previously approved subdivisions not affected.

Nothing herein provided shall be applicable to any final plat of a subdivision which was recorded prior to the effective date of this subdivision, nor shall it be applicable to any preliminary subdivision plan which had tentative approval prior to the effective date of this subdivision. (Balto. Co. Code, 1958, sec. 44-2. Bill No. 68, 1963. 7-11-49.)

Subdivision III. Improvements.

Sec. 22-61. Specifications of and supervision by chief engineer.

All improvements required under this article shall be constructed in accordance with the specifications set out in this subdivision and under the supervision of the chief engineer of the department of public works and to his satisfaction. (Balto. Co. Code, 1958, sec. 44-5. 7-11-49.)

Sec. 22-62. Streets generally—To conform with major street plan.

Whenever a tract to be subdivided includes any part of a street or controlled-access motorway indicated on the major street plan, such part shall be suitably incorporated by the subdivider in his layout plan. (Balto. Co. Code, 1958, sec. 44-6. 7-11-49.)

Sec. 22-63. Same—Consideration of tentative plans of planning board for locality.

If tentative plans have been made by the planning board for the locality of the proposed subdivision, the street system of the latter shall give due consideration thereto. (Balto. Co. Code, 1958, sec. 44-7. 7-11-47.)

EXH 23

ments, shoulders, curbs and gutters, sidewalks, parking areas and other areas within the street right-of-way lines.

Subdivision means the division of property into two (2) or more lots, or the combination of lots, parcels, tracts or other units of property previously divided, for the purpose, whether immediate or future, of sale, rental or building development.

Wetland means:

(1) A private wetland or a state wetland as defined in section 9-101 of the Natural Resources Article of the Annotated Code of Maryland, and, if a private wetland, as delineated under the procedures of section 9-301 of that article; or

(2) A wetland as defined in section 1302, title 16, of chapter 29 of the United States Code Annotated and as described in section 7.752.2 of volume 7 of the Code of Federal Regulations; or

(3) An area not designated under these provisions but which is inundated or saturated by surface water or groundwater and which supports vegetation predominantly adapted to saturated soils and which has been designated as a wetland by ordinance of the county council. (Bill No. 56, 1982, § 2)

Sec. 22-40. Scope of regulations.

These regulations shall apply to all development except such development which, prior to the effective date of this article [June 11, 1982], has received tentative approval of the preliminary plan by the planning board or for which development a valid, unexpired building permit exists, or for which development a current executed public works agreement exists, all of which development shall be governed by the subdivision regulations in effect at the time of said preliminary plan approval, building permit issuance or public works agreement execution, as the case may be. (Bill No. 56, 1982, § 2)

Sec. 22-41. General exemption.

The subdivision of land for agricultural purposes is exempt from these regulations if no new streets are involved. (Bill No. 56, 1982, § 2)

EXH 24

BILL NO. 11-77

A RESOLUTION to approve the extension of the sanitary sewer system of Baltimore County in North Point Road, East Battle Grove Road, and North Point Boulevard in the vicinity of Battle Grove, Fifteenth Election District and Seventh Councilmanic District of Baltimore County.

WHEREAS, the county health officer and the director of public works have found it necessary, for the protection of the public health, that the sanitary sewer system of Baltimore County be extended in North Point Road, East Battle Grove Road, and North Point Boulevard, in the vicinity of Battle Grove, Fifteenth Election District and Seventh Councilmanic District, to serve existing housing units in the area; and

WHEREAS, pursuant to the authority contained in Section 34-28 of the Baltimore County Code, 1968, the county is authorized to construct such extension of said system without meeting the requirement that such project be self-supporting, provided the County Council of Baltimore County, Maryland approve said extension by Resolution duly adopted; and

WHEREAS, the County Council deems it necessary for the protection of the public health that said sewer extension be constructed as aforesaid; now, therefore

SECTION 1. *Be it resolved by the County Council of Baltimore County, Maryland,* that it hereby approves the extension of the sanitary sewer system of Baltimore County, Maryland, in North Point Road, East Battle Grove Road and North Point Boulevard in the vicinity of Battle Grove, Fifteenth Election District and Seventh Councilmanic District.

SECTION 2. And be it further resolved, that this resolution shall take effect forty-five days after its enactment.

BILL NO. 12-77

AN ACT, to regulate for an interim period the issuance of building permits, special permits~~, created~~ AUTHORIZED by Section 430.1B3 of the Baltimore County Zoning Ordinance (hereinafter referred to as special permits), special exceptions, subdivision approvals, amendments to the zoning maps, and reclassifications of the use of property in Baltimore County affected by prospective amendments to Title 22 of the County Code pursuant to the proposed preparation and implementation of a proposed new County ~~Comprehensive~~ Master Plan ~~(hereinafter referred to as the proposed Master Plan)~~, including, but not limited to, development of a comprehensive growth management system and ~~permanent~~ implementing legislation AND TO IMPOSE A TIME LIMIT ON THE PERIOD OF VALIDITY OF A FINAL RECORDED SUBDIVISION PLAT UNDER CERTAIN CONDITIONS; by adding new Section 22-15.1 to the Baltimore County Code, 1968, title "Planning, Zoning and ~~Subdivision~~ SUBDIVISION Control", Article II. Planning. ~~This Act shall hereinafter be referred to as the Interim Development Control Act.~~

WHEREAS, by Article XI-A of the Maryland Constitution, the General Assembly is authorized to provide a grant of "express powers" to counties that form a charter government; and

WHEREAS, by Article 25A, Section 5 of the Annotated Code of Maryland, the General Assembly has designated the "express powers" to be granted to charter counties which powers include the power to enact local laws, for the protection and promotion of public ~~safety, health, morals~~ HEALTH, SAFETY and welfare, relating to planning, zoning and subdivision and to pass all ordinances, resolutions or bylaws that may be necessary and proper to execute and enforce any of the powers expressly enumerated; and

WHEREAS, the people of Baltimore County in accordance with the Constitution and laws of the State of Maryland have adopted, ordained and established the Baltimore County Charter; and

WHEREAS, pursuant to provisions of the Charter and of the laws of Maryland, the County is charged with the duty of planning for the future development and growth of the County, including the preparation of a Master Plan, the enactment of rules and regulations governing the control of building permits, subdivisionS and the development of a zoning map and zoning regulations; and

WHEREAS, pursuant to Title 22 of the County Code, the County Planning Board is authorized to prepare, adopt and amend a Master Plan for the physical development of the County, which will guide the development of the County and make adequate provision for services and public utilities, transportation, housing conservation, distribution and density of population, public and semi-public facilities, urban redevelopment and rehabilitation, capital programming, and other elements of County growth and development; and

23(a)

WHEREAS, pursuant to Title 22 of the County Code, zoning ~~s~~ and regulations and subdivision controls are generally ~~re~~ed to be ~~consistent~~ CONSISTENT with a Master Plan ~~be~~ designed to facilitate adequate provision for schools, parks, water, sewerage, transportation and other public requirements and utilities, to preserve open space, to control the density of population, to avoid undue concentration, to reduce traffic congestion, to regulate the issuance of permits, exceptions and variances, and to promote public health, safety and welfare; and

WHEREAS, pursuant to Title 22 of the County Code, the County Council is empowered to adopt such zoning regulations, subdivision controls and other legislation to implement a Master Plan including a comprehensive growth management system elements; and

WHEREAS, pursuant to Title 22 of the County Code, the County Council has adopted in 1976 a comprehensively revised ~~m~~ap of the county-wide Zoning Map, which under this Act shall be deemed to constitute the present county-wide Zoning Map of Baltimore County; now, therefore

SECTION 1. *Be it enacted by the County Council of Baltimore County, Maryland,* that new Section 22-15.1 be and it is hereby added to the Baltimore County Code, 1968, title "Planning, Zoning and Subdivision Control", Article II. Planning; said new Section to read as follows:

Sec. 22-15.1 *Master Plan — Interim Development Control Pending Plan Completion and Adoption.*

(a) *Legislative Intent and Findings of Fact.*

(1) *Background.* Baltimore County, Maryland has been experiencing growth with respect to population, land development, utilization of natural and environmental resources and agricultural land over the past decade, which the 1975 County ~~Master~~ COMPREHENSIVE Plan indicates has resulted in the inadequacy of public facilities and services in many areas, the premature and unnecessary conversion of open space and agricultural land to urban uses, environmental degradation, an imbalance of growth between types of uses in different parts of the County, an imbalance in the provision of housing for all segments of the community, traffic congestion, and inefficient sprawl patterns of development. The County Council, in recognition of these critical problems and to vest in the present and future citizens of the County a high quality of life in the community, has authorized the preparation of a proposed

NEW COUNTY Master Plan (HEREINAFTER REFERRED TO AS THE PROPOSED MASTER PLAN) ~~with a~~ INCLUDING comprehensive growth management system elementS to regulate growth within developed and undeveloped areas of the County and has authorized the preparation of studies for the proposed revision of zoning and subdivision regulations, and other legislation to implement the goals, objectives, policies and techniques to be incorporated in the proposed Master Plan.

(2) *Legislative Findings of Fact.* The County Council does hereby find that FOR THE PROTECTION OF THE PUBLIC INTEREST, pending the necessary studies, hearings and other ~~preliminaries~~ PRELIMINARY MATTERS incident to proper consideration and decisions by the Council of any revisions and amendments to the planning, zoning and subdivision regulations of the County Code and other County legislation necessary to implement the proposed Master Plan and growth management system elementS ~~that~~ appropriate measures must be taken for a reasonable interim period to ~~protect the public interest by preserving~~ PRESERVE the integrity of the proposed Master Plan and proposed Code revisions, AMENDMENTS and implemental legislation, until adopted and effective. The County Council further finds that without such interim measures, development may occur throughout the County in areas that may be affected by the proposed Master Plan and any proposed Code revisions, amendments and implemental legislation that may frustrate the purpose and intent of the proposed Master Plan and destroy the integrity of such plan before it can be adopted and made effective through Code revisions and amendments, including necessary growth management legislation. The County Council further finds that an inventory of residentially zoned land exists with requisite subdivision approval, which is not subject to the controls of this Act (SOMETIMES REFERRED TO HEREINAFTER AS "INTERIM DEVELOPMENT CONTROL ACT"), sufficient to meet the needs of projected population increase in the County for a THE period ~~of duration~~ covered by this Act, and that the controls of this Act are essential and necessary to preserve the orderly and appropriate future growth and development of the County, the provision of adequate facilities and services, the conservation of environmentally-sensitive open space and agricultural land, and to meet the general public health, safety and welfare of the citizens of the County.

(3) *Legislative Intent and Purpose.* Pursuant to authority duly vested in it, it is the intent and purpose of the County Council to protect AND PRESERVE

TIVES OF an acceptable Master Plan and Comprehensive growth management system elements THEREOF ~~to preserve its objectives~~ and insure ~~its~~ THE PLAN'S implementation, by ~~hereby~~ adopting HEREIN reasonable protective interim legislation during preparation and consideration of the MASTER Plan and the proposed Code revisions and amendments, including necessary growth management legislation thereby protecting the public interest and welfare, promoting ample public debate and consideration of the proposed MASTER plan, preventing the intrusion of incompatible uses, and preventing premature and conflicting amendments to the Zoning Map, special permit and special exception approvals, subdivision approvals and reclassifications of the use of property, INCLUDING PROPERTY OWNED BY LOCAL GOVERNMENTS, for development which would tend to prejudice the integrity and objectives of the proposed MASTER plan or result in the establishment of land use patterns development and capital expenditures inconsistent with the intent of the proposed Plan and implementation measures, including the projected growth management system elementS. THE COUNTY COUNCIL FURTHER PURSUANT TO AUTHORITY VESTED IN IT AND FOR THE INTENT AND PURPOSE OF PROTECTING AND PRESERVING THE OBJECTIVES OF AN ACCEPTABLE MASTER PLAN AND GROWTH MANAGEMENT SYSTEM AND TO ADOPT STANDARDS AND GUIDELINES TO CONTROL DEVELOPMENT WHICH WOULD RESULT IN THE ESTABLISHMENT OF LAND USE PATTERNS AND DEVELOPMENT AND CAPITAL EXPENDITURES CONSISTENT WITH THE FUTURE PLANNED AND ORDERLY DEVELOPMENT OF BALTIMORE COUNTY BY PROVIDING FOR THE IMPOSITION OF A TIME LIMIT, UNDER CERTAIN CONDITIONS, ON THE PERIOD OF VALIDITY OF FINAL RECORDED SUBDIVISION PLATS RECORDED PRIOR TO OR SUBSEQUENT TO THE EFFECTIVE DATE OF THIS ACT. The County Council has developed standards and guidelines that permit all development that will not likely be inconsistent with the purposes and objectives of the proposed Master Plan, has provided a variance and appeals procedure, and for penalties and enforcement.

(b) *Establishment of Interim Development Control Map.* Baltimore County is hereby divided into four areas, the respective color for each area being set forth opposite its title, which areas and boundaries are designated on the Interim Development Control Map of the County which is hereby adopted as part of this Act and which areas and boundaries incorporate designations of the County Zoning Map, ~~the 1975~~

~~Master COUNTY COMPREHENSIVE Plan~~ and the ~~Ten Year~~ *1975* COMPREHENSIVE Water and Sewerage Plan.

Area	*Color*
1. *Urbanized Area:* presently served by public ~~sewer~~ SEWERAGE and water lines or in which extensions are included within the first two years of the ~~Ten Year~~ *1975* COMPREHENSIVE Water and ~~Sewer~~ SEWERAGE Plan.	Yellow
~~2. *Urbanizing Area:* presently unserved by public sewer and water lines, but in which area extensions are included within years 3 through 10 (1978-1986) of the County Ten Year and Water and Sewerage Plan and the 1975 Master Plan Urban Rural Demarcation Line whichever is more restrictive.~~	~~Orange~~
2. *URBANIZING AREA:* PRESENTLY UNSERVED BY PUBLIC SEWER AND WATER LINES, BUT IN WHICH AREA, EXTENSIONS ARE INCLUDED WITHIN THE URBAN RURAL DEMARCATION LINE, AS DELINEATED IN THE 1975 COMPREHENSIVE WATER AND SEWERAGE PLAN (FOR THE YEARS 3 THROUGH 10 (1978-1986) ~~AND THE 1975 COUNTY COMPREHENSIVE PLAN, WHICHEVER LINE IS MORE RESTRICTIVE.~~	ORANGE
3. *Non-Urban Area:* presently on the rural side of the Urban RURAL Demarcation Line or within the Urban Rural Demarcation Line, AS DELINEATED IN THE 1975 COMPREHENSIVE WATER AND SEWERAGE PLAN, but presently unserved by public water and sewer lines and for which extensions are not planned in the ~~County Ten Year~~ *1975* COMPREHENSIVE Water and Sewerage Plan.	Light Green
4. *Environmental Protection Area:* areas of the County that have been identified and mapped as environmentally sensitive land, ~~in which development should not occur without detailed~~	Dark Green

WHICH ARE LOCATED WITHIN wetlands, tidelands, steep slopes (of A GRADE OF 20 per cent ~~of~~ OR more), areas subject to severe erosion and areas with the 100-year floodplain, IN WHICH DEVELOPMENT SHOULD NOT OCCUR.

The Interim Development Control Map, together with everything shown thereon, including the colors of the respective areas set forth above, is hereby made a part of this Act.

Area boundaries shown on the Interim Development Control Map shall follow Federal and State highways, County streets, County boundary lines, streams, railroad rights-of-way, utility lines, ~~planning area boundaries,~~ zoning district lines, property ownership lines or the Urban Rural Demarcation Line, as indicated on the INTERIM DEVELOPMENT CONTROL Map and as may be defined in the County COMPREHENSIVE Zoning Map and Regulations, ~~the 1975 Master COUNTY COMPREHENSIVE Plan~~ and the ~~Ten Year~~ *1975* COMPREHENSIVE Water and Sewerage Plan.

~~(c) *Duration of Interim Development Controls.* This Act shall be in full force and effect from its effective date according to law for a period not to exceed 12 months, if not otherwise re-enacted by the County Council for an additional period of 6 months, provided Section (j) as to vested rights shall be permanently in effect.~~

(C) *DURATION OF INTERIM DEVELOPMENT CONTROLS.* THE PROVISIONS OF THIS ACT, OTHER THAN SECTION (J) (3) HEREOF, SHALL REMAIN IN FULL FORCE AND EFFECT FROM ITS EFFECTIVE DATE FOR A PERIOD OF ~~12~~ *18* MONTHS, WHICH ACT MAY BE EXTENDED BY RESOLUTION OF THE COUNTY COUNCIL FOR AN ADDITIONAL PERIOD OF 6 MONTHS. THE PROVISIONS OF SECTION (J) (3) HEREOF, AS TO VESTED RIGHTS, SHALL REMAIN IN FULL FORCE AND EFFECT UNTIL REPEALED OR MODIFIED BY COUNTY ORDINANCE.

(d) *General Requirements.*

(1) *Zoning Amendments or Reclassification of Use.* No zoning map amendment or ZONING reclassification of ~~use~~ PROPERTY shall be granted during the duration of this Act in any area of the County EXCEPT AS TO ~~unless required by constitutional doctrine regarding a~~ "mistake" OR DRAFTING OR CLERICAL ERROR ~~in the zoning classifications in force at the time of adoption of this Act.~~

(2) *Other Laws, Orders and Ordinances.* Nothing in this Act shall be deemed to affect, annual or abrogate any other law or ordinance pertaining to or applicable to ~~the properties~~ PROPERTY affected by this Act, ~~which is consistent with the provisions of this Act,~~ and which can be given effect without abrogating the purpose, intent and requirements of this Act; provided, however, that this Act shall be construed to complement and supplement State laws and orders, including state imposed moratoria on building or development, which may affect such property. If this Act is deemed to be in conflict with any State law or order affecting such property, the State law or order shall be controlling. IN THE EVENT OF A CONFLICT BETWEEN THE PROVISIONS OF THIS ACT AND THE INTERIM DEVELOPMENT CONTROL MAP, THE PROVISIONS OF THIS ACT SHALL BE CONTROLLING.

(3) *Definitions.* For the purposes of this Act, the words and terms used herein will be given the same meaning as such words and terms are given in the County Code, County Zoning Ordinance and County Subdivision Regulations~~;~~ , PROVIDED, however, for the purposes of this Act, the following terms will be given the following meanings:

A. *Residential development.* Includes all of the uses permitted as of right or by special exception in the Resource Conservation (R.C. 2, 3, 4 and 5) zoning classifications; Density Residential (D.R. 1, 2, 3.5, 5.5, 10.5 and 16) zoning classifications, ~~except for~~ INCLUDING offices permitted by special exception in the D.R. 16 zoning classification; Residential Transition areas, Residence, Apartment, Elevator (R.A.E. 1 and 2) zoning classifications; and Residential Unit Developments.

B. *Commercial Development.* Includes all of the uses permitted as of right or by special exception in the Commercial (BL-Business, Local; BM-Business, Major; and BR-Business, Roadside) zoning classifications; the Commercial Community Core (CCC) and Commercial Town-Center Core (CT) zoning classifications; the Commercial Neighborhood Shopping District (CNS); and the Commercial Rural District (CR).

C. *Industrial Development.* Includes all of the uses permitted as of right or by special exception in the Industrial zoning classifications ("MR-Manufacturing, Restricted; MLR-Manufacturing, Light Restricted; ML-Manufacturing Light; ~~and~~ MH-Manufacturing, Heavy; AND IM-INDUSTRIAL MAJOR").

(e) *Scope of Interim Development Controls*

(1) *General Requirements for All Development.* No special permit, special exception, tentative or final subdivision approval (with or without a Public Works Agreement), shall be granted by the appropriate County authority or official for any property lying within any area shown on the Interim Development Control Map unless the Planning Board pursuant to the procedures set forth in section (f) of this Act, after referral to the appropriate departments for study, analysis and findings, AND taking into account all appropriate PUBLIC comments and ~~evidence~~ DEPARTMENT FINDINGS AND RECOMMENDATIONS submitted, ~~by the public,~~ determines that said property meets all of the following requirements:

A. *Public Sewer.*

~~(i) public sewer facilities actually serve the property at the time of application for tentative or final subdivision approval (with or without a Public Works Agreement) or approval of the special permit or special exception with adequate capacity to serve the property as defined from pipe size, rated flow, known or reported dry weather over flows and estimated flow from the total usage to be generated from the proposed development.~~

(i) PUBLIC SEWER FACILITIES WITH ADEQUATE CAPACITY ~~ACTUALLY~~ ARE AVAILABLE TO SERVE ~~SERVES~~ THE PROPERTY AT THE TIME OF (A) APPLICATION FOR TENTATIVE OR FINAL SUBDIVISION APPROVAL (WITH OR WITHOUT A PUBLIC WORKS AGREEMENT) OR (B) APPROVAL OF THE SPECIAL PERMIT OR SPECIAL EXCEPTION. ADEQUATE CAPACITY FOR THE PURPOSES OF THIS SECTION INCLUDES TREATMENT PLANT CAPACITY AND PUMPING STATION CAPACITY WHERE APPLICABLE, AND SHALL BE DEFINED BASED ON EXISTING USAGE, ESTIMATED FLOWS FROM THE TOTAL USAGE GENERATED FROM THE PROPOSED DEVELOPMENT RELATED TO PIPE SIZE RATED FLOW, AND KNOWN OR CONFIRMED DRY WEATHER OVERFLOWS. ~~(for~~ FOR purposes of this section, public sewer is available at a development site if public sewer lines actually extend to the property or the developer has deposited with the County, at the time of application for subdivision approval, special exception or special permit, a sum of money, security, IRREVOCABLE LETTER OF CREDIT, ASSIGNMENT OF PASSBOOK ACCOUNT or bond, with sufficient sureties, ~~as determined by the County Office of Law,~~ which guarantees the construction of the public sewer lines to

the property at the time of final approval of the subdivision, special permit or special exception) AND APPROVED BY THE COUNTY OFFICE OF LAW; or

(ii) ~~public sewer facilities which the~~ THE Department of Public Works confirms THAT PUBLIC SEWER FACILITIES are scheduled for construction or extension to the property within the current Metropolitan DISTRICT Capital Budget or programmed within the first year of the Metropolitan DISTRICT Capital Program and are CONSTRUCTIVELY available at the property at the time of granting tentative or final subdivision approval (with or without a Public Works Agreement) or approval of the special ~~exception~~ PERMIT or special ~~permit~~ EXCEPTION.

B. *Public Water.*

(1) ~~p~~Public water facilities WITH ADEQUATE WATER PRESSURE, FLOW OR VOLUME FOR CONSUMPTION AND FIRE PROTECTION ~~actually~~ ARE AVAILABLE TO serve the property at the time of *(a)* application for tentative or final subdivision approval (with or without a Public Works Agreement or (b) approval of the special permit or special exception. ~~with adequate water pressure for consumption and fire protection (for~~ FOR purposes of this section, public water FACILITIES ~~SHALL BE DEEMED TO ACTUALLY SERVE THE PROPERTY is~~ ARE available at a development site if public water lines actually extend to the property, or the developer has deposited with the Count, at the time of application for TENTATIVE OR FINAL subdivision approval, special exception or special permit, a sum of money, security, IRREVOCABLE LETTER OF CREDIT, ASSIGNMENT OF PASSBOOK ACCOUNT or bond, with sufficient sureties, ~~as determined by the County Office of Law,~~ which guarantees the construction of the public water lines to the property at the time of final approval of the subdivision, special permit or special exception) AND APPROVED BY THE COUNTY OFFICE OF LAW; or

(ii) ~~public water facilities which t~~ The Department of Public Works confirms THAT PUBLIC WATER FACILITIES are scheduled for construction or extension to the property within the current Metropolitan DISTRICT Capital Budget or programmed within the first year of the Metropolitan DISTRICT Capital Program and are CONSTRUCTIVELY available at the property at the time of granting tentative or final subdivision approval (with or without a Public Works Agreement) or approval of the special permit or special exception.

C. *Storm Drainage.*

(i) ~~s~~*S*torm water management facilities for handling storm water runoff from the fully developed property, ~~are~~ SHALL BE ~~certified~~ APPROVED by the Department of Public Works, in accordance with storm water management policies of the ~~c~~*C*ounty, AND THAT SUCH FACILITIES ARE ~~to be~~ capable of managing and controlling storm water runoff from the proposed development so that the amount of runoff, based on a minimum 2 year storm frequency, will not be greater after development than before; and

~~(ii) storm water runoff from the property, along a route to sea level, will be adequately controlled and managed through natural or artificial facilities, which either exist at the property through to sea level or are in an approved capital budget to be operational within 2 years.~~

(ii) STORM WATER RUNOFF FROM THE PROPERTY AND EXISTING FLOWS COMPUTED IN ACCORDANCE WITH COUNTY DESIGN STANDARDS SHALL BE ADEQUATELY CONVEYED THROUGHOUT THE *DOWNSTREAM DRAINAGE COURSES OF THE COUNTY* WITHOUT DAMAGE TO DOWNSTREAM DEVELOPED PROPERTIES OR WHERE DRAINAGE FACILITIES ARE *INADEQUATE UNDER THIS CRITERIA*, CORRECTION SHALL BE OPERATIONAL OR UNDER CONSTRUCTION WITHIN TWO YEARS.

D. *Roads.*

(i) ~~e~~ *E*xisting roads AND NEAREST ARTERIAL INTERSECTIONS serving the proposed development are adequate DURING PEAK HOURS AT A SERVICE LEVEL OF "E", ~~"D"~~ OR BETTER, IF DURING THE PEAK HOUR THE *EXISTING ROADS AND NEAREST ARTERIAL INTERSECTIONS ARE ABLE* to accommodate the traffic generated by the PROPOSED development, AT AN "E", ~~"D"~~ OR BETTER LEVEL *except*:

~~(A)~~ that if the existing level of service at the nearest arterial traffic intersection, at the time of application for approval under this Act, has a rating of service level "F" as determined by the Department of Traffic Engineering, the application shall be denied~~;~~; AND IN ADDITION, IN LOCATIONS OR AREAS WHERE THERE IS NO ARTERIAL ACCESS TO OR EGRESS FROM A PROPOSED DEVELOPMENT, OTHER THAN THROUGH AN "F" INTERSECTION, WHICH MAY NOT BE THE NEAREST ARTERIAL INTERSECTION, THE APPLICATION SHALL ALSO BE DENIED.

(B) ~~(ii) that Section D(i) (A) shall not apply to arterial traffic intersections consisting solely of intersection State arterial roads.~~

~~(iii)~~ *(ii)* THE PROVISIONS OF D (i) SHALL NOT APPLY, PROVIDED ROAD OR ROAD INTERSECTION IMPROVEMENTS TO RELIEVE TRAFFIC CONGESTION TO A LEVEL "E" SERVICE OR BETTER DURING PEAK HOURS ARE SCHEDULED IN THE CURRENT 1976-77 MARYLAND STATE HIGHWAY ADMINISTRATION'S FIVE YEAR IMPROVEMENT PROGRAM OR THE BALTI*MORE COUNTY* BUDGET OR PROGRAM FOR CONSTRUCTION WITHIN THE NEXT SUCCEEDING TWO YEARS:

~~(iv)~~ *(iii)* ARTERIALS AS USED *HERE*IN IS DEFINED TO MEAN THOSE EXISTING ROADS DESIGNATED AS PRINCIPAL OR MINOR ARTERIALS; INTERSTATE AND FREEWAY-EXPRESSWAY IN THE *1980* FEDERAL FUNCTIONAL CLASSIFICATION, BALTIMORE COUNTY, MARYLAND, PREPARED BY THE DEPARTMENT OF TRANSPORATATION, STATE HIGHWAY ADMINISTRATION DATED MARCH 15, 1976, WITH MODIFICATIONS TO EXPRESS EXISTING CONDITIONS:

~~(v)~~ *(iv)* ARTERIAL LEVELS OF SERVICE AS USED HEREIN ARE DEFINED IN THE 1965 HIGHWAY CAPACITY MANUAL AND ON FILE IN THE DEPARTMENT OF TRAFFIC ENGINEERING:

~~(vi) IF PUBLIC BUS, RAIL OR OTHER FORM OF MASS TRANSIT IS REGISTERED WITH THE PUBLIC SERVICE COMMISSION AS TO ROUTES AND SCHEDULED STOPS AT A LEVEL OF SERVICE OF AT LEAST FOUR (4) TRIPS PER HOUR DURING THE PEAK HOUR OF A TYPICAL WEEK DAY AND SERVICES THE PROPOSED DEVELOPMENT BY WAY OF A SCHEDULED STOP, WITHIN THE DEVELOPMENT OR WITHIN ONE THOUSAND FEET (1000') OF ANY PUBLIC STREET CORNER WITHIN THE PROPOSED DEVELOPMENT, THE REQUIREMENTS OF SECTION D (i) SHALL NOT APPLY.~~

(2) *Extent of Development Permitted.*

IN CONSIDERING AN APPLICATION FOR APPROVAL, THE PLANNING BOARD SHALL FIRST DETERMINE WHETHER SUFFICIENT DATA EXISTS TO ESTABLISH THE ADEQUACY OF THE FACILITIES REQUIRED BY SECTION E (1), BASED ON AND CONSISTENT WITH THE DEPARTMENT'S RECOMMENDATIONS.

A. If an applicant meets all of the general requirements set forth in section (e) (1), above, as demonstrated by all data available to the County and its respective departments at the time of the application for approval of subdivision, special ~~exception~~ PERMIT or special ~~permit~~ EXCEPTION, the Planning Board shall allow full development in accordance with said application pursuant to THEN existing zoning and subdivision regulations, the County Code and ~~existing~~ county legislation.

B. If an applicant fails to meet any of the general requirements set forth in section (e) (1) above as ~~affirmatively~~ demonstrated by all data available to the County and its respective departments at the time of application for approval of subdivision, special exception or special permit, the Planning Board shall ~~deny~~ ADVISE THE APPROPRIATE AUTHORITY AND SAID AUTHORITY SHALL DENY said application.

C. If the data necessary to made a determination of conformance with the general requirements set forth in section (e) (1) above are unavailable to the County and its respective departments at the time of application for approval of subdivision, special permit or special exception, the Planning Board shall ADVISE THE APPROPRIATE AUTHORITY AND THE APPROPRIATE AUTHORITY SHALL deny said application with leave to the applicant to renew his application: (1) upon applicant's furnishing sufficient data to enable the Planning Board and various COUNTY departments to make an objective determination OF COMPLIANCE WITH THE REQUIREMENTS OF SECTION (e) (1); or (2) WHEN the plans, studies and data made available through the development of the proposed NEW COUNTY Master Plan ~~became~~ BECOME sufficient for the Planning Board and the various County departments to make an objective determination OF COMPLIANCE WITH THE REQUIREMENTS OF SECTION (e) (1).

D. THE DEPARTMENT SHALL LIST IN WRITING WHAT DATA IS MISSING AND THE COUNTY's SCHEDULE FOR ACQUIRING THIS INFORMATION. ~~IT IS THE INTENT OF THE COUNTY COUNCIL THAT~~ STUDIES TO ACQUIRE THE LISTED MISSING DATA SHALL BE GIVEN PRIORITY TO MINIMIZE UNREASONABLE DELAY FOR THE APPLICANT. THE PLANNING BOARD SHALL REVIEW THESE PLANS AND SCHEDULES AND ~~DIRECT~~ ADVISE THE APPROPRIATE AUTHORITY ~~TO APPROVE THE APPLICATION IF IT FINDS UNREASONABLE DELAY BEYOND WHICH INDEPENDENT CONSULTANTS, KNOWLEDGEABLE IN THE FIELD, WOULD REQUIRE TO ACQUIRE THE MISSING DATA~~ THAT IN

THEIR OPINION, BASED UPON THE COUNTY'S SCHEDULE AND UPON THE TIME THAT AN INDEPENDENT CONSULTANT, KNOWLEDGEABLE IN THE FIELD, WOULD REQUIRE TO ACQUIRE THE MISSING DATA FOR SIMILAR COMPREHENSIVE STUDIES, THAT AN UNREASONABLE DELAY IN ACQUIRING THE DATA EXISTS AND THAT SAID APPLICATION SHOULD PROCEED INTO THE APPLICABLE PROCESS FOR APPROVAL. ANY COSTS INCURRED BY THE BOARD IN REACHING THEIR OPINION SHALL BE BORNE BY THE APPLICANT.

(3) *Special Exceptions to the General Requirements.*

A. *Urbanizing Area*

(i) The requirement for public sewers FACILITIES set forth in section (e) (1)A of this Act shall be deemed to have been fulfilled if property is located more than 2,000 feet from an existing public sewer line and the applicant agrees to furnish the following: (1) on-site septic or sewerage disposal systems satisfying County and State health requirements and (2) in place capped sewer lines MEETING ALL OF THE REQUIREMENTS OF THE DEPARTMENT OF PUBLIC WORKS WITH RESPECT TO SIZE, LOCATION, ELEVATION AND ANY OTHER APPLICABLE REQUIREMENTS on all internal streets of the proposed subdivision to serve each lot THE PROVISION REQUIRING IN PLACE CAPPED SEWERS SHALL NOT APPLY TO DEVELOPMENTS OR SUBDIVISIONS WHICH CONSIST SOLELY OF LOT OF 2 ACRES OR LARGER IN SIZE. ~~to the junction box, meeting all of the requirements of the Department of Public Works with respect to size, location, elevation and any other applicable requirements.~~ If the property is within 2,000 feet of an existing public sewer line that can be extended physically without violation of engineering PRINCIPLES or planning policies, the applicant shall meet all of the requirements of section (e) (1)A of this Act and this exception shall not be applicable.

(ii) The Planning Board, in approving the Final Subdivision plat, shall require as a condition to approval thereof, that the requirement for capped sewers, IF APPLICABLE shall be noted on the Subdivision Plat to be filed, which note shall provide that each prospective lot purchaser shall be notified BY THE SELLER, IN WRITING, of this requirement prior to such purchase.

~~B. Non-Urban Area. The requirements set forth in section (e) (1) A. & B. of this Act shall not be applicable to any property located in the RC 5 zone classification and said property shall be allowed full development pursuant to the~~

~~requirements of all OTHER applicable zoning and subdivision regulations, the County Code and other County legislation, POLICIES AND REGULATIONS, except that such property shall be subject to the requirements set forth for all subdivisions as to the vesting of rights contained in section (j) of this Act. No development shall be allowed on property in the RC-5 zone which is located within the Environmental Protection Area as defined in Section (b)4 of this Act, or which is located OR ON THOSE RC-5 ZONES WHICH ARE LOCATED WITHIN THE COASTAL ZONE AS SHOWN ON THE OFFICIAL COASTAL Zoning Management Map. ZONE MANAGEMENT PROGRAM BOUNDARY LINE MAP, DATED DECEMBER, 1976.~~

B. *NON-URBAN AREA.* SUBJECT TO THE REQUIREMENTS OF ALL OTHER APPLICABLE PROVISIONS OF THIS ACT, ZONING AND SUBDIVISION REGULATIONS, THE COUNTY CODE AND OTHER COUNTY LAWS, POLICIES AND REGULATIONS AND FURTHER SUBJECT TO THE PROVISIONS OF THE LAST SENTENCE OF THIS SECTION B, PROPERTY LOCATED IN RC-2, *RC-3,* RC-4 AND RC-5 ZONE CLASSIFICATIONS MAY BE DEVELOPED AS FOLLOWS:

~~(1) RC-2 AND RC-4 ZONE CLASSIFICATION PROPERTY WHICH HAS BEEN PREVIOUSLY LAWFULLY SUBDIVIDED, MAY BE SUBDIVIDED INTO 3 LOTS, OR LESS, IN ADDITION TO ANY LOT, IF ANY, WHICH HAS BEEN OR WILL BE ALLOCATED TO AN EXISTING PRINCIPAL RESIDENTIAL STRUCTURE, SAID SUBDIVISION SHALL NOT BE SUBJECT TO THE PROVISIONS OF SECTION (e) (1) A. & B. OF THIS ACT, PROVIDED HOWEVER, THAT ANY ADDITIONAL SUBDIVISION OF SUCH PROPERTY (INCLUDING THE ACCOMMODATION OF ACCESSORY STRUCTURES OR TENANT HOUSES) SHALL BE PROHIBITED DURING THE PERIOD COVERED BY THIS ACT.~~

(1) PROPERTY CLASSIFIED IN RC-2 OR RC-4 ZONE CLASSIFICATIONS, WHICH HAS BEEN LAWFULLY SUBDIVIDED PRIOR TO THE EFFECTIVE DATE OF THIS ACT, MAY BE FURTHER SUBDIVIDED INTO TWO LOTS, IN ADDITION TO ANY LOT, IF ANY, WHICH HAS BEEN OR WILL BE ALLOCATED TO AN EXISTING PRINCIPAL RESIDENTIAL STRUCTURE WHICH IS OWNER OCCUPIED AND SAID SUBDIVISION SHALL NOT BE SUBJECT TO THE PROVISIONS OF SECTION (E) (1) A. & B. OF THIS ACT, PROVIDED HOWEVER, THAT ANY FURTHER SUBDIVISION OF SUCH PROPERTY (INCLUDING THE ACCOMMODATION OF ACCESSORY STRUCTURES OR TEN-

ANT HOUSES) SHALL BE PROHIBITED DURING THE PERIOD COVERED BY THIS ACT.

(1a) PROPERTY CLASSIFIED IN RC-3 ZONE CLASSIFICATION, WHICH HAS BEEN LAWFULLY SUBDIVIDED PRIOR TO THE EFFECTIVE DATE OF THIS ACT, MAY BE FURTHER SUBDIVIDED INTO TWO LOTS, INCLUDING ANY LOT, IF ANY, WHICH HAS BEEN OR WILL BE ALLOCATED TO AN EXISTING PRINCIPAL RESIDENTIAL STRUCTURE WHICH IS OWNER OCCUPIED AND SAID SUBDIVISION SHALL NOT BE SUBJECT TO THE PRIVISIONS OF SECTION (E) (1) A. & B. OF THIS ACT, PROVIDED HOWEVER, THAT ANY FURTHER SUBDIVISION OF SUCH PROPERTY (INCLUDING THE ACCOMMODATION OF ACCESSORY STRUCTURES OR TENANT HOUSES) SHALL BE PROHIBITED DURING THE PERIOD COVERED BY THIS ACT.

(2) RC-5 ZONE CLASSIFICATION PROPERTY SHALL BE ALLOWED FULL DEVELOPMENT AND SHALL NOT BE SUBJECT TO THE PROVISIONS OF SECTION (e) (1) A. & B. OF THIS ACT.

NOTWITHSTANDING THE FOREGOING, NO DEVELOPMENT SHALL BE ALLOWED UPON ANY PROPERTY LOCATED IN THE RC-2, *RC-3,* RC-4 AND RC-5 ZONE CLASSIFICATIONS AND LOCATED WITHIN THE COASTAL ZONE AS SHOWN ON THE OFFICIAL COASTAL ZONING MANAGEMENT PROGRAM BOUNDARY LINE MAP, DATED DECEMBER, 1976.

C. *Environmental Protection Area.* NOTWITHSTANDING ANY PROVISIONS OF THIS ACT TO THE CONTRARY, no building permit, special permit, special exception, tentative or final subdivision approval (with or without a Public Works Agreement) shall be granted in any ENVIRONMENTAL PROTECTION ~~a~~ *Area* as defined in Section (b)4 of this Act. EXCEPT THAT SHOUD A PRINCIPAL AND/OR ACCESSORY STRUCTURE BE EITHER TOTALLY OR PARTIALLY DESTROYED DURING THE PERIOD OF THIS ACT, WHICH DESTRUCTION IS NOT THE RESULT OF THE WILFUL OR INTENTIONAL ACT OF THE OWNER, HIS AGENTS, SERVANTS OR EMPLOYEES A REPLACEMENT BUILDING PERMIT MAY BE ISSUED PROVIDED THE STRUCTURE SO TOTALLY OR PARTIALLY DESTROYED WAS LAWFULLY CONSTRUCTED. SHOULD THE REPLACEMENT PERMIT BE ISSUED, IT SHALL BE LIMITED TO REPLACEMENT OF THE SAME SQUARE FOOTAGE AND CUBIC SQUARE FOOTAGE AS

THAT OF THE PARTIALLY OR TOTALLY DESTROYED STRUCTURE AND SAID PERMIT SHALL REQUIRE THAT ALL OTHER APPLICABLE PROVISIONS OF THIS CODE, OTHER COUNTY LAWS, POLICIES AND REGULATIONS BE MET.

~~(4)~~ D. *Non-Residential Development.*

Industrial and eCommercial ~~d~~Development as defined in this Act is exempt from all of the requirements as set forth in section (e) (1) as to all property located within the urbanized and urbanizing areas of the County, provided, however, that all non-residential development shall conform with all other applicable zoning and subdivision regulations, ~~and policies of~~ the County Code, and other County legislation, policies and regulations.

(f) *Planning Board Procedure for Approval of Development Application.*

Upon receipt of an application for a special permit, special exception, tentative or final subdivision approval, with respect to property located in any of the areas shown on the Interim Development Control Map during the EFFECTIVE PERIOD ~~pendency~~ of this Act, the appropriate County authority or official shall, prior to taking any action on such application, WITHIN TEN DAYS AFTER RECEIPT OF SAME refer such application to the Planning Board for its review, report and decision as to whether such property conforms to and meets the requirements set forth in Sections (d) and (e) of this Act. The decision of the Planning Board shall be rendered and referred to the appropriate County or official within 90 days of receipt of said application by the Planning Board. Upon receipt of said application the Planning Board shall review said application with respect to its conformity to the requirements of this Act and draft a preliminary report, together with the application and other relevant information and documentation, which shall be circulated to the Departments of Public Works, Planning, ~~and~~ Traffic Engineering and such other departments as may be appropriate, for EACH such department's study, analysis and recommendation, together with such supporting data as such department shall compile as to the conformance of the proposed development to the requirements of this Act. Such recommendations and data of the departments shall be transmitted to the Planning Board within 75 days from the date of submission of the application. Upon the basis of, and consistent with, the recommendations so received, the Planning Board shall render its decision as to whether the property conforms to the requirements of this Act. If the ~~decision of the~~ Planning Board

~~is affirmative as to the property meeting~~ THEN DECIDES THAT THE PROPERTY CONFORMS TO THE REQUIREMENTS ~~the requirements~~ of this Act, the appropriate County authority or officials shall proceed to process said application pursuant to the procedures authorized by the County Code. If the ~~report of the~~ Planning Board ~~is negative as to~~ THEN DECIDES THAT the property ~~meeting~~ FAILS TO CONFORM TO the requirements of this Act, the appropriate County authority or official shall deny such application. The applicant may renew such application at any time during the EFFECTIVE period of the Interim Development Control Act, upon complying with the conditions and standards of the Act or upon the final acceptance of the proposed Master Plan and implementing county legislation and regulations. The decision of the Planning Bord shall be final and no appeal shall be taken therefrom to any County Board or official INCLUDING THE ZONING COMMISSIONER.

~~(g) *Variances.*~~

~~The Zoning Commissioner shall have the power to vary or modify the application of any provision of this Act upon his independent determination that such variance or modification is consistent with the spirit of the proposed Master Plan or part thereof, particularly in regard to the proposed elements of the growth management system as they become available or adopted and with the promotion and protection of the health, safety, morals and general welfare of the County. Such petition for a variance or modification shall be submitted to the Zoning Commissioner only after an application for approval of a subdivision, special permit or special exception shall have been approved or denied by the Planning Board pursuant to this Act. The Zoning Commissioner shall comply with all of the procedural requirements for a variance as set forth in Section 22-23 of the County Code, except that he shall refer the petition to the Planning Board for its review, recommendation and report, prior to the Zoning Commissioner's decision. The Planning Board shall report as to the consistency of any proposed variance or modification with the spirit of the proposed Master Plan and the growth management system elements thereof. Any decision of the Zoning Commissioner shall be subject to an appeal to the Board of Appeals, as set forth in Section 22-27 of the County Code, including an appeal by the planning board. (Nothing in this subsection affects or authorizes the variance or modification of any provision of law other than the provisions of this section; in particular, THE PROVISIONS OF THIS PARAGRAPH (g) RELATE ONLY TO THE PROVISIONS OF THIS ACT ACCORDINGLY, should it~~

~~be determined under this subsection that THE provisions of this section shall be made in ACT ARE NOT applicable to a given subdivision plan or other document, that plan or other document shall still be subject to other pertinent provisions of this title and of all other applicable zoning and subdivision regulations, County Code and other County laws.) POLICIES AND REGULATIONS.~~

~~(g) *VARIANCES*~~

~~FOR REASON THAT EXTRAORDINARY OR EXCEPTIONAL SITUATIONS OR CONDITIONS MAY EXIST WITH REGARD TO SPECIFIC PROPERTY OR OF A PARTICULAR USE THEREOF AND THE STRICT APPLICATION OF ANY PROVISION OF THIS ACT WOULD RESULT IN PECULIAR AND EXCEPTIONAL DIFFICULTIES TO OR EXCEPTIONAL AND DEMONSTRABLE UNDUE HARDSHIP UPON THE OWNER OF THE PROPERTY AS AN UNREASONABLE DEPRIVATION OF USE, THE ZONING COMMISSIONER SHALL BE AUTHORIZED TO GRANT A VARIANCE SOLELY FROM THE PROVISION OF THIS ACT SO AS TO RELIEVE THE DEMONSTRABLE DIFFICULTIES OR HARDSHIP. SUCH VARIANCES, IF GRANTED, SHALL BE THE MINIMUM NECESSARY TO RELIEVE THE HARDSHIP OR DIFFICULTIES AND MAY REQUIRE THAT THE APPLICANT MEET APPROPRIATE CONDITIONS RELATING TO THE REQUIREMENTS OF SECTIONS (d) AND (e) OF THIS ACT TO INSURE THAT THE VARIANCE WILL NOT IMPAIR THE INTENT AND PURPOSE OF THIS ACT OR THE PUBLIC HEALTH, SAFETY OR GENERAL WELFARE OF THE COUNTY. CONDITIONS SO IMPOSED SHALL BE LIMITED TO THOSE CONTAINED IN THE PLANNING BOARD REPORT, EVIDENCE SUBMITTED IN THE HEARING AND RECOMMENDATIONS FROM THE VARIOUS APPROPRIATE COUNTY AGENCIES. APPLICATION FOR A VARIANCE FROM THE PROVISIONS OF THIS ACT SHALL BE SUBMITTED TO THE ZONING COMMISSIONER ONLY IF AN APPLICATION FOR ISSUANCE OF A SPECIAL PERMIT OR SPECIAL EXCEPTION OR FOR APPROVAL OF A TENTATIVE SUBDIVISION PLAT HAS BEEN DENIED BY THE APPROPRIATE COUNTY AUTHORITY FOR FAILURE TO CONFORM TO THE REQUIREMENTS AND STANDARDS OF THIS ACT. UPON RECEIPT OF SUCH APPLICATION FOR THE VARIANCE FROM THE PROVISIONS OF THIS ACT, THE ZONING COMMISSIONER SHALL COMPLY WITH ALL OF THE PROCEDURAL REQUIREMENTS FOR A VARIANCE AS SET FORTH IN SECTION 22-23 OF THE BALTIMORE~~

~~COUNTY CODE, EXCEPT THAT PRIOR TO MAKING A DECISION, THE ZONING COMMISSIONER SHALL REFER THE APPLICATION TO THE PLANNING BOARD FOR ITS REVIEW, RECOMMENDATION, AND REPORT AS TO THE CONSISTENCY OF SUCH APPLICATION WITH THE INTENT AND PURPOSE OF THIS ACT WITH THE SPIRIT OF THE PROPOSED MASTER PLAN AND GROWTH MANAGEMENT SYSTEMS AND ELEMENTS THEREOF AND WITH THE PUBLIC HEALTH, SAFETY, AND GENERAL WELFARE. THE DECISION OF THE ZONING COMMISSIONER SHALL BE SUBJECT TO APPEAL IN ACCORDANCE WITH SECTIONS 22-27 AND 22-28 OF THE BALTIMORE COUNTY CODE.~~

~~NOTHING IN THIS SECTION AUTHORIZES THE ZONING COMMISSIONER TO VARY OR MODIFY THE APPLICATION OF ANY PROVISION OF LAW OTHER THAN THE PROVISIONS OF THIS ACT WITH RESPECT TO APPLICATION FOR SPECIAL EXCEPTIONS, SPECIAL PERMITS, OR TENTATIVE SUBDIVISION APPROVAL, IN AREAS SHOWN ON THE INTERIM DEVELOPMENT CONTROL ACT DURING THE EFFECTIVE PERIOD OF THIS ACT.~~

~~UPON APPROVAL OF AN APPLICATION FOR A VARIANCE, THE OWNER OF THE PROPERTY SHALL BE PERMITTED TO PROCESS AN APPLICATION FOR APPROVAL OF THE SPECIAL PERMIT, SPECIAL EXCEPTION AND TENTATIVE SUBDIVISION PLAT IN ACCORDANCE WITH THE APPLICABLE PROVISIONS OF THE BALTIMORE COUNTY CODE, COUNTY ZONING ORDINANCE, COUNTY SUBDIVISION REGULATIONS AND OTHER APPLICABLE PROVISIONS OF LAW.~~

~~(h)~~ (g) *Penalties and Enforcement.*

Any person, firm, entity or corporation who shall subdivide, construct, erect, enlarge, REPAIR, REMODEL or alter structurally, any parcel, lot, building or structure, in violation of the provisions of this Act or who shall otherwise violate any of the provisions of this Act shall be subject to any and all penalties and enforcement procedures set forth in Title 22 of the County Code.

~~(i) *Severability.*~~

~~The invalidity of any word, section, clause, paragraph, sentence, part or provision of this Act shall not affect the validity of any other part of this Act which can be given effect without such invalid part or parts.~~

~~(g) (i)~~ *(h) Vested Rights.*

(1) *Urbanized, Urbanizing and Non Urban Areas.*

A. Nothing in this Act shall be deemed or intended to abrogate or annul any prior approval lawfully issued and in effect on the date of effectiveness of this Act with respect to an already issued or approved special permit, special exception, zoning map amendment, reclassification of the use of property, final subdivision approval ~~(with or without a Public Works Agreement)~~ or tentative subdivision approval ~~with a public works agreement~~ WITH OR WITHOUT A PUBLIC WORKS AGREEMENT.

B. Nothing in this Act shall be deemed or intended to deny the owner of a lawfully created single tract or parcel of land the right to develop a single residential unit and structures accessory thereto on said property in conformity with existing zoning regulations, provided that no subdivision of said land or parcel shall be required.

C. For the purposes of this Act, a tenant farmer's house on property also occupied by a main dwelling is an accessory structure if farming of the property constitutes the sole vocation of the occupant of the tenant farmer's house.

(2) *Environmental Protection Area.*

Nothing in this Act shall be deemed or intended to abrogate or annul any prior approval lawfully issued and in effect on the date of effectiveness of this Act, with respect to an already issued or approved building permit, special permit, special exception, zoning map amendment or reclassification of the use of property, pursuant to which substantial construction has occurred.

~~(3) *Subdivision Approvals Protected for Three Years.*~~

~~WHERE A any subdivision, or lot or parcel thereof, that has received final subdivision approval where no valid Public Works Agreement remains outstanding, which AND THE SAID subdivision, LOT OR PARCEL THEREOF remains entirely or partially undeveloped for three years from the effective date of this Act, said approval with respect to such subdivision, lot or parcel thereof shall be deemed to have lapsed, and said subdivision, lot or parcel thereof shall be resubmitted to the Planning Board, prior to any further development, for reapproval in accordance with the THEN applicable provisions of the County Zoning and Subdivision Regulations. A subdivision, lot or parcel thereof shall be considered to be entirely or partially undeveloped, and therefore subject to the requirements~~

~~of this subsection, if within three (3) years after the effective date of the adoption of this Act, a building permit has not been granted and OR substantial construction ON PUBLIC IMPROVEMENTS WITHIN THE SUBDIVISION OR SECTION THEREOF has not begun, and the subdivision regulations or ZONING REGULATIONS, ORDINANCE OR MAP have been changed subsequent to the original subdivision approval.~~

~~If only the area regulations of the zoning district in which a subdivision, lot or parcel is located have been changed, thereby making the subdivision, lot or parcel nonconforming IN NONCOMPLIANCE as to area, and the lot or parcel is separated from any other land in the same ownership, said lot or parcel may be used for any permitted use in the zoning district in which the lot or parcel is located without resubmittal to the Planning Board, provided that such uses shall comply with the area regulations as specified in the Highest MOST RESTRICTIVE AND COMPARABLE residential, commercial or industrial zoning district (whichever is applicable) having the same minimum lot area.~~

~~Same ownership, as used in this subsection shall mean ownership by THE same person, corporation, firm, entity, TRUST, ESTATE, partnership or unincorporated association; or ownership by different corporations, firms, partnerships, entities, TRUSTS, ESTATES, or unincorporated associations, in which a stockholder, BENEFICIARY, partner or associate, or a member of his IMMEDIATE family (I.E. SPOUSE, CHILDREN, PARENTS OF ANY OF THEM) owns an OR HAS A BENEFICIAL, interest in each corporation, firm, partnership, entity, TRUST, ESTATE or unincorporated association.~~

(3) *RECORD SUBDIVISION PLATS PROTECTED FOR ~~THREE~~ FIVE YEARS.*

RECORD SUBDIVISION PLATS (WHETHER RECORDED PRIOR TO OR SUBSEQUENT TO THE EFFECTIVE DATE OF THIS ACT) FOR ANY SUBDIVISION, SECTION, OR PARCEL THEREOF (HEREINAFTER DEFINED AS TWO OR MORE CONTIGUOUS LOTS IN THE SAME OWNERSHIP IN SAID SUBDIVISION), SHALL BE DEEMED TO HAVE LAPSED AND HAVE BEEN REVOKED FOR EITHER THE ENTIRE SUBDIVISION, OR ANY SECTION OR PARCEL THEREOF, WHERE THE APPLICABLE SUBDIVISION, SECTION OR PARCEL THEREOF REMAINS UNDEVELOPED FOR A PERIOD OF ~~THREE~~ FIVE YEARS FROM THE EFFECTIVE DATE OF THIS ACT

OR FIVE YEARS AFTER THE DATE OF RECORDING THE FINAL SUBDIVISION PLAT WHICHEVER IS LATER.

UPON SUCH LAPSE AND REVOCATION OF THE RECORD PLAT, A NEW APPLICATION FOR TENTATIVE AND FINAL SUBDIVISION APPROVAL FOR SUCH UNDEVELOPED SUBDIVISIONS, SECTION OR PARCEL THEREOF, SHALL BE SUBMITTED TO THE PLANNING BOARD, PRIOR TO ANY DEVELOPMENT OR ISSUANCE OF BUILDING PERMITS, FOR REAPPROVAL, IN ACCORDANCE WITH THE APPLICABLE PROVISIONS OF THE COUNTY ZONING ORDINANCE AND SUBDIVISION REGULATIONS IN FORCE AT THE TIME OF SAID REAPPLICATION.

A SUBDIVISION, SECTION OR PARCEL THEREOF, IS HEREBY DEFINED AS UNDEVELOPED IF:

A. BUILDING PERMITS HAVE NOT BEEN ISSUED OR;

B. BUILDING PERMITS HAVE BEEN ISSUED BUT SUBSTANTIAL CONSTRUCTION ON THE SITES HAS NOT BEGUN OCCURRED OR;

C. SUBSTANTIAL CONSTRUCTION ON REQUIRED PUBLIC IMPROVEMENTS (HEREINAFTER DEFINED AS CONSTRUCTION OF PUBLIC OR PRIVATE IMPROVEMENTS PURSUANT TO APPLICABLE REGULATIONS AND REQUIREMENTS OF THE DEPARTMENT OF PUBLIC WORKS) HAS NOT ~~BEGUN~~ OCCURRED ON ANY SECTION OR PARCEL OF THE SUBDIVISION;

D. SUBSTANTIAL CONSTRUCTION ON REQUIRED PUBLIC OR PRIVATE IMPROVEMENTS HAS ~~BEGUN~~ OCCURRED ON A PART OF THE SUBDIVISION, BUT HAS NOT ~~BEGUN~~ OCCURRED WITH RESPECT TO ANY SECTION OR PARCEL THEREOF, IN WHICH EVENT ONLY THE SECTION(S) OR PARCEL(S) OF THE SUBDIVISION IN WHICH SUBSTANTIAL CONSTRUCTION ON REQUIRED PUBLIC IMPROVEMENTS HAS NOT ~~BEGUN,~~ OCCURRED SHALL BE DEEMED TO BE UNDEVELOPED.

ANY SINGLE LOT IN SUCH SUBDIVISION, SEPARATED FROM ANY OTHER LOT IN THE SAME OWNERSHIP, MAY BE USED WITHOUT FURTHER SUBDIVISION APPROVAL FOR ANY PERMITTED USE IN THE ZONING DISTRICT IN WHICH THE LOT IS LOCATED IN EFFECT AT THE TIME OF APPLICATION FOR A BUILDING PERMIT, SPECIAL PERMIT, OR SPECIAL EXCEP-

TION, EXCEPT THAT THE AREA REQUIREMENTS FOR SUCH LOT IF USED FOR A RESIDENTIAL SINGLE FAMILY STRUCTURE SHALL BE THOSE REQUIREMENTS IN FORCE AT THE TIME THE INITIAL FINAL SUBDIVISION WAS APPROVED.

SAME OWNERSHIP, AS USED IN THIS SUBSECTION SHALL MEAN OWNERSHIP BY THE SAME PERSON, CORPORA-TION, FIRM, ENTITY, TRUST, ESTATE, PARTNERSHIP, OR UNINCORPORATED ASSOCIATION; OR OWNERSHIP BY DIFFERENT CORPORATIONS, FIRMS, PARTNERSHIPS, ENTITIES, TRUSTS, ESTATES, OR UNINCORPORATED ASSOCIATIONS, IN WHICH A STOCKHOLDER, BENEFICIARY, PARTNER, OR ASSOCIATE, OR A MEMBER OF HIS IMMEDIATE (I.E., SPOUSE, CHILDREN, PARENTS OF ANY OF THEM) FAMILY OWNS AN INTEREST IN EACH CORPORATION, FIRM, PARTNERSHIP, ENTITY, TRUST, ESTATE, OR UNINCORPORATED ASSOCIATION.

SECTION 2. SEVERABILITY.

EVERY PART OF EVERY SECTION, SUBSECTION, SENTENCE, CLAUSE, PHRASE, OR WORD OF THIS NEW SECTION 22-15.1 IS ENACTED INDEPENDENTLY AND IS, THEREFORE, SEVERABLE; IF ANY SECTION, SUBSECTION, SENTENCE, CLAUSE, PHRASE OR WORD HEREOF IS FOR ANY REASON, HELD TO BE UNCONSTITUTIONAL, VOID OR INVALID, THE VALIDITY OF THE REMAINING PORTIONS SHALL NOT BE AFFECTED THEREBY, IT BEING THE INTENT OF THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND IN ADOPTING THIS ACT THAT NO PORTION THEREOF OR PROVISION OR REGULATION CONTAINED THEREIN SHALL BECOME INOPERATIVE OR FAIL BY REASON OF ANY UNCONSTITUTIONALITY OR INVALIDITY OF ANY OTHER PORTION OR PROVISION OR REGULATION.

SECTION ~~2~~ *3.* And be it further enacted, that this Act shall take effect forty-five days after its enactment.

BILL NO. 13-77

AN ORDINANCE to amend the 1976-77 Current Expense Budget, otherwise known as the 1976-77 operating budget for the fiscal year ending June 30, 1977, by appropriating funds provided by the Mayor's Office of Manpower Resources under

to the Trustee to be held and disbursed by the Trustee as provided in the Trust Agreement to be approved by the County Council in the Bond Resolution. No such moneys shall be commingled with the County's funds or shall be subject to the absolute control of the County, but only to such limited supervision and checks as are deemed necessary or desirable to insure that the proceeds of the Bonds shall be used to accomplish the public purposes of the Act and this Ordinance.

SECTION 9. *And be it further enacted by the County Council of Baltimore County, Maryland,* that, the provisions of this Ordinance are severable, and if any provision, sentence,

(e) to execute, acknowledge, seal and deliver the Loan Agreement in the form determined administratively by the County Council in the Bond Resolution;

(f) to execute, acknowledge, seal and deliver the Trust Agreement in the form determined administratively by the County Council in the Bond Resolution;

(g) to execute, acknowledge, seal and deliver the Bonds in the form determined administratively by the County Council in the Bond Resolution; and

(h) to execute, acknowledge, seal and deliver such other and further certificates, certifications, agreements, documents and instruments and take such other actions as they or any one or more of them may deem necessary or appropriate to consummate the transactions contemplated by this Ordinance in accordance with the provisions hereof and of the Bond Resolution, including, but not limited to, the statement of election required by Section 103(b)(6)(D) of the Internal Revenue Code of 1954, as amended, and Section 1.103-10(b)(2)(vi) of the clause, section or part thereof shall be held to be illegal, invalid or unconstitutional or inapplicable to any person, entity or circumstances, such illegality, invalidity or unconstitutionality or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of the Ordinance or their application to other persons, entities or circumstances. It is hereby declared to be the legislative intent that this Ordinance would have been adopted if such illegal, invalid or unconstitutional provision, sentence, clause, section or part had not been included therein, and if the person, entity or circumstances to which the Ordinance or any part thereof is inapplicable had been specifically exempted therefrom.

EXH 23(g)

SECTION 10. *And be it further enacted,* that this Ordinance shall take effect forty-five (45) days after enactment.

ENACTED: 5/16/79

BILL NO. 61-79

AN ACT to provide, with certain exceptions, for a limitation of time during which subdivision approvals are valid; to require a valid plat before transferring part of a subdivision; to require determination of validity of certificate of subdivision approval, and to clarify rights under such certificates, by repealing and re-enacting with amendments Sections 22-40(a), 22-41, and 22-43 and by adding new Section 22-39. and a new subsection (4) to Section 22-44, all of Article IV. Subdivision Control Generally, title "Planning, Zoning and Subdivision Control" of the Baltimore County Code, 1968; by repealing and re-enacting with amendments Sections 22-119, 22-120 and 22-135 and by repealing Section 22-60, all of Article V. Subdivision Regulations of said title and code; AND BY REPEALING SECTION 22-15.1(H)(3) ARTICLE II. PLANNING, TITLE "PLANNING, ZONING AND SUBDIVISION CONTROL", ADOPTED BY THE COUNTY COUNCIL APRIL 16, 1979, BY BILL NO. 58-79; and by adding new subsection 103.4 to the Baltimore County Zoning Regulations, 1955, to follow immediately after subsection 103.3 of said regulations.

SECTION 1. *Be it enacted by the County Council of Baltimore County, Maryland,* that Sections 22-40(a), 22-41 and 22-43, of Article IV. Subdivision Control Generally, title "Planning, Zoning and Subdivision Control" of the Baltimore County Code, 1968, be and they are hereby repealed and re-enacted with amendments, to read as follows:

Sec. 22-40. Sale, transfer, etc; of any land in unapproved plat.

(a) If [before approval of a plat has been obtained,] any person transfers, sells or agrees to sell, as owner or agent, any land which forms a part of a subdivision on which, by ordinance, the planning board is required to act, *but for which there is not a valid approved plat,* such person shall be subject to a fine not to exceed one hundred dollars or to imprisonment for not more than thirty days, and each parcel, plat or lot so disposed of shall be deemed a separate violation.

Sec. 22-41. Certificate of approval of subdivision-Application.

The prospective purchaser, prospective mortgager or any other person interested in any land which forms part of a subdivision, or which, since the first day of October, 1955, formed part of such a subdivision, may apply in writing to the proper official or, if such official is unknown to the applicant, then to the secretary to the county executive for the issuance of a certificate certifying whether or not such subdivision has been approved by the planning board, *and, if it has been approved, whether and to what extent the approval remains valid.* Such application shall contain a diagram showing the location and dimensions of the land to be covered by the certificate and the name of the owner thereof.

Sec. 22-43. Same-Rights under certificates.

Any person who shall acquire for a valuable consideration an interest in the lands covered by any such certificate of approval of a subdivision in reliance upon [the] *any* information therein [contained] *that is incorrect at the time the certificate is issued* shall hold such interest free of any right, remedy or action which could be prosecuted or maintained by the county pursuant to the provisions of this title.

SECTION 2. *Be it further enacted*, that new Section 22-39.1 and new subsection (4) to Section 22-44, be and they are hereby added to Article IV. Subdivision Control Generally, title "Planning, Zoning and Subdivision Control" of the Baltimore County Code, 1968, said new section and subsection to read as follows:

Sec. 22-39.1. Record subdivision plats protected for five years.

Record subdivision plats (whether recorded prior to or subsequent to the effective date of this section) for any subdivision, section, or parcel thereof (hereinafter defined as two or more contiguous lots in the same ownership in said subdivision), except planned industrial parks, shall be deemed to have lapsed and to be invalid, for either the entire subdivision, or any section or parcel thereof, where the applicable subdivision, section or parcel thereof, remains undeveloped for a period of five years from April 16, 1977, or five years after the date of recording the final subdivision plat, whichever is later.

Upon such lapse and revocation of the record plat, a new application for tentative and final subdivision approval of such undeveloped subdivision, section or parcel thereof, shall be submitted to the planning board, prior to any development or issuance of building permits, for reapproval in accordance with the applicable provisions of the county zoning and subdivision regulations in force at the time of said reapplication.

A subdivision, section or parcel thereof is hereby defined as undeveloped if:

(a) building permits have not been issued; or

(b) building permits have been issued but substantial construction on the site has not occurred; or

(c) substantial construction on required public improvements (hereinafter defined as construction of public or private improvements pursuant to applicable regulations and requirements of the department of public works) has not occurred on any section or parcel of the subdivision; or

(d) substantial construction on required public or private improvements has begun on a part of the subdivision, but has not occurred with respect to any section or parcel thereof, in which event only the section(s) or parcel(s) of the subdivision in which substantial construction on required public improvements has not occurred shall be deemed to be undeveloped.

Any single lot OR LOTS NOT TO EXCEED THREE IN NUMBER in such subdivision, separated from any other lot OR LOTS in the same ownership, may be used without further subdivision approval for any permitted use in the zoning district in which the lot is located in effect at the time of application for a building permit, special permit, or special exception, except that the area requirements for such lot OR LOTS if used for a residential single family structure shall be those requirements in force at the time the initial final subdivision was approved.

Same ownership, as used in this section shall mean ownership by the same person, corporation, firm, entity, trust, estate, partnership or unincorporated association; or ownership by different corporations, firms, partnerships, entities, trusts, estate or unincorporated associations, in which a stockholder, beneficiary, partner or associate, or a member of his immediate (i.e. spouse, children, parents of any of them) family owns an interest in each corporation, firm, partnership, entity, trust, estate or unincorporated association.

Sec. 22-44. Same-Contents.

(4) Whether, if the subdivision or resubdivision has been approved, the approval with respect to any or all of the land in question has lapsed under the provisions of Section 22-39.1.

SECTION 3. *Be it further enacted*, that Sections 22-119, 22-120 and 22-135 of Article V. Subdivision Regulations, title "Planning, Zoning and Subdivision Control" of the Baltimore County Code, 1968, be and they are hereby repealed and re-enacted with amendments, to read as follows:

Sec. 22-119. Steps to be taken by planning commission.

The planning board, having studied the preliminary plan in connection with a staff report thereon, takes action and informs the developer within forty days. If the plan is approved, the board staff requests seven black and white prints. These are signed by the chairman or director of the planning board, and by the roads engineer, with the dates of tentative approval and are distributed as follows:

1 print to the developer.

1 print to planning board's files.

1 print to the county health officer.

4 prints to the chief engineer of the department of public works.

Approval of a preliminary plan is revocable, and it is valid for not more than one year, unless extended by the planning board's request.

If the plan is disapproved, the director of the planning board so informs the developer by letter, stating reasons for disapproval.

If approval of a final plat or part of such a plat has lapsed under Section 22-39.1, the planning board's approval of that part of the preliminary plan coverend by that plat or part of the plat is invalidated.

Sec. 22-120. Contents generally; completion of or arrangements to complete improvements prerequisite to approval; approval prerequisite to recordation.

The final plat of a subdivision shall consist of the official record plat and supporting detailed plans and data, as noted in this division. A final plat may include only a portion of the preliminary plan. No *final* subdivision plat may be recorded [and no lot therein may be sold legally] until [a final] *the* plat

has been approved by the roads engineer and the planning board, *and no lot covered by a subdivision plat may be sold unless the plat has been so approved and unless the approval with respect to that lot remains valid.* Before a plat may be eligible for approval, the public improvements indicated in the preliminary plan, namely, any or all of the following that have been required by the roads engineer and the planning board: Street and alley pavements sidewalks, water and sewer lines and storm drains, either must have been completed for that portion which is covered by the final plat, or arrangements must have been made with the department of public works, in accordance with its established procedure, to insure their subsequent proper completion by the developer

Sec. 22-135. Recordation within ninety days after approval.

The developer must record the final plat among the land records in the office of the clerk of the circuit court within ninety days after the date of approval by the planning board or such approval becomes void. *(See also Section 22-39.1.)*

SECTION 4. *Be it further enacted*, that Section 22-60 of Article V. Subdivision Regulations, title "Planning Zoning and Subdivision Control" of the Baltimore County Code, 1968, AS SECTION 22-15.1(H)(3), ARTICLE II. PLANNING, TITLE "PLANNING, ZONING AND SUBDIVISION CONTROL", ADOPTED BY THE COUNTY COUNCIL APRIL 16, 1979, BY BILL NO. 58-79, be and ~~it is~~ THEY ARE hereby repealed.

SECTION 5. *Be it further enacted*, that new subsection 103.4 be and it is hereby added to the Baltimore County Zoning Regulations, 1955, to follow immediately after subsection 103.3 of said regulations; said new subsection to read as follows:

103.4 If a subdivision plan or plat approval application to any lot, other than a lot in a planned industrial park, has lapsed under the provisions of Article IV. or Article V. of Title 22 of Baltimore County Code, 1968, as amended, development of that lot in contravention of the use, height, area, or other land-use or development standards of these regulations may not be undertaken pursuant to the following provisions of these zoning regulations:

Subsection 103.1

Subsection 103.3

Subparagraph 1A01.3.B.2

Subparagraph 1A02.3.B.6

Subparagraph 1A03.4.B.6

Subparagraph 1A04.3.B.5

Subparagraph 1B01.1.B.2

Subsection 1B02.3

Section 304

SECTION 6. *And be it further enacted,* ~~five members of the County Council having voted in the affirmative, that this Act shall take effect 12:01 A.M. April 17, 1979~~ THAT THIS ACT SHALL TAKE EFFECT FORTY-FIVE DAYS AFTER ITS ENACTMENT.

ENACTED: 5/16/791

BILL NO. 62-79

AN ACT to prohibit any person from clinging or tethering himself, or any sled or similar device on or in which he or others are being conveyed, to any motor vehicle in motion upon any highway or on any property used by the public in general, and providing for a penalty for a violation of such prohibition, by adding a new Section 17-6.1 to the Baltimore County Code, 1968, to Article I. In General, title "Motor Vehicles and Traffic".

SECTION 1. *Be it enacted by the County Council of Baltimore County, Maryland,* that a new Section 17-6.1 be and it is hereby added to the Baltimore County Code, 1968, Article I. In General, title "'Motor Vehicles and Traffic", said new section to read as follows:

Section 17-6.1 Persons prohibited from clinging to buses, etc.

(a) It shall be unlawful for any person to attach, cling, fasten or tether himself, or others, or any sled or similar device, on or in which he or others are being, or will be conveyed, to any motor vehicle upon any roadway, as such motor vehicle and roadway are defined in the Transportation Article, Annotated Code of Maryland, or on any property used by the public in general.

(b) Any person violating any of the provisions of subsection (a) of this section shall be deemed guilty of a misdemeanor

and upon conviction thereof shall be subject to a fine of not more than one hundred dollars.

SECTION 2. *And be it further enacted,* that this Act shall take effect forty-five days after its enactment.

ENACTED: 5/16/79

BILL NO. 63-79

AN ACT to provide for the disconnecting and amortizing of the cost of disconnecting prohibited storm drain connections, by repealing Subsection 13.1.2 of the Baltimore County Plumbing-Gasfitting Code, 1973, as amended and enacting a new Section 13.1.2 in lieu thereof and by adding new Section 34-61.1 to Article III. Metropolitan District, title "Water, Sewers, Sewage Disposal and Drains" of the Baltimore County Code, 1968.

SECTION 1. *Be it enacted by the County Council of Baltimore County, Maryland,* that Subsection 13.1.2 of the Baltimore County Plumbing-Gasfitting Code, 1973, be and it is hereby repealed a new Subsection 13.1.2 is hereby enacted in lieu thereof, said new subsection to read as follows:

13.1.2 Storm Water or Other Unpolluted Waters Drainage to Sewer Prohibited.

(a) The connection of any pipe or piping system which conveys stormwater, groundwater, roof runoff, subsurface drainage, uncontaminated cooling water or other unpolluted waters to the sanitary sewer is prohibited.

(b) Existing connections which convey stormwater, groundwater, roof runoff, subsurface drainage, uncontaminated cooling water or other unpolluted waters to the sanitary sewer must be disconnected within ~~90~~ *120* days after written notice is given by the County to the owner(s) of any property having such connections. The owner(s) must provide for the proper disposal of such waters in compliance with this code.

(c) The owner(s) of any property failing to comply with the written notice in subparagraph b. above, shall, upon conviction, be subject to a fine of not more than One Hundred ($100) Dollars for such violation and an additional fine of Twenty-Five ($25) Dollars for each day that such violation continues after expiration of the time allowed by the notice to disconnect set forth in subsection b. of this section.

vested rights
rescissinn of permit
Section 103.1
see Sec. 502.3

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO James E. Dyer Date September 24, 1979

FROM Office of Law

SUBJECT Application of Setbacks and Procedure for Building Permits Approved in Error

You requested our advices in regard to the following facts and issues.

FACTS:

A developer has applied for building permits for dwellings on Lots 13, 14, Block A, Lots 16, 17, and 18, Block B, Section 5, Ravenhurst. On Lot 14, construction is on-going, and the house frame is up. The developer has also applied for a variance on Lots 16, 17 from the strict application of the setback requirements in existence on January 21, 1976. He has signed contracts of sale for the construction of dwellings on Lots 13 and 18, respectively.

You advise us further that the approvals were based upon Section 5 being included within the boundaries of the preliminarily approved plan, dated March 9, 1966, and tentatively approved by County agencies in July, 1966. Upon rechecking, you advise us that it was found that preliminary approval did not include the entire property boundaries indicated on the plan, and parcel 5 on which the lots now appear was not included in the 1966 approval. Lots 13, 14, 16, 17 and 18 were first approved, preliminarily, on the final plat of Section 5, Ravenhurst, dated January 21, 1976. Finally, you advise that there is no problem with regard to lot area, or with the overall density of this site.

STATUTORY LAW:

Section 103 - APPLICATION OF ZONING REGULATIONS [B.C.Z.R. 1955].

103.1 -- These Regulations shall apply as of the date of their adoption but the provisions pertaining to use, height, area and density of population shall not apply to any development, subdivision or parcel of land, the preliminary plan for which was originally submitted to the (then)

EXH 26

Baltimore County Planning Commission, 1/ (now Planning Board) and approved or tentatively approved (including any approval made subject to any condition or conditions) under the then existing official procedure in Baltimore County, prior to the adoption of these Regulations. 2/ The zoning regulations applicable to any such development, subdivision or parcel of land as aforesaid shall be the zoning regulations in effect at the time such plan, as aforesaid, was originally submitted to the Baltimore County Planning Commission.

ISSUE:

Our advices have been requested in regard to providing an interpretation as to the following:

1) The general application of paragraph one (1) of Section 103.1 of the Baltimore County Zoning Regulations, as that section applies to all subdivisions; and

2) The manner in which paragraph one (1) of Section 103.1 specifically applies to Lots 12, 13 and 14 Block A; Lots 16, 17 and 18, Block B, Section 5, Ravenhurst; and

3) Whether or not building permits Nos. 10381 through 10385 - NR were properly approved for dwellings on said lots and whether they are revocable?

DISCUSSION:

1. Re: General application of paragraph one (1) of Section 103.1 of the Baltimore County Zoning Regulations, as it relates to all subdivisions.

Absent any statutory protection, land included in a plat approved by the Planning Board and recorded, is as vulnerable to changes in the zoning regulations as is all other land in the County. In effect, the mere delineation of lots on a map of subdivision filed, after approval by the

1/ Thus (comma) in Resolution; November 21, 1956.
2/ B.C.Z.R. 1955, adopted March 30, 1955.

Planning Board, carries with it no guaranty that each lot or parcel will be sufficient in itself, in view of the possibility of zoning change, to be built upon when the time comes to do so. As a consequence, the conclusion is almost universal that, apart from statute, a developer has no vested rights relating to a change of zoning affecting land in an approved subdivision. Moreover, legislation changing the zoning requirements is in no sense retroactive legislation. Unless protected by statute, the filing of an approved subdivision plat does not establish a nonconforming use of the platted land which protects it from subsequent zoning changes; no right to the continuance of an existing zoning classification is gained by preparation, and preliminary works, however extensive. In brief, relief from subsequent zoning changes will not be afforded a subdivider, without the aid of statutory law, see Anderson, American Law of Zoning, Section 23.23 "Effect of approval on power to rezone", pp. 96, 97, 98.

Maryland case law is in fundamental agreement with the proposition that the mere approval or even recordation of a subdivision plat, without statutory intervention does not insulate the plat from further zoning changes. In Rockville Fuel and Feed Co. v. City of Gaithersburg, 266 Md. 117 (1972), the Maryland Court of Appeals held that a zoning case must be decided upon the law applicable at the time a case is before the Court, in the absence of intervening vested rights. Thus, a property owner has no absolute right to the zoning or the permitted uses unless he obtains a vested right in the use. Vested rights occur when the property owner:

1. Obtains a building permit or occupancy certificate; and

2. Proceeds under the permit to exercise his rights on the land by a substantive beginning to construct, so that the neighborhood may be advised as to the intended land use.

Earlier in Rupp v. Cline & Sons, 230 Md. 573, 578 (1963), speaking for the Court of Appeals, Judge Horney enunciated the test as to a vested right as follows:

> a manifest commencement of some work or labor on the grounds which everyone can readily see and recognize as the commencement of a building...begun with the intention and purpose then formed to continue the works until completion of the building.

Other cases reaching the same conclusion that was reached in Rockville Fuel and Feed Co., supra are Stewart Petroleum Co. v. Bd. of County Comm'rs of St. Mary's County, 276 Md. 435 (1935), County Council for Montgomery County v. District Land Corp., 274 Md. 691 (1975), and Mayor and Council of Baltimore v. Crane, 277 Md. 198 (1976). In discussing the effect of subdivision approval on the power to rezone, attention must be focused on the recent case of WSS Com v. TKU Associates, 281 Md. 91, 376 A2d 505 (1977). There, it was held that irrespective of the dedication of valuable rights of way and expenditures of large sums of money in connection with its subdivision plan, a property owner did not obtain vested rights in a prior zoning classification where nothing in the subdivision regulations guaranteed that the project would be approved.

In interpreting the proper application of Section 103.1 of the Baltimore County Zoning Regulations, it is important to recall that Chapter 610 (S. B. 556) of the Public Local Law of 1955 enacted by the General Assembly and effective June 1, 1955, reconstituted the then existing Baltimore County Planning Commission as the Baltimore County Planning Board. 3/

Paragraph one (1) of Section 103.1 of the Baltimore County Zoning Regulations, in essence, provides that zoning regulations ordinarily apply as of the date of their adoption. The ordinance, however, also provides that current minimum restrictions pertaining to use, height, area and density shall not apply to any subdivision of land, the preliminary plan for which was originally submitted to the Baltimore County Planning Commission, and was approved or tentatively approved under what was, at the time of subdivision, the effective zoning regulations. A parenthetical expression, i. e. (now Planning Board), however, is used to refer to the current Planning Board. The question thus arises as to whether or not the legislative intention was to extend the benefit of Paragraph one (1) of Section 103.1 only to those plats submitted and approved by the Baltimore County Planning Commission; or, whether that intention was to extend the benefit of Paragraph one (1) to plats also approved by the Planning Board. As the legislative intention is not clear from the face of Paragraph one (1) of Section 103.1, there is a sufficient

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3/442. There shall be an Office of Planning, the head of which shall be a Planning Board...

478. The existing Planning Commission created by resolution under the Enabling Act of the State of Maryland contained in Article 66B of the Annotated Code of Maryland (1951 Edition, as amended) shall be and it is hereby reconstituted in accordance with the provisions of this title (effective June 1, 1955).

basis, in order to determine that intention, to resort to the canons of statutory construction, cf., Sands' Sutherland Statutory Construction, Vol. 02, Section 46.01 "The Plain Meaning Rule," p. 48. Among those canons of construction, in the canon that, where statutory language is ambiguous or uncertain, a contemporaneous construction may be resorted to as an aid in ascertaining the legislative intention; furthermore, the interpretation of administrative officials should not be disregarded except in the most demanding of circumstances, see City of Baltimore v. Machen, 132 Md. 618, 104 A. 175 (1918). Professor Sands in his edition of Sutherland Statutory Construction notes:

> Long continued contemporaneous and practical interpretation of a statute by the executive officers charged with its administration... constitutes an invaluable aid in determining the meaning of a doubtful statute Volume 2A, Section 49.03 "Contemporaneous and practical interpretation."

The interpretation that Paragraph one (1) of Section 103.1 is applicable also to subdivision plats submitted and approved by the Planning Board, is of long standing duration. It is currently applied to approvals by the Planning Board, and has been so applied since the beginning of the Board. Its application is in excess of twenty (20) years standing. In this context, it should be pointed out that contemporaneous interpretations ranging in duration from as long as seventy (70) to as short as five (5) years have been found to have established the legislative meaning, see Sands ibid, Section 49.07 "Duration of contemporaneous and practical interpretation." Moreover, where a contemporaneous interpretation has stood unchallenged for a considerable length of time, as in the case here, it is regarded as of great importance in arriving at the proper construction of statutory law, see Sutherland, ibid, Section 49.07.

Any ambiguity contained in Paragraph one (1) of Section 103.1 as to whether or not it applies to plats approved by the Planning Board as well as the Planning Commission has been resolved by the administrative determination that it has application to Planning Board approvals. This conclusion meets the test as set out by Sutherland as to whether or not it is proper to apply the principle of contemporaneous construction:

> The conclusiveness of a contemporaneous and practical interpretation will depend upon a number of additional elements that give efficacy to the rule. In general, these elements are: (1) that the interpretation

originated from a reliable source; (2) that the interpretation was made at or near the time of the enactment of the statute, and (3) that the interpretation has continued for a long period of time and received wide acceptance and following. Where these factors are present the vagueness usually surrounding the other aids of construction are not present, and therefore the rule serves as one of the most definite and reliable sources of statutory meaning. Sutherland, ibid, Vol. 2A., Section 49.04 "Probative force," pp. 235-236.

In light of this test, the administrative interpretation is proper that Paragraph one (1) of Section 103.1 is currently effective as to plats approved by the Planning Board. Consequently, the zoning regulations insofar as they relate to use, height, area, and density applicable on the development of any plan of subdivision, are the regulations in effect at the time the plan was originally submitted to either the Planning Commission or the Planning Board. As a result of this intervention of statutory law, an approved or tentatively approved plan of subdivision, relative to zoning restrictions concerning use, height, area and density, as of the time of its submissions, is insulated from further zoning changes.

The administrative interpretation of Paragraph one (1) of Section 103.1 that it insulates approved subdivisions, relative to minimum restrictions, from further zoning changes is corroborated by Section 103.3 of the Baltimore County Zoning Regulations, added to Section 103 by Bill No. 98-75. Section 103.3 provides that in any rural conservation zone, a recorded subdivision plat approved by the Commission or Board is insulated from further changes relative to residential densities, lot lines, yards, and open space. Further, if an approved plan does not indicate densities, lot lines or open space, they may be established or situated only in accordance with standards prescribed and in force at the time of lot recordation.

2. Re: Application of Paragraph one (1) of Section 103.1 to Lots 12, 13, 14 Block A, Lots 16, 17 and 18 Block B, Section 5, Ravenhurst.

Applying Paragraph one (1) of Section 103.1 to the preliminarily approved plan for Ravenhurst approved July, 1966, and excluding Section 5, as to the plan, use, height, area and density restrictions are those restrictions which are effective as of the time the plan was submitted to the

Planning Board for approval. The plan's approval, insofar as those restrictions are concerned, resulted in insulating the lots platted on the plan from further zoning changes. In the facts at issue, Lots 13, 14 Block A, Lots 16, 17, 18, Block B, Section 5, Ravenhurst were first approved on January 21, 1976. As to those lots, and with reference to the minimum restrictions applicable to use, height, area and density in effect in 1966, Paragraph one (1) of Section 103.1 does not establish a nonconforming use of the platted land. Consequently, unless, in reliance on the 1966 restrictions, there was a substantial beginning to construction, or intervening rights, there would be no vested right as per Paragraph one (1) of Section 103.1 to see applied the minimum restrictions as to those lots, except in conformity with the zoning regulations effective January 21, 1976.

3. Re: Propriety of approval of Building Permits Nos. 10782 through 10385-NR on Lots 12, 13, 14, Blocks A, Lots 16, 17 and 18, Block B, Section 5, Ravenhurst, and possible cancellation thereof.

Lot 12, Block A, Section 5, Ravenhurst is not in the ownership of the developer, Kirch Homes, Inc., as per information received from Mr. Kirch. As to Lots 16, 17 Block B, Section 5, the developer is applying for a variance from the strict application of the side yard setbacks as they existed as of January 21, 1976. Consequently, as there is no dispute that the 1976 setbacks requirements are applicable as to those lots, they need not be discussed at great length. The developer has construction out of the ground on Lot 13, Block A, Section 5, Ravenhurst. As determined by the test set out alone in Rockville Fuel & Feed Co., supra there is manifestly some work on the ground which is readily visible, and as to that lot, the developer has a vested interest to continue to develop in conformity with the zoning specifications as they existed as of January 21, 1976. No attempt should be made at revoking that building permit regardless of the assertion that it was issued in error.

Relative to Lots 13, Block A, and Lot 18, Block B, Section 5, Ravenhurst, contracts for construction of dwellings on those lots, respectively, have been signed by the developer and purchasers of those lots. On these facts, the Courts have held that where, as here, successors in title to a subdivider, in reliance on the approval of the final plan and recordation of the final plat thereof have acquired their respective interests as good faith purchasers their consent is necessary before approval of a plat or building permit can be rescinded, see Stoner v. Planning Board of Agawan, 368 Mass. 209, 266 NE2d 891. Accordingly, the consent of the contract

purchasers as well as the holders of mortgages on those lots would seem to be necessary prior to recission, see also Brigham v. Planning Board of North Reading, Mass. 285 NE2d 408. As it is highly unlikely that subdivision lot purchasers as well as their mortgagees would consent to a recission of the approved subdivision plan, or permits issued in reliance thereon, rescission of the approval of the final plat or permits is not recommended.

3A. Possible cancellation of permits.

As to the building permits relating to Lots 16, 17, as there is neither a substantial beginning to construct, nor intervening rights of purchasers or their mortgagees, these permits could be revoked. However, as the developer has applied for a variance from the strict application of the zoning regulations, as they existed January 21, 1976, the permits should not now be cancelled. Rather, it is suggested that all parties await the determination of the Zoning Commissioner on the petition for variance.

As to the building permits relative to Lots 13 and 18, intervening rights of good faith purchasers and their mortgagees are now extant; irrespective of the original error in issuing the permits not in conformance with January, 1976 zoning regulations; no attempt should be made at revocation. As there is a "frame" up on Lot 14, vested rights have intervened and the permit cannot be revoked, cf. Town of Berwyn Heights v. Rogers, 228 Md. 271, 179 A2d 712.

CONCLUSIONS:

1. Apart from statute, a developer has no vested rights relating to a change of zoning affecting land in an approved subdivision

2. Pursuant to statutory authority, the zoning regulations insofar as they relate to use, height, area, and density applicable or the development of any plan of approved or tentatively approved plan of subdivision, are the regulations in effect at the time the plan was originally submitted to either the Planning Commission or the Planning Board.

3. As a result of the intervention of statutory law, an approved or tentatively approved plan of subdivision, relative to zoning restrictions concerning use, height, area, and density, as of the time of its submission to the Planning Commission or Planning Board, is insulated from further zoning changes.

4. Lot 13, Block A, intervening rights of purchasers and their mortgagees are not extant; no attempt should be made at revocation of the building permit.

Lot 14, Block A, construction is out of the ground and visible, vested rights have intervened and the permit cannot be revoked.

Lot 16, Block B, application for variance is currently pending with the Office of Zoning Commissioner. The outcome of that petition should be awaited and considered prior to any attempt at revocation of the permit.

Lot 18, Block B, intervening rights of purchasers and their mortgagees are now extant; no attempt should be made at revocation.

This letter of advice is not to be construed as a formal opinion of the Office of Law of Baltimore County.

Leonard S. Jacobson
County Solicitor

Michael J. McMahon
Assistant County Solicitor

LSJ/MJM:gp

FEB 27 '81 PKK Please let me see you & Sec 103.1 vested rights

BALTIMORE COUNTY, MARYLAND

(Connect GH 3/4/81

INTER-OFFICE CORRESPONDENCE

TO Norman E. Gerber, Director
Office of Planning & Zoning

Date February 10, 1981

FROM Law Office

SUBJECT Request for Advice

RECEIVED
BALTIMORE COUNTY
FEB 23 1981
OFFICE OF PLANNING
AND ZONING

1) Application of §103 of the Zoning Regulations to Subdivisions which have had zoning changed via recently adopted 1980 Zoning Maps.

2) Development in accordance with subdivision plan or plat not complying with changed zoning classification.

You have requested our advice as to the following:

FACTS:

Section 103 of the Baltimore County Zoning Regulations (B.C.Z.R.) seems to provide that subdivisions which are approved tentatively or finally by the Planning Board may be developed in accordance with height, set-back, and area requirements of the zone applied to the property as of the time of either the tentative or final subdivision approval.

You would like clarification of the effect of §103 on subdivisions which receive final and/or tentative approval under a residential zone classification applied at the time of the approval and which have subsequently been reclassified through the 1980 Comprehensive Zoning Ordinance Map to another classification. You need advice in light of the impact of the Sunset provisions (Local Law §22-44.1, Record Subdivision plats protected for five years that now apply to final or record plats and also in light of the one (1) year life of tentative approval of any residential subdivision, (see also your request of 11/17/80; development in accordance with subdivision plat not complying with changed zoning classification).

STATUTORY LAW:

1) Section 103 - APPLICATION OF ZONING REGULATIONS (B.C.Z.R. 1955).

103.1--These Regulations shall apply as of the date of their adoption but the provisions pertaining to use, height, area and density of population shall not apply to any development, subdivision or parcel of land, the preliminary plan for which was originally submitted to the (then) Baltimore County Planning Commission, [1]

~~1 Thus~~ (comma) in Resolution; November 21, 1956.

EXH 27

(now Planning Board) and approved to tentatively approved (including any approval made subject to any condition or conditions) under the then existing official procedure in Baltimore County, prior to the adoption of these Regulations.[2] The zoning regulations applicable to any such development, subdivision or parcel of land as aforesaid shall be the zoning regulations in effect at the time such plan, as aforesaid, was originally submitted to the Baltimore County Planning Commission.

2) Local Law §22-44.1 Record subdivision plats protected for five (5) years.

Record subdivision plats...for any subdivision...shall be deemed to have lapsed and to be invalid...where the...subdivision... remains undeveloped for a period of five (5) years from April 16, 1977, or five (5) years after the date of recording the final subdivision plat, whichever is later.

ISSUE:

What is the effect of §103.1 of the Baltimore County Zoning Regulations on subdivisions which receive final and/or tentative approval under a residential zoning classification applied at the time of the approval, and which are subsequently reclassified through the 1980 Comprehensive Zoning Map to another classification?

DISCUSSION:

1) General application of paragraph one (1) of §103.1 of the Baltimore County Zoning Regulations, as it relates to residential subdivisions.

Absent any statutory protection, land included in a plat approved by the Planning Board and recorded, is as vulnerable to changes in the zoning regulations as is all other land in the County. In effect, the mere delineation of lots on a map of subdivision filed, after approval by the Planning Board, carries with it no guarantee that each lot or parcel will be sufficient in itself, in view of the possibility of zoning change, to be built upon when the time comes to do so. As a consequence, the conclusion is almost universal that, apart from statute, a developer has no vested

2. B.C.Z.R. 1955, adopted March 30, 1955.

rights relating to a change of zoning affecting land in an approved subdivision. Moreover, legislation changing the zoning requirements is in no sense retroactive legislation. Unless protected by statute, the filing of an approved subdivision plat does not establish a nonconforming use of the platted land which protects it from subsequent zoning changes; no right to the continuance of an existing zoning classification is gained by preparation, and preliminary works, however extensive. In brief, relief from subsequent zoning changes will not be afforded a subdivider, without the aid of statutory law, see Anderson, American Law of Zoning, §23.23 "Effect of approval on power to rezone", pp. 96, 97 and 98.

Maryland case law is in fundamental agreement with the proposition that the mere approval or even recordation of a subdivision plat, without statutory intervention does not insulate the plat from further zoning changes. In Rockville Fuel and Feed Co. v. City of Gaithersburg, 266 Md. 117 (1972), the Maryland Court of Appeals held that a zoning case must be decided upon the law applicable at the time a case is before the Court, in the absence of intervening vested rights. Thus, a property owner has no absolute right to the zoning or the permitted uses unless he obtains a vested right in the use. Vested rights occur when the property owner:

1. Obtains a building permit or occupancy certificate; and

2. Proceeds under the permit to exercise his rights on the land by a substantive beginning to construct, so that the neighborhood may be advised as to the intended land use.

Earlier in Rupp v. Cline & Sons, 230 Md. 573, 578 (1963), speaking for the Court of Appeals, Judge Horney enunciated the test as to a vested right as follows:

> "a manifest commencement of some work or labor on the grounds which everyone can readily see and recognize as the commencement of a building...begun with the intention and purpose then formed to continue the works until the completion of the building."

Other cases reaching the same conclusion that was reached in Rockville Fuel and Feed, supra., are Stewart Petroleum Co. v. Bd. of County Comm'rs of St. Mary's County, 276 Md. 435 (1935); County Council for Montgomery County v. District Land Corp., 274 Md. 691 (1975); and Mayor and Council of Baltimore v. Crane, 277 Md. 198 (1976). In discussing the effect of subdivision approval on the power to rezone, attention must be focused on the recent case of

WSS Com. v. TKU Associates, 281 Md. 01, 376 A.2d 505 (1977). There, it was held that irrespective of the dedication of valuable rights of way and expenditures of large sums of money in connection with its subdivision plan, a property owner did not obtain vested rights in a prior zoning classification where nothing in land use regulations served to preserve previous approvals with regard to height, area, density, use and bulk requirements, see also Millison v. Secretary of Health and Mental Hygiene, 32 Md. 165, 357 A.2d 274. Nonetheless, because of statutory modifications set forth in Title 22, Local Law is somewhat contrary to the result in TKU, supra, in that previous approvals with regard to height, set-back and are are insulated from subsequent comprehensive rezoning changes.

In interpreting the proper application of §103.1 of the Baltimore County Zoning Regulations, it is important to recall that Chapter 610 (Senate Bill 556) of the Public Local Law of 1955, enacted by the General Assembly and effective June 1, 1955, reconstituted the then existing Baltimore County Planning Commission as the Baltimore County Planning Board.[3]

Paragraph one (1) of §103.1 of the Baltimore County Zoning Regulations, in essence, provides that zoning regulations ordinarily apply as of the date of their adoption. The ordinance, however, also provides that current minimum restrictions pertaining to use, height, area, and density shall not apply to any subdivision of land, the preliminary plan for which was originally submitted to the Baltimore County Planning Commission, and was approved or tentatively approved under what was, at the time of subdivision, the effective zoning regulations. A parenthetical expression, i.e. (now Planning Board), however, is used to refer to the current Planning Board. The question thus arises as to whether or not the legislative intention was to extend the benefit of paragraph one (1) of §103.1 only to those plats submitted and approved by the Baltimore County Planning Commission; or, whether that intention was to extend the benefit of paragraph one (1) to plats also approved by the Planning

3. 442. There shall be an Office of Planning, the head of which shall be a Planning Board...

478. The existing Planning Commission created by resolution under the Enabling Act of the State of Maryland contained in Article 66B of the Annotated Code of Maryland (1951 Edition, as amended) shall be and it is hereby reconstituted in accordance with the provisions of this title (effective June 1, 1955).

Board. As the legislative intention is not clear from the face of paragraph one (1) of §103.1, there is a sufficient basis, in order to determine that intention, to resort to the canons of statutory construction, cf., Sands' Sutherland Statutory Construction, Vol. 2, §46.01 "The Plain Meaning Rule", p. 48. Among those canons of construction, in the canon that, where statutory language is ambiguous or uncertain, a contemporaneous construction may be resorted to as an aid in ascertaining the legislative intention; furthermore, the interpretation of administrative officials should not be disregarded except in the most demanding of circumstances, see City of Baltimore v. Machen, 132 Md. 618, 104 A.175 (1918). Professor Sands in his edition of Sutherland Statutory Construction notes:

> "Long continued contemporaneous and practical interpretation of a statute by the executive officers charged with its administration...constitutes an invaluable aid in determining the meaning of a doubtful statute. Volume 2A, §49.03 "Contemporaneous and practical interpretation."

The interpretation that paragraph one (1) of §103.1 is applicable also to subdivision plats submitted and approved by the Planning Board, is of long standing duration. It is currently applied to approvals by the Planning Board, and has been so applied since the beginning of the Board. Its application is in excess of twenty (20) years standing. In this context, it should be pointed out that contemporaneous interpretations ranging in duration from as long as seventy (70) to as short as five (5) years have been found to have established the legislative meaning, see Sands ibid, §49.07 "Duration of contemporaneous interpretation and practical interpretation." Moreover, where a contemporaneous interpretation has stood unchallenged for a considerable length of time, as in the case here, it is regarded as of great importance in arriving at the proper construction of statutory law, see Sutherland, ibid, §49.07.

Any ambiguity contained in paragraph one (1) of §103.1 as to whether or not it applies to plats approved by the Planning Board as well as the Planning Commission has been resolved by the administrative determination that it has application to Planning Board approvals. This conclusion meets the test as set out by Sutherland as to whether or not it is proper to apply the principle of contemporaneous construction:

> "The conclusiveness of a contemporaneous and practical interpretation will depend upon a number of additional elements that give efficacy to the rule. In general, these elements are: (1) that the interpretation

originated from a reliable source; (2) that the interpretation was made at or near the time of the enactment of the statute, and (3) that the interpretation has continued for a long period of time and received wide acceptance and following. Where these factors are present the vagueness usually surrounding the other aids of construction are not present, and therefore the rule serves as one of the most definite and reliable sources of statutory meaning. Sutherland, ibid, Vol. 2A, §49.04 "Probative force" pp. 235-236.

In light of this test, the administrative interpretation is proper that paragraph one (1) of §103.1 is currently effective as to residential plats approved by the Planning Board. Consequently, the zoning regulations insofar as they relate to use, height, area and density applicable on the development of any plan of subdivision, are the regulations in effect at the time the plan was originally submitted to either the Planning Commission or the Planning Board. As a result of this intervention of statutory law, an approved or tentatively approved plan of subdivision, relative to zoning restrictions concerning use, height, area and density, as of the time of its submission, is insulated from further zoning changes.

The administrative interpretation of paragraph one (1) of §103.1 that it insulates approved residential subdivisions, relative to minimum restrictions, from further zoning changes is corroborated by §103.3 of the Baltimore County Zoning Regulations, added to §103 by Bill #98-75. Section 103.3 provides that in any rural conservation zone, a recorded subdivision plat approved by the Commission or Board is insulated from further changes relative to residential densities, lot lines, yards, and open space. Further, if an approved plan does not indicate densities, lot lines, or open space, they may be established or situated only in accordance with standards prescribed and in force at the time of lot recordation.

Focusing on Local Law 22-44.1, it is observed that the language used therein is plain and unambiguous and must be given effect as the Council intended. Accordingly, a recorded subdivision plat will have lapsed into invalidity where the subdivision remains undeveloped for a period of five (5) years from a date certain (April 17, 1977) or five (5) years after the plat recordation date, whichever is later. Local Law §22-44.1 originates with enabling legislation found respectively in both the Baltimore County Charter and Code. Charter §522.1 (1978) provides for the preparation of recommendations concerning subdivision regulations which can only take effect after approving legislation has been enacted by the Council, see Charter §§522.1(a)(3)(4) and 522.1(b). Additionally, Local Law §22-37

"Subdivision regulations" (1978 Code) provides that the Planning Board is to submit supplementary amendments to existing regulations governing the subdivision of land in Baltimore County, including requirements and procedures for the submission of subdivision plats.

With regard to the enabling authority for §103.1 of the Baltimore County Zoning Regulations, Local Law §22-19 (1978) requires the preparation of zoning maps and regulations restricting and regulating height, area, density, use and bulk of buildings, structures and land for the purpose of promoting health, safety, morals and the community's general welfare. In addition, Local Law 22-20 (1978) provides that the County is to divide into zones for the purpose of regulating the height, bulk, and area of lots, buildings and other structures.

As both the zoning and subdivision regulations have their statutory origin in Title 22 of the Baltimore County Code, they must be construed with reference to each other to produce a harmoniuous whole. Indeed, related statute or statutes on the same subject or objects should be construed together, Sutherland, ibid, Vol. 2A, §51.03 "Statutes deemed to be in pari materia", p. 298. Moreover, in terms of legislative intent, it is assumed that whenever the legislature enacts a provision, it has in mind previous statutes relating to the same subject matter; consequently, it is held that in the absence of any express repeal or amendment therein, the new provision was enacted in accord with the legislative policy embodied in those prior statutes and they all should be construed together, see Sutherland, ibid, Volume 4, §51.02 "Statutes on the same subject construed together" p. 290. Moreover, the construction that produces the greatest harmony and the least inconsistency is that which ought to prevail, see Sutherland, ibid, Vol. 2A, §46.05 "Whole Statute Interpretation", p. 57.

Applying those precepts of statutory construction, it is stressed that Baltimore County Zoning Regulations, §103.1 should be construed together with Local Law §22-44.1 to produce the greatest harmony and the least inconsistency. Moreover, it must be assumed that the County Council, when it adopted Local Law §22-44.1 was aware of the contemporaneous construction given to §103.1, that an approved or tentatively approved plan of subdivision relative to use, height, area and density regulations, was insulated from further zoning changes as of the time of the plan's submission to either the Planning Commission or Planning Board.

Consequently, construing §103.1 of the Baltimore County Zoning Regulations in light of the subsequently enacted Local Law §22-44.1 leads to the conclusion that height, area, bulk and density of a recorded subdivision plat are preserved against subsequent zoning changes for a period coextensive with the statutory period exempting recorded subdivision plats from the impact of the local Sunset provision of Title 22.

CONCLUSIONS:

1. Apart from statute, a developer has no vested rights relating to a change of zoning affecting land in an approved subdivision.

2. Pursuant to statutory authority, the zoning regulations insofar as they relate to use, height, area, and density applicable or the development of any plan of approved or tentatively approved plan of subdivision, are the regulations in effect at the time the plan was originally submitted to either the Planning Commission or the Planning Board.

3. As a result of the intervention of statutory law, as approved or tentatively approved plan of residential subdivision, relative to zoning restrictions concerning use, height, area, and density as of the time of its submission to the Planning Commission or Planning Board, is insulated from further comrehensive rezoning changes.

4. Use, height, area and density requirements (see §103.1 Baltimore County Zoning Regulations) of an approved recorded subdivision plat are preserved against subsequent comprehensive rezoning changes for a period coextensive with the statutory period exempting recorded subdivision plats from the impact of the local Sunset provision of Title 22.

This letter of advice is not to be construed as a formal opinion of the Office of Law of Baltimore County.

Leonard S. Jacobson
County Solicitor

Michael J. McMahon
Assistant County Solicitor

L.S.J./M.J.M.:dp

IN THE MATTER OF STEPCICH PROPERTY, SECTION 3 WINDMERE – 3 STONEHURST ROAD BRIZENDINE, TRUSTEES PHOENIX, MD 21131 11TH ELECTION DISTRICT 6TH COUNCILMANIC DISTRICT	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
RE: JSPC SUBDIVISION PLAN/DENIAL OF PROPOSED RE-SUBDIVISION / AMENDMENT TO JSPC PLAN	*	CASE NO. CBA-04-157

* * * * * * * * * *

ORDER TO REMAND

Statement Of Facts

This matter comes before the Baltimore County Board Of Appeals on appeal from a decision by the Director of the Office of Planning dated October 26, 2004, in which the Appellants' request with the Planning Board of Baltimore County to approve an amendment to the Section III, Windermere plat was denied. Appellants filed an appeal to the Board Of Appeals on November 19, 2005.

Arnold Jablon, Esquire, VENABLE, LLP, represented the Property Owners /Appellants; John E. Beverungen, Deputy County Attorney, appeared on behalf of Baltimore County, Maryland; and Peter M. Zimmerman, People's Counsel for Baltimore County, entered his appearance on behalf of that Office. A hearing was held before the County Board of Appeals on May 11, 2005 and was heard *de novo*. A public deliberation was held on July 14, 2005

Testimony and Evidence

No testimony was heard as to the merits at the May 11, 2005 hearing. The parties by agreement made oral argument and agreed to submit memorandums on the following issues as well as others:

EXHIBIT A

1. Was the letter of October 6, 2004 by the Director of Planning a final order appealable to the County Board of Appeals?

2. Did the Director of Planning have authority to render a decision on the Petitioners' request made to the Planning Board?

This matter arose when the Appellants filed a request with the Planning Board of Baltimore County to approve an amendment to the Section III, Windermere plat. The Planning Board held a hearing on this matter on three occasions; October 21, 2004, November 18, 2004 and January 6, 2005, according to counsel for Appellants. The Director of Planning issued a letter on October 26, 2004 denying Appellants' request. Appellants' filed an Appeal to the Board of Appeals from the Director of Planning's letter of October 26, 2004. The Planning Board at the January 2005 hearing decided not to take any action until the Board of Appeals had rendered a decision on the appeal .

The Board finds that the letter of October 6, 2004 by the Director of Planning was a final order appealable to the Board Of Appeals. The Board of Appeals' jurisdictional authority to hear appeals is granted under § 602 (d) of the *Baltimore County Charter* and Article 25A, Section5 (U) of the *Annotated Code of Maryland.* We find that under *United Parcel Service, Inc., v. People's Counsel for Baltimore County*, 336 Md 569 (1994), the Director Of Planning's letter of October 26, 2004 was an appealable event. We agree with Appellants' counsel that the Director Of Planning's letter of October 26, 2004 was an adjudicatory order issued by an administrative official that effectively denied the Appellants' request.

The Board finds that the Director of Planning did not have authority to render a decision on the Appellants' request. Appellants filed their request with the Planning Board not with the Director of Planning. The request was for plat approval. Under the *Baltimore County Code*, the

Planning Board and Department of Public Works were given joint authority to approve all plats. The Baltimore County Code does not give the Director Of Planning the authority to deny the request made by the Appellants.

ORDER

THEREFORE, it is this 21st day of July, 2005, by the County Board of Appeals of Baltimore County

ORDERED that letter dated October 26, 2004 from the Director of Planning be and is hereby **REVERSED**; And it is further

ORDERED that this matter be and is hereby **REMANDED** to the Baltimore County Planning Board for a final decision as required by statute.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence M. Stahl, Chairman

Michael O. Ramsey

Edward W. Crizer, Jr.

IN THE MATTER OF THE APPLICATION OF RANSHELL HOLDINGS, LLC - LEGAL OWNERS /PETITIONERS FOR A SPECIAL HEARING ON PROPERTY LOCATED ON THE S/S KEENEY MILL ROAD, 750' E OF C/L SOUTH RUHL ROAD (20713 KEENEY MILL ROAD) 6TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Case No. 03-225-SPH

* * * * * * * * * *

OPINION

Background

This matter is before the Board on an appeal from a decision of the Deputy Zoning Commissioner dated March 7, 2003 in which a Petition for Special Hearing to confirm the existence of two building lots on the property known as Lot #1 of Keeney Mill Woods – East was denied and the finding that there does not exist a sufficient amount of density for said lot to be divided to create two separate building lots.

A hearing was held before the Board on October 29, 2003 and December 3, 2003. The Petitioner, Ranshell Holdings, LLC, by Randolph H. Shelly, General Manager, was represented by Howard L. Alderman, Jr., Esquire. Protestants, John C. Boyle, Brian Gebhart, Joseph Matricciani, and Mr. and Mrs. Joseph R. Fuchs, adjacent property owners, were represented by J. Carroll Holzer, Esquire. People's Counsel for Baltimore County was represented by Deputy People's Counsel, Carole S. Demilio, Esquire. Briefs were submitted to the Board by all parties, and a public deliberation was held on January 29, 2004.

Facts

The subject property is an unimproved parcel located on the south side of Keeney Mill Road, just west of South Ruhl Road in northern Baltimore County. The property is also known as Lot #1 of Keeney Mill Woods – East and contains a gross area of 2.999 acres +/-, zoned R.C. 2.

EXHIBIT B

Petitioners purchased the subject property from Gloria Evangelisti on or about September 12, 2002 and desire to subdivide the property into two separate building lots in order to construct a single-family dwelling on each lot. The Petition herein was filed to confirm that the density exists to allow the proposed subdivision and to determine the proper procedure for subdividing the property.

The Protestants are neighbors in the subdivision and argue that it would be out of character with the existing community to subdivide Lot 1. They testified that Lot 1 is the smallest of five lots in the subdivision and that the proposed development would overcrowd this parcel. Mr. Fuchs, the owner of Lot #2, is fearful that the proposed building envelope for one of the lots would be too close to his home on Lot #2. He also is concerned about drain fields from that home going into his lot, and the rainwater from Lot 1 running off in gullies over his property. All of the Protestants argue that there is no right of subdivision on this lot based upon the zoning history of the property.

It was noted previously that the property is also known as Lot 1 of Keeney Mill Woods – East, which was approved as a five-lot subdivision in May 1977. The overall tract contained 27.501 acres, zoned R.C. 2, which at that time permitted the subdivision of the property into no more than five residential building lots. In 1979 County Council Bill No. 178-79, which became effective on November 25, 1979, changed the method by which R.C. 2 zoned land may be subdivided. The new method established by Bill 178-79 restricted the amount of density associated with R.C. 2 zoned land. Under the new R.C. 2 regulations which were effective in 1979, the same 27.501-acre parcel would yield only two lots and not the five that were approved at the time the development was approved in 1977.

Lot #1 is the only lot upon which a building has not been erected. As stated above, the Petitioner seeks to divide Lot #1 into two lots in accordance with the present zoning laws.

Petitioner's Position

Petitioner presented Geoffrey C. Schultz as an expert witness in support of its position. Mr. Schultz is vice president of the firm McKee & Associates. He prepared the plat which was submitted in support of the Petition as Petitioner's Exhibit #1. Mr. Schultz testified that, based upon his expertise and research, the subdivision plat of Keeney Mill Woods – East was duly recorded in the land records of Baltimore County and that the lots 1 through 5 shown thereon were considered lots of record. He also testified as to the chain of title of Lot #1 being conveyed from James Kassolis, the Developer of Keeney Mill Woods, to Gloria Evangelisti, and the subsequent deed from Evangelisti to the Petitioner, Ranshell Holdings, LLC.

Mr. Schultz also testified that in preparing the proposed development plan, in evidence as Petitioner's Exhibit 1, he relied on the current zoning regulations in accordance with § 26-169 of the *Baltimore County Code*. He read § 26-169 as follows:

> These regulations shall apply to all development except:
>
> (i) such development which, prior to the effective date of this article (June 11, 1982) has received tentative approval of the preliminary plan by the planning board for which development a valid, unexpired building permit exists, or for which development a current executed public works agreement exists, all of which development shall be governed by the subdivision regulations in effect at the time of said preliminary plan approval, building permit issuance or public works agreement execution, as the case may be. Proposed development shall be in compliance with the present zoning classification on the subject property; and
> (ii) such development as has received CRG approval, reclamation plan approval, or any other project vested by law, or such development for which a CRG plan has been accepted for filing by the Department of Public Works prior to the date of adoption of Bill 1-92, all of which development shall be governed by the subdivision regulations in effect at the time of said approval or acceptance for filing, as the case may be. **[Emphasis added.]**

It was Mr. Schultz's opinion that, since there was a tentative approval of the preliminary plan for the subdivision by the Planning Board prior to the effective date of the article (June 11, 1982), the subdivision was subject to the regulations that were effective at the time of the approval, which would have been the joint subdivision advisory committee process. Mr. Schultz then stated that the sentence in § 26-169 which stated "proposed development shall be in compliance with the present zoning classification on the subject property" gave him the direction for the zoning classification of Lot #1, that he proposed to divide Lot #1 into two lots. It was Schultz's position that Council Bill 79-178, which was effective November 25, 1979, governed this subdivision in that Lot #1 was a lot of record on November 25, 1979 and the lot was between 2 and 100 acres, it could be divided into two lots.

Mr. Schultz also testified that he was familiar with the Zoning Commissioner's Policy Manual, specifically § 1A01.3.B.1, entitled "Subdividing Existing Lots." That states:

1A01.3.B.1. Subdividing existing lots

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

1) only the most recent deed shall be used to determine the number of lots of record; and that

2) the lots recorded met the existing zoning regulations at that time.

Mr. Schultz indicated that he was familiar with this section and that he had been required to use that policy in his practice several times. He stated that it was necessary to demonstrate to the Baltimore County zoning office that the parcel existed on November 25, 1979 in the same configuration as it exists today to verify that it has density. Mr. Schultz did this by starting with the most recent deed and going back through the chain of title to demonstrate that there had been no change in the boundaries of that parcel and that the density had not been utilized for other

parcels of land since 1979. Based upon his review of the documents, he concluded that the subdivision plat of Keeney Mill Woods met the zoning regulations in effect at the time they were recorded. Therefore, he felt that the subdivision of Lot #1 into two lots was justified under the Zoning Commissioner's Policy Manual.

Protestants' Evidence

In addition to the testimony of the neighbors in Keeney Mill Woods, the Protestants presented the written comments of the zoning office authorized by Mr. Lloyd Moxley. Moxley's comments by memo dated November 7, 2002 indicated that § 103 of the Baltimore County Zoning Regulations precludes the additional re-subdivision requested since this development continues to be governed by the zoning regulations in place at the time Baltimore County Planning Commission approval was granted. It was the opinion of the staff that no further density existed on the property.

Protestants also presented Mr. Jack Dillon who was accepted as an expert in planning, zoning and subdivision. Mr. Dillon testified as to his employment with Baltimore County from 1962 until 1973, where he served in the County Planning Office as a Planner during that period and also worked in the Baltimore County zoning office from 1966 to 1972, where he served as Chairman of the Zoning Advisory Committee and Zoning Enforcement. Dillon also worked as an Environmental Planner in the Planning Office from 1974 to 1981 and was District Area Planner and Administrator of the Baltimore County Agricultural Land Preservation Program from 1981 to 1987. From 1987 until 1996, when he retired, he was the Senior Planner and Deputy Division Chief for the rural area of Baltimore County.

It was Mr. Dillon's opinion that the Petitioner's request for the re-subdivision of Lot #1 could not be accomplished based upon the unavailability of any density left on the site. Dillon

testified that the property was subdivided in 1977 and at that time, the density factor permitted a maximum of five (5) density units on the site. In 1979 the R.C. 2 zone was amended to permit only two (2) density units on sites between 2 and 100 acres, which meant that the present law was more restrictive than the previous law.

Mr. Dillon produced a copy of the final development plan for Keeney Mill Woods which was passed pursuant to Bill 12-77, the Interim Development Control Act (IDCA). The IDCA was in effect from April 16, 1977 until November 25, 1979. The final development plan for Keeney Mill Woods – East Subdivision was approved by the County and signed on April 29, 1977.

On cross-examination, Mr. Dillon was questioned with respect to § 26-169 of the *Baltimore County Code*. Mr. Dillon was confronted with a preliminary plan for the Keeney Mill Woods – East subdivision which was approved March 30, 1977. He was questioned as to whether or not subsection (i) of § 26-169 applied in this particular situation. It was Dillon's opinion that, since a final development plan had been approved, Section (i) did not apply because it applied only to preliminary plans. He stated that the subdivision was reviewed under the Joint Subdivision Planning Review Process (JSPC). This was the process that preceded the CRG process and the community input process now in effect. He felt that the whole section did not apply but if any part of it applied, it would be subsection (ii). Mr. Dillon testified that the Keeney Mill Woods – East subdivision did not receive CRG approval since the CRG was not in effect at the time that the subdivision was approved.

Mr. Dillon was also questioned with respect to § 103.1 and § 103.3 of the zoning regulations. These sections were relied on by Mr. Moxley of the zoning office in his memorandum. It was Mr. Dillon's testimony that the first part of § 103.1 was an evolving

section. He opined that it pertained to a tentative approval of a preliminary plan prior to the adoption of the regulations which were adopted on March 30, 1955 and did not apply to the preliminary plan for the Keeney Mill Woods – East subdivision since a final development plan had been approved. He felt that § 103.3 was specific to the R.C. 5 zones, and that 103.3 was a grandfather regulation.

Mr. Dillon was also asked to comment on the Zoning Commissioner's Policy Manual § 1A01.3.B.1 which was referred to by the Deputy Zoning Commissioner in his decision in this matter, when he stated:

> It appears to me that the provision relied upon by the Petitioner relates to legally existing R.C. 2 zoned lots of record that were created by deed or multiple deeds. That particular provision does not apply to the re-subdivision of an existing lot which was part of an approved final subdivision plat such as Keeney Mill Woods – East.

Mr. Dillon agreed with the Deputy Zoning Commissioner's analysis stating, "I think the Deputy Zoning Commissioner hit it very correctly in that the section of the policy manual really deals with parcels or tracts of land that were out there that were created, and not part of a subdivision…if they were part of a subdivision, I don't believe they would fall under that section."

Mr. Dillon also relied heavily on § 1B01.B.2 of the zoning regulations and § 1B01.3 which regulates the amendment of approved development plans. Mr. Dillon quoted the last sentence of § 1B01.B.2 which states:

> It is the intent of the zoning regulations to prohibit subdivision or re-subdivision of portions of a tract in R.C. zones in a manner so to exceed the total number of dwelling or density units allowed under the applicable R.C. zones for the entire tract.

When asked as to the significance of the word "entire," Dillon states: "You can't take it out of context…You can't take a lot created in 1977 and then come back in 1979 and then say,

'now we're our own tract,' and re-subdivide under the new regulations...You can't have your foot in both zones. You have to look at the entire tract."

Dillon then concluded that this development was approved in 1977 under the 1977 regulations and that they have maximized the density that was allowed under the zone at the time and that the subdivision was subsequently recorded. He felt that the grandfather clause was generally meant to provide some insurance to a developer to rely on that their plans were approved and the same protection goes to the people who bought the properties.

Decision

The Board has carefully reviewed the testimony, exhibits and excellent briefs filed by the parties in this matter. The Petitioner has been very creative in its attempt to subdivide the remaining lot in the Keeney Mill Woods – East subdivision. However, the Board feels that the Petition for Special Hearing in this matter should be denied. It is unfortunate that the myriad of zoning regulations that have been passed in Baltimore County have not been coordinated in some way so that the previous regulations, which may have created a right at a particular time, have not been either deleted or grandfathered in some way by the most recent zoning regulations. This appears to create some confusion with respect to the rights under the current regulations.

However, the Board is persuaded by the testimony of Mr. Dillon citing § 1B01.7 entitled "Amendment of Approved Development Plans" and § 1B01.B.2 of the regulations with respect to density residential zones. Sections 1B01.7.A and B provide for amendment of approved development plans through special exception procedures in the manner provided under § 502 of the BCZR and subject to three provisions. The last provision states: "(3) It must be determined in the course of the hearing procedure that the amendment would be consistent with the spirit and intent of the original plan and of this article." Section C(4) of the above section states, "The

zoning commissioner and the director of planning must certify that the amendment is in keeping with the spirit and intent of this article and other Baltimore County land use and development requirements administered by them, and both must certify that the amendment does not violate the spirit and intent of the original plan."

Finally, § 1B01.B.2 states:

> In fact, no subdivision of a tract or a portion of a tract may be created after the effective date of this article except as otherwise provided under § 1B02.3.A.2 unless the final subdivision plat therefore contains a summary showing the total number of dwelling or density units allowed for the entire tract under the applicable D.R. zones. The summary shall indicate as appropriate the number of dwelling or density units utilized by previous final subdivision plats or portions of the same tract. The number of dwelling or density units contained in the current subdivision plat and the balance of dwelling or density units allowed for the remainder of the tract under the applicable D.R. zones. It is the intent of these zoning regulations to prohibit subdivision or re-subdivision of portions of a tract in a D.R. zone in a manner so as to exceed the total number of dwelling or density units allowed under the applicable D.R. zones for the entire tract.

Mr. Dillon indicated that § 1A00.4 and the general regulations of R.C. 2 indicate that the manner prescribed under § 1B01.3 for the purposes of interpretation with reference to the D.R. zones are in the Code and that you substitute R.C. for D.R. in those areas and that they are now part of that section.

It is the opinion of the Board that when the above §§ 1B01.7.A and B and 1B01.B.2, as well as the spirit and intent of the law, are considered, the Petition for Special Hearing must be denied. At the time the original Keeney Mill Woods – East subdivision was created, the zoning regulations allowed for a density of five (5) lots on the 27+ acres of the subdivision. Had the Keeney Mill Woods – East subdivision been created today, the number of lots allowed would be two (2). This indicates that the spirit and intent of the law is to reduce the density in the rural agricultural zones.

For that reason, the Board considers that any amendment to a development plan must be the amendment to the final subdivision of Keeney Mill Woods – East, not the subdivision of Lot #1 of Keeney Mill Woods – East. In considering the entire tract of Keeney Mill Woods – East, there can be no further density allowed on the Keeney Mill Woods – East tract, since all five density units that were allowed at the time the final subdivision was approved have been utilized.

ORDER

THEREFORE, IT IS THIS 26th day of February, 2004 by the County Board of Appeals of Baltimore County

ORDERED that the Petition for Special Hearing to confirm the existence of two building lots for the subject property and to determine the proper procedure for subdividing same in accordance with Petitioner's Exhibit #1 be and is hereby **DENIED**; and it is further

ORDERED that there does not exist a sufficient amount of density for Lot #1 of Keeney Mill Woods – East to be subdivided to create two separate building lots; thus only one residential dwelling can be constructed on the subject 2.99 acre parcel.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence M. Stahl, Panel Chairman

Edward W. Crizer, Jr.

Lawrence S. Wescott

of the Department of Public Works and other County agencies for the collection of data and shall receive the recommendations from all County departments concerning their capital improvement needs before the 6-year Capital Improvement Program is prepared. The Planning Board shall consult with the Department of Public Works, the Board of Education and other using agencies before final action is taken on the 6-year Capital Improvement Program. The 6-year capital program, after approval by the Planning Board, shall be submitted to the County Commissioners not later than March 1, 1956, and each even numbered year thereafter. The Planning Board shall also submit not later than March 1, 1956, and each even numbered year thereafter, recommendations for the capital program for the following two years to the County Commissioners.

1955, ch. 610, sec. 457.

381. The County Commissioners of Baltimore County may be ordinance provide for the regulation of sub-divisions within the County by requiring approval of all plats by the Planning Board and the Department of Public Works before such plats may be filed with the Clerk of the Circuit Court for recording, and may authorize and empower the Planning Board and the Department of Public Works to review plats in accordance with sub-division regulations, requirements and standards adopted by the County Commissioners as hereinafter provided, and may further fix filing fees to be paid for by any applicant for sub-division approval.

1955, ch. 610, sec. 458.

382. The Planning Board shall prepare regulations governing the subdivision of land throughout Baltimore County, including but not limited to standards for approving the design of subdivisions, requirements for the submission of subdivision plats and the procedure to be followed by subdividers. Such regulations may provide for the proper arrangement of streets, in relation to other existing planned streets and to the Master Plan, for adequate and convenient open spaces for traffic, recreation, utilities, access of fire-fighting apparatus, light and air, and for the avoidance of congestion of population, including minimum widths and areas of lots. Such minimums shall coincide with such provisions in the Zoning Regulations for Baltimore County.

PETITIONER'S EXHIBIT C

These Subdivision Regulations may include provisions as to the extent to which streets and other ways, water, sewer and drain pipes and other public facilities shall be provided for, as a condition precedent to approval of the plat. Such Regulations may provide for tentative approval of the plat, but any such tentative approval shall be revocable. The Subdivision Regulations shall be adopted, with amendments if any, and may from time to time thereafter be amended by the Board of County Commissioners by resolution after public hearing. Copies of the Subdivision Regulations shall be made available to the public, and a reasonable charge therefor may be made.

1955, ch. 610, sec. 459.

383. Any such Subdivision Regulations may exempt from the requirements of governmental approval, subdivisions wherein the number of new lots is less than a designated number, or plats that do not involve new streets, or such other plats of subdivisions as such ordinance shall designate. In all cases involving such exempted subdivisions, the Planning Board Chairman, or its Director, shall certify the exemption on the plat, deed or instrument to be filed with the Clerk of the Circuit Court for recording.

1955, ch. 610, sec. 460.

384. The County Commissioners of Baltimore County may appoint a Joint Committee for the processing and approval of subdivision plats. The Joint Committee shall consist of representatives of the office of Planning and the Department of Public Works and shall be known as the Joint Subdivision Planning Committee. The approvals of the Joint Subdivision Planning Committee shall be in addition to those required by the Planning Board and the Department of Public Works.

1955, ch. 610, sec. 461.

385. The Joint Subdivision Planning Committee shall establish such rules and regulations as they may consider necessary for proper public notice regarding proposed subdivisions and hearing thereon.

1955, ch. 610, sec. 462.

386. (a) In acting upon subdivisions, the Planning Board shall require, among other conditions in the public interest,

rights-of-way or flood areas in fee, required for final approval of any plat and deemed essential to the public welfare.

(d) Before final approval of subdivisions the County Commissioners may require, in accordance with the subdivision regulations, the execution of a Public Works Agreement for any or all of the following improvements it may deem to be necessary or appropriate: street grading, pavement, gutters, curbs, sidewalks, street lighting, shade trees, surveyor's monuments, water mains, culverts, storm sewers, sanitary sewers or other means of sewage disposal, drainage structures, and such other subdivision improvements as the County Commissioners may find necessary in the public interest. The Public Works Agreement shall set forth the amount of the funds required to be paid by the County and the developer or owner of the subdivision.

1955, ch. 610, sec. 463.

387. (a) Final plats of subdivisions shall conform to the standards prescribed by Article 17, Section 71 and 72, of the Annotated Code of Maryland (1951 Edition, as amended). A final plat shall be deemed to have been submitted when an application for approval has been delivered to the office of the Planning Board in conformance with the printed requirements governing the submission of subdivision plats.

(b) The Planning Board may approve or after hearing disapprove a plat. If the Planning Board disapproves any plat, the findings and reasons for such disapproval shall be stated upon the records of the Planning Board, and the applicant shall be given a copy.

(c) Where approval of a plat, map or plan of land is required by any officer or body of the County, including the Board of Health, Department of Public Works, Board of Education and Board of Recreation, under the provisions of any other law or ordinance, such approval shall be certified on the plat before the final plat shall be approved as a prerequisite to its acceptance for filing by the Clerk of the Circuit Court.

(d) The Planning Board shall take action under this section within 45 days after submission of the final plat for approval, or within such further time as the applying party may agree to. Otherwise such plat shall be deemed to have

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PETITIONER'S EXHIBIT D

been given favorable approval. Such approval by default, however, shall not be valid unless all necessary prerequisites for approval of a final plat have been fulfilled by the applicant.

1955, ch. 610, sec. 464.

388. The final approval by the Planning Board of a plat shall expire 90 days from the date of such approval, unless within the period such plat shall have been duly filed by the owner or his agent with the Clerk of the Circuit Court for recording. The Planning Board for good cause shown may extend the time for plat filing for a period not to exceed 90 days.

1955, ch. 610, sec. 465.

389. No plat shall be accepted for filing by the Clerk of the Circuit Court for Baltimore County until it has been approved by the Planning Board and such approval has been endorsed on the instrument in such manner as the Board of County Commissioners may designate. It shall be the duty of the Clerk of the Circuit Court for Baltimore County to notify the Planning Board in writing within three days of the filing of any plat approved by the Planning Board, identifying such plat by its title, date of filing and official number.

1955, ch. 610, sec. 466.

390. If any person shall be aggrieved by the action of the Planning Board, an appeal may be taken to the Circuit Court for Baltimore County within 30 days after the date of action by the Planning Board. The said Court shall hear all appeals without the intervention of a Jury and shall have power to affirm, modify or reverse in part or in whole any decision appealed from and may remand any case for the entering of a proper order or for further proceedings, as the Court shall determine. Upon the hearing of such appeal, the decision of the Planning Board shall be presumed by the Court to be proper and to best serve the public interest; the burden of proof shall be upon the Appellant to show that the decision complained of was against the public interest and that the Planning Board's discretion in rendering its decision was not honestly and fairly exercised, or such decision was arbitrary, or procured by fraud, or unsupported by any substantial evidence, or was unreasonable,

BALTIMORE COUNTY
OFFICE OF LAW
TOWSON, MARYLAND 21204
494-4420

MALCOLM F. SPICER, JR.
COUNTY ATTORNEY

MAY 17 AM
By
May 17, 1984

Honorable Donald P. Hutchinson,
County Executive
Mezzanine - Court House
Towson, Maryland 21204

Honorable Ronald B. Hickernell
County Council of Baltimore County
Second Floor - Court House
Towson, Maryland 21204

Ted Zaleski, Director
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111 W. Chesapeake Avenue
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Norman E. Gerber, Director
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Towson, Maryland 21204

Re: Westchester
Opinion #1-84

Gentlemen:

This Office has received inquiries from all of you concerning the status of the development known as Westchester and particularly the status of that Plat entitled "Amended Plat of a Portion of Plat 4, Section 2, Westchester" recorded among the Plat Records of Baltimore County in Plat Book EHK, Jr. 41, folio 16 on March 14, 1977 (the "Plat").

The controversy surrounding this development came to the surface when the Developer, The Stefanowicz Corporation, applied for building permits to construct approximately 108 apartment units as shown on the Plat. At the time this Plat was originally approved by the Baltimore County Planning Board and at the time of its recordation, the subject property, which contains approximately 18.9 acres, was zoned D.R. 5.5. A new comprehensive zoning map for the First Councilmanic District was adopted by Bill #184-80, effective December 11, 1980. By that new map the subject property was downzoned to D.R. 2 and D.R. 3.5.

The ultimate question to be decided is what effect, if any, does the 1980 Comprehensive Rezoning (from D.R. 5.5. to D.R. 2 and D.R. 3.5) have on the developer's ability to proceed with his previously approved and recorded Plat.

PETITIONER'S EXHIBIT E

The subdivision known as "Westchester" has a long and extensive history. It is not necessary for purposes of this Opinion to recite in detail that long and extensive history, but it will suffice to highlight certain important events which occurred during the course of development.

The Public Works Agreement for that portion of Westchester which includes the subject property was approved by the County Executive on January 24, 1975. The Agreement is known as Public Works Agreement #17404. The Agreement provided for the Developer to construct Bathhurst Road for a length of 630 feet, St. Johnsbury Road for a length of 620 feet, Stoneham Court for a length of 180 feet and the construction of Drawde Court for a length of 200 feet. In addition to the construction of the public roads previously mentioned, the Developer was required and did construct public water and sewer in the beds of those roads, as well as appropriate storm drains. In addition, the Developer constructed a sewer line running through the proposed apartment development from Bathhurst Road to Drawde Court. Sewer lines amounted to approximately 1660 feet, water lines amounted to approximately 1720 feet, storm drains amounted to approximately 1630 feet and the total street paving amounted to approximately 1630 feet. All of these public improvements were constructed at the Developer's full cost and expense and in accordance with County standards. Installation of public utilities was completed in October of 1978 and they, along with the roads referred to, were conveyed to the County by Deed dated April 19, 1979. All of the public improvements required by PWA #17404 were completed by the Developer in a timely fashion at a cost of approximately $160,000. All of the roads and public utilities have been conveyed to Baltimore County for public maintenance. Notwithstanding that the public improvements required under the Public Works Agreement had been completed in the fall of 1978 and accepted by the County in 1979, the Developer did not proceed with the construction of the planned apartment units and interior private road and utilities systems. The precise reason or reasons for the delay are not entirely clear although they are probably attributable in part, at least, to the financial difficulties of the Developer and the sewer moratorium in the Patapsco drainage area. The Stefanowicz Corporation commenced a Chapter 11 proceeding in the Federal Bankruptcy Court which eventually resulted in the approval of a plan of reorganization.

Renewed interest in proceeding with the apartment development began to occur in early 1982 when the Developer's attorney had a meeting with representatives of the Office of Planning and Zoning concerning the approval of building permits for 108 apartment units. At this time the property was in the Patapsco Sewer Moratorium Area and although the development had received approval for 108 connections in 1978 that approval had lapsed and it was

initially doubted that the Developer would qualify for an allocation under the provisions of the Growth Management legislation that had taken effect in November of 1979. By letter dated March 15, 1982 the Developer's attorney was advised that there was no sewer capacity available in the Patapsco area for this apartment development and that the prior application for a Reserve Capacity Use Certificate, which had been made in connection with a revised Plat of Westchester proposing the development of 55 townhouses, was no longer valid. As the revised plat for the 55 townhouses was never taken to final approval and record Plat, the Reserve Capacity Use Certificate was void. The correspondence of March 15, 1982 referred to a revised Plat of Westchester, Section 2, Plat 4 for 55 townhouses. This revised Plat of the subject property had been submitted to the County in May of 1979, but was subsequently abandoned by the Developer and never pursued to final approval. The revised Plat indicated 55 townhouses on the same property which had previously been covered by the record Plat indicating 108 apartment units. The correspondence of March 15, 1982 pointed out to the Developer's attorney that as the Plat for 55 townhouses was not approved and recorded and, in view of the fact that the zoning of the subject property was changed in December of 1980, the 55 townhouse development could not proceed under current regulation. There was no mention in that letter that the 108 apartment units which had been approved and recorded was in anyway affected by the zoning change. At this point the Developer was concerned to say the least. He had been told that he could not proceed with 55 townhouses as the zoning had been changed and that he could not proceed with his 108 apartment unit development because there was no sewer capacity available in the Patapsco area. In order to obtain some form of relief for the Developer, his attorneys filed a lawsuit against Baltimore County and the Director of Planning & Zoning in April of 1982. This action was commenced in order to obtain a Writ of Mandamus and Injunctive Relief. Specifically, the Plaintiff, The Stefanowicz Corporation, was requesting that the Director of Planning & Zoning be directed to issue Reserve Capacity Use Certificates for the apartment development and, as ancillary relief, enjoin the County from voiding the subject Plat because it was vested.

After the filing of this lawsuit the Department of Public Works and the Office of Planning & Zoning extensively reviewed this development and the subject property to determine its status and rights under the Growth Management legislation and under the recently adopted Development Regulations which took effect on June 11, 1982. After considering the fact that all of the public improvements required under the PWA had been completed many years prior to this time it was determined that the subject Plat which indicated 108 apartment units was "vested" and had no expiration

date. By letter dated December 1, 1982 the Director of Planning and Zoning wrote to the Developer's attorney and stated, in part, as follows:

> "I have determined that the amended plat of Westchester, Plat 4, Section 2 (EHK, Jr. 41, folio 16) which contains 108 apartment units and was recorded March 14, 1977, is vested and has no expiration date. This decision was based on a review of all required improvements for this subdivision. All necessary sewer and water mains have been built. All easements have been deeded to the County, including Bathhurst Road. In addition, varying percentages of streets, curb and gutter, grading and storm water management improvements had been constructed."

This decision was not made in a vacuum but was made after consultation with the Department of Public Works and with the Office of Law. The Department of Public Works, by inter-office memo dated October 28, 1982, advised the Office of Planning & Zoning that they had reviewed the Public Works requirements for the subject subdivision and found that all required public improvements have been completed and accepted by Baltimore County. In conclusion, the Department of Public Works indicated that they were of the opinion that the subdivision met the grandfather requirements of the Baltimore County Code. Copies of the letter dated December 1, 1982 and the memo of October 28, 1982 are attached to this Opinion and marked as Exhibits #1 and #2, respectively.

As a result of these conclusions and based upon the advice of the Office of Law, the litigation which had been filed was settled and an Order of Dismissal was filed in the case file.

Following the issuance of the letter of December 1, 1982 it was assumed by all parties concerned that the Plat was vested and that the development could proceed, subject only to the availability of sewer allocations in the Patapsco area. At no time during the history of this project and specifically, at no time subsequent to December of 1980, had there been any suggestion that the completed apartment development of 108 units could not proceed because of any change in the zoning classification. The Office of Planning & Zoning was quick to point out to the Developer that his revised plan for 55 townhouses could not proceed because it had not obtained record Plat status prior to the change in the zoning classification. There was never any mention or suggestion that the apartment development could not proceed because of the change in zoning classification. In February of 1983 the Developer's attorney wrote to the Department of Public

Works concerning this development. The letter begins by stating as follows:

> "As a result of Baltimore County's recent decision to allow my client, The Stefanowicz Corporation, to proceed in the development of the above-captioned property, as per letter of authorization from Norman Gerber, Director of Planning, dated December 1, 1982 (copy of which is attached hereto) I would request your consideration and approval to the following items:
>
> 1. That 108 building permits be approved by Baltimore County for construction and sale of condominium type apartments at such time that sewer allocations are approved by Baltimore County.
>
> 2. That the record plat dated March 14, 1977 recorded in plat book EHK, Jr. 41, 16 and development plan approved September 21, 1971 be recognized and accepted for the development of said subject site."

The letter then goes on to list several other items for which the Developer was requesting approval. A complete copy of this correspondence is attached hereto and marked as Exhibit #3. In response to the letter of February 3, 1983, the Department of Public Works wrote to the Developer's attorney by letter dated February 22, 1983. This letter indicates that the Department of Public Works and the Current Planning section of the Office of Planning & Zoning are in agreement with all items in his letter except for items #6 and #7. Items #6 and #7 dealt with adjustment of building sizes and adjustments of the grading study. A copy of this letter is attached hereto and marked as Exhibit #4. In June of 1983 the Office of Planning and Zoning issued Reserve Capacity Use Certificate #529 in the name of Westchester Apartments, which allocated 32,400 gallons of sewer allocation for 108 apartment units. This Use Certificate has no expiration date. See B.C.Z.R. §4A.02.3.G.5.

This brief factual scenario of the history of the Westchester subdivision brings us up to the present time. The Developer has applied for permits to construct the apartment buildings as indicated on the recorded Plat and questions have been raised by County agencies, as well as neighboring property owners, as to whether or not the changes in the comprehensive rezoning of the subject property would prohibit the development now shown on the recorded Plat for this portion of the Westchester subdivision. There is little, if any, dispute involving the

facts surrounding the development of this property and the only major legal issue to be decided is whether or not this property has achieved a "vested status" and thereby entitled to proceed in accordance with the Plat notwithstanding that the zoning has been changed.

The law in Maryland is clear. Absent statutory protection, land included in a Plat approved by the Planning Board and recorded is as vunerable to change in the Zoning Regulations as all other land in the County. The mere delineation of lots on a map of subdivision carries with it not guarantee that the land can be developed in accordance with the Plat. Unless protected by statute, the filing of an approved subdivision plat does not establish a non-conforming use of the platted land which protects it from subsequent zoning changes and no right to the continuance of an existing zoning classification is gained by the preparation and preliminary work, no matter how extensive. See Anderson, American Law of Zoning, §23.23 "Effect of approval on power to rezone" pp. 96-98. Maryland case law is in fundamental agreement with this proposition. In the case of Rockville Fuel & Feed Co. v. City of Gaithersburg, 266 Md. 117 (1972), the Court of Appeals of Maryland stated the well established rule that, in the absence of statutory intervention, for a property owner to obtain a "vested right" in the existing zoning classification which will be Constitutionally protected against subsequent change, the property owner must 1) obtain a permit where required and 2) must proceed under that permit to exercise it on the land involved so that the neighborhood may be advised that the land is being devoted to that use. This rule has been applied in prior, as well as subsequent cases, from the Court of Appeals. See Rupp v. Kline & Sons, 230 Md. 573 (1963); Stewart Petroleum Co. v. Bd. of Co. Com'rs of St. Mary's Co., 276 Md. 435 (1975); County Council for Montgomery Co. v. District Land Corp., 274 Md. 691 (1975); City of Baltimore v. Crane, 277 Md. 198 (1976); and Washington Suburban Sanitary Commission v. T.K.U. Associates, 281 Md. 1 (1977).

It is unnecessary to analyze the particular facts of the Westchester subdivision in light of the principals enunciated by the cited cases in view of the fact that it is the Opinion of this Offic that the County Council has, by legislative enactment, altered the rules set forth in those cases in connection with subdivision Plats and Plans.

It should be noted, if only in passing, that from 1955 until at least 1977 and possibly longer, the Office of Planning and Zoning, as well as the Zoning Commissioners in Office during those years, interpreted and applied §103.1 of the Baltimore County Zoning Regulations to essentially insulate a subdivision plat which

which had received tentative approval from the Baltimore County Planning Board from subsequent changes to the use, height, area and density accomplished by either zoning text amendments or comprehensive rezoning maps. The effect of this interpretation was to give a Developer a vested right to proceed with his tentative plan notwithstanding that the zoning may have been changed prior to the issuance of permits and the commencement of construction. Previous letters of advice from this Office, dated September 24, 1979 and February 10, 1981 have indicated that the ambiguity that may have existed in §103.1 has been resolved by long standing administrative interpretation and practice which has received wide acceptance and which has been acquiesed in by the County Council, the legislative branch of Baltimore County. While I personally have doubts that the administrative interpretation given to §103.1 in the past is the correct interpretation of that Section, it is unnecessary to delineate my reasons for disagreement with that interpretation in view of the subsequent legislation adopted by the County Council.

Prior to 1977, Baltimore County did not definitively provide a period of time after which a recorded Plat would lapse. While §103.1 of the Zoning Regulations has been interpreted to give a vested right to plats which had received tentative approval from the Planning Board, that legislation did not provide a period of time after which those rights would lapse.

Bill #12-77, commonly referred to as the Interim Development Control Act, was the first clear legislative recognition and the first legislative granting of vested rights to subdivisions which had received either final or tentative approval. This legislation set forth the circumstances and conditions under which a Developer could achieve a vested right to proceed with his development notwithstanding a subsequent change in the zoning classification. This Act was codified in §22-16 of the Baltimore County Code, 1978 and in paragraph (h)(3) of §22-16 the County Council provided as follows:

> "(h) Vested Rights.
>
> (3) Record subdivision plats protected for five years.
>
> Record subdivision plats (whether recorded prior to or subsequent to the effective date of this Act for any subdivision, section or parcel thereof, hereinafter defined as two or more continguous lots in the same ownership of said subdivision) shall be deemed to have lapsed and have been revoked for either the entire

subdivision or any section or parcel thereof, where the applicable subdivision, section or parcel thereof remains undeveloped for a period of five years from the effective date of this act or five years after the date of recording the final subdivision plat whichever is later.

Upon such lapse and revocation of the record plat, a new application for tentative and final subdivision approval for such undeveloped subdivisions, section or parcel thereof, shall be submitted to the Planning Board, prior to any development or issuance of building permits for reapproval, in accordance with the applicable provisions of the County zoning ordinance and subdivision regulations in force at the time of said reapplication."

The Section then goes on to list the circumstances under which a subdivision would be considered undeveloped. One of those conditions was the lack of substantial construction on required public improvements pursuant to the applicable regulations and requirements of the Department of Public Works.

The language of this Section is clear and unambiguous. A record Plat is protected for five (5) years from changes in both zoning and subdivision regulations. If, at the end of five (5) years, a Plat is still undeveloped then it lapses and must be resubmitted for approval in accordance with the then "applicable provisions of the County zoning ordinance and subdivision regulations." Copies of the pertinent Sections of Bill #12-77 are attached hereto and marked as Exhibit #5.

This Section was continued in essentially its same forum when Bill #61-79 was passed by the County Council. Bill #61-79 provided in its title that it was "To provide, with certain exceptions, for a limitation on time on which subdivision approvals are valid." Under the provisions of Bill #61-79 a record subdivision Plat would lapse and be considered invalid if the property remained undeveloped for a period of five (5) years from April 16, 1977 or five (5) years after the date of recording the plat, whichever was later. The same test, originally adopted by Bill #12-77, to determine whether or not a Plat was "undeveloped" was continued in the 1979 legislation.

Bill #56-82 passed by the County Council on April 19, 1982, enacted by the County Executive on April 27, 1982 and effective on June 11, 1982 repealed all previous Subdivision Regulations and adopted a comprehensive system for development approval in Baltimore

County. Included within the provisions relating to the approval process and standards for development were provisions substantially similar to those which had been in existence since 1977 and which provided a means whereby a Developer could be assured that he would have a reasonable period of time to complete his development. Section 22-68 of the current Development Regulations sets forth the time limit for validity of subdivision plats. Section 22-68(a) provides that a subdivision Plat will lapse and become invalid if it has not been developed in accordance with the time limit set forth. In connection with a Plat which was recorded prior to the effective date of the new regulations, §22-68(a)(1) provides that it will expire five (5) years after recordation or on April 16, 1982, whichever is later unless it has been "developed." Development is defined in subsection (c) of that Section to be either the issuance of building permits or substantial construction on required public or private improvements on such subdivision. Clearly, the Plat under consideration in this case has met the test of substantial construction on required public improvements and clearly it achieved its developed status prior to its otherwise scheduled expiration date of April 16, 1982. All of the public improvements required by the applicable regulations and requirements of the Department of Public Works have been completed in connection with the Westchester apartment development and all of the improvements were completed in 1978 and accepted by the County in 1979.

The County Council of Baltimore County has, since at least 1977, chosen to recognize that it takes a substantial expenditure of funds to go through the various regulations of Baltimore County in the subdivision process and that a Developer should be given a reasonable period of time to achieve a developed status for his property without running the risk of losing his investment by change in the Zoning Regulations or zoning classification. That recognition has come in the form of giving a Developer a five (5) year period of time (now eight (8) years for plans approved after the effective date of the new Development Regulations) within which to develop his property. The County Council has chosen, by legislative enactment, to change the rule of law enunciated in the line of Maryland cases cited in this Opinion and has decided that a Developer should have a vested right to proceed with his development if he has secured building permits or if there has been substantial construction on required public improvements.

The legislative history of Bill #56-82 supports this conclusion. In discussing the new Development Regulations recommended by the Planning Board, the County Council had before it the analysis of the regulations prepared by Thomas Peddicord,

Esquire, Legislative Draftsman for the County Council. In discussing the Planning Board recommendations dealing with the time limit for validity of Plats, Mr. Peddicord pointed out to the County Council on page two (2) of his report, as follows:

> "Absent statutory intervention, a record subdivision plat is valid only at the time of approval and recordation. The right to develop in accordance with the County's approval vests only when a building permit or occupancy certificate is obtained and some visible effort to begin construction takes place. If, before that vesting occurs, a change of zoning takes place effecting land in the approved subdivision, the developer's rights are nill.
>
> However, §103.1 of the zoning regulations insulates the approved subdivision from subsequent zoning changes by providing that the regulations in effect at the time the subdivision plan was originally submitted for approval are the applicable regulations for the approved subdivision. Then, in 1979, the Council enacted the sunset provision of §22-44.1. The effect is that the zoning requirements in effect at the time a subdivision is recorded are preserved against subsequent zoning changes for a period coextensive with the statutory sunset period.
>
> The draft then adds the additional factor of a longer period of validity if the developer has executed a Public Works Agreement."

Clearly, the County Council was aware of the administrative interpretation that had been given to §103.1 of the Zoning Regulations for approximately 25 years and clearly the County Council was aware of the intended effect of the provisions relating to the validity of subdivision plats.

Any doubt about the intended effect of the various provisions for protection of record Plats contained in the Development Regulations adopted by Bill #56-82 is further removed by reference to the Final Report of the Baltimore County Planning Board adopted October 1, 1981 and submitted to the County Council on October 6, 1981. On page iii of that Report, the Planning Board, in its discussion of major issues, states as follows:

> "Interim Development Control Legislation, enacted in April 1977, deemed recorded plats to have lapsed after five years. This five year plat provision was reconfirmed with the enactment of the growth management legislation,

but again emerged as an issue in discussions of the development regulations. The Planning Board is concerned that five years is not a sufficient period of time for subdivisions to be protected considering the development costs involved with required public improvements. After lengthy discussions, the Planning Board has recommended that subdivisions for which a Public Works Agreement is require should have a ten year plat life. Subdivisions for which Public Works Agreements are not required will continue to lapse after five years if not developed."

A subsequent Report prepared for the County Council and entitled "Development Regulations, Policy Decisions on Public Concerns, Part II" prepared by Thomas Peddicord, Esquire, Legislative Draftsman for the County Council, contains further discussions on this issue and suggests to the Council several options, one of which was to repeal both §103.1 B.C.Z.R. and §22-44.1 of the County Code and provide no specific period of validity for approved plats. It is pointed out to the Council that repeal of these provisions would then allow for the application of the general law of Maryland as set forth in the previously cited cases. The Council did not choose this option but instead retained the vesting provisions now contained in the County Code. Statutory protection to development plans is not unique to Baltimore County. Rathkopf, in his treatise, The Law of Zoning & Planning, Chapter 50 "Vested Rights" discusses similar provisions which have been adopted by various jurisdictions throughout the County.

It is clear that the County Council intended, by the enactment of §22-68 to protect a record Plat from subsequent changes in the Zoning Regulations and to give to the Developer a vested right to proceed with his development if at the end of that five (5) year period (for plats recorded prior to June 11, 1982) he has met the test of being "developed" as defined in §22-68(c)(2).

In conclusion, therefore, it is the Opinion of this Office that The Stefanowicz Corporation is entitled to receive building permits allowing the construction of 108 apartment units in the Westchester subdivision and as indicated on the Plat recorded among the Plat records of Baltimore County, notwithstanding that the zoning classification of the property has been changed.

Very truly yours,

Malcolm F. Spicer, Jr.
County Attorney

MFS:JR:ch

cc: B. Melvin Cole, County
Administrative Officer
Phyllis C. Friedman, Peoples' Counsel

IN THE MATTER OF THE APPLICATION OF WESTCHESTER, INC. FOR SPECIAL HEARING RE BUILDING PERMIT AND APPLICATION FOR PERMITS NW/S BATHURST ROAD, 95' N. OF WESTCHESTER ROAD 1st DISTRICT Case No. 85-7 SPH and Case No. CBA-84-132	*	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY 10/218/85-CG-1483

* * * * * * * * *

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MEMORANDUM OPINION AND ORDER

This case came before the Court on September 17, 1985, on the appeal of Westchester, Inc. (Westchester). Westchester appeals a Baltimore County Board of Appeals Opinion and Order dated March 28, 1985, later confirmed by its Order of May 7, 1985, following hearing on Appellant's Motion for Reconsideration.

This case was heard by the County Board of Appeals on appeal by Protestants (Appellee) from an Opinon and Order of the Zoning Commissioner of Baltimore County which authorized the issuance of certain building permits to Westchester. Protestants also appealed the actual issuance of the permits by the Department of Licenses and Permits of Baltimore County.

Although the facts of this case are lengthy and complex, those central to the dispute are not contested. The dispute involves the development of that subdivision located in the First District of Baltimore County known as Westchester. This property was originally purchased by a predecessor to the Appellant in 1967. The development of the property was initially to include only

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PETITIONER'S EXHIBIT E

single family homes. In 1970, the Baltimore County Council adopted Bill No. 100 which facilitated greater flexibility in residential development through the device of cluster development. Under this Bill, developers were allowed to take unused zoning density from one portion of a development tract and add it to the permitted zoning in another area of the tract.

The previous developer of the Westchester subdivision, the Stefanowicz Corporation, utilized the provisions of Bill 100 and gained approval from the Baltimore County Board of Appeals for a development plan. This plan contained an apartment complex which was to be surrounded by single family dwellings. The Board ruled that the final development plan was valid in an Order dated October 12, 1973. In 1975, the Stefanowicz Corporation negotiated and received approval for a public works agreement. In 1977, an amended record plat was filed which clearly showed the 108 unit apartment complex. The public improvements were completed in October of 1978 and were conveyed to the County by Deed dated April 19, 1979. By 1978, when many of the public improvements had been placed, the single family lots were being sold. The purchasers were aware of the proposed apartment complex as it appeared in the record plat and in fact, several purchasers signed a statement attesting to that knowledge.

The Baltimore County Council, in the comprehensive map process of 1980, downshifted the zoning of the Westchester property from D.R. 5.5 to D.R. 2 and D.R. 3.5, with some D.R. 5.5. This downshift in zoning has created the current controversy because it raises the issue of whether the record plat of 1977 remains valid in spite of the downshift. If the development plan has vested,

then it should be protected against subsequent changes in zoning. Otherwise, the downshift of 1980 renders the development plan void.

Much of the problem arising in this case stems from the developer's inability to obtain the proper sewer allocation. Because the Patapsco Watershed was experiencing a sewer deficiency during this time (the late 70's and early 80's), sewer allocations were difficult to obtain. The needed sewer allocation was granted and then withdrawn as the developer was put on a waiting list. Amidst some apparent confusion, the developer was dropped from the waiting list.

Suit was filed in 1982 in the Baltimore County Circuit Court by the developer to protect the 1977 record plat from being voided and to compel the issuance of sewer allocations. On December 1, 1982, an opinion was elicited from the Director of Planning and Zoning which declared that the subdivision development plan vested and reinstated the developer's waiting list status for sewer allocations. Relying on this opinion, Westchester purchased the property from the bankruptcy proceedings which reorganized the Stefanowicz Corporation. The sewer allocations were finally obtained in June, 1983. Additionally, the developer obtained utility permits for the subdivision. Further grading work was performed and private utilities were installed under the approved permits during 1983 and 1984. Final building permits were granted to the developer on July 30, 1984. The protestants, the homeowners surrounding the proposed apartment complex, appealed the issuance of the permit to the County Board of Appeals. Although formal opinions

of both the County Attorney and the Zoning Commissioner (after a special hearing) determined the subdivision plat to have vested, the County Board of Appeals ruled otherwise.

Thus, as previously stated, the issue in this case is whether the record plat filed in 1977 is vested. Appellant advances several different legal theories in support of its argument for vesting. One theory is that under common law the subdivision record plat is vested. All parties involved in the case have agreed that the proper standard to apply is found in Rockville Fuel & Feed Co. v. City of Gaithersburg, 266 Md. 117, 291 A.2d 672 (1972). The Court in Rockville Fuel quoted an earlier case, The Richmond Corporation v. Board of County Commissioners for Prince George's County, 254 Md. [illegible] (1969), for the general law in regard to "vested rights" in zoning cases:

> In Maryland it is well settled that in order to obtain a 'vested right' in the existing zoning use which will be constitutionally protected against a subsequent change in the zoning ordinance prohibiting or limiting that use, the owner must (1) obtain a permit or occupancy certificate where required by the applicable ordinance and must proceed under the permit and (2) make substantial construction on the land in reliance thereon. Construction work of a substantial character must be done such that the neighborhood may be advised that the land is being devoted to that use.

The standard thus contains two prongs, a permit prong and what has sometimes been referred to as a substantial construction prong. In the discussion that follows the Court's quotation of the standard, it is clear that the permit required must be a building permit. Insomuch as no building permits in the present case were obtained until after the land improvements were made, the record

plat of 1977 fails to vest as it does not satisfy the permit requirement. Furthermore, the cases which discuss the substantial construction requirement as to when construction commences, all speak of the actual building or structure involved not preliminary land improvements. For these reasons, the Court agrees with the County Board of Appeals that Appellant's record plat does not vest under common law.

Appellant also argues that the plat vests under two different statutory provisions. The first statutory basis for vesting involves the question of the applicability of a provision of the Baltimore County Code, § 22-68. Section 22-68, in pertinent part, provides:

> (a) Unless extended pursuant to the provisions of section 22-68.1, a subdivision plat shall lapse and be invalid for either the entire subdivision or any section or parcel thereof, if such subdivision, section or parcel has not been developed, as defined in subsection (c), in accordance with the following time limits as applicable:
>
> . . .
>
> (c) A subdivision, section or parcel thereof is hereby defined as developed if any of the following has occurred with respect to such subdivision, section or parcel:
>
> (1) Building permits have been issued; or
>
> (2) Substantial construction on required public or private improvements has occurred on such subdivision, section or parcel pursuant to the applicable regulations and requirements of the department of public works.

There is no question that § 22-68 is currently the law in Baltimore County. The Board of Appeals observed that if the 1977 record plat was governed by § 22-68, then it would be vested. (Opinion p. 7). The Board, however, concluded that

§ 22-40 of the Code provides that § 22-68 applies only to development plats recorded after the date of the new regulations, June 11, 1982. (Opinion, p. 9.).

Section 22-40 provides:

> These regulations shall apply to all development except such development which, prior to the effective date of this article [June 11, 1982], has received tentative approval of the preliminary plan by the planning board or for which development a valid, unexpired building permit exists, or for which development a current executed public works agreement exists, all of which development shall be governed by the subdivision regulations in effect at the time of said preliminary plan approval, building permit issuance or public works agreement execution, as the case may be. (Bill No. 56, 1982, § 2).

The Board of Appeals ruled that the clear and unambigious language of § 22-40 precludes the application of § 22-68 to the Westchester development. Appellees further argue that § 22-68 does not apply because it is a subdivision regulation and thus has no bearing on a zoning question. Appellee notes that Article 3 of Title 22 of the Baltimore County Code is captioned "Zoning" whereas Article 4 (which contains both § 22-40 and § 22-68) of Title 22 is captioned "Development Regulations". Appellees thus argue that § 22-68 insulates recorded plats from changes in development regulations only and does not insulate recorded plats from changes in zoning regulations. There is nothing implicitly or explicitly in the Code, however, to support this argument. Appellees also argue that zoning is a nondelegatable legislative function, while subdivision control is a delegated administrative function.

The Court acknowledges the differences between the concepts of zoning, planning and subdivision regualtion. See E.g. Board of County Commissioners v. Gaster, 285 Md. 233, 401 A.2d 666 (19..

Board of County Commissioners v. Stephens, 286 Md. 384, 408 A.2d 1017 (1979); Miller v. Forty West Builders, 62 Md. App. 320, 489 A.2d 26 (1985). All these cases quote 1 E. Yokley, Zoning Law and Practice § 1-2 (4th ed. 1978) which comments:

> ...[Z]oning is almost exclusively concerned with use regulation, whereas planning is a broader term and indicates the development of a community, not only with respect to streets, parks, civic beauty, industrial and commercial undertakings, residential developments and such other matters affecting the public convenience and welfare as may be properly embraced within the police power.
>
> . . .
>
> There are three integral parts of adequate land planning, the master plan, zoning, and subdivsiion. (emphasis added).

The caption under Title 22 of the Baltimore County Code confirms this integration: "Planning, Zoning and Subdivison Control". Thus, while the comparison of any of these component parts of land planning may to some degree be likened to comparing apples and oranges, it is clear that they all belong in the same basket. It is thus necessary to consider the articles of Title 22 as an integrated whole, not as subdivided parts existing in isolation.

This requires a close scrutiny of § 22-40 and § 22-68. Section 22-40, captioned simply "scope of regulations", serves to make the new regulations apply to all developments except those which have taken significant steps towards development prior to the date of the new regualtions. The new regulations in these cases are thus primarily intended to be prospective only in order to provide protection to those developments. If read in isolation, however, the general decree of § 22-40 would negate the similar yet more specific protection of § 22-68. There is nothing in

§ 22-68 to indicate that the protection it offers is to be prospective only. Most importantly, the legislative history of § 22-68 indicates the contrary. It is axiomatic to state that the polestar of statutory interpretation is to ascertain and carry out the real intent of the legislature when it enacts a statute. See E.g. Harbor Island Marina v. Calvert Co., 286 Md. 303, 407 A.2d 738 (1979). The legislative history of § 22-68 is thoroughly recounted in an opinion written by the County Attorney which is dated May 17, 1984. The opinion traces the history of several statutory provisions that the County, through the Office of Planning and Zoning as well as the County Council, utilized to provide protection through vesting for subdivision plats in which some steps toward development had been taken. The opinion notes that from 1955 to (at least) 1977, the Office of Planning and Zoning interpretated § 103.1 of the Baltimore County Zoning Regulations to insulate subdivision plats which had received tentative County Board approval from subsequent zoning changes. The effect of this interpretation was to vest the developer's plan. The County Council also passed the Interim Development Control Act, formerly codified at § 22-16 of the County Code, which set forth certain circumstances under which a development would vest. Finally, in 1982, the County Council repealed all previous subdivision regulations and passed the development regulations (which include § 22-68) now in effect. In his opinion, the County Attorney notes that since at least 1977 the Baltimore County Council has chosen to recognize that it takes a substantial expenditure of funds to comply with the various County regulations in the subdivision process and that a developer should be given a reasonable period of time to achieve a developed status for his property without running the

risk of losing his investment by changes in the zoning classification. (Opinion, p. 9). The Opinion further indicates that the County Council purposely chose to change the Maryland line of case law concerning vesting institute less stringent requirements for vesting. (Opinion, p. 9). Noting further details the legislative history of § 22-68, the County Attorney concluded that § 22-68 was intended to apply to plats recorded prior to June 11, 1982, the effectiv date of the new subdivision development regulations.

This Court agrees with the County Attorney's opinion. The Court finds after considering the background of legislative history and circumstances, that the County Council would not have enacted § 22-68 if it did not intend for it to apply to cases prior to the effective date of the new subdivison regulations that otherwise meet its requirements.

In addition to § 22-68, Appellant argues that § 103.1 serves as a statutory basis for the vesting of the Westchester record plat of 1977. Section 103.1 provides:

> These Regulations shall apply as of the date of their adoption but the provisions pertaining to use, height, area and density of population shall not apply to any development, subdivision or parcel of land, the preliminary plan for which was originally submitted to the (then) Baltimore County Planning Commission, (now Planning Board) and approved or tentatively approved (including any approval made subject to any condition or conditions) under the then existing official procedure in Baltimore County, prio to the adoption of these Regulations. The zoning regulations applicable to any such development, subdivision or parcel of land as aforesaid shall be the zoning regulations in effect at the time such plan, as aforesaid, was originally submitted to the Baltimore County Planning Commission.
>
> Provided further, however, that the use and development of land in M.L. zones shall not be affected by the foregoing provision, but development is permitted in accordance with

> any preliminary development plan approved by the Office of Planning and Zoning before the effective date of this further proviso, even though such development may be counter to then-current regulations for M.L. zones, if, on the fifth anniversary of such effective date, construction either is completed or is substantially commenced and diligently being pursued to completion; otherwise, the regulations generally in effect at the time such use or development is to be established shall control.
> (footnotes omitted).

The Court finds that the clear and unambigious language indicates that it was intended to apply only to cases prior to the date of its enactment, 1955. The Board of Appeals, the Zoning Commissioner, and the County Attorney all seem to concur in this assessment. The Office of Zoning and Planning for some reason, however, interpreted § 103.1 as providing vesting protection for developers for some 30 years past the date of enactment (1955). The Court agrees that § 103.1 itself does not serve to vest the record plat of 1977. Any reliance by Appellants on the County's interpretation of § 103.1 only affects the issue of estoppel. The Board of Appeals opinion correctly noted that notwithstanding the incorrect interpretation of § 103.1 by zoning officials since 1955, there arises the issue as to whether equitable estoppel is available to Appellant. (Opinion, p. 14).

Under Maryland law, equitable estoppel is defined as:

> the effect of the voluntary conduct of a party whereby he is absolutely precluded, both at law and in equity, from asserting rights which might have perhaps otherwise existed, either of property, of contract, or of remedy, as against another person, who has in good faith relied upon such conduct, and has been led thereby to change his position for the worse, and who, on his part, acquires some corresponding right, either of property, of contract, or of remedy.

Dixon v. Process Corp., 38 Md. App. 644, 382 A.2d 893 (1978) quoting 3 J. Pomeroy, A Treatise on Equity Jurisprudence § 804 (5th ed. 1941).

Whether the doctrine is to be applied in a given case is dependent soley upon the particular facts and circumstances of that case. Rodgers v. John, 131 Md. 455, 102 A. 549 (1917). The facts of this case cry out for an application of the doctrine. The Court finds it impossible to accept the conclusion of the Board of Appeals that there was a lack of reliance and no change of position by the developer as a result of the County's assurances that the record plat of 1977 was vested. (Opinion p. 16, 17). Only after extensive negotiations and communications with the County (which concluded in the assurance that the record plat was vested), did Appellant purchase the Westchester property out of bankruptcy. The negotiations were far from casual or informal. The developer filed suit against the County in 1982 and the centerpiece of the settlement of that action was the assurance that the plat with the 108 unit apartment complex was vested. This was set forth in a formal opinion by the Director of the Office of Planning and Zoning.

It should be further noted that the property's zoning density was downshifted in 1980 with no notice to the property owner. Although notice is now required in such cases, it was not in 1980.

The Court is also unable to accept the Board of Appeals' conclusion that equitable estoppel is unavailable to Appellant because of a lack of activity in developing the property. The Board of Appeals itself noted that the sewer allocation process which prevented the developer from securing the necessary hookups was "with some justification" blamed for the inactivity from sometime

in 1979 unti 1982. While the Board ultimately found that the developer did not "actively" seek the allocations, the affirmative action that the developer failed to take has not been revealed by the Board or Appellee.

While it may be true that Appellant might be able to develop the property in some other way consistent with the current zoning, it does not follow that to disallow the vesting of the plat would not still be highly inequitable. The Zoning Commissioner, after a hearing, also concluded in his opinion that the 30 year old interpretation of § 103.1 was incorrect. The Commissioner nonetheless found that Appellant acted in good faith reliance on that interpretation and other assurances by the County. The Commissioner thus ruled that under the circumstances of this case, to make the new interpretation retroactive would be "highly inequitable and oppressive". (Opinion, P. 9).

This Court conludes that in view of the considerable money and effort expended by Appellant by reason of justified, good faith reliance, coupled with the substantial change of position by the developer, the application of equitable estoppel is required in this case.

When a reviewing court examines a factual decision reached by an administrative agency, it must determine whether reasoning minds could reasonably reach that conclusion by direct proof or by permissible inference from the facts and the record before the agency. If the conclusion could be reached then it is based upon substantial evidence and the court has no power to reject that conclusion. See E.g. Commission on Human Relations v. Washingt. County Community Action Council, Inc., 59 Md. App. 451, 476 A.2d 222 (

Furthermore, in applying this substantial evidence test, a court may not substitute its judgment for that of the members of the administrative agency from which the appeal is taken. Bullock v. Pelham Wood apts., 283 Md. 505, 390 A.2d 1119 (1978).

It has been noted, however, that the standard of review for a finding of law is not so limited. While the view taken by administrative officials is strong and persuasive, it may be disregarded for strong and argent reasons. Miller v. Forty West Builders, 62 Md. App. 320, 489 A.2d 76 (1985) citing Baltimore Building Construction Trades v. Barnes, 290 Md. 9, 427 A.2d 979 (1981).

For the above reasons, it is therefore ADJUDGED and ORDERED on this 8th day of October, 1985, that the Order of the County Board of appeals of March 28, 1985, and its Order of May 7, 1985 on reconsideration thereof are reversed.

AUSTIN W. BRIZENDINE
Judge

Copies sent to:

John B. Gontrum, Esquire
Malcolm Spicer, Esquire
C. Victor McFarland, Esquire

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CIRCUIT COURT OF APPEALS
QUEEN ANNE'S COUNTY

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

NO. 1287

September Term, 1985

WILLIAM J. BAUMAN, et al.,

v.

WESTCHESTER, INC., et al.

Adkins
Bell, R.M.
Wenner,

JJ.

PER CURIAM

Filed: August 12, 1986

PETITIONER'S EXHIBIT 6

On October 8, 1985 the Circuit Court for Baltimore County (Brizendine, J.) filed an opinion and order which reversed an order of the Board of Appeals for Baltimore County, and reinstated an order of the Baltimore County Zoning Commissioner which directed the issuance of five building permits to Westchester, Inc. (appellee), a Baltimore County developer. Walter J. Bauman, et al. (appellants), a group of homeowners opposed to the issuance of the building permits, have appealed to this Court. For reasons explained below, we shall affirm the judgment of the circuit court.

The facts, although somewhat complex, are essentially undisputed. At issue is the development of an eight-acre parcel of land located in the Westchester subdivision in western Baltimore County. The property was originally purchased in 1967 by the Stefanowicz Corporation, the predecessor in title to the appellee. At that time its development was to include only single family homes.

In 1970 the Baltimore County Council adopted Bill No. 100, which substantially rewrote many of the county's zoning ordinances and provided for greater flexibility in residential development through the use of cluster development.[1] At that time the subject property was zoned D.R. 5.5 for maximum permissible density. In 1973 the Stefanowicz Corporation received

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1 "Cluster development" is a zoning technique which provides for greater flexibility and variation in housing, in the development of large tracts of land. It allows a developer to take unused density from one portion of a tract and add it to the permitted density in another portion of the tract. See 82 Am. Jur. 2d, Zoning and Planning, § 106.

approval from the Board of Appeals for Baltimore County (the "Board") of a development plan for eighteen and one-half acres utilizing the cluster concept. The plan consisted of a 108-unit apartment complex surrounded by single family homes. A record plat was filed early in 1975. In 1977 an amended plat was filed which made minor changes in the earlier plat. No changes were made, however, in the number of units planned, and the apartment buildings were clearly shown on the plat.

In January of 1975 the Stefanowicz Corporation entered into a public works agreement with the County. Pursuant to that agreement, the Stefanowicz Corporation constructed public streets, sewer lines, water lines, storm drains, sediment control facilities and other incidental improvements on the property, at substantial expense to the corporation. The public improvements were completed by late 1978, and conveyed to the County in April, 1979

In the meantime work was begun on the single family homes shown on the plat. By 1978 sales of those homes had begun. The buyers were told of the proposed apartment complex shown on the record plat and several of them signed statements which attested to their being advised of the proposed development plans.

At that time no construction on the apartment buildings had begun. The reasons for the delay in construction of the apartment buildings are somewhat unclear, but it appears that it was due partially to the developer's financial difficulties and partially to the developer's inability to obtain the proper sewer allocations. The property is located in the Patapsco Watershed which was experiencing a sewer deficiency at that time, making

sewer allocations difficult to obtain. For reasons which are not quite clear in the record, the developer was dropped from the waiting list for sewer allocations.

The Baltimore County Council, in the comprehensive map process of 1980, downshifted the permissible density on the subject property from D.R. 5.5 to D.R. 2 and D.R. 3.5, with some D.R. 5.5. This downshift in zoning created the current controversy as to whether the 1977 plat is still valid.

In 1982, the Stefanowicz Corporation filed suit in the Circuit Court for Baltimore County to protect the 1977 record plat from being voided and to compel the issuance of sewer allocations. An opinion was elicited from the Director of Planning and Zoning which stated that the development plan had vested and reinstated the developer on the waiting list for sewer allocations. As a result, the lawsuit against the County was dismissed.

In reliance on the opinion of the Director of Planning and Zoning, Westchester, Inc. purchased the property from the bankruptcy proceedings which reorganized the Stefanowicz Corporation. The sewer allocations were then obtained along with utility permits for the subdivision. Further grading of the property was done and private utilities were installed under the permits. Westchester, Inc., received final building permits on July 30, 1984. The appellants, the homeowners surrounding the site for the apartment buildings, appealed the issuance of the permits to the County

Board of Appeals. Although both the County Attorney and the Zoning Commissioner were of the opinion that the subdivision plat had vested, the Board ruled otherwise. On appeal to the Circuit Court for Baltimore County, the court found itself in agreement with the County Attorney and the Zoning Commissioner and reversed the ruling of the County Board of Appeals. Unhappy with that result, the homeowners have brought the case to this court.

Although appellants pose numerous questions in their brief, many of them were not raised below and thus will not be considered here. Rule 1085. The questions that are properly before us are all rephrasings of the central issue in this appeal: Have the developer's rights to develop the subject property according to the plans contained in the 1977 recorded plat vested so as to insulate the property against the subsequent downshift in permitted density?

Professor Rathkopf defines "vested rights" in this context as follows:

> A vested right is the right to initiate or continue the establishment of a use or construction of a structure which, when completed, will be contrary to the restrictions or regulations of a zoning ordinance or an amendment to it which has become effective in the meantime. The particular nonconforming use or structure will continue after the effective date of the ordinance or amendment as a vested right.

4 Rathkopf, The Law of Zoning and Planning, § 50.01 (4th ed. 1986). The Court of Appeals has held that such rights may be acquired where (1) the landowner has obtained a valid permit; and (2) in reliance upon the permit, the owner has made a substantial beginning in construction and in committing

the land to the permitted use before the change in the zoning ordinance. O'Donnell v. Bassler, 289 Md. 501, 425 A.2d 1003 (1981); Rockville Fuel and Feed Co. v. City of Gaithersburg, 266 Md. 117, 291 A.2d 672 (1972); Richmond Corporation v. Board of County Commissioners for Prince George's County, 254 Md. 244, 255 A.2d 398 (1969). Under this rule it is insufficient to show substantial expenses incurred in preparation for building, such as fees for studies and development plans or expenses for grading and clearing, and excavation; rather, the owner must show the commencement of construction of the structure itself. Steuart Petroleum Co. v. Board of County Commissioners 276 Md. 435, 347 A.2d 854 (1975); County Council of Montgomery County v. District Land Corporation, 274 Md. 691, 337 A.2d 712 (1975); Ross v. Montgomery County, 252 Md. 497, 250 A.2d 635 (1969). While the Court of Appeals has acknowledged that the application of this rule may be less onerous in other jurisdictions, it has declined to relax it in this state. Steuart Petroleum Co. v. Board of County Commissioners, supra; County Council of Montgomery County v. District Land Corporation, supra; see generally, Rathkopf, supra, § 50.03. In the case sub judice, no building permits were issued after the improvements had been made. Furthermore, in spite of the completion of the public works and the incurring of substantial expenses by the appellee, no construction has yet begun on the actual apartment buildings. Thus, the appellee has not met either requirement of the standard enunciated by the Court of Appeals and can claim no vested rights under a common law theory.

The most vigorously disputed question in this appeal, however, is whether the plat had vested under the statutory provisions of the Baltimore County Code. Section 22-68 of the Code provides, in pertinent part:

> (a) Unless extended pursuant to the provisions of section 22-68.1, a subdivision plat shall lapse and be invalid for either the entire subdivision or any section or parcel thereof, if such subdivision, section or parcel has not been developed, as defined in subsection (c), in accordance with the following time limits as applicable:
>
> ...
>
> (c) A subdivision, section or parcel thereof is hereby defined as developed if any of the following has occurred with respect to such subdivision, section or parcel:
>
> (1) Building permits have been issued; or
>
> (2) Substantial construction on required public or private improvements has occurred on such subdivision, section or parcel pursuant to the applicable regulations and requirements of the department of public works.

This statute was enacted in 1982, as a part of the regulations adopted by the Baltimore County Council in Bill No. 56-82. Bill No. 56-82 included new legislation encompassing § 22-37 through § 22-105 of the Baltimore County Code entitled "Article IV. Development Regulations of Baltimore County".

Notwithstanding the seemingly clear application of the language of § 22-68 to the subject property, the County Board of Appeals concluded that the statute was not controlling in this case. This conclusion was based on the Board's interpretation of § 22-40 (also enacted in 1982 as a part of Bill No. 56-82) which sets forth the scope of Article IV, the Developmental Regulations. Section 22-40 reads as follows:

> These regulations shall apply to all development except such development which, prior to the effective date of this article [June 11, 1982], has received tentative approval of the preliminary plan by the planning board or for which development a valid, unexpired building permit exists, or for which development a current executed public works agreement exists, all of which development shall be governed by the subdivision regulations in effect at the time of said preliminary plan approval, building permit issuance or public works agreement execution, as the case may be.

Under the Board's interpretation of § 22-40, the case turned on the statutes in existence in 1975, the year the public works agreement was executed. In 1975 there was no "saving" statutes in effect, and thus the Board ruled that the subdivision plat had not vested. As we have noted, the Circuit Court disagreed with the Board's interpretation and application of the statutes, as do we.

Section 22-40, a more general provision, serves to make the new regulations apply to all developments except those which had taken significant steps toward development prior to the effective date of the new regulations. The new regulations are primarily intended to be prospective in order to provide protection to those developments. If

read in isolation, the more general language of § 22-40 would seem to negate the similar but more specific protection in § 22-68. The statutes must be read as part of an integrated whole, however, and not as isolated parts. Nothing in § 22-68 indicates that the Baltimore County Council intended it to apply only prospectively. Furthermore, the legislative history of § 22-68, as recounted in the Opinion of the County Attorney in the record below, indicates to the contrary. The County Attorney notes that § 22-68 and its predecessor statutes were enacted by the County Council in recognition of the fact that it takes a substantial expenditure of funds to proceed through various county regulations in the subdivision process, and that a developer should be given a reasonable period of time to achieve a developed status for this property without running the risk of losing his investment through a change in the zoning regulations.

Additionally, the Board also ignored the effect of the predecessor statutes to § 22-40. In 1977 the County Council enacted Bill No. 12-77, known as the Interim Development Act. Section 22-15.1(L)(3) of that Act provided essentially that record subdivision plats, whether recorded prior to or after the enactment of Bill No. 12-77, would lapse and become invalid if they were undeveloped after five years from the later of the date of the enactment or the date of recordation. The statute further provided that where substantial construction on required public improvements had occurred, the subdivision would be considered "developed". This provision was repealed and reenacted in substantially the same form in 1979, in Bill

No. 61-79. Thus it seems clear from the history of the present § 22-68 and its predecessors, the statutes were enacted to provide protection for precisely the type of development that is at issue in this case. The subdivision plat vested by virtue of the substantial construction (indeed, it may be more accurate to say the completed construction) of the public improvements under the public works agreement, as provided in § 22-68 and its predecessor statutes.[2]

As a final comment, the circuit court noted that, even absent the statutory intervention of § 22-68, the facts of this case cry out for an application of the doctrine of equitable estoppel. Equitable estoppel is defined as:

> ... the effect of the voluntary conduct of a party whereby he is absolutely precluded both at law and in equity, from asserting rights which might perhaps otherwise have existed, either of property, of contract, or of remedy, as against another person, who has in good faith relied upon such conduct, and has been led thereby to change his position for the worse and who on his part acquires some corresponding right, either of property, of contract, or of remedy.

Knill v. Knill, ___ Md. ___ (No. 39, Sept. Term, 1985, filed 6/27/86, Slip. Op. at 9), quoting from 3 J. Pomeroy, Equity Jurisprudence, § 804 (5th ed. 1941). The appellants have strongly opposed the application of this doctrine in favor of the developer on the ground that there was insufficient detrimental reliance by the developer on the actions of the county officials to call for an application of estoppel. They have,

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2 We note further that § 22-40 speaks only of executory public works agreements. It would be somewhat strange to provide protection for those subdivisions where the public works agreements are simply executory, and not for those where the public works agreements have been fully performed.

however, missed the most essential point. While we may be inclined to agree that an estoppel could be invoked against the County under these facts, we do not see how estoppel can be invoked against the neighboring landowners. It was not their conduct upon which the appellee relied. See generally, Rathkopf, supra, § 50.04. The appellee presented a good argument for the application of estoppel - it simply had the wrong party on the opposing side of this case.

JUDGMENT AFFIRMED.

COSTS TO BE PAID BY APPELLANTS.

VESTED RIGHTS

CHARLES LEWIS and ROXANNE LEWIS, CHARLES T. KINDRED and GAIL KINDRED, PETER V. SCHUKAS, WILLIAM KUBIET and ELEANOR KUBIET, WILLIAM BUCHTA and SUSANNE BUCHTA, JOHN BENT and FRANCES BENT, ELLA KUBIET and WILLIAM KUBIET,	*	IN THE
Plaintiffs	*	CIRCUIT COURT FOR
vs.	*	
NORMAN GERBER, DIPECTOR, DEPT. OF PLANNING & ZONING, BALTIMORE COUNTY; HAROLD J. PISTEL, P.E., DIRECTOR, DEPT. OF PUBLIC WORKS, BALTIMORE COUNTY; WILLIAM T. HACKETT, CHAIRMAN, COUNTY BOARD OF APPEALS, BALTIMORE COUNTY; CHESAPEAKE HOMES, INC.; TED ZALESKI, DIRECTOR, DEPT. OF PERMITS and LICENSES, BALTIMORE, MD.; BALTIMORE COUNTY;	*	BALTIMORE COUNTY
Defendants	*	CASE NO. 84-CSP-969

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MEMORANDUM OPINION AND ORDER

This case came before the Court on May 27, 1985 on Plaintiffs, et al, as well as Defendant's (Chesapeake Homes) Motion for Partial Summary Judgment on the issue of whether Chesapeake Homes obtained vested rights in the zoning of a parcel of property which they sought to develop. Also heard at this time was Baltimore County's Motion for Summary Judgment as to the duty of the Office of Zoning to issue building permits pursuant to an approved plat where legislation to amend existing zoning regulations was pending.

This is an action for injunctive relief filed by Plaintiffs who are residents of Relay, located in Baltimore County, Maryland. Plaintiffs (hereafter Residents) seek an injunction against the continued construction and

PETITIONER'S EXHIBIT H

development of a parcel of property known as Huntsmoor South. The Huntsmoor South property encompasses approximately 50 acres in Baltimore County and is adjacent to Interstate 95. Suit was filed against various Baltimore County officials, as well as various Baltimore County Governmental Agencies. The purpose of the suit is to enjoin the continued development in Huntsmoor South, as well as to enjoin the continued issuing of development permits and to compel the revocation of previously issued permits. The owner and developer of Huntsmoor South, Chesapeake Homes (hereafter Chesapeake) intervened in the action and became a party Defendant in an attempt to protect its rights as the developer of Huntsmoor South.

A chronology of the facts relative to the development of Huntsmoor South is as follows. In November of 1982, Chesapeake submitted development plans to the County Review Group (C.R.G.) in order to develop the subdivision. On February 10, 1983, pursuant to two public hearings, C.R.G. granted final approval of the plan for development. The plan provided for construction of the subdivision in an existing D.R. 10.5 zoning classification. On May 7, 1984 the Department of Public Works approved the development of storm water management Pond No. 1. The final development plan was approved on July 6, 1984. Plans for storm water management pond No. 2 were approved by the Department of Public Works on July 24, 1984. On September 27, 1984, Chesapeake recorded a final subdivision development plat for Huntsmoor South in the D.R. 10.5 zone. Upon recording the subdivision plat, Chesapeake obtained building permits on November 20, 1984 and work was begun on the site on December 3, 1984.

On May 31, 1983, Residents requested a down-zoning of the Huntsmoor South property from D.R. 10.5 to D.R. 3.5. and presented their request to the Planning Board on November 16, 1983. On February 7, 1984, the Planning Board decided to recommend a change in the zoning of Huntsmoor South from D.R. 10.5 to D.R. 3.5

On June 20, 1984, public hearings were held before the Baltimore County Council on zoning issues relating to the down-zoning of Huntsmoor South. The County Council retired the Huntsmoor South issue on September 10, 1984 by accepting the Planning Board's recommendation for down-zoning the property to D.R.3.5. On November 13, 1984, the County Council voted to downshift the zoning from D.R. 10.5 to D.R. 3.5 which became effective on January 10, 1985.

As of the effective date of the down-zoning, January 10, 1985, Chesapeake's pre-construction and construction efforts consisted of clearing and grading the Huntsmoor South property, construction of two sediment control ponds, pouring of several concrete footings, delivery of cement blocks and bales of hay, erection of silt fencing as well as a trailer "hook-up" on the construction site. The total expenditure for the pre-construction and construction efforts was Eight Hundred Seventy-Eight Thousand, Five Hundred Twenty-Nine Dollars ($878,529.00).

The issue is whether Chesapeake obtained vested rights in the D.R. 10.5 zoning classification of Huntsmoor South. This has been addressed by the parties from two perspectives. First, whether Chesapeake obtained vested rights pursuant to the Common Law of Maryland; secondly, whether Chesapeake statutorily obtained vested rights pursuant to Baltimore County Code, Section 22-68 (1983 Cum. Supp.). Both will be considered herein.

In order to determine whether pursuant to Maryland's Common Law, Chesapeake obtained vested rights in the D.R. 10.5 zoning classification, it will be necessary to review the pertinent Maryland case law. Because the variant facts of the applicable cases have yielded different holdings, the Court believes it useful, if not necessary, to review the facts and holdings in those cases in order to properly explain its rationale in the application of the law to the facts at issue in this case.

The first case in a line of cases which addresses the issue of when construction commences, thereby resulting in a developer/property owner obtaining a vested right in the existing zoning, is Rupp, et al., Trustees, v. Earl H. Cline & Sons, Inc., et al, 230 MD 573 (1962). The Rupp court defines commencement of a building as "a manifest commencement of some work or labor on the ground which everyone can readily see and can recognize as the commencement of a building and the work done must have been begun with the intention and purpose then formed to continue the work until the completion of the building." The majority rule concerning vesting, which is stated in Rathkopf Law of Zoning and Planning, 3rd Edition, Volume 2, Chapter 57-6, Section 3 and which has been consistently followed by Maryland's Courts is that ...

> "a landowner will be held to have acquired a vested right to continue the construction of a building or structure and to initiate and to continue a use despite a restriction contained in an ordinance where prior to the effective date of the ordinance in reliance upon a permit theretofore validly issued he has in good faith made a substantial change of position in relation to the land, made substantial expenditures or has incurred substantial obligations....."

In Rockville Fuel and Feed Co., Inc. v. City of Gaithersburg, Maryland, 266 MD 117 (1972) the language used by the court concerning vesting is that a vested right can only result when a lawful permit is obtained by the owner of the property and in good faith the owner proceeds with such construction under the permit as would advise the public that the developer had made a substantial beginning to construct the building and commit the use of the land to the permission granted.

With these general rules in mind, we now turn to the contentions of the parties in this case. Residents argue Chesapeake did not obtain common law vesting for two reasons. The first reason asserted by Residents is that

Chesapeake did not perform substantial construction as required under the case law of Maryland; the second reason is that because Chesapeake knew of the potential down-zoning of Huntsmoor South and continued with development of the property in accordance with the building permits, it did not act in good faith.

As to the issue of substantial construction, the facts in the case of Ross, et al. v. Montgomery County, Maryland, et al., 252 MD 497 (1968) were that a landowner had a building permit to construct a then permitted apartment complex and that he had poured one footer in an attempt to maintain the validity of his building permit; however, the footer was filled in the very next day. The Ross court held that the landowner did not acquire any vested rights in the zoning classification. The court found that the landowner did not in good faith begin actual construction with the intention to complete the building prior to the expiration of the building permit as required by Rupp because the footer was filled in the day after it had been dug.

Addressing the issue of monies expended in anticipation of construction, the Ross court, although being cognizant that Fifty-Six Thousand Dollars ($56,000.00) had been expended on architectural fees, found that the amount was not substantial in the absence of actual construction. Furthermore, the court noted that this was not a situation where a valid permit had been revoked by operation of an ordinance which affected a re-zoning repugnant to the use for which the permit had been issued. This was a case where the permit had expired for want of construction and with that expiration any vested right which may have existed was nullified.

In Rockville Fuel, the petitioner's purchased a parcel of property for the exclusive purpose of building a concrete plant. The City of Gaithersburg opposed the construction of the plant and litigation resulted from that opposition. Rockville Fuel petitioned for a special exception pursuant to the zoning ordinance

which then included such plants as a permitted use. The Board of Appeals of the City of Gaithersburg denied Rockville's request for a special exception. The case ultimately wound up in the Court of Appeals which reversed the Court of Special Appeals and the Board of Appeals and remanded the case for further proceedings to enable Rockville Fuel to obtain a special exception and build the concrete plant. Subsequent to the decision by the Court of Appeals, the City applied for a zoning amendment for the sole purpose of eliminating the concrete plant as a permitted use and thereby including it as a prohibited use. The Mayor subsequently approved the ordinance granting the zoning amendment and accordingly disapproved Rockville's request for a special exception. Rockville subsequently initiated suit on the basis that it had acquired vested rights to construct the concrete plant as a result of the Court of Appeals decision. At no time did Rockville ever obtain a building permit and at no time did Rockville begin construction. Accordingly, the Court found that Rockville Fuel had not acquired a vested right in the prior zoning and it further stated that such a vested right could only result when a lawful permit was obtained and the owner in good faith had proceeded with such construction under it as would advise the public that the owner had made a substantial beginning to construct the building and commit the use of the land to the permission granted.

In Pemberton v. Montgomery County, Maryland, 275 MD 363 (1975), the Exxon Corporation sought to construct a gasoline station under a special exception. Approximately one (1) day before the end of the period granting the special exception, Exxon pursuant to a building permit, constructed a retaining wall, dug a trench, installed horizontal steel rods and then poured five (5) to six (6) yards of concrete into the excavation for footings. In determining whether substantial construction had begun, the Pemberton court, relying on the two-pronged test enumerated in Rupp, distinguished the case from Ross because

in Ross the footer was filled in the day after it was dug, and accordingly, the Court found that the second aspect of the Rupp test had not been met in that the requisite intent to continue construction was absent. The Court further stated that Pemberton was comparable to Ross to the limited extent that the same type of work was performed, i.e., excavation and construction of footings. The Pemberton court upheld the Board's decision that there was sufficient evidence of digging and cement work on the retaining wall foundation and accordingly upheld the Board's finding that Exxon had acquired vested rights.

The last in the line of cases relating to substantial construction is Steuart Petroleum Co., et al. vs. Board of County Commissioners of St. Mary's County, 276 MD 435 (1975). The Steuart Petroleum Co. sought to build a refinery; they applied for and were granted a permit authorizing construction of a warehouse. The permit covered construction of a foundation pad for processing and utility. At no time during the application process was there any reference to a proposed refinery. The County subsequently revoked the permit stating the permit could in no way be construed as pertaining to the construction of anything except the foundation pad. The day before the expiration of the permit, Steuart's contractor poured six (6) concrete footings for a pad on which a transformer was to be located. As the work progressed, it was determined that the footings had been improperly sited and they were ultimately incorporated in the foundation for the warehouse. The court held that pouring of the six (6) footings for the pad was not the commencement of construction because the footings were located in the wrong place and were ultimately covered by the warehouse.

As in Ross, the Steuart court noted that substantial preliminary commencement construction expenditures were made. The expenditures included One

Hundred Seventy-Five Thousand Dollars ($175,000.00) for a feasibility and design study and Eighty Two Thousand Five Hundred Dollars ($82,500.00) for an environmental impact study. However, the court stated that these expenditures were not sufficient to support its claim of a vested right because as in Ross where the Fifty-Six Thousand Dollars ($56,000.00) was expended for architectural fees, the expenditures were not substantial due to an absence of actual construction.

In applying the facts of the instant case to Rupp and the line of cases following it, the Court believes the law in this case to be less difficult than the facts. In accordance with the two-pronged Rupp test for determining commencement of construction, the Court believes that Chesapeake's procurement of five (5) building permits out of twelve (12) for plat A; three (3) building permits out of nine (9) for plat B; zero (0) building permits out of twenty-three (23) for plat C; five (5) building permits out of twelve (12) for plat D, as well as the digging of footings and the pouring of concrete for two (2) of the buildings, staking out of buildings, construction of two (2) sediment control ponds, substantial clearing and grading, the "hook-up" of an on-site construction trailer, erection of silt fencing and placement of bales of hay is sufficient to meet both prongs of the test. Accordingly, the Court finds that Chesapeake had commenced construction prior to the effective date of the down-zoning on January 10, 1985.

Furthermore, the Court finds that, pursuant to Ross and Rockville, Chesapeake began construction with the good faith intention to complete it in compliance with both their approved developmental plan and their subsequently issued building permits. This finding is evidenced by Chesapeake's expenditure, in connection with the development of Huntsmoor South, of over Eight Hundred

Seventy Thousand Dollars ($870,000.00) as of January 10, 1985 (the effective date of the down-zoning). The Court finds that because the aforementioned expenditures were coupled with the presence of actual construction, Chesapeake has made a substantial change of position in relation to the land and has therefore met the test for obtaining vested rights as stated by Rathkopf and as followed by the Maryland Courts. Accordingly, the Court finds that Chesapeake obtained vested rights in the D.R. 10.5 zoning classification pursuant to Maryland's Common Law.

As to Residents' argument that Chesapeake acted in bad faith by continuing the development of Huntsmoor South while possessing knowledge of pending down-zoning legislation, the Court finds that the good faith requirement enunciated by the Rupp Court is the good faith intent to complete the project started. Assuming arguendo, however, that Residents' good faith argument is meritorious, the Court notes that in none of the Maryland cases cited by counsel is there any indication that a developer's attempt to obtain vested rights in an existing zoning classification where down-zoning legislation is pending constitutes bad faith. The good faith considerations noted in Ross, Rockville and Steuart Petroleum, all address the issue of whether a developer, in good faith, initiated actual construction with the intent and purpose of completing said construction or whether the developer began the construction in bad faith, merely to obtain vesting.

Inasmuch as the Court has found that Chesapeake has obtained vesting in the D.R. 10.5 zoning classification as a result of commencing substantial construction prior to the effective date of the down-zoning, it is not necessary for the Court to determine whether vesting may have accrued under Section 22-68 of the Baltimore County Code. However, because the issue of whether this section of the Code vests zoning has arisen, the Court believes that a resolution of the issue should be made.

Section 22-68 provides in pertinent part that:

(a) 'A subdivision plat shall lapse and be invalid ... ... if such subdivision ... has not been developed, as defined in subsection C, in accordance with the following time limits ...:

(3) Any plat ... approved after the effective date of these regulations shall expire eight (8) years after the approval of the plan pertinent to which the plat was prepared."

(c) "A subdivision ... is hereby defined as developed if any of the following has occurred ...:

(1) Building permits have been issued; or
(2) Substantial construction or required public or private improvements has occurred ... pursuant to the applicable regulations and requirements of the Department of Public Works. ..."

Accordingly, upon obtaining building permits or upon performing substantial construction, §22-68 permits a developer to maintain the validity of the subdivision plat for a period of eight (8) years after its approval.

Residents note that Article 4 in which §22-68 appears is captioned "Development Regulations of Baltimore County" as opposed to Article 3 which is captioned "Zoning Regulations." Accordingly, argue Residents, §22-68 by its own terms insulates recorded plats from changes in development regulations only and does not insulate recorded plats from changes in zoning regulations.

The Court recognizes the difference between zoning and planning. Board of County Commissioners vs. Gaster, 285 MD 233 (1979) states that zoning is concerned with the use of property but planning is broader in concept. Additionally, Judge Bishop in Miller v. Forty West Builders, Inc., No. 947 Sept. Term (1984) quoting from 1 - E Yokley Zoning Law and Practice, Section 1-2 (4th ed. 1978) describes the concepts as follows:

> "... Let us say that zoning is almost exclusively concerned with the use regulation whereas planning is a broader term and indicates the development of a community not only with respect to the uses of land and buildings but also with respect to streets, parks, civic beauty, industrial and commercial undertakings, residential developments and such other matters affecting the public convenience and welfare as may be properly embraced within the police power."

Accordingly, inasmuch as development regulations encompass the broader aspect of the development of a community with respect to its uses, i.e., with respect to its zoning, it becomes evident that §22-68 vests developmental regulations as well as zoning regulations for a duration of eight (8) years after approval of the plan pursuant to which the approved plat was prepared.

The Maryland Court of Special Appeals has most recently expressed their position regarding the relationship between zoning and regulation in the Forty West Builders, Inc. case. In Forty West, the Court stated that:

> "There are three integral parts of adequate land planning, the Master Plan, zoning and subdivision regulations.....
>
> Although this case arose within the context of approval of a subdivision plan, ..., it also involves zoning. Accorndingly, we hold that the term 'zoning petition' was intended to be broad enough to include subdivision plans submitted to the C.R.G. for approval.
>
> Approval by the C.R.G. will necessarily entail review of and compliance with the applicable zoning regulations."

The language used by the Court of Appeals indicates that zoning and planning, although having distinct meanings, are not wholly unrelated concepts, and effectively, they are synonymous when considered in the context of C.R.G. approval of subdivision plans such as those at issue in this case.

In addition to the Forty West case, the legislative context within which §22-68 was adopted,is indicative of the intent of the statute. The legislative

history of §22-68 is addressed in an opinion written by the County Attorney on May 17, 1984 known as the Westchester Opinion. The opinion notes that from 1955 until at least 1977, the Office of Planning and Zoning, as well as the Zoning Commissioner's office, interpreted §103.1 of the Baltimore County Zoning Regulations to essentially insulate a subdivision plat which had received tentative approval from the Baltimore County Planning Board. The effect of this interpretation was to give a developer a vested right to proceed with his tentative plan notwithstanding that the zoning may be changed prior to the issuance of permits and prior to the commencement of construction. The County Attorney went on further to indicate that the interpretation of §103.1 had been adopted by the County Council.

The opinion further indicates that in 1977 the County Council passed the Interim Development Control Act, codified at §22-16 of the Baltimore County Code 1978. That legislation set forth the circumstances and conditions under which a developer could receive a vested right to proceed with his development notwithstanding a subsequent change in the zoning classification. Specifically, §22-16 (h) 3 expressly provided the developer with the vested right to proceed with development for five (5) years notwithstanding subsequent down-zoning.

In 1982 the County Council enacted §22-68 which repealed all previous subdivision regulations and established the development regulations now in effect. Said section established an eight (8) year period for development following plan approval. In his opinion, the County Attorney notes that since at least 1977 the County Council of Baltimore has chosen to recognize that it takes a substantial expenditure of funds to go through the various regulations of Baltimore County in the subdivision process and that a developer should be given a reasonable period of time to achieve a developed status for his property without running the risk of losing his investment by changes in the zoning classification.

The opinion goes on to state that the County Council has chosen by legislative enactment to change the rule of law enunciated in the line of Maryland cases cited in this opinion and has decided that a developer should have a vested right to proceed with his development if he has secured building permits or if there has been substantial construction on required public improvements.

Pursuant to the most recent assessment by the Court of Appeals concerning the interplay between zoning and planning, and given the legislative history of the enactment of §22-68, it is the opinion of this Court that the section vests zoning rights as well as developmental rights in the owner of property, provided said owner meets the requisite elements for such vesting.

The final motion for consideration is Baltimore County's Motion for Summary Judgment on the issue of whether applications for building permits conforming to current zoning regulations should be issued by the Zoning Office even though they proposed a use contrary to an enacted but not effective amendment to existing zoning regulations. Residents contend that Chesapeake's awareness of potential down-zoning and Chesapeake's knowledge of the comprehensive re-zoning by the 1984 Comprehensive Map should have inhibited Chesapeake's application for its building permits. The County's position is that if an application for a permit conforms to a then existing zoning regulation, it is encumbent on the County to issue the permit. The denial of the permit, pending the effectiveness of the amendment to the zoning regulation is, according to the County, beyond the powers delegated to it.

In the case of Baltimore County v. Security Mortgage Corp., 227 MD 234 (1961), the Security Management Corporation brought suit for declaratory judgment and injunctive relief pursuant to the County's refusal to approve recordation of

subdivision plats. The Court held that a municipal agency can exercise only so much of the police power as may be expressly granted or necessarily implied to it, and that if the action taken exceeds that power, the action is void. The Annotated Code of Maryland, Article 25 A, Section 5, (1957) enumerates the express powers provided to the counties. Section 5 contains no provision granting the County authority to refuse an application for a building permit where the intended use conforms to what is then the controlling zoning regulations. Accordingly, the Court believes that if the County were to deny the issuance of building permits pending the effectiveness of an amendment to existing zoning regulations such an act would be beyond the powers delegated to it.

In Baltimore Planning Commission vs. Victor Development Co., Inc., 261 MD 387 (1970), a Petition for Mandamus was filed by the Victor Development Co. when the Planning Commission rejected the approval of a development plan that complied with the legal requirements for its approval. The Court held that a refusal by the Baltimore County Planning Commission to approve a subdivision development plan where the plan appeared to have complied in all respects with the rules, regulations and requirements for its approval, was not within the Commission's authority. Similarly, in this case, the County was confronted with a situation where a request for building permits was made in accordance with the approval of a developmental plan that complied with the then existing zoning regulations. As the court in Ross stated in addressing the issue of how a change in zoning regulations enacted while litigation was pending would affect the determination of the suit, "The case must be determined under the law as it currently exists." Similarly, the Court finds that the County had to act under the law as it existed at the time Chesapeake sought their building permits. Therefore, the Court finds

that the County had no authority to reject Chesapeake's request for their building permits.

Accordingly, it is this 2nd day of August, 1985, by the Circuit Court for Baltimore County,

ORDERED that Plaintiffs' et al. Motion for Partial Summary Judgment* (Paper No. 30) be and is hereby DENIED, and it is further;

ORDERED that Defendant's (Chesapeake Homes, Inc.) Motion for Partial Summary Judgment (Paper No. 33) be and is hereby GRANTED, and it is further;

ORDERED that Defendant's (Baltimore County) Motion for Summary Judgment (Paper No. 35) be and is hereby GRANTED, and it is further;

ORDERED that Defendant's (Chesapeake Homes, Inc.) Motion to Strike the Memorandum filed on behalf of Kubiet and Spencer (paper No. 38) be and is hereby GRANTED.

*Plaintiffs' allegation of numerous design defects on Chesapeake's construction of Huntsmoor South is still pending.

A. OWEN HENNEGAN, JUDGE

COPIES SENT:

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO James E. Dyer Date September 24, 1979

FROM Office of Law

SUBJECT Application of Setbacks and Procedure for Building Permits Approved in Error

You requested our advices in regard to the following facts and issues.

FACTS:

A developer has applied for building permits for dwellings on Lots 13, 14, Block A, Lots 16, 17, and 18, Block B, Section 5, Ravenhurst. On Lot 14, construction is on-going, and the house frame is up. The developer has also applied for a variance on Lots 16, 17 from the strict application of the setback requirements in existence on January 21, 1976. He has signed contracts of sale for the construction of dwellings on Lots 13 and 18, respectively.

You advise us further that the approvals were based upon Section 5 being included within the boundaries of the preliminarily approved plan, dated March 9, 1966, and tentatively approved by County agencies in July, 1966. Upon rechecking, you advise us that it was found that preliminary approval did not include the entire property boundaries indicated on the plan, and parcel 5 on which the lots now appear was not included in the 1966 approval. Lots 13, 14, 16, 17 and 18 were first approved, preliminarily, on the final plat of Section 5, Ravenhurst, dated January 21, 1976. Finally, you advise that there is no problem with regard to lot area, or with the overall density of this site.

STATUTORY LAW:

Section 103 - APPLICATION OF ZONING REGULATIONS [B.C.Z.R. 1955].

103.1 -- These Regulations shall apply as of the date of their adoption but the provisions pertaining to use, height, area and density of population shall not apply to any development, subdivision or parcel of land, the preliminary plan for which was originally submitted to the (then)

PETITIONER'S EXHIBIT 1

Baltimore County Planning Commission, 1/ (now Planning Board) and approved or tentatively approved (including any approval made subject to any condition or conditions) under the then existing official procedure in Baltimore County, prior to the adoption of these Regulations. 2/ The zoning regulations applicable to any such development, subdivision or parcel of land as aforesaid shall be the zoning regulations in effect at the time such plan, as aforesaid, was originally submitted to the Baltimore County Planning Commission.

ISSUE:

Our advices have been requested in regard to providing an interpretation as to the following:

1) The general application of paragraph one (1) of Section 103.1 of the Baltimore County Zoning Regulations, as that section applies to all subdivisions; and

2) The manner in which paragraph one (1) of Section 103.1 specifically applies to Lots 12, 13 and 14 Block A; Lots 16, 17 and 18, Block B, Section 5, Ravenhurst; and

3) Whether or not building permits Nos. 10381 through 10385 - NR were properly approved for dwellings on said lots and whether they are revocable?

DISCUSSION:

1. Re: General application of paragraph one (1) of Section 103.1 of the Baltimore County Zoning Regulations, as it relates to all subdivisions.

Absent any statutory protection, land included in a plat approved by the Planning Board and recorded, is as vulnerable to changes in the zoning regulations as is all other land in the County. In effect, the mere delineation of lots on a map of subdivision filed, after approval by the

1/ Thus (comma) in Resolution; November 21, 1956.
2/ B.C.Z.R. 1955, adopted March 30, 1955.

Planning Board, carries with it no guaranty that each lot or parcel will be sufficient in itself, in view of the possibility of zoning change, to be built upon when the time comes to do so. As a consequence, the conclusion is almost universal that, apart from statute, a developer has no vested rights relating to a change of zoning affecting land in an approved subdivision. Moreover, legislation changing the zoning requirements is in no sense retroactive legislation. Unless protected by statute, the filing of an approved subdivision plat does not establish a nonconforming use of the platted land which protects it from subsequent zoning changes; no right to the continuance of an existing zoning classification is gained by preparation, and preliminary works, however extensive. In brief, relief from subsequent zoning changes will not be afforded a subdivider, without the aid of statutory law, see Anderson, American Law of Zoning, Section 23.23 "Effect of approval on power to rezone", pp. 96, 97, 98.

Maryland case law is in fundamental agreement with the proposition that the mere approval or even recordation of a subdivision plat, without statutory intervention does not insulate the plat from further zoning changes. In Rockville Fuel and Feed Co. v. City of Gaithersburg, 266 Md. 117 (1972), the Maryland Court of Appeals held that a zoning case must be decided upon the law applicable at the time a case is before the Court, in the absence of intervening vested rights. Thus, a property owner has no absolute right to the zoning or the permitted uses unless he obtains a vested right in the use. Vested rights occur when the property owner:

1. Obtains a building permit or occupancy certificate; and

2. Proceeds under the permit to exercise his rights on the land by a substantive beginning to construct, so that the neighborhood may be advised as to the intended land use.

Earlier in Rupp v. Cline & Sons, 230 Md. 573, 578 (1963), speaking for the Court of Appeals, Judge Horney enunciated the test as to a vested right as follows:

> a manifest commencement of some work or labor on the grounds which everyone can readily see and recognize as the commencement of a building...begun with the intention and purpose then formed to continue the works until completion of the building.

Other cases reaching the same conclusion that was reached in Rockville Fuel and Feed Co., supra are Stewart Petroleum Co. v. Bd. of County Comm'rs of St. Mary's County, 276 Md. 435 (1935), County Council for Montgomery County v. District Land Corp., 274 Md. 691 (1975), and Mayor and Council of Baltimore v. Crane, 277 Md. 198 (1976). In discussing the effect of subdivision approval on the power to rezone, attention must be focused on the recent case of WSS Com v. TKU Associates, 281 Md. 01, 376 A2d 505 (1977). There, it was held that irrespective of the dedication of valuable rights of way and expenditures of large sums of money in connection with its subdivision plan, a property owner did not obtain vested rights in a prior zoning classification where nothing in the subdivision regulations guaranteed that the project would be approved.

In interpreting the proper application of Section 103.1 of the Baltimore County Zoning Regulations, it is important to recall that Chapter 610 (S. B. 556) of the Public Local Law of 1955 enacted by the General Assembly and effective June 1, 1955, reconstituted the then existing Baltimore County Planning Commission as the Baltimore County Planning Board. 3/

Paragraph one (1) of Section 103.1 of the Baltimore County Zoning Regulations, in essence, provides that zoning regulations ordinarily apply as of the date of their adoption. The ordinance, however, also provides that current minimum restrictions pertaining to use, height, area and density shall not apply to any subdivision of land, the preliminary plan for which was originally submitted to the Baltimore County Planning Commission, and was approved or tentatively approved under what was, at the time of subdivision, the effective zoning regulations. A parenthetical expression, i. e. (now Planning Board), however, is used to refer to the current Planning Board. The question thus arises as to whether or not the legislative intention was to extend the benefit of Paragraph one (1) of Section 103.1 only to those plats submitted and approved by the Baltimore County Planning Commission; or, whether that intention was to extend the benefit of Paragraph one (1) to plats also approved by the Planning Board. As the legislative intention is not clear from the face of Paragraph one (1) of Section 103.1, there is a sufficient

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3/442. There shall be an Office of Planning, the head of which shall be a Planning Board...

478. The existing Planning Commission created by resolution under the Enabling Act of the State of Maryland contained in Article 66B of the Annotated Code of Maryland (1951 Edition, as amended) shall be and it is hereby reconstituted in accordance with the provisions of this title (effective June 1, 1955).

basis, in order to determine that intention, to resort to the canons of statutory construction, cf., Sands' Sutherland Statutory Construction, Vol. 02, Section 46.01 "The Plain Meaning Rule," p. 48. Among those canons of construction, in the canon that, where statutory language is ambiguous or uncertain, a contemporaneous construction may be resorted to as an aid in ascertaining the legislative intention; furthermore, the interpretation of administrative officials should not be disregarded except in the most demanding of circumstances, see City of Baltimore v. Machen, 132 Md. 618, 104 A. 175 (1918). Professor Sands in his edition of Sutherland Statutory Construction notes:

> Long continued contemporaneous and practical interpretation of a statute by the executive officers charged with its administration... constitutes an invaluable aid in determining the meaning of a doubtful statute Volume 2A, Section 49.03 "Contemporaneous and practical interpretation."

The interpretation that Paragraph one (1) of Section 103.1 is applicable also to subdivision plats submitted and approved by the Planning Board, is of long standing duration. It is currently applied to approvals by the Planning Board, and has been so applied since the beginning of the Board. Its application is in excess of twenty (20) years standing. In this context, it should be pointed out that contemporaneous interpretations ranging in duration from as long as seventy (70) to as short as five (5) years have been found to have established the legislative meaning, see Sands ibid, Section 49.07 "Duration of contemporaneous and practical interpretation." Moreover, where a contemporaneous interpretation has stood unchallenged for a considerable length of time, as in the case here, it is regarded as of great importance in arriving at the proper construction of statutory law, see Sutherland, ibid, Section 49.07.

Any ambiguity contained in Paragraph one (1) of Section 103.1 as to whether or not it applies to plats approved by the Planning Board as well as the Planning Commission has been resolved by the administrative determination that it has application to Planning Board approvals. This conclusion meets the test as set out by Sutherland as to whether or not it is proper to apply the principle of contemporaneous construction:

> The conclusiveness of a contemporaneous and practical interpretation will depend upon a number of additional elements that give efficacy to the rule. In general, these elements are: (1) that the interpretation

originated from a reliable source; (2) that the interpretation was made at or near the time of the enactment of the statute, and (3) that the interpretation has continued for a long period of time and received wide acceptance and following. Where these factors are present the vagueness usually surrounding the other aids of construction are not present, and therefore the rule serves as one of the most definite and reliable sources of statutory meaning. Sutherland, ibid, Vol. 2A., Section 49.04 "Probative force," pp. 235-236.

In light of this test, the administrative interpretation is proper that Paragraph one (1) of Section 103.1 is currently effective as to plats approved by the Planning Board. Consequently, the zoning regulations insofar as they relate to use, height, area, and density applicable on the development of any plan of subdivision, are the regulations in effect at the time the plan was originally submitted to either the Planning Commission or the Planning Board. As a result of this intervention of statutory law, an approved or tentatively approved plan of subdivision, relative to zoning restrictions concerning use, height, area and density, as of the time of its submissions, is insulated from further zoning changes.

The administrative interpretation of Paragraph one (1) of Section 103.1 that it insulates approved subdivisions, relative to minimum restrictions, from further zoning changes is corroborated by Section 103.3 of the Baltimore County Zoning Regulations, added to Section 103 by Bill No. 98-75. Section 103.3 provides that in any rural conservation zone, a recorded subdivision plat approved by the Commission or Board is insulated from further changes relative to residential densities, lot liner, yards, and open space. Further, if an approved plan does not indicate densities, lot lines or open space, they may be established or situated only in accordance with standards prescribed and in force at the time of lot recordation.

2. Re: Application of Paragraph one (1) of Section 103.1 to Lots 12, 13, 14 Block A, Lots 16, 17 and 18 Block B, Section 5, Ravenhurst.

Applying Paragraph one (1) of Section 103.1 to the preliminarily approved plan for Ravenhurst approved July, 1966, and excluding Section 5, as to the plan, use, height, area and density restrictions are those restrictions which are effective as of the time the plan was submitted to the

Planning Board for approval. The plan's approval, insofar as these restrictions are concerned, resulted in insulating the lots platted on the plan from further zoning changes. In the facts at issue, Lots 13, 14 Block A, Lots 16, 17, 18, Block B, Section 5, Ravenhurst were first approved on January 21, 1976. As to those lots, and with reference to the minimum restrictions applicable to use, height, area and density in effect in 1966, Paragraph one (1) of Section 103.1 does not establish a nonconforming use of the platted land. Consequently, unless, in reliance on the 1966 restrictions, there was a substantial beginning to construction, or intervening rights, there would be no vested right as per Paragraph one (1) of Section 103.1 to see applied the minimum restrictions as to those lots, except in conformity with the zoning regulations effective January 21, 1976.

3. Re: Propriety of approval of Building Permits Nos. 10782 through 10285-NR on Lots 12, 13, 14, Blocks A, Lots 16, 17 and 18, Block B, Section 5, Ravenhurst, and possible cancellation thereof.

Lot 12, Block A, Section 5, Ravenhurst is not in the ownership of the developer, Kirch Homes, Inc., as per information received from Mr. Kirch. As to Lots 16, 17 Block B, Section 5, the developer is applying for a variance from the strict application of the side yard setbacks as they existed as of January 21, 1976. Consequently, as there is no dispute that the 1976 setbacks requirements are applicable as to those lots, they need not be discussed at great length. The developer has construction out of the ground on Lot 13, Block A, Section 5, Ravenhurst. As determined by the test set out alone in Rockville Fuel & Feed Co., supra there is manifestly some work on the ground which is readily visible, and as to that lot, the developer has a vested interest to continue to develop in conformity with the zoning specifications as they existed as of January 21, 1976. No attempt should be made at revoking that building permit regardless of the assertion that it was issued in error.

Relative to Lots 13, Block A, and Lot 18, Block B, Section 5, Ravenhurst, contracts for construction of dwellings on those lots, respectively, have been signed by the developer and purchasers of those lots. On these facts, the Courts have held that where, as here, successors in title to a subdivider, in reliance on the approval of the final plan and recordation of the final plat thereof have acquired their respective interests as good faith purchasers their consent is necessary before approval of a plat or building permit can be rescinded, see Stoner v. Planning Board of Agawan, 368 Mass. 209, 266 NE2d 891. Accordingly, the consent of the contract

purchasers as well as the holders of mortgages on those lots would seem to be necessary prior to recission, see also Brigham v. Planning Board of North Reading, Mass. 285 NE2d 408. As it is highly unlikely that subdivision lot purchasers as well as their mortgagees would consent to a recission of the approved subdivision plan, or permits issued in reliance thereon, rescission of the approval of the final plat or permits is not recommended.

3A. Possible cancellation of permits.

As to the building permits relating to Lots 16, 17, as there is neither a substantial beginning to construct, nor intervening rights of purchasers or their mortgagees, these permits could be revoked. However, as the developer has applied for a variance from the strict application of the zoning regulations, as they existed January 21, 1976, the permits should not now be cancelled. Rather, it is suggested that all parties await the determination of the Zoning Commissioner on the petition for variance.

As to the building permits relative to Lots 13 and 18, intervening rights of good faith purchasers and their mortgagees are now extant; irrespective of the original error in issuing the permits not in conformance with January, 1976 zoning regulations; no attempt should be made at revocation. As there is a "frame" up on Lot 14, vested rights have intervened and the permit cannot be revoked, cf. Town of Berwyn Heights v. Rogers, 228 Md. 271, 179 A2d 712.

CONCLUSIONS:

1. Apart from statute, a developer has no vested rights relating to a change of zoning affecting land in an approved subdivision

2. Pursuant to statutory authority, the zoning regulations insofar as they relate to use, height, area, and density applicable or the development of any plan of approved or tentatively approved plan of subdivision, are the regulations in effect at the time the plan was originally submitted to either the Planning Commission or the Planning Board.

3. As a result of the intervention of statutory law, an approved or tentatively approved plan of subdivision, relative to zoning restrictions concerning use, height, area, and density, as of the time of its submission to the Planning Commission or Planning Board, is insulated from further zoning changes.

4. Lot 13, Block A, intervening rights of purchasers and their mortgagees are not extant; no attempt should be made at revocation of the building permit.

Lot 14, Block A, construction is out of the ground and visible, vested rights have intervened and the permit cannot be revoked.

Lot 15, Block B, application for variance is currently pending with the Office of Zoning Commissioner. The outcome of that petition should be awaited and considered prior to any attempt at revocation of the permit.

Lot 18, Block B, intervening rights of purchasers and their mortgagees are now extant; no attempt should be made at revocation.

This letter of advice is not to be construed as a formal opinion of the Office of Law of Baltimore County.

Leonard S. Jacobson
County Solicitor

Michael J. McMahon
Assistant County Solicitor

LSJ/MJM:gp

FEB 27 '81 PLK Please list hearing Mary
Counsel JH 3/9/81

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO Norman E. Gerber, Director
Office of Planning & Zoning

Date February 10, 1981

FROM ~~Law Office~~

SUBJECT Request for Advice

RECEIVED
BALTIMORE COUNTY
FEB 23 1981
OFFICE OF PLANNING
AND ZONING

1) Application of §103 of the Zoning Regulations to Subdivisions which have had zoning changed via recently adopted 1980 Zoning Maps.

2) Development in accordance with subdivision plan or plat not complying with changed zoning classification.

You have requested our advice as to the following:

FACTS:

Section 103 of the Baltimore County Zoning Regulations (B.C.Z.R.) seems to provide that subdivisions which are approved tentatively or finally by the Planning Board may be developed in accordance with height, set-back, and area requirements of the zone applied to the property as of the time of either the tentative or final subdivision approval.

You would like clarification of the effect of §103 on subdivisions which receive final and/or tentative approval under a residential zone classification applied at the time of the approval and which have subsequently been reclassified through the 1980 Comprehensive Zoning Ordinance Map to another classification. You need advice in light of the impact of the Sunset provisions (Local Law §22-44.1, Record Subdivision plats protected for five years that now apply to final or record plats and also in light of the one (1) year life of tentative approval of any residential subdivision, (see also your request of 11/17/80; development in accordance with subdivision plat not complying with changed zoning classification).

STATUTORY LAW:

1) Section 103 - APPLICATION OF ZONING REGULATIONS (B.C.Z.R. 1955).

103.1--These Regulations shall apply as of the date of their adoption but the provisions pertaining to use, height, area and density of population shall not apply to any development, subdivision or parcel of land, the preliminary plan for which was originally submitted to the (then) Baltimore County Planning Commission, [1]

~~1 Thus (comma)~~ in Resolution; November 21, 1956. PETITIONER'S EXHIBIT J

(now Planning Board) and approved to tentatively approved (including any approval made subject to any condition or conditions) under the then existing official procedure in Baltimore County, prior to the adoption of these Regulations.[2] The zoning regulations applicable to any such development, subdivision or parcel of land as aforesaid shall be the zoning regulations in effect at the time such plan, as aforesaid, was originally submitted to the Baltimore County Planning Commission.

2) Local Law §22-44.1 Record subdivision plats protected for five (5) years.

Record subdivision plats...for any subdivision...shall be deemed to have lapsed and to be invalid...where the...subdivision... remains undeveloped for a period of five (5) years from April 16, 1977, or five (5) years after the date of recording the final subdivision plat, whichever is later.

ISSUE:

What is the effect of §103.1 of the Baltimore County Zoning Regulations on subdivisions which receive final and/or tentative approval under a residential zoning classification applied at the time of the approval, and which are subsequently reclassified through the 1980 Comprehensive Zoning Map to another classification?

DISCUSSION:

1) General application of paragraph one (1) of §103.1 of the Baltimore County Zoning Regulations, as it relates to residential subdivisions.

Absent any statutory protection, land included in a plat approved by the Planning Board and recorded, is as vulnerable to changes in the zoning regulations as is all other land in the County. In effect, the mere delineation of lots on a map of subdivision filed, after approval by the Planning Board, carries with it no guarantee that each lot or parcel will be sufficient in itself, in view of the possibility of zoning change, to be built upon when the time comes to do so. As a consequence, the conclusion is almost universal that, apart from statute, a developer has no vested

2. B.C.Z.R. 1955, adopted March 30, 1955.

WSS Com. v. TKU Associates, 281 Md. 01, 376 A.2d 505 (1977). There, it was held that irrespective of the dedication of valuable rights of way and expenditures of large sums of money in connection with its subdivision plan, a property owner did not obtain vested rights in a prior zoning classification where nothing in land use regulations served to preserve previous approvals with regard to height, area, density, use and bulk requirements, see also Millison v. Secretary of Health and Mental Hygiene, 32 Md. 165, 357 A.2d 274. Nonetheless, because of statutory modifications set forth in Title 22, Local Law is somewhat contrary to the result in TKU, supra, in that previous approvals with regard to height, set-back and are are insulated from subsequent comprehensive rezoning changes.

In interpreting the proper application of §103.1 of the Baltimore County Zoning Regulations, it is important to recall that Chapter 610 (Senate Bill 556) of the Public Local Law of 1955, enacted by the General Assembly and effective June 1, 1955, reconstituted the then existing Baltimore County Planning Commission as the Baltimore County Planning Board.[3]

Paragraph one (1) of §103.1 of the Baltimore County Zoning Regulations, in essence, provides that zoning regulations ordinarily apply as of the date of their adoption. The ordinance, however, also provides that current minimum restrictions pertaining to use, height, area, and density shall not apply to any subdivision of land, the preliminary plan for which was originally submitted to the Baltimore County Planning Commission, and was approved or tentatively approved under what was, at the time of subdivision, the effective zoning regulations. A parenthetical expression, i.e. (now Planning Board), however, is used to refer to the current Planning Board. The question thus arises as to whether or not the legislative intention was to extend the benefit of paragraph one (1) of §103.1 only to those plats submitted and approved by the Baltimore County Planning Commission; or, whether that intention was to extend the benefit of paragraph one (1) to plats also approved by the Planning

3. 442. There shall be an Office of Planning, the head of which shall be a Planning Board...

478. The existing Planning Commission created by resolution under the Enabling Act of the State of Maryland contained in Article 66B of the Annotated Code of Maryland (1951 Edition, as amended) shall be and it is hereby reconstituted in accordance with the provisions of this title (effective June 1, 1955).

Board. As the legislative intention is not clear from the face of paragraph one (1) of §103.1, there is a sufficient basis, in order to determine that intention, to resort to the canons of statutory construction, cf., Sands' Sutherland Statutory Construction, Vol. 2, §46.01 "The Plain Meaning Rule", p. 48. Among those canons of construction, in the canon that, where statutory language is ambiguous or uncertain, a contemporaneous construction may be resorted to as an aid in ascertaining the legislative intention; furthermore, the interpretation of administrative officials should not be disregarded except in the most demanding of circumstances, see City of Baltimore v. Machen, 132 Md. 618, 104 A.175 (1918). Professor Sands in his edition of Sutherland Statutory Construction notes:

> "Long continued contemporaneous and practical interpretation of a statute by the executive officers charged with its administration...constitutes an invaluable aid in determining the meaning of a doubtful statute. Volume 2A, §49.03 "Contemporaneous and practical interpretation."

The interpretation that paragraph one (1) of §103.1 is applicable also to subdivision plats submitted and approved by the Planning Board, is of long standing duration. It is currently applied to approvals by the Planning Board, and has been so applied since the beginning of the Board. Its application is in excess of twenty (20) years standing. In this context, it should be pointed out that contemporaneous interpretations ranging in duration from as long as seventy (70) to as short as five (5) years have been found to have established the legislative meaning, see Sands ibid, §49.07 "Duration of contemporaneous interpretation and practical interpretation." Moreover, where a contemporaneous interpretation has stood unchallenged for a considerable length of time, as in the case here, it is regarded as of great importance in arriving at the proper construction of statutory law, see Sutherland, ibid, §49.07.

Any ambiguity contained in paragraph one (1) of §103.1 as to whether or not it applies to plats approved by the Planning Board as well as the Planning Commission has been resolved by the administrative determination that it has application to Planning Board approvals. This conclusion meets the test as set out by Sutherland as to whether or not it is proper to apply the principle of contemporaneous construction:

> "The conclusiveness of a contemporaneous and practical interpretation will depend upon a number of additional elements that give efficacy to the rule. In general, these elements are: (1) that the interpretation

originated from a reliable source; (2) that the interpretation was made at or near the time of the enactment of the statute, and (3) that the interpretation has continued for a long period of time and received wide acceptance and following. Where these factors are present the vagueness usually surrounding the other aids of construction are not present, and therefore the rule serves as one of the most definite and reliable sources of statutory meaning. Sutherland, ibid, Vol. 2A, §49.04 "Probative force" pp. 235-236.

In light of this test, the administrative interpretation is proper that paragraph one (1) of §103.1 is currently effective as to residential plats approved by the Planning Board. Consequently, the zoning regulations insofar as they relate to use, height, area and density applicable on the development of any plan of subdivision, are the regulations in effect at the time the plan was originally submitted to either the Planning Commission or the Planning Board. As a result of this intervention of statutory law, an approved or tentatively approved plan of subdivision, relative to zoning restrictions concerning use, height, area and density, as of the time of its submission, is insulated from further zoning changes.

The administrative interpretation of paragraph one (1) of §103.1 that it insulates approved residential subdivisions, relative to minimum restrictions, from further zoning changes is corroborated by §103.3 of the Baltimore County Zoning Regulations, added to §103 by Bill #98-75. Section 103.3 provides that in any rural conservation zone, a recorded subdivision plat approved by the Commission or Board is insulated from further changes relative to residential densities, lot lines, yards, and open space. Further, if an approved plan does not indicate densities, lot lines, or open space, they may be established or situated only in accordance with standards prescribed and in force at the time of lot recordation.

Focusing on Local Law 22-44.1, it is observed that the language used therein is plain and unambiguous and must be given effect as the Council intended. Accordingly, a recorded subdivision plat will have lapsed into invalidity where the subdivision remains undeveloped for a period of five (5) years from a date certain (April 17, 1977) or five (5) years after the plat recordation date, whichever is later. Local Law §22-44.1 originates with enabling legislation found respectively in both the Baltimore County Charter and Code. Charter §522.1 (1978) provides for the preparation of recommendations concerning subdivision regulations which can only take effect after approving legislation has been enacted by the Council, see Charter §§522.1(a)(3)(4) and 522.1(b). Additionally, Local Law §22-37

"Subdivision regulations" (1978 Code) provides that the Planning Board is to submit supplementary amendments to existing regulations governing the subdivision of land in Baltimore County, including requirements and procedures for the submission of subdivision plats.

With regard to the enabling authority for §103.1 of the Baltimore County Zoning Regulations, Local Law §22-19 (1978) requires the preparation of zoning maps and regulations restricting and regulating height, area, density, use and bulk of buildings, structures and land for the purpose of promoting health, safety, morals and the community's general welfare. In addition, Local Law 22-20 (1978) provides that the County is to divide into zones for the purpose of regulating the height, bulk, and area of lots, buildings and other structures.

As both the zoning and subdivision regulations have their statutory origin in Title 22 of the Baltimore County Code, they must be construed with reference to each other to produce a harmoniuous whole. Indeed, related statute or statutes on the same subject or objects should be construed together, Sutherland, ibid, Vol. 2A, §51.03 "Statutes deemed to be in pari materia", p. 298. Moreover, in terms of legislative intent, it is assumed that whenever the legislature enacts a provision, it has in mind previous statutes relating to the same subject matter; consequently, it is held that in the absence of any express repeal or amendment therein, the new provision was enacted in accord with the legislative policy embodied in those prior statutes and they all should be construed together, see Sutherland, ibid, Volume 4, §51.02 "Statutes on the same subject construed together" p. 290. Moreover, the construction that produces the greatest harmony and the least inconsistency is that which ought to prevail, see Sutherland, ibid, Vol. 2A, §46.05 "Whole Statute Interpretation", p. 57.

Applying those precepts of statutory construction, it is stressed that Baltimore County Zoning Regulations, §103.1 should be construed together with Local Law §22-44.1 to produce the greatest harmony and the least inconsistency. Moreover, it must be assumed that the County Council, when it adopted Local Law §22-44.1 was aware of the contemporaneous construction given to §103.1, that an approved or tentatively approved plan of subdivision relative to use, height, area and density regulations, was insulated from further zoning changes as of the time of the plan's submission to either the Planning Commission or Planning Board.

Consequently, construing §103.1 of the Baltimore County Zoning Regulations in light of the subsequently enacted Local Law §22-44.1 leads to the conclusion that height, area, bulk and density of a recorded subdivision plat are preserved against subsequent zoning changes for a period coextensive with the statutory period exempting recorded subdivision plats from the impact of the local Sunset provision of Title 22.

CONCLUSIONS:

1. Apart from statute, a developer has no vested rights relating to a change of zoning affecting land in an approved subdivision.

2. Pursuant to statutory authority, the zoning regulations insofar as they relate to use, height, area, and density applicable or the development of any plan of approved or tentatively approved plan of subdivision, are the regulations in effect at the time the plan was originally submitted to either the Planning Commission or the Planning Board.

3. As a result of the intervention of statutory law, as approved or tentatively approved plan of residential subdivision, relative to zoning restrictions concerning use, height, area, and density as of the time of its submission to the Planning Commission or Planning Board, is insulated from further comrehensive rezoning changes.

4. Use, height, area and density requirements (see §103.1 Baltimore County Zoning Regulations) of an approved recorded subdivision plat are preserved against subsequent comprehensive rezoning changes for a period coextensive with the statutory period exempting recorded subdivision plats from the impact of the local Sunset provision of Title 22.

This letter of advice is not to be construed as a formal opinion of the Office of Law of Baltimore County.

Leonard S. Jacobson
County Solicitor

Michael J. McMahon
Assistant

L.S.J./M.J.M.

RC 6

RC 7

RC 7

STONEHEDGE RD

GLOVERLAND DR

DANCE MILL RD

RAVENHURST CIR

BAFFORD CT

LONG GREEN SPRING WAY

DULANEY VALLEY RD

FAIRMEADOW RD

WINDEMERE PKWY

STONEHURST RD

GREENSPRING WAY

COLLINGWOOD

Plan Sheet: ***053A1***

Note:
Section 32-3-202 of the Baltimore County, 2003 Code establishes the zoning geodatabase. This map represents the actions of the Baltimore County Council on August 31, 2004 (Bills 82-04, 83-04, 84-04, 85-04, 86-04, 87-04, 88-04, and 89-04) effective September 3, 2004.

Legend

Zoning — Streams — Vegetation

Buildings ------ Roads

Baltimore County
Office of Planning and Zoning
Official Zoning Map

043B3	043C3	044A3	044B3	044C3
052B1	052C1	053A1	053B1	053C1
052B2	052C2	053A2	053B2	053C2

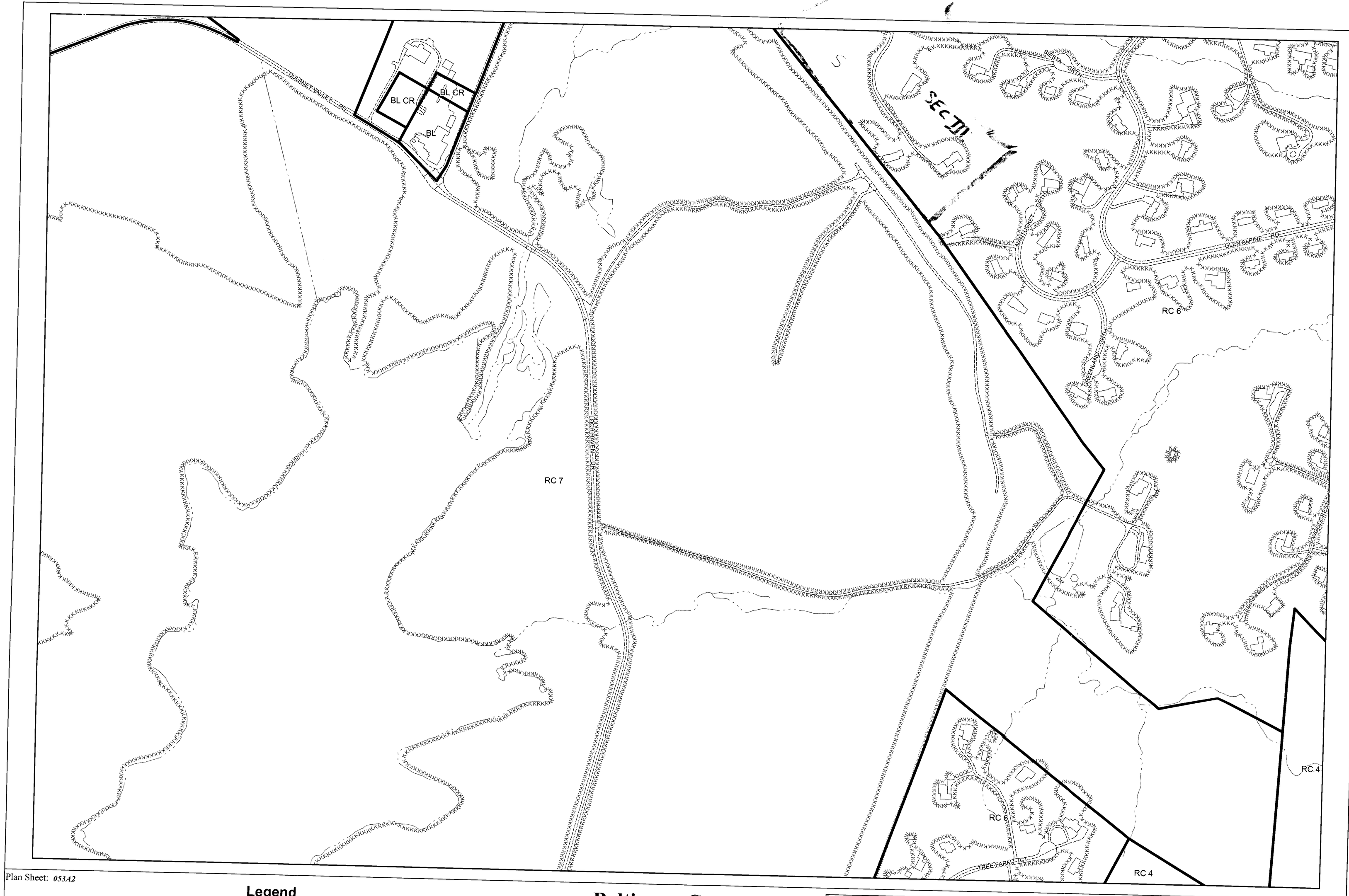
Scale

1" = 200'

0 100 200 400 Feet

1

Data Sources:
Planametric Data - Baltimore County OIT/GIS Services Unit
1:2400, from 1995/96 photography
Zoning - Baltimore County Office of Planning
1:2400, 2004



Plan Sheet: *053A2*

Note:
Section 32-3-202 of the Baltimore County, 2003 Code establishes the zoning geodatabase. This map represents the actions of the Baltimore County Council on August 31, 2004 (Bills 82-04, 83-04, 84-04, 85-04, 86-04, 87-04, 88-04, and 89-04) effective September 3, 2004.

Legend

Zoning — Streams — Vegetation
Buildings ------ Roads

Baltimore County
Office of Planning and Zoning
Official Zoning Map

052B1	052C1	053A1	053B1	053C1
052B2	052C2	053A2	053B2	053C2
052B3	052C3	053A3	053B3	053C3

Scale

1" = 200'

0 100 200 400 Feet

1

Data Sources:
Planametric Data - Baltimore County OIT/GIS Services Unit
1:2400, from 1995/96 photography
Zoning - Baltimore County Office of Planning
1:2400, 2004

General Notes

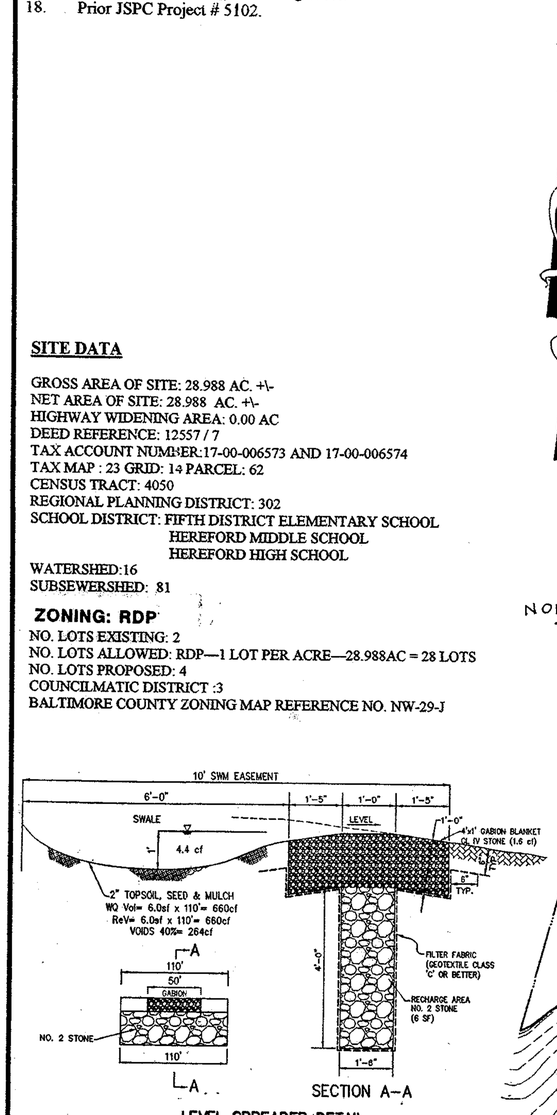
1. All lots shown hereon to be served by private well and septic systems.
2. Soil types shown hereon are taken from Baltimore County Soil Survey Map No. 7.
3. Average Daily Trips = 12.4/ lot : 4 lots x 12.4 = 50 A.D.T.s.
4. The properties shown hereon have been held intact since July 6, 1976. The developer's engineer has confirmed that the plan has never been utilized, recorded or represented as density to support any off-site dwelling.
5. All lots shown hereon are for single family dwellings.
6. Maximum allowable principal building height in RDP Zone is 35 feet.
7. Any Forest Buffer Easements and Forest Conservation Easements shown hereon are subject to protective covenants which may be found in the land records of Baltimore County, Maryland, and which restricts disturbance and use of these areas.
8. There shall be no clearing, grading, construction or disturbance of vegetation in the Forest Buffer Easements and Forest Conservation Easements except as permitted by the Baltimore County Department of Environmental Protection and Resource Management.
9. The area between the sight line and the curb line must be cleared graded and kept free of any obstructions.
10. The existing site cover is forest, pasture, lawn and landscape.
11. Topography show hereon is taken from Baltimore County maps.
12. There are no known existing wells or septic systems within 100 feet of the subject property unless otherwise shown.
13. Private driveway entrances shall conform with Baltimore County Standard Detail PlateR-15, dated 1977 for "Typical entrances from a road without curb an gutter."
14. Baltimore County 200 scale map reference : NW 29-J .
15. There are no zoning lines within 200 feet of this property unless otherwise shown.
16. Site is not located in the Chesapeake Bay Critical Area.
17. There are no known prior zoning cases.
18. Prior JSPC Project # 5102.

SITE DATA

GROSS AREA OF SITE: 28.988 AC. +\-
NET AREA OF SITE: 28.988 AC. +\-
HIGHWAY WIDENING AREA: 0.00 AC
DEED REFERENCE: 12557 / 7
TAX ACCOUNT NUMBER:17-00-006573 AND 17-00-006574
TAX MAP : 23 GRID: 14 PARCEL: 62
CENSUS TRACT: 4050
REGIONAL PLANNING DISTRICT: 302
SCHOOL DISTRICT: FIFTH DISTRICT ELEMENTARY SCHOOL
HEREFORD MIDDLE SCHOOL
HEREFORD HIGH SCHOOL
WATERSHED:16
SUBSEWERSHED: 81

ZONING: RDP

NO. LOTS EXISTING: 2
NO. LOTS ALLOWED: RDP—1 LOT PER ACRE—28.988AC = 28 LOTS
NO. LOTS PROPOSED: 4
COUNCILMATIC DISTRICT :3
BALTIMORE COUNTY ZONING MAP REFERENCE NO. NW-29-J

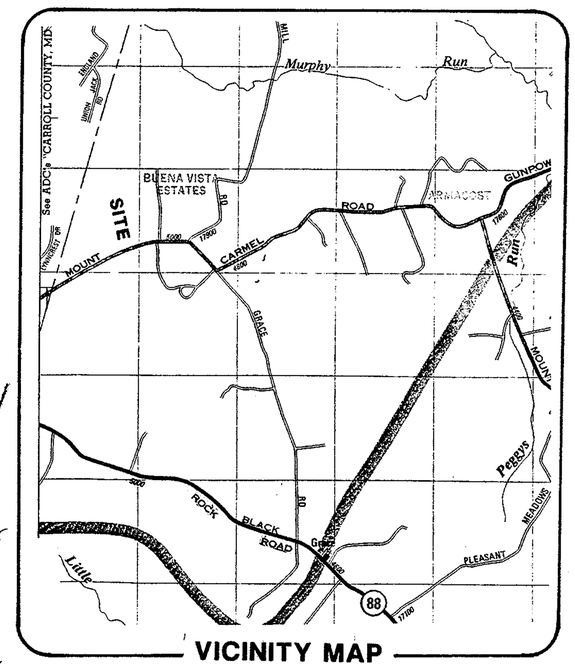


LEVEL SPREADER DETAIL
NOT-TO-SCALE

BALTIMORE COUNTY
JOINT SUBDIVISION PLANNING COMMITTEE
OF THE OFFICE OF PLANNING
This Plan Was Reviewed By the JSPC on 8/4/04
With the Following Action Taken:

PLAN APPROVED

DRC # 061002C
PDM # V-221
Refinement # 1
Plan Approved Lynn Lanham
Plan Disapproved
Plan Referred to Planning Board



VICINITY MAP
SCALE : 1" = 2000'

LEGEND

EXISTING CONTOUR
SLOPES > 25 %
EXISTING STREAM
EXISTING WOODS LINE
SOILS LINE — CcB2 / GoC2
HOUSE SITE
WELL AREA — EX: ⊙ O PROP.
PERC TEST — FAILED PASSED
PROP. SEPTIC AREA
FOREST BUFFER EASEMENT
FOREST CONSERVATION EASEMENT
100 YR. W.S.EL.
1' FREEBOARD
PROPOSED 100 YR. FLOOD PLAIN & DRAINAGE AND UTILITY EASEMENT

1ST REFINEMENT
PRELIMINARY PLAN

RECEIVED
AUG - 4 2004
OFFICE OF PLANNING

"LONG SHADOW"

"HOUSE LOT" AND "LOT 3"
(PLAT RECORDING 39/108)

5TH ELECTION DISTRICT BALTO. COUNTY MD
AND HAMPSTEAD DISTRICT, CARROLL COUNTY, MD

SCALE : 1" = 100'
DATE : 06/21/2003
REV. : 10/14/2003
REV. : 06/10/2004 REV. W.Q. FACILITY

REASON FOR FIRST REFINEMENT

AS PER APPROVED DRC CASE 061002C A REFINEMENT TO THE PRELIMINARY PLAN AND "PLAT OF LONG SHADOW" (RECORDED IN PLAT BOOK 39 FOLIO 108) HAS BEEN APPROVED TO RESUBDIVIDED THE EXISTING "HOUSE LOT" AND LOT 3 INTO FOUR (4) LOTS PURSUANT TO THE GRANDFATHERED R.D.P. ZONING AND THE J.S.P.C. PROCESS.

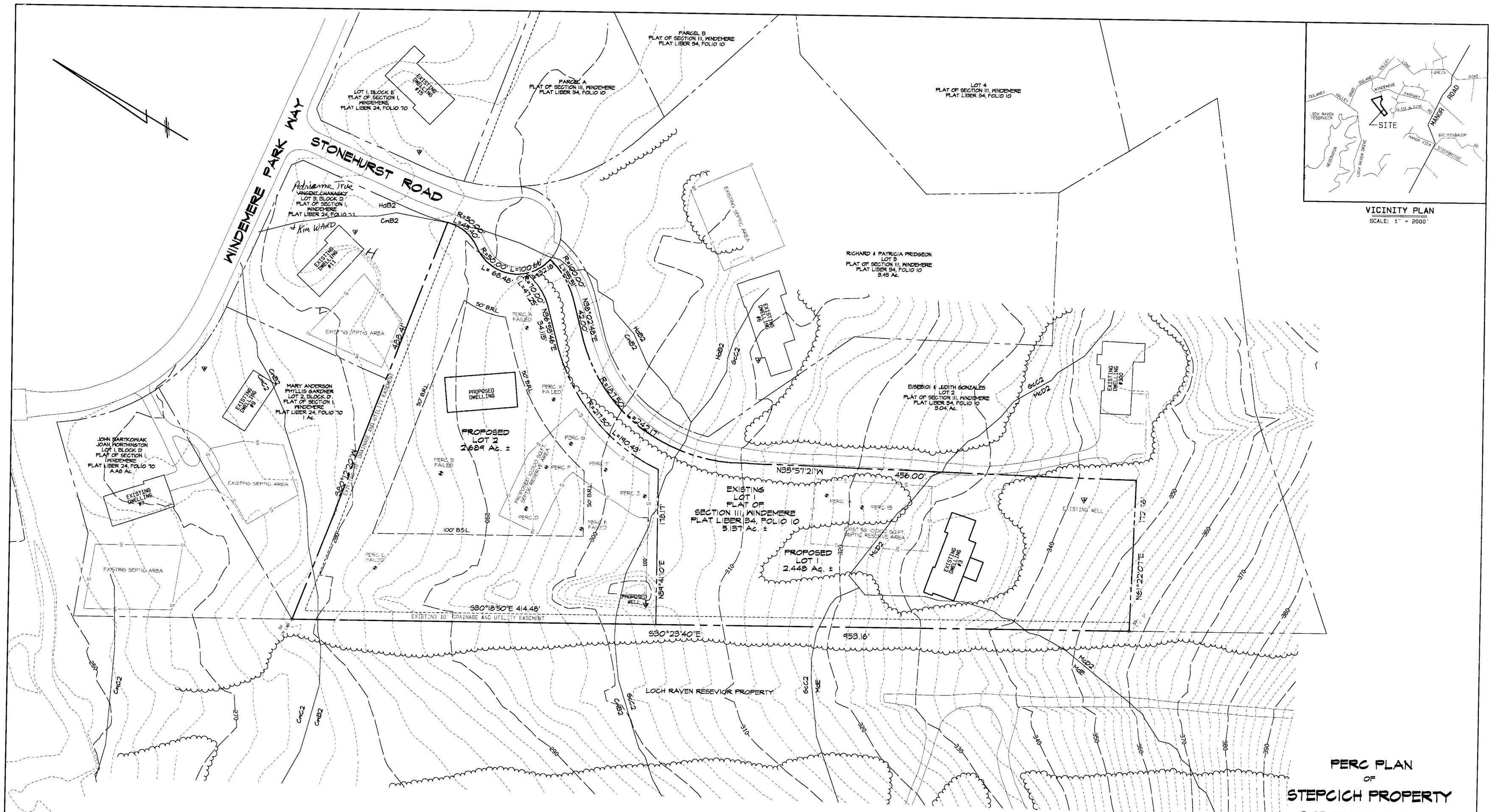
OWNER
CHARLES W. STAFFORD &
LAURIE E. STAFFORD
5012 MOUNT CARMEL ROAD
DEED: 16539/9
TAX ACCT.#1700006574

McKEE & ASSOCIATES, INC.
Engineering – Land Planning – Land Surveying
Natural Resource Planning – Real Estate Development
5 SHAWAN ROAD, Suite 1 COCKEYSVILLE, MARYLAND 21030
TELEPHONE: (410) 527-1555 FACSIMILE: (410) 527-1563

RECEIVED
AUG 4 2004
DEPT. OF PERMITS AND DEVELOPMENT MANAGEMENT

Pet. Ex. #25

Pet. Ex. #23 + #24



VICINITY PLAN
SCALE: 1" = 2000'

NOTES

1. CENSUS TRACT 4112.02 A.D.C. MAP & GRID 20-C-7
   WATERSHED LOCH RAVEN SUBSEWERSHED NONE
   SCHOOL DISTRICT RIDGLEY/DULANEY REGIONAL PLANNING DISTRICT 310
2. THE SUBJECT PROPERTY IS NOT LOCATED IN THE CHESAPEAKE BAY CRITICAL AREA.
3. CONTOURS SHOWN HEREON WERE TAKEN FROM BALTIMORE COUNTY GIS TILE 53-A2.

SOIL TYPES & LIMITATIONS

TYPE	SOIL SERIES	HOMESITES	SEPTIC FILTER FIELD	STREETS PARKING
McD2, MaE	MANOR	SEVERE	SEVERE	SEVERE
GcC2	GLENELG	MODERATE	MODERATE	SEVERE
CwB2	CONESTOGA	SLIGHT	SLIGHT	MODERATE
CwC2	CONESTOGA	MODERATE	MODERATE	SEVERE

GRAPHIC SCALE 1"=50'
3/8/4 0 3/8/4 50 3/4 100 3/8/8/4

REVISION	DATE
MOVE WELL LOCATION	05-16-03
REVISE SEPTIC AREA	05-12-03
REVISE SEPTIC AREA	03-04 03
ADD FAILED PERCS AND REVISE SEPTIC AREA	02-02-03

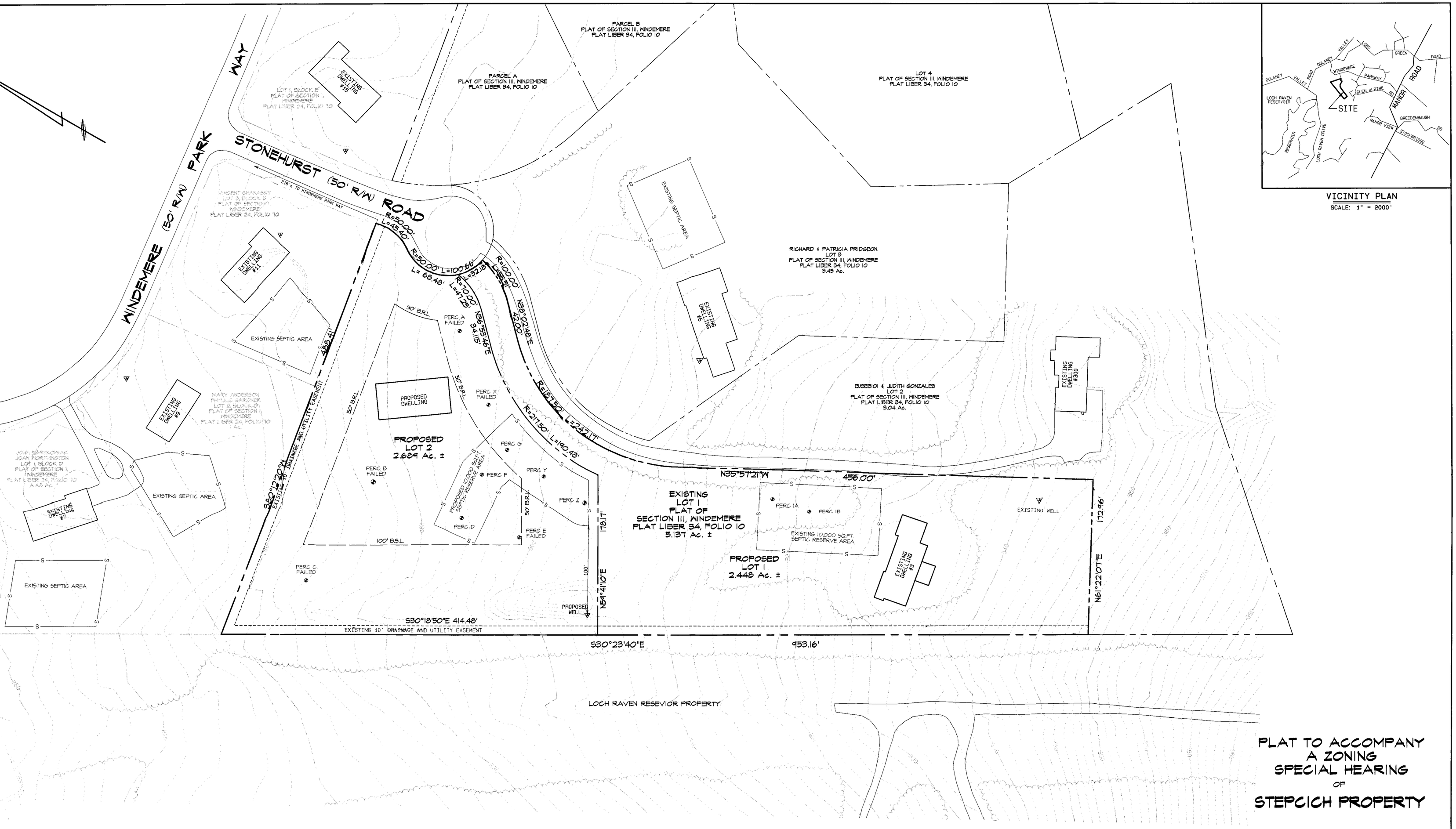
PERC PLAN
OF
STEPCICH PROPERTY
3 STONEHURST ROAD

Deed Ref: S.M. No. 10085 folio 712
Tax Account No.: 1600003598
Zoned RC 4, MAP NE 16-D
Tax Map 53; Grid 8; Parcel 60

11th ELECTION DISTRICT
6th COUNCILMANIC DISTRICT
SCALE: 1"=50' DATE: OCTOBER 10, 2002

150
BRIAN DIETZ
PROFESSIONAL LAND SURVEYOR #21080
7867 OAKDALE AVENUE
BALTIMORE MD 21237
PH 410-686-1198, FAX 410-682-6021
TECHNICIAN

PEI EXH 15



VICINITY PLAN
SCALE: 1" = 2000'

PLAT TO ACCOMPANY A ZONING SPECIAL HEARING OF STEPCICH PROPERTY

NOTES

1. CENSUS TRACT 4112.02 A.D.C. MAP & GRID 20-C-7
   WATERSHED LOCH RAVEN SUBSEWERSHED NONE
   SCHOOL DISTRICT RIDGLEY/DULANEY REGIONAL PLANNING DISTRICT 310
2. CONTOURS SHOWN HEREON WERE TAKEN FROM BALTIMORE COUNTY GIS TILE 53-A2.
3. 200' SCALE ZONING MAP No. 53-A-2.
4. THIS SITE IS SERVICED BY WELL AND SEPTIC.
5. NO PRIOR ZONING CASES.
6. ZONING IN 1970 WAS RSC
   ZONING IN 1980-2004 IS RC-4
   ZONING IN 2004 TO PRESENT IS RC-6

GRAPHIC SCALE 1"=50'
0 50 100 150

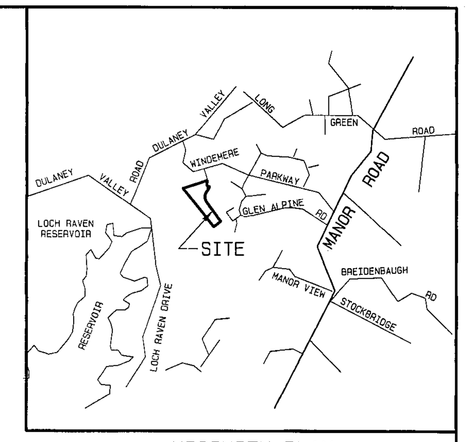
11th ELECTION DISTRICT
6th COUNCILMANIC DISTRICT
SCALE: 1"=50' DATE: FEBRUARY 3, 2006

BRIAN DIETZ
PROFESSIONAL LAND SURVEYOR #21080
7867 OAKDALE AVENUE
BALTI MORE MD 21237
PH 410-686-1198, FAX 410-682-6021

REVISION	DATE

PLOT DATE: 1/9/2007	TECHNICIAN:	FILE NAME: J:\stonehurst\STONEwork.pro

PRI EXHIB



VICINITY PLAN
SCALE: 1" = 2000'

50' WIDE DRAINAGE AND UTILITY RESERVATION

NAD 83-91

SAMUEL ROTHBLUM
CHARLENE ROTHBLUM
LOT 1, BLOCK E
PLAT OF SECTION 1,
WINDEMERE
PLAT LIBER 24, FOLIO 70
0.82 Ac.

EXISTING DWELLING #15

PARCEL B
PLAT OF SECTION III, WINDEMERE
PLAT LIBER 34, FOLIO 10

SAMUEL ROTHBLUM
CHARLENE ROTHBLUM
PARCEL A
PLAT OF SECTION III, WINDEMERE
PLAT LIBER 34, FOLIO 10
0.8 Ac.

LOT 4
PLAT OF SECTION III, WINDEMERE
PLAT LIBER 34, FOLIO 10

WINDEMERE PARK WAY

STONEHURST ROAD

R=50.00'
L=45.38'
Chd=N04°59'46"E
43.84'

R=50.00'

R=100.00'
L=59.81'
Chd=N29°32'57"E
58.90'

R=50.00'
L=68.47'
Chd=N63°20'02"W
63.25'

R=352.18'
L=41.29'
N36°59'46"E
41.15'

N45°27'06"E
42.00'

R=1850'
L=242.17'
Chd=N08°27'01"E 225.64'

R=2150'
L=190.49'
Chd=N00°22'04"E 184.41'

N28°33'03"W 456.00'

RICHARD & PATRICIA PRIDGEON
LOT 3
PLAT OF SECTION III, WINDEMERE
PLAT LIBER 34, FOLIO 10
3.45 Ac.

EXISTING DWELLING #9

EXISTING DWELLING #11

ADRIENNE TRUE
KIM WARD
LOT 3, BLOCK D
PLAT OF SECTION 1,
WINDEMERE
PLAT LIBER 24, FOLIO 70
0.72 Ac.

489.41'

S30°17'10"W

EXISTING 10' DRAINAGE AND UTILITY EASEMENT

EXISTING DWELLING #3

CRAIG LAUDEMAN
MARY LAUDEMAN
LOT 2, BLOCK D
PLAT OF SECTION 1,
WINDEMERE
PLAT LIBER 24, FOLIO 70
1.0 Ac.

50' B.R.L.

PROPOSED DWELLING

PROPOSED
LOT 2
2.689 Ac. ±

50' B.R.L.

50' B.R.L.

100' B.R.L.

EUSEBIO I & JUDITH GONZALES
LOT 2
PLAT OF SECTION III, WINDEMERE
PLAT LIBER 34, FOLIO 10
3.04 Ac.

EXISTING DWELLING #300

EXISTING
LOT 1
PLAT OF
SECTION III, WINDEMERE
PLAT LIBER 34, FOLIO 10
5.137 Ac. ±

PROPOSED
LOT 1
2.448 Ac. ±

178.17'

N54°41'10"E

EXISTING DWELLING #13

172.96'

N61°26'57"E

S30°18'50"E 414.48'

EXISTING 10' DRAINAGE AND UTILITY EASEMENT

S30°18'50"E 953.16'

LOCH RAVEN RESERVOIR PROPERTY

NOTES

1. CENSUS TRACT 4112.02 — A.D.C. MAP & GRID 20-C-7
   WATERSHED LOCH RAVEN — SUBSEWERSHED NONE
   SCHOOL DISTRICT RIDGLEY/DULANEY — REGIONAL PLANNING DISTRICT 310
2. THE SUBJECT PROPERTY IS NOT LOCATED IN THE CHESAPEAKE BAY CRITICAL AREA.
3. ADJOINING ROADS AND BUILDINGS SHOWN HEREON WERE TAKEN FROM BALTIMORE COUNTY GIS TILE 53-A2.
4. SECTION III, WINDEMERE WAS ORIGINALLY APPROVED BY THE BALTIMORE COUNTY PLANNING BOARD ON 2-19-1970. AT THAT TIME THIS SITE WAS ZONED RSC.

DENSITY CALCULATIONS
SECTION III, WINDEMERE
PLAT LIBER 34, FOLIO 10

GROSS AREA = 19.035 Ac.±
RSC DENSITY = MIN. 1 Ac. LOT
LOTS PERMITTED = 19
LOTS CREATED PER RECORD PLAT = 6
REMAINING DENSITY UNITS = 13
LOTS PROPOSED AS PER THIS AMENDMENT = 1

GRAPHIC SCALE 1"=50'
0 50 100 150

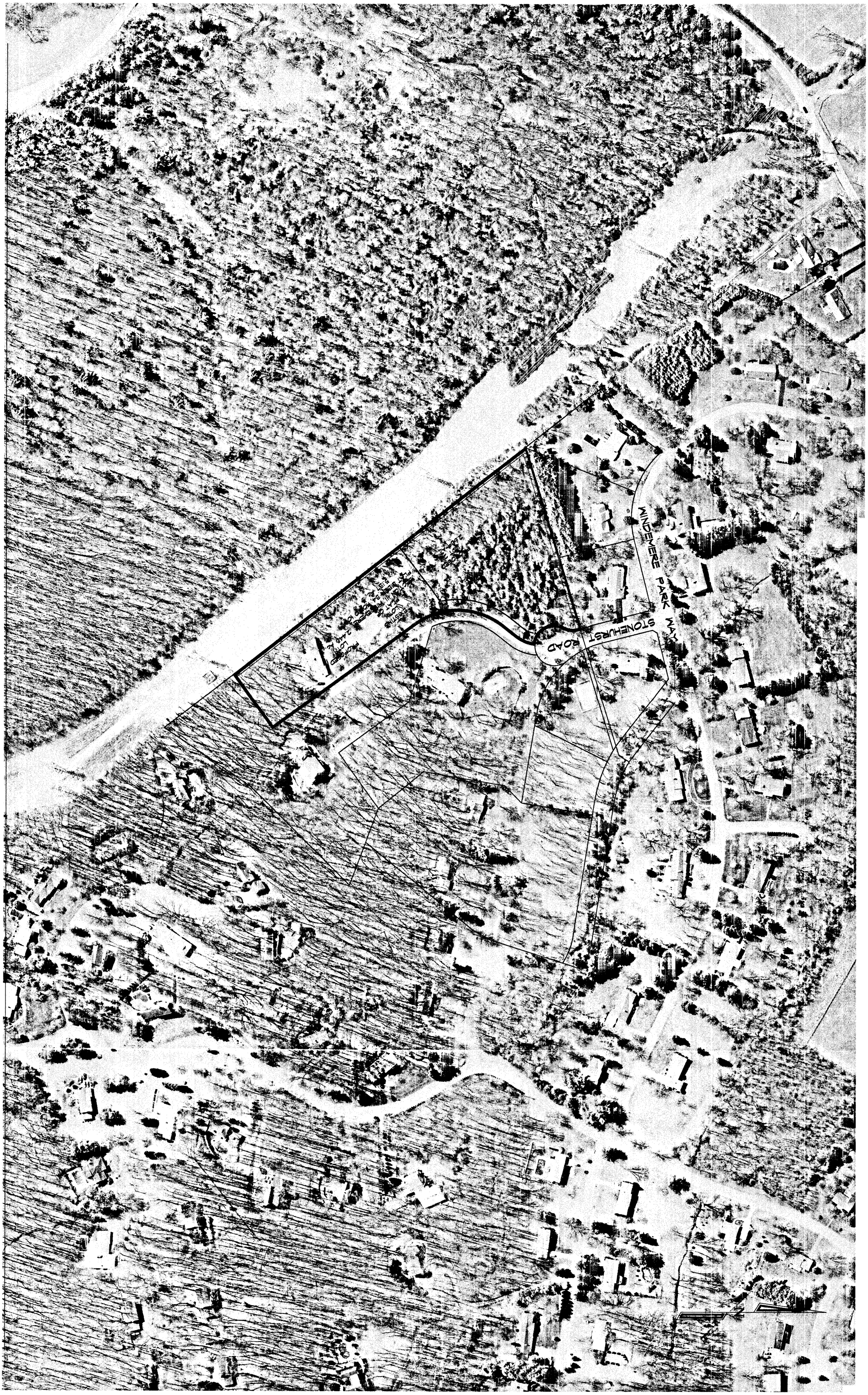
AMENDED J.S.P.C. PLAN
OF
SECTION III, WINDEMERE
PLAT LIBER 34, FOLIO 10

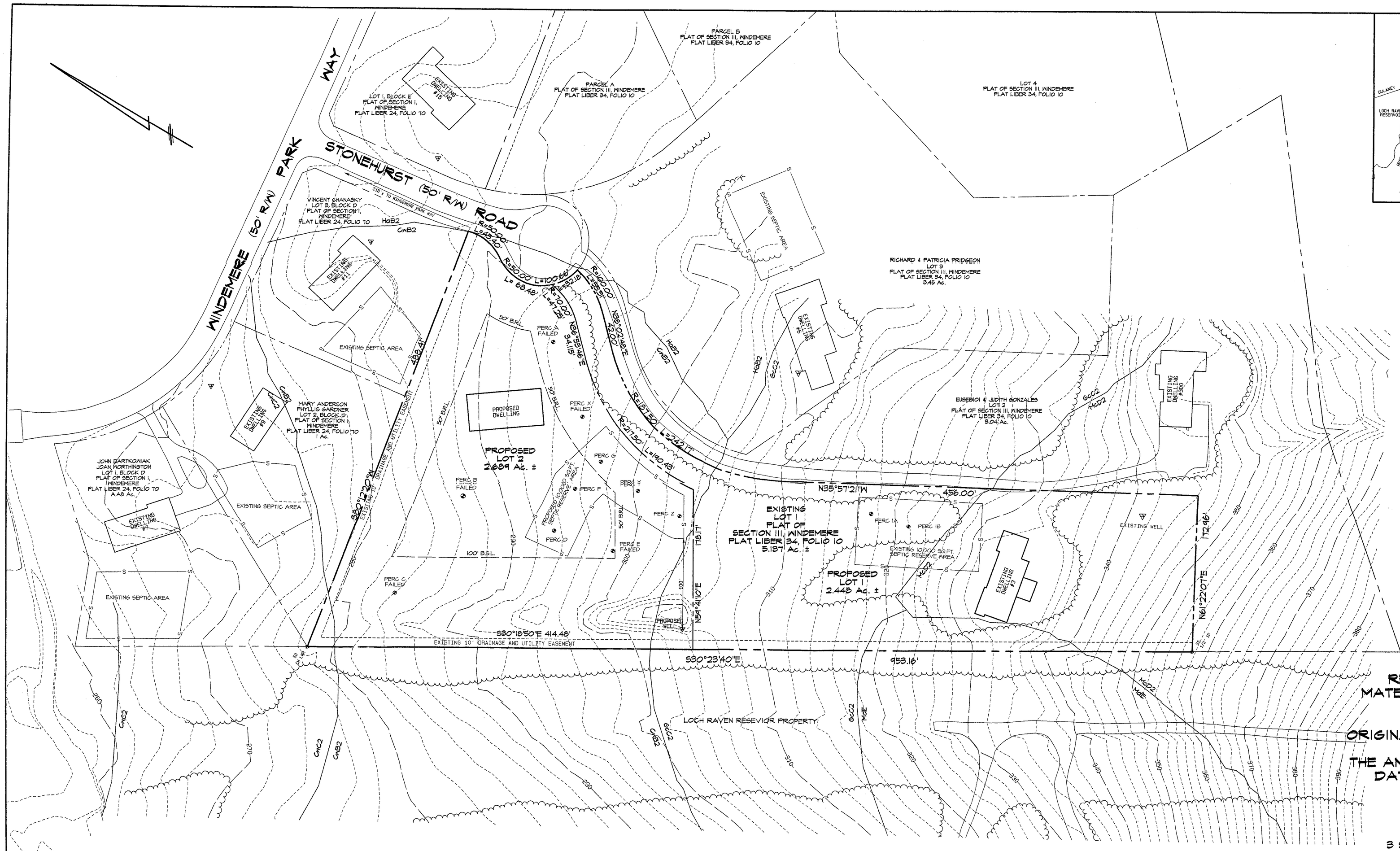
11th ELECTION DISTRICT
6th COUNCILMANIC DISTRICT
SCALE: 1"=50' DATE: OCTOBER 10, 2003

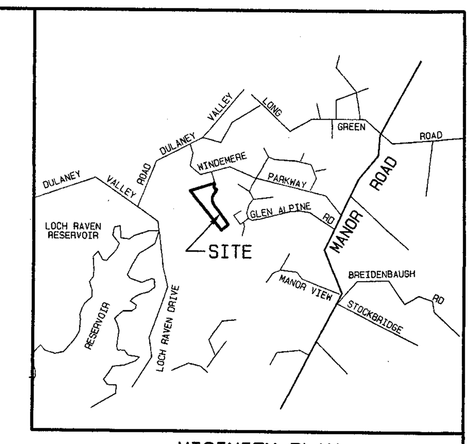
BRIAN R. DIETZ
PROFESSIONAL LAND SURVEYOR #21080
7867 OAKDALE AVENUE
BALTIMORE MD 21237
PH 410-686-1198, FAX 410-682-6021

REVISION	DATE	PLOT DATE: 5/9/2005	TECHNICIAN:	FILE NAME: D:\JOBS\stonehurst\STONEJspc.plo

MPP FXH 4/1


WINDEMERE PARK WAY
STONEHURST ROAD





VICINITY PLAN
SCALE: 1" = 2000'

RECEIVED
MAR 14 2006
DEPT. OF PERMITS AND DEVELOPMENT MANAGEMENT

REQUEST FOR A MATERIAL AMENDMENT TO THE JSPC PLAN ORIGINAL RECORDED 1970 AND TO THE AMENDED JSPC PLAN DATED 10-10-2002

OF

SECTION III WINDEMERE

3 STONEHURST ROAD

Deed Ref: S.M. No. 10085 folio 712
Tax Account No.: 1600003598
Zoned RC 6, MAP 053-A-2
Tax Map 53; Grid 8; Parcel 60

11th ELECTION DISTRICT
6th COUNCILMANIC DISTRICT
SCALE: 1"=50' DATE: MARCH 13, 2006

NOTES

1. CENSUS TRACT 4112.02 A.D.C. MAP & GRID 20-C-7
   WATERSHED LOCH RAVEN SUBSEWERSHED NONE
   SCHOOL DISTRICT RIDGLEY/DULANEY REGIONAL PLANNING DISTRICT 310
2. CONTOURS SHOWN HEREON WERE TAKEN FROM BALTIMORE COUNTY GIS TILE 53-A2.
3. 200' SCALE ZONING MAP No. 53-A-2.
4. THIS SITE IS SERVICED BY WELL AND SEPTIC.
5. NO PRIOR ZONING CASES.
6. ZONING IN 1970 WAS RSC
   ZONING IN 1980-2004 IS RC-4
   ZONING IN 2004 TO PRESENT IS RC-6

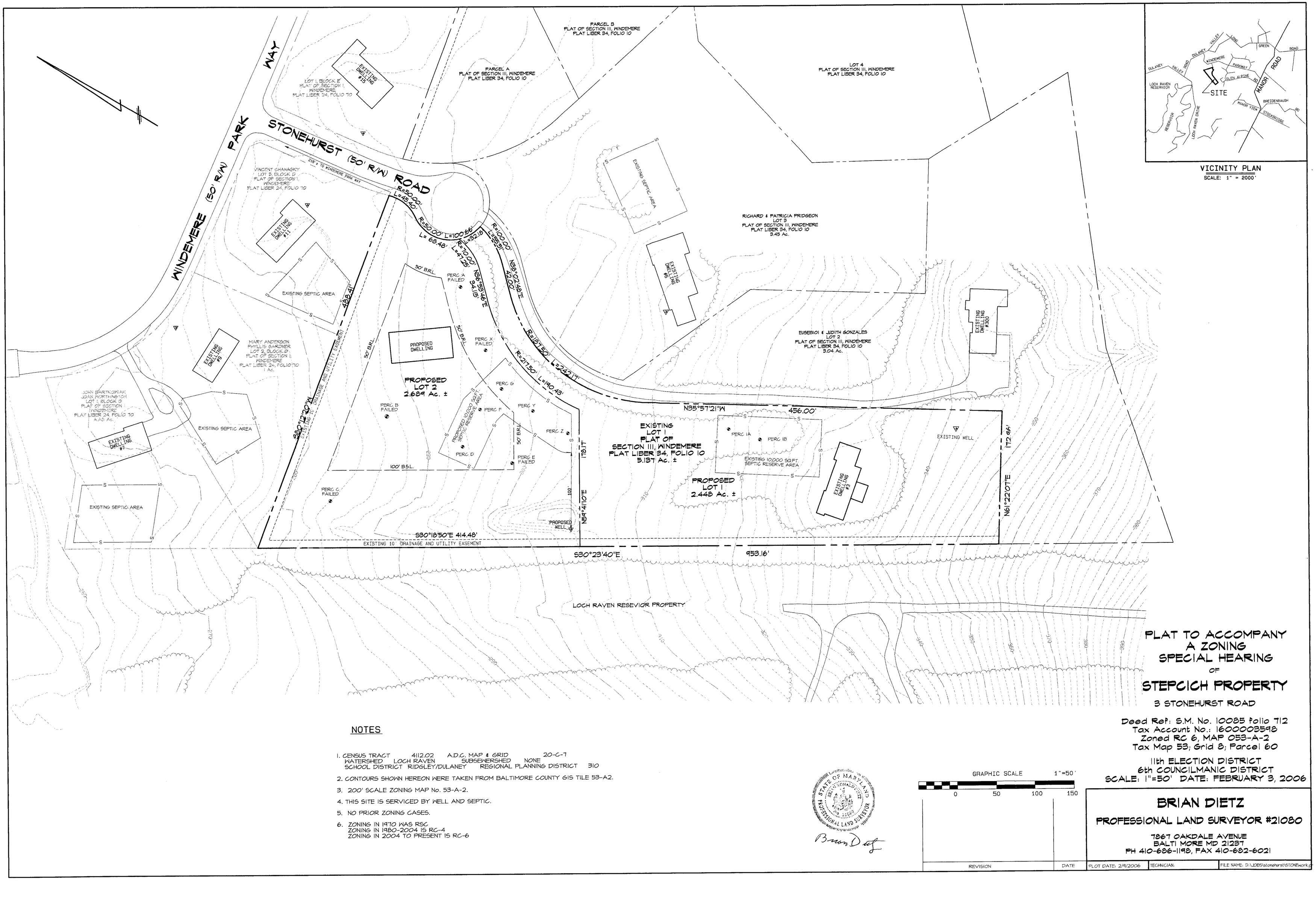
STATE OF MARYLAND BRIAN RONALD DIETZ No. 21080 PROFESSIONAL LAND SURVEYOR

GRAPHIC SCALE 1"=50'
0 50 100 150

BRIAN R. DIETZ
PROFESSIONAL LAND SURVEYOR #21080
7867 OAKDALE AVENUE
BALTIMORE MD 21237
PH 410-686-1198, FAX 410-682-6021

REVISION	DATE

PLOT DATE: 3/13/2006 | TECHNICIAN: | FILE NAME: J:\stonehurst\STONEwork.pro



VICINITY PLAN
SCALE: 1" = 2000'

PLAT TO ACCOMPANY A ZONING SPECIAL HEARING OF STEPCICH PROPERTY

3 STONEHURST ROAD

Deed Ref: S.M. No. 10085 Folio 712
Tax Account No.: 1600003598
Zoned RC 6, MAP 053-A-2
Tax Map 53; Grid 8; Parcel 60

11th ELECTION DISTRICT
6th COUNCILMANIC DISTRICT
SCALE: 1"=50' DATE: FEBRUARY 3, 2006

NOTES

1. CENSUS TRACT 4112.02 A.D.C. MAP & GRID 20-C-7
   WATERSHED LOCH RAVEN SUBSEWERSHED NONE
   SCHOOL DISTRICT RIDGLEY/DULANEY REGIONAL PLANNING DISTRICT 310
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   ZONING IN 2004 TO PRESENT IS RC-6

STATE OF MARYLAND
BRIAN DIETZ
No. 21080
PROFESSIONAL LAND SURVEYOR

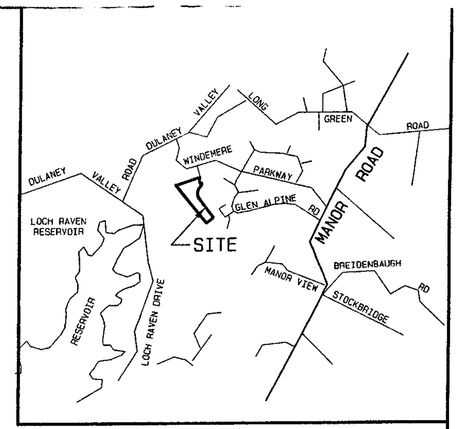
GRAPHIC SCALE 1"=50'
0 50 100 150

REVISION	DATE

PLOT DATE: 2/9/2006 | TECHNICIAN: | FILE NAME: D:\JOBS\stonehurst\STONEwork.dwg

BRIAN DIETZ
PROFESSIONAL LAND SURVEYOR #21080
7867 OAKDALE AVENUE
BALTIMORE MD 21237
PH 410-686-1198, FAX 410-682-6021

PETITIONER'S EXHIBIT NO. 1



VICINITY PLAN
SCALE: 1" = 2000'

50' WIDE DRAINAGE AND UTILITY RESERVATION

NAD 83-91

LOT 4
PLAT OF SECTION III, WINDEMERE
PLAT LIBER 34, FOLIO 10

PARCEL B
PLAT OF SECTION III, WINDEMERE
PLAT LIBER 34, FOLIO 10

PARCEL A
PLAT OF SECTION III, WINDEMERE
PLAT LIBER 34, FOLIO 10

LOT 1, BLOCK E
PLAT OF SECTION 1,
WINDEMERE
PLAT LIBER 24, FOLIO 70

EXISTING DWELLING #121

WINDEMERE PARK WAY

STONEHURST ROAD

VINCENT CHANASKY
LOT 3, BLOCK D
PLAT OF SECTION 1,
WINDEMERE
PLAT LIBER 24, FOLIO 70

EXISTING DWELLING #131

R=50.00'
L=45.'
Chd=N09°15'46"E
43.84'

R=50.00'

R=50.00'
L=68.47'
Chd=N03°20'02"W
63.25'

R=100.00'
L=47.13'
N86°39'36"E
34.115'

R=100.00'
L=398.51'
Chd=N24°39'51"E
396.02'

N45°21'06"E
42.00'

R=217.50'
L=180.43'
Chd=N00°22'09"E 174.41'

R=181.50'
L=242.17' Chd=N08°27'01"E 225.69'

50' B.R.L.

488.41'

S80°11'10"W

EXISTING 10' DRAINAGE AND UTILITY EASEMENT

MARY ANDERSON
PHYLLIS GARDNER
LOT 2, BLOCK D
PLAT OF SECTION 1,
WINDEMERE
PLAT LIBER 24, FOLIO 70
1 Ac.

EXISTING DWELLING #9

PROPOSED DWELLING

PROPOSED
LOT 2
2.689 Ac. ±

100' B.S.L.

RICHARD & PATRICIA PRIDSEON
LOT 3
PLAT OF SECTION III, WINDEMERE
PLAT LIBER 34, FOLIO 10
3.45 Ac.

EXISTING DWELLING #6

EUSEBIOI & JUDITH GONZALES
LOT 2
PLAT OF SECTION III, WINDEMERE
PLAT LIBER 34, FOLIO 10
3.04 Ac.

EXISTING DWELLING #300

N28°33'03"W 456.00'

EXISTING
LOT 1
PLAT OF
SECTION III, WINDEMERE
PLAT LIBER 34, FOLIO 10
5.137 Ac. ±

PROPOSED
LOT 1
2.448 Ac. ±

EXISTING DWELLING #4

178.17'

N59°41'10"E

172.96'

N61°26'57"E

S80°18'50"E 414.48'

EXISTING 10' DRAINAGE AND UTILITY EASEMENT

S80°18'50"E 953.16'

LOCH RAVEN RESEVIOR PROPERTY

NOTES

1. CENSUS TRACT 4112.02 A.D.C. MAP & GRID 20-C-7
   WATERSHED LOCH RAVEN SUBSEWERSHED NONE
   SCHOOL DISTRICT RIDGLEY/DULANEY REGIONAL PLANNING DISTRICT 310
2. THE SUBJECT PROPERTY IS NOT LOCATED IN THE CHESAPEAKE BAY CRITICAL AREA.
3. ADJOINING ROADS AND BUILDINGS SHOWN HEREON WERE TAKEN FROM BALTIMORE COUNTY GIS TILE 53-A2.
4. SECTION III, WINDEMERE WAS ORIGINALLY APPROVED BY THE BALTIMORE COUNTY PLANNING BOARD ON 2-19-1970. AT THAT TIME THIS SITE WAS ZONED RSC.

DENSITY CALCULATIONS
SECTION III, WINDEMERE
PLAT LIBER 34, FOLIO 10

GROSS AREA = 19.035 Ac.±
RSC DENSITY = MIN. 1 Ac. LOT
LOTS PERMITTED = 19
LOTS CREATED PER RECORD PLAT = 6
REMAINING DENSITY UNITS = 13
LOTS PROPOSED AS PER THIS AMENDMENT = 1

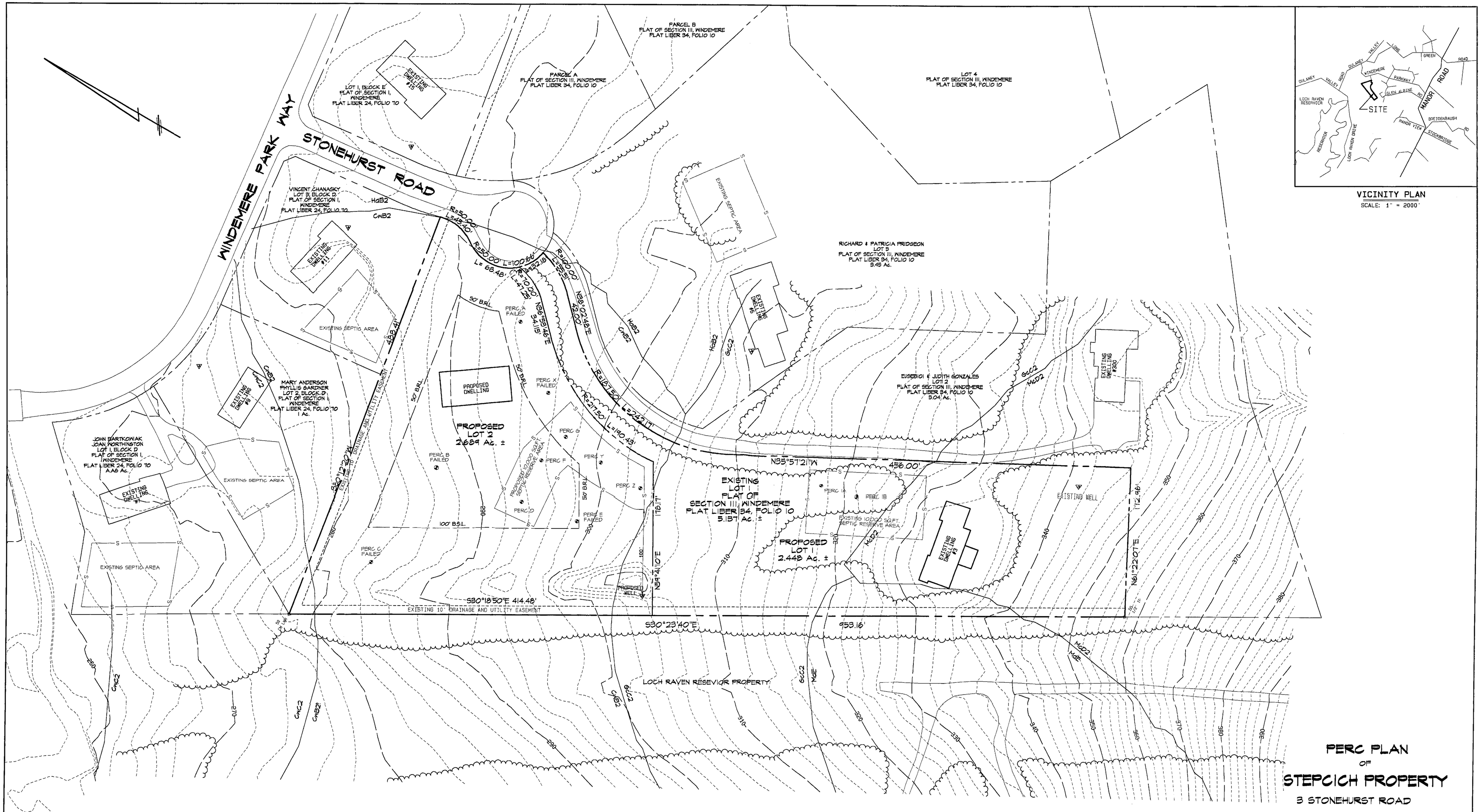
GRAPHIC SCALE 1"=50'
0 50 100 150

AMENDED J.S.P.C. PLAN
OF
SECTION III, WINDEMERE
PLAT LIBER 34, FOLIO 10
11th ELECTION DISTRICT
6th COUNCILMANIC DISTRICT
SCALE: 1"=50' DATE: OCTOBER 10, 2003

BRIAN R. DIETZ
PROFESSIONAL LAND SURVEYOR #21080
7867 OAKDALE AVENUE
BALTIMORE MD 21237
PH 410-686-1198, FAX 410-682-6021

REVISION	DATE	PLOT DATE: 1/28/2004	TECHNICIAN:	FILE NAME: G:\BRIANSTONE\jspc.pro

Pet EXH A



VICINITY PLAN

SCALE: 1" = 2000'

NOTES

1. CENSUS TRACT 4112.02 A.D.C. MAP & GRID 20-C-7
   WATERSHED LOCH RAVEN SUBSEWERSHED NONE
   SCHOOL DISTRICT RIDGLEY/DULANEY REGIONAL PLANNING DISTRICT 310
2. THE SUBJECT PROPERTY IS NOT LOCATED IN THE CHESAPEAKE BAY CRITICAL AREA.
3. CONTOURS SHOWN HEREON WERE TAKEN FROM BALTIMORE COUNTY GIS TILE 53-A2.

SOIL TYPES & LIMITATIONS

TYPE	SOIL SERIES	HOMESITES	SEPTIC FILTER FIELD	STREETS PARKING
McD2, MdE	MANOR	SEVERE	SEVERE	SEVERE
GcC2	GLENELG	MODERATE	MODERATE	SEVERE
CwB2	CONESTOGA	SLIGHT	SLIGHT	MODERATE
CwC2	CONESTOGA	MODERATE	MODERATE	SEVERE

GRAPHIC SCALE 1"=50'

3/3/4 0 3/3/4 50 3/4 100 3/3/3/4

REVISION	DATE
MOVE WELL LOCATION	05-16-03
REVISE SEPTIC AREA	05-12-03
REVISE SEPTIC AREA	03-04-03
ADD FAILED PERCS AND REVISE SEPTIC AREA	02-02-03

PERC PLAN
OF
STEPCICH PROPERTY
3 STONEHURST ROAD

Deed Ref: S.M. No. 10085 folio 712
Tax Account No.: 1600003598
Zoned RC 4, MAP NE 16-D
Tax Map 53; Grid 8; Parcel 60

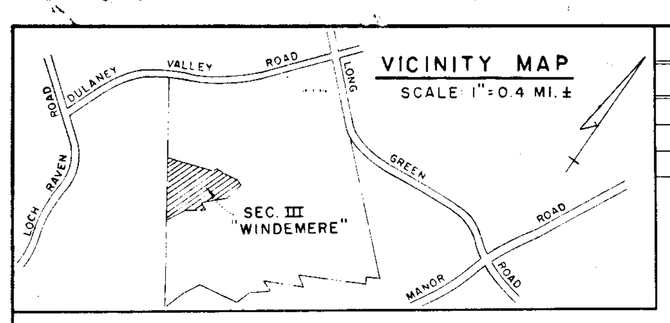
11th ELECTION DISTRICT
6th COUNCILMANIC DISTRICT
SCALE: 1"=50' DATE: OCTOBER 10, 2002

150

BRIAN DIETZ
PROFESSIONAL LAND SURVEYOR #21080
7867 OAKDALE AVENUE
BALTIMORE MD 21237
PH 410-686-1198, FAX 410-682-6021

TECHNICIAN

DX16



CURVE DATA FOR ROAD ALIGNMENT						
NO.	RADIUS	ARC (L)	Δ	TAN	L.C.B	CHORD
A	225.00'	59.79'	15°-13'-28"	30.07'	S 25°-14'-34"E	59.61'
B	50.00'	217.01'	248°-40'-35"	73.19'	N 88°-31'-00"W	82.57'
C	50.00'	45.40'	52°-01'-13"	24.40'	S 9°-48'-40"W	43.85'

NOTES

1) UNLESS OTHERWISE SHOWN, 5 FOOT WIDE EASEMENTS FOR UTILITIES AND DRAINAGE ARE HEREBY RESERVED ALONG THE REAR AND SIDE LINES OF ALL LOTS.

2) THE STREETS AND/OR ROADS AS SHOWN HEREON AND MENTION THEREOF IN DEEDS ARE FOR THE PURPOSE OF DESCRIPTION ONLY AND THE SAME ARE NOT INTENDED TO BE DEDICATED TO PUBLIC USE. THE FEE SIMPLE TITLE THEREOF IS EXPRESSLY RESERVED IN THE GRANTORS OF THE DEED TO WHICH THIS PLAT IS ATTACHED THEIR HEIRS AND ASSIGNS.

3) THE BEARINGS AND COORDINATES SHOWN HEREON ARE REFERRED TO AN ASSUMED GRID.

O.T.G. 34 FOLIO 10
RECEIVED for Record
FEB 24 1970 A.M. P.M.
same day recorded in liber O.T.G. No. _____ folio _____ One of the _____ Records of Baltimore County and examined, per

SECTION III
"WINDEMERE"
OWNED AND DEVELOPED
BY
PHILIP O. TILGHMAN REALTY COMPANY
34 W. CHESAPEAKE AVE.
TOWSON 4, MD.

11TH ELECT. DIST. BALTO. CO., MD.
SCALE: 1" = 100' NOV. 12, 1969
REVISED NOV. 14, 1969

FOR TITLE, SEE LIBER O.T.G. NO. 5011 FOLIO 540

X1-91

1169039.99

H.W.S. Extract

APPROVED FOR BALTIMORE COUNTY HEALTH DEPARTMENT
BY Donald Foos M.D. DATE 12-5-69
DEPUTY STATE AND COUNTY HEALTH OFFICER

APPROVED FOR BALTIMORE COUNTY PLANNING BOARD
BY George E. Gavrelis DATE 2/19/70
DIRECTOR

SURVEYORS CERTIFICATE
I, LEO W. RADER, A REGISTERED LAND SURVEYOR OF THE STATE OF MARYLAND, DO HEREBY CERTIFY THAT THE LAND SHOWN HEREON HAS BEEN LAID OUT, AND THE PLAT THEREOF PREPARED IN ACCORDANCE WITH THE PROVISIONS OF THE LAW RELATING TO THE SUBDIVISION OF LAND KNOWN AS HOUSE BILL #459, CHAPTER 1016 OF THE ACTS OF 1945, AND SUBSEQUENT AMENDATORY ACTS.
Leo W. Rader DATE NOV. 17, 1969
REGISTERED LAND SURVEYOR NO. 1825

OWNERS CERTIFICATE
THE REQUIREMENTS OF SECTION 72-B, ARTICLE 17 OF THE ANNOTATED CODE OF MARYLAND, (FLACK 1947 SUPPLEMENT) AS FAR AS THEY RELATE TO THE PREPARATION OF THIS PLAT HAVE BEEN COMPLIED WITH. - PHILIP O. TILGHMAN REALTY CO.
Philip O. Tilghman DATE NOV. 19, 1969
OWNER
PRESIDENT
_____ DATE _____

LEO W. RADER
REGISTERED LAND SURVEYOR
38 BELFAST ROAD
TIMONIUM, MD. CL 2-2920

HIGHWAY DEPARTMENT OF BALTIMORE COUNTY
APPROVED FOR STREET ALIGNMENT AND LOCATION
BY Thornton T. Mourning DATE 12/5/69
ROAD ENGINEER

COORDINATES		
NO.	NORTH	EAST
1	2803.05	2271.87
2	2666.66	1481.81
3	1650.56	2077.82
4	1852.00	2854.00
5	2074.00	2538.00
6	2129.30	2434.10
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9	2595.91	2805.53
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11	2679.90	2753.96
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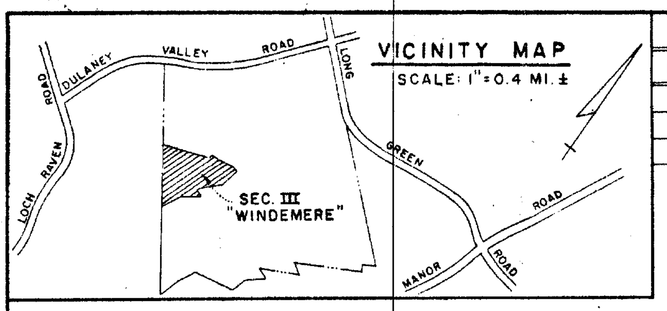
14	2807.42	2297.21
15	2631.93	2739.86
16	2730.84	2403.43
17	2775.13	2308.42
18	2758.31	2012.74
19	2704.39	2038.17
20	2630.20	2013.03
21	2628.10	1987.07
22	2706.53	1955.62
23	2749.74	1963.09
24	2562.61	1977.67
25	2580.40	1960.11
26	2533.10	1947.78
27	2550.89	1930.22
28	2369.85	1906.57
29	2327.61	1897.37
30	2611.25	2161.54

56 25
14 30
41 75

X1-91

34-10



CURVE DATA FOR ROAD ALIGNMENT

NO.	RADIUS	ARC (L)	Δ	TAN.	L.C.B	CHORD
A	225.00'	59.79'	15°-13'-28"	30.07'	S 25°-14'-34"E	59.61'
B	50.00'	217.01'	248°-40'-35"	73.19'	N 88°-31'-00"W	82.57'
C	50.00'	45.40'	52°-01'-13"	24.40'	S 9°-48'-40"W	43.85'

NOTES

1) UNLESS OTHERWISE SHOWN, 5 FOOT WIDE EASEMENTS FOR UTILITIES AND DRAINAGE ARE HEREBY RESERVED ALONG THE REAR AND SIDE LINES OF ALL LOTS.

2) THE STREETS AND/OR ROADS AS SHOWN HEREON AND MENTION THEREOF IN DEEDS ARE FOR THE PURPOSE OF DESCRIPTION ONLY AND THE SAME ARE NOT INTENDED TO BE DEDICATED TO PUBLIC USE. THE FEE SIMPLE TITLE THEREOF IS EXPRESSLY RESERVED IN THE GRANTORS OF THE DEED TO WHICH THIS PLAT IS ATTACHED THEIR HEIRS AND ASSIGNS.

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O.T.G. 34 FOLIO 10

RECEIVED for Record
FEB 24 1970 A.M. P.M.
same day recorded in liber O.T.G. No. ____ folio ____
One of the ____ Records of Baltimore County and examined, per

Quill Cuill

SECTION III
"WINDEMERE"

OWNED AND DEVELOPED
BY
PHILIP O. TILGHMAN REALTY COMPANY
34 W. CHESAPEAKE AVE.
TOWSON 4, MD.

11TH ELECT. DIST. BALTO. CO., MD.

SCALE: 1" = 100' NOV. 12, 1969
REVISED NOV. 14, 1969

FOR TITLE, SEE LIBER O.T.G. NO. 5011 FOLIO 540

Lots marked "Parcels A, B, etc." distinguish from those identified by numerals have not passed the percolation tests. Approval of the application for these parcels until a method other than that public sewerage

1169036 G
Plotting
Approved H.W.S. Ramos 12-4-69
Sewer No.
Water #

SECTION I "WINDEMERE" G.L.B. 24-70

SECTION I "WINDEMERE" G.L.B. 24-70

EXISTING FLOOD CONTROL RESERVATION

S 38°-19'-56"W 30.45'

R=300.00' L=114.93' CHD.=N62°-38'-30"W 114.23'

N 2850

E 2600

NOW OR FORMERLY BRICKETT O.T.G. 4671-386

NOW OR FORMERLY DEBAUGH R.R.G. 4213-212

R=225.00' L=82.75' CHD=N63°-04'-50"W 82.28'

E 2000

STONEHURST ROAD

CONCRETE MONUMENT BRASS DISC ON TOP MARKED "WINDEMERE LWR 1"

N73°-37'-00"W 350.66'

DRAINAGE AND UTILITY RESERVATION

R=350.00' L=151.25' CHD 105.22

N 73°37'-00" W 350.66'

313.67'

R=175.00' 75.50'

51.57'

244.70' E

EXISTING DRAINAGE AND UTILITY RESERVATION

CONCRETE MONUMENT BRASS DISC ON TOP MARKED "WINDEMERE LWR 8"

827.46'

262.96'

10' DRAINAGE & UTILITIES EASEMENT

PARCEL "A"

PARCEL "B"

RADIAL N 33°-36'-31" E 208.33'

S 16°-57'-39" W 185.32'

50' MINIMUM BUILDING SETBACK LINE

193.13'

N 25°-00'-00" E

EXISTING 10' DRAINAGE & UTILITIES EASEMENT

R=50'

SIESTA GARTH

PARCEL 'D' SEC. V IS BEING CONVEYED WITH LOT 4, SEC. III

S80°-12'-20"W 488.41'

10' DRAINAGE & UTILITIES EASEMENT

45.40'

50.38'

ROAD

P.R.C.

100.66'

90.01'

217.59'

R=225.00' L=157.80'

S 73°-02'-21" E 233.49'

33.00'

200.49'

S 53°-05'-08" W 61.89'

N 35°-12'-15"E 50.80'

R=100.00' L=55.51'

S 45°-22'-16" W 42.00'

26.34'

R=125.00' L=77.52'

S 45°-22'-16" W 42.00'

50' MINIMUM BUILDING SETBACK LINE

CONCRETE MONUMENT BRASS DISC ON TOP MARKED "WINDEMERE LWR 2"

1

2

3

4

R=187.50' L=242.17'

R=162.50' L=177.00'

N65°-39'-57"W 201.96'

S16°-57'-39"W 214.41'

S31°-45'-48"E 150.45'

"LOT I BLOCK C" SECTION V, "WINDEMERE" O.T.G. 33-123

361.11'

N 46°-10'-31" E

10' DRAINAGE & UTILITIES EASEMENT

S30°-23'-40"E 933.16'

MAYOR AND CITY COUNCIL OF BALTIMORE

50' MIN. BLDG. SETBACK LINE

N28°-37'-53"W 225.00'

N 28°-37'-53"W 456.00'

N6°-22'-07"E 175.00'

93.00' N61°-58'-32"W

117.71' 210.71'

CONCRETE MONUMENT BRASS DISC ON TOP MARKED "WINDEMERE LWR 4"

EXISTING 10' DRAINAGE & UTILITIES EASEMENT

N 51°-59'-08" E 360.47'

N6°-22'-07"E 172.96'

1178.00'

224.84'

N 41°-10'-24"E 267.61'

E 2400

N 1700

N 1650.56

E 2071.82

CONCRETE MONUMENT BRASS DISC ON TOP MARKED "WINDEMERE LWR 3"

COORDINATES

NO.	NORTH	EAST
1	2803.05	2271.87
2	2666.66	1481.81
3	1650.56	2077.82
4	1852.00	2254.00
5	2074.00	2538.00
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10	2642.64	2827.33
11	2679.90	2753.96
12	2778.81	2417.53
13	2831.30	2316.07
14	2807.42	2297.21
15	2831.93	2739.86
16	2730.84	2403.43
17	2775.13	2308.42
18	2758.31	2012.74
19	2704.39	2038.17
20	2630.20	2013.03
21	2628.10	1987.07
22	2706.53	1955.62
23	2749.74	1963.09
24	2562.61	1977.67
25	2580.40	1960.11
26	2533.10	1947.78
27	2550.89	1930.22
28	2369.85	1906.57
29	2327.61	1897.37
30	2611.25	2161.54

APPROVED FOR BALTIMORE COUNTY HEALTH DEPARTMENT
BY Donald J. Roop M.D. DATE 12-5-69
DEPUTY STATE AND COUNTY HEALTH OFFICER

APPROVED FOR BALTIMORE COUNTY PLANNING BOARD
BY George E. Gavrelis DATE 2/10/70
DIRECTOR

SURVEYORS CERTIFICATE
I, LEO W. RADER, A REGISTERED LAND SURVEYOR OF THE STATE OF MARYLAND, DO HEREBY CERTIFY THAT THE LAND SHOWN HEREON HAS BEEN LAID OUT, AND THE PLAT THEREOF PREPARED IN ACCORDANCE WITH THE PROVISIONS OF THE LAW RELATING TO THE SUBDIVISION OF LAND KNOWN AS HOUSE BILL #459, CHAPTER 1016 OF THE ACTS OF 1945, AND SUBSEQUENT AMENDATORY ACTS.
Leo W. Rader DATE Nov. 17, 1969
REGISTERED LAND SURVEYOR NO. 1825

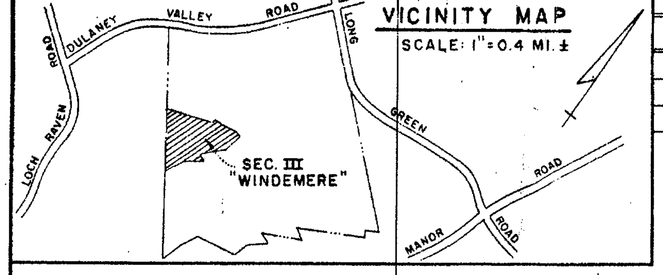
OWNERS CERTIFICATE
THE REQUIREMENTS OF SECTION 72-B, ARTICLE 17 OF THE ANNOTATED CODE OF MARYLAND, (FLACK 1947 SUPPLEMENT) AS FAR AS THEY RELATE TO THE PREPARATION OF THIS PLAT HAVE BEEN COMPLIED WITH. - PHILIP O. TILGHMAN REALTY CO.
Philip O. Tilghman DATE NOV. 19, 1969
OWNER
PRESIDENT
DATE

LEO W. RADER
REGISTERED LAND SURVEYOR
38 BELFAST ROAD
TIMONIUM, MD. CL 2-2920

HIGHWAY DEPARTMENT OF BALTIMORE COUNTY
APPROVED FOR STREET ALIGNMENT AND LOCATION
BY Thornton T. Mourning DATE 12/5/69
ROAD ENGINEER

P 5415

EXH 1



CURVE DATA FOR ROAD ALIGNMENT						
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O.T.G. 34 FOLIO 10
RECEIVED for Record
FEB 24 1970 A.M. P.M.
same day recorded in liber O.T.G. No. ____ folio ____ One of the ____ Records of Baltimore County and examined, per

SECTION III
"WINDEMERE"

OWNED AND DEVELOPED
BY
PHILIP O. TILGHMAN REALTY COMPANY
34 W. CHESAPEAKE AVE.
TOWSON 4, MD.

11TH ELECT. DIST. BALTO. CO., MD.

SCALE: 1"= 100' NOV. 12, 1969
REVISED NOV. 14, 1969

FOR TITLE, SEE LIBER O.T.G. NO. 5011 FOLIO 540

Tax parcels "Parcels A, B, etc." distinguished from those identified by numerals have not received the necessary approval of the Health Department for their parcels will be served by other than public sewerage systems.

W.A. No. 1169039-G
Plat No. 21 Rec'd
Plan No. 22
Examined H.W.S. Examined 12-4-69
Signed

APPROVED FOR BALTIMORE COUNTY HEALTH DEPARTMENT
BY Donald J. Roop M.D. DATE 12-5-69
DEPUTY STATE AND COUNTY HEALTH OFFICER

APPROVED FOR BALTIMORE COUNTY PLANNING BOARD
BY George E. Gavrelis DATE 2/19/70
DIRECTOR

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Leo W. Rader DATE Nov. 17, 1969
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Philip O. Tilghman DATE Nov. 19, 1969
OWNER
PRESIDENT
DATE

LEO W. RADER
REGISTERED LAND SURVEYOR
38 BELFAST ROAD
TIMONIUM, MD. CL 2-2920

HIGHWAY DEPARTMENT OF BALTIMORE COUNTY
APPROVED FOR STREET ALIGNMENT AND LOCATION
BY Thornton M. Mourning DATE 12/5/69
ROAD ENGINEER

COORDINATES		
NO.	NORTH	EAST
1	2803.05	2271.87
2	2666.66	1481.81
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13	2831.30	2316.07
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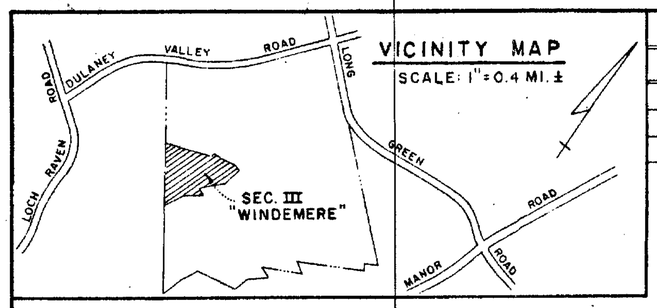
30	2611.25	2161.54

P&H EXH B



CURVE DATA FOR ROAD ALIGNMENT

NO.	RADIUS	ARC (L)	Δ	TAN.	L.C.B	CHORD
A	225.00'	59.79'	15°-13'-28"	30.07'	S 25°-14'-34"E	59.61'
B	50.00'	217.01'	248°-40'-35"	73.19'	N 88°-31'-00"W	82.57'
C	50.00'	45.40'	52°-01'-13"	24.40'	S 9°-48'-40"W	43.85'

NOTES

1) UNLESS OTHERWISE SHOWN, 5 FOOT WIDE EASEMENTS FOR UTILITIES AND DRAINAGE ARE HEREBY RESERVED ALONG THE REAR AND SIDE LINES OF ALL LOTS.

2) THE STREETS AND/OR ROADS AS SHOWN HEREON AND MENTION THEREOF IN DEEDS ARE FOR THE PURPOSE OF DESCRIPTION ONLY AND THE SAME ARE NOT INTENDED TO BE DEDICATED TO PUBLIC USE. THE FEE SIMPLE TITLE THEREOF IS EXPRESSLY RESERVED IN THE GRANTORS OF THE DEED TO WHICH THIS PLAT IS ATTACHED THEIR HEIRS AND ASSIGNS.

3) THE BEARINGS AND COORDINATES SHOWN HEREON ARE REFERRED TO AN ASSUMED GRID.

SECTION I "WINDEMERE" G.L.B. 24-70

SECTION I "WINDEMERE" G.L.B. 24-70

EXISTING FLOOD CONTROL RESERVATION

S 38°-19'-56"W 30.45'

R=300.00' L=114.93' CHD.=N62°-38'-30"W 114.23'

E 2600 N 2850

NOW OR FORMERLY BRICKETT O.T.G. 4671-386

NOW OR FORMERLY DEBAUGH R.R.G. 4213-212

R=225.00' L=82.75' CHD=N63°-04'-50"W 82.28'

CONCRETE MONUMENT BRASS DISC ON TOP MARKED "WINDEMERE LWR 1"

N73°-37'-00"W 350.66'

DRAINAGE AND UTILITY RESERVATION

R=350.00' L=151.25' N 73°37'-00" W 350.66'

R=175.00' 75.50'

CONCRETE MONUMENT BRASS DISC ON TOP MARKED "WINDEMERE LWR 8"

EXISTING DRAINAGE AND UTILITY RESERVATION

E 2000 N 2850

STONEHURST ROAD

10' DRAINAGE & UTILITIES EASEMENT

827.46' 262.96' 50.38' 46.03' 105.22' 36.99' 313.67' 51.57' 244.70'

PARCEL "A"

PARCEL "B"

RADIAL N 33°-36'-31" E 208.33'

S 16°-57'-39" W 185.32'

S 16°-57'-39" W 214.41'

S 80°-12'-20" W 488.41'

10' DRAINAGE & UTILITIES EASEMENT 45.40'

R=225.00' L=157.80 S 73°-02'-21" E 233.49' 217.59' 200.49' 33.00'

50' MINIMUM BUILDING SETBACK LINE

S 53°-05'-08" W 61.89'

50' MINIMUM BUILDING SETBACK LINE

N 35°-12'-15" E 50.80'

EXISTING 10' DRAINAGE & UTILITIES EASEMENT

R=50'

SIESTA GARTH

PARCEL "D" SEC. V IS BEING CONVEYED WITH LOT 4, SEC. III

N 25°-00'-00" E 193.13'

R=100.00' L=55.51' 100.66' 100.06' 26.34'

R=125.00' L=77.52'

S 45°-22'-16" W 42.00'

S 45°-22'-16" W 42.00'

R=187.50' R=162.50' L=177.00' L=242.17'

N 61°-39'-57" W 101.96'

50' 50' MIN. BLDG. SETBACK LINE

N 28°-37'-53" W 225.00'

N 28°-37'-53" W 456.00'

N 61°-22'-07" E 175.00'

S 31°-45'-46" E 160.40'

93.00' N 61°-58'-32" W 117.71' 210.71'

N 46°-10'-31" E

CONCRETE MONUMENT BRASS DISC ON TOP MARKED "WINDEMERE LWR 4"

CONCRETE MONUMENT BRASS DISC ON TOP MARKED "WINDEMERE LWR 2"

10' DRAINAGE & UTILITIES EASEMENT

S 30°-23'-40" E 933.16'

MAYOR AND CITY COUNCIL OF BALTIMORE

1178.00'

N 61°-22'-07" E 172.96'

224.84'

N 1650.56 E 2207.82

N 41°-10'-24" E 267.61'

N 51°-59'-08" E 360.47'

EXISTING 10' DRAINAGE & UTILITIES EASEMENT

E 2400 N 1700

N 41°-10'-24" E 361.11'

"LOT I BLOCK C" SECTION V, "WINDEMERE" O.T.G. 33-123

CONCRETE MONUMENT BRASS DISC ON TOP MARKED "WINDEMERE LWR 3"

1 2 3 4

O.T.G. 34 FOLIO 10

RECEIVED for Record FEB 24 1970 A.M. P.M.

same day recorded in liber O.T.G. No. ____ folio ____ One of the ____ Records of Baltimore County and examined, per

SECTION III "WINDEMERE"

OWNED AND DEVELOPED BY

PHILIP O. TILGHMAN REALTY COMPANY

34 W. CHESAPEAKE AVE.

TOWSON 4, MD.

11TH ELECT. DIST. BALTO. CO., MD.

SCALE: 1"=100' NOV. 12, 1969 REVISED NOV. 14, 1969

FOR TITLE, SEE LIBER O.T.G. NO. 5011 FOLIO 540

Lots marked "Parcels A, B, etc." distinguish those identified by numerals have not passed the percolation tests. Approval of building permits for these parcels will be withheld until such time that public sewerage is available.

1169036 G.

H.W.S. Earned 12-4-68

COORDINATES

NO.	NORTH	EAST
1	2803.05	2271.87
2	2666.66	1481.81
3	1650.56	2077.82
4	1852.00	2254.00
5	2074.00	2538.00
6	2129.30	2434.10
7	2379.36	2694.62
8	2420.87	2723.91
9	2595.91	2805.53
10	2642.64	2827.33
11	2679.90	2753.96
12	2778.81	2417.53
13	2831.30	2316.07
14	2807.42	2297.21
15	2631.93	2739.86
16	2730.84	2403.43
17	2775.13	2308.42
18	2758.31	2012.74
19	2704.39	2038.17
20	2630.20	2013.03
21	2628.10	1987.07
22	2706.53	1955.62
23	2749.74	1963.09
24	2562.61	1977.67
25	2580.40	1960.11
26	2533.10	1947.78
27	2550.89	1930.22
28	2369.85	1906.57
29	2327.61	1897.37
30	2611.25	2161.54

APPROVED FOR BALTIMORE COUNTY HEALTH DEPARTMENT
BY Donald J. Roop M.D. DATE 12-5-69
DEPUTY STATE AND COUNTY HEALTH OFFICER

APPROVED FOR BALTIMORE COUNTY PLANNING BOARD
BY George E. Gavrelis DATE 2/19/70
DIRECTOR

SURVEYORS CERTIFICATE
I, LEO W. RADER, A REGISTERED LAND SURVEYOR OF THE STATE OF MARYLAND, DO HEREBY CERTIFY THAT THE LAND SHOWN HEREON HAS BEEN LAID OUT, AND THE PLAT THEREOF PREPARED IN ACCORDANCE WITH THE PROVISIONS OF THE LAW RELATING TO THE SUBDIVISION OF LAND KNOWN AS HOUSE BILL #459, CHAPTER 1016 OF THE ACTS OF 1945, AND SUBSEQUENT AMENDATORY ACTS.
Leo W. Rader DATE Nov. 17, 1969
REGISTERED LAND SURVEYOR NO. 1825

OWNERS CERTIFICATE
THE REQUIREMENTS OF SECTION 72-B, ARTICLE 17 OF THE ANNOTATED CODE OF MARYLAND, (FLACK 1947 SUPPLEMENT) AS FAR AS THEY RELATE TO THE PREPARATION OF THIS PLAT HAVE BEEN COMPLIED WITH. - PHILIP O. TILGHMAN REALTY CO.
Philip O. Tilghman DATE Nov. 19, 1969
OWNER
PRESIDENT
DATE

LEO W. RADER
REGISTERED LAND SURVEYOR
38 BELFAST ROAD
TIMONIUM, MD. CL 2-2920

HIGHWAY DEPARTMENT OF BALTIMORE COUNTY
APPROVED FOR STREET ALIGNMENT AND LOCATION
BY Thornton M. Mourning DATE 12/5/69
ROAD ENGINEER

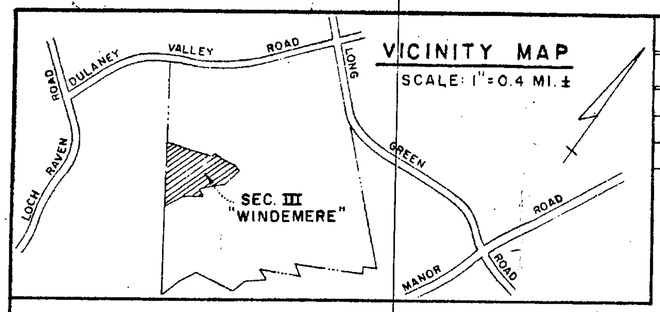
PETITIONER'S EXHIBIT NO. 2

Petitioner Exhibit 2

MSA S5W23C-5239

34-42

VICINITY MAP
SCALE: 1"=0.4 MI.±



CURVE DATA FOR ROAD ALIGNMENT

NO.	RADIUS	ARC (L)	Δ	TAN.	L.C.B	CHORD
A	225.00'	59.79'	15°-13'-28"	30.07'	S 25°-14'-34"E	59.61'
B	50.00'	217.01'	248°-40'-35"	73.19'	N 88°-31'-00"W	82.57'
C	50.00'	45.40'	52°-01'-13"	24.40'	S 9°-48'-40"W	43.85'

NOTES

1) UNLESS OTHERWISE SHOWN, 5 FOOT WIDE EASEMENTS FOR UTILITIES AND DRAINAGE ARE HEREBY RESERVED ALONG THE REAR AND SIDE LINES OF ALL LOTS.

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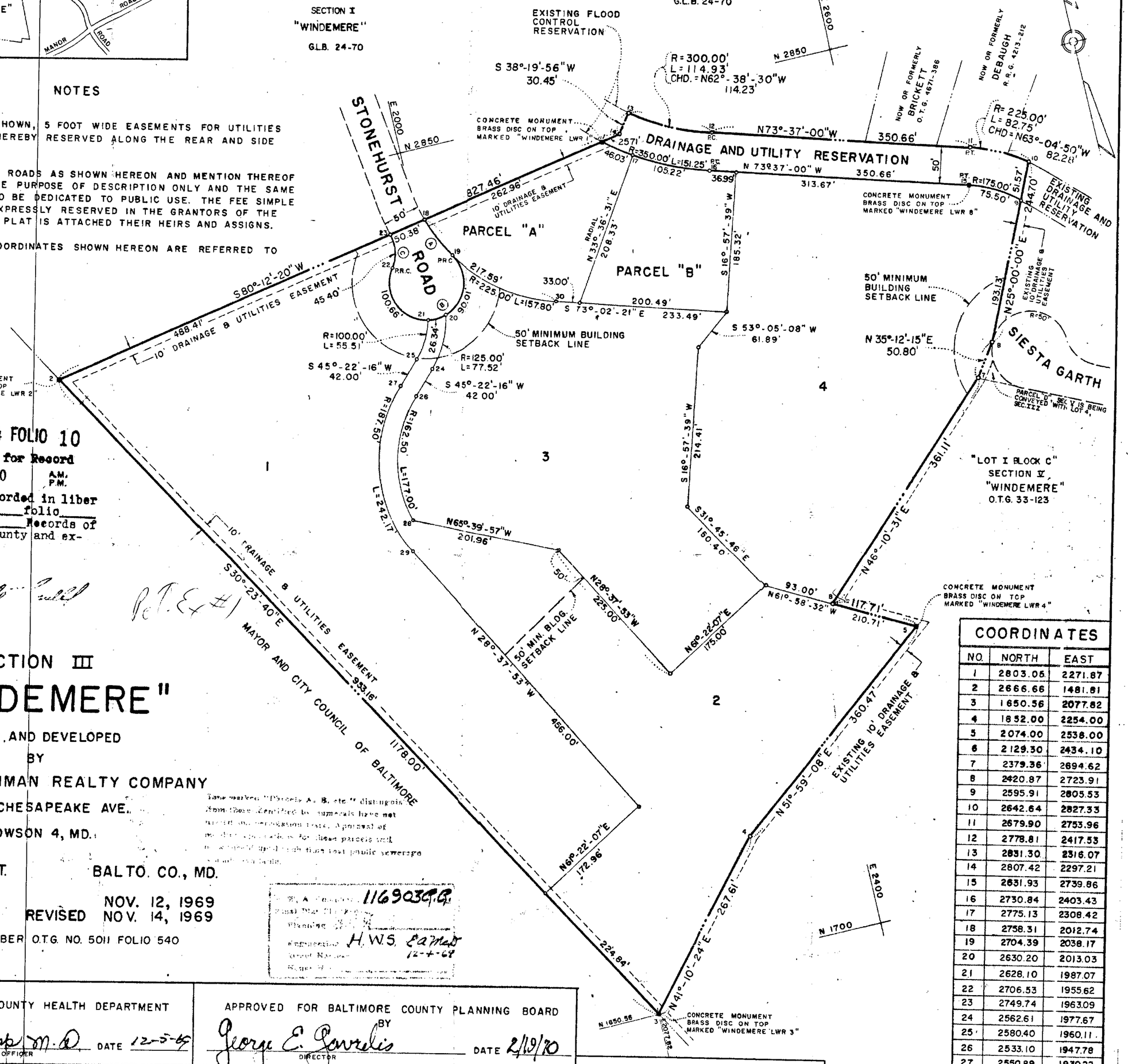

O.T.G. 34 FOLIO 10
RECEIVED for Record
FEB 24 1970 A.M. P.M.
same day recorded in liber O.T.G. No. ____ folio ____
One of the ____ Records of Baltimore County and examined, per

SECTION III
"WINDEMERE"

OWNED AND DEVELOPED
BY
PHILIP O. TILGHMAN REALTY COMPANY
34 W. CHESAPEAKE AVE.
TOWSON 4, MD.

11TH ELECT. DIST. BALTO. CO., MD.

SCALE: 1"= 100' NOV. 12, 1969
REVISED NOV. 14, 1969

FOR TITLE, SEE LIBER O.T.G. NO. 5011 FOLIO 540

Lots marked "Parcels A, B, etc." distinguish those certified by owners have not passed the percolation tests. Approval of these parcels for deep wells and individual sewage disposal systems will be withheld until public sewerage is available.

S.A. Number 1169036-G
Final Plat Check
Planning
Engineering H.W.S. Earned 12-4-69
Deed Number
Sheet No.

COORDINATES

NO.	NORTH	EAST
1	2803.05	2271.87
2	2666.66	1481.81
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27	2550.89	1930.22
28	2369.85	1906.57
29	2327.61	1897.37
30	2611.25	2161.54

APPROVED FOR BALTIMORE COUNTY HEALTH DEPARTMENT
BY Donald J. Roop M.D. DATE 12-5-69
DEPUTY STATE AND COUNTY HEALTH OFFICER

APPROVED FOR BALTIMORE COUNTY PLANNING BOARD
BY George E. Gavrelis DATE 2/19/70
DIRECTOR

SURVEYORS CERTIFICATE
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Leo W. Rader DATE Nov. 17, 1969
REGISTERED LAND SURVEYOR NO. 1825

OWNERS CERTIFICATE
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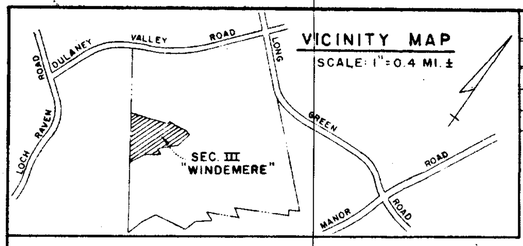
Philip O. Tilghman DATE Nov. 19, 1969
OWNER
PRESIDENT
DATE

LEO W. RADER
REGISTERED LAND SURVEYOR
38 BELFAST ROAD
TIMONIUM, MD. CL 2-2920

HIGHWAY DEPARTMENT OF BALTIMORE COUNTY
APPROVED FOR STREET ALIGNMENT AND LOCATION
BY Thornton M. Mourning DATE 12/5/69
ROAD ENGINEER

P.T.E. #1

59 FF 53



CURVE DATA FOR ROAD ALIGNMENT						
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C	50.00	45.40'	52°-01'-13"	24.40'	S 9°-48'-40"W	43.85'

NOTES

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SECTION I "WINDEMERE" G.L.B. 24-70

SECTION I "WINDEMERE" G.L.B. 24-70

EXISTING FLOOD CONTROL RESERVATION

S 38°-19'-56"W 30.45'

R=300.00' L=114.93' CHD.=N62°-38'-30"W 114.23'

N 2850 E 2600

NOW OR FORMERLY BRICKETT O.T.G. 4871-386

NOW OR FORMERLY DEBAUGH R.R.G. 4213-212

R=225.00' L=82.75' CHD=N63°-04'-50"W 82.2±'

N73°-37'-00"W 350.66'

DRAINAGE AND UTILITY RESERVATION

CONCRETE MONUMENT BRASS DISC ON TOP MARKED "WINDEMERE LWR 1"

STONEHURST ROAD

E 2000 N 2850

827.46'

262.96'

10' DRAINAGE & UTILITIES EASEMENT

R=350.00' L=151.25' 105.22' 46.03' 36.99'

N 73°37'-00" W 350.66' 313.67'

50'

R=175.00' 75.50' 51.57'

EXISTING DRAINAGE AND UTILITY RESERVATION

CONCRETE MONUMENT BRASS DISC ON TOP MARKED "WINDEMERE LWR 6"

PARCEL "A"

PARCEL "B"

N 33°-36'-31"E RADIAL 208.33'

S 16°-57'-39"W 185.32'

50' MINIMUM BUILDING SETBACK LINE

N 25°-00'-00" E 193.13'

EXISTING 10' DRAINAGE & UTILITIES EASEMENT

R=50'

SIESTA GARTH

PARCEL "A" CONVEYED SEC. V IS BEING WITH LOT 1, SEC. III

S80°-12'-20"W 488.41'

10' DRAINAGE & UTILITIES EASEMENT

50.38' 45.40'

R=225.00' L=157.80' 217.59' 90.01' 100.86' 33.00'

S 73°-02'-21" E 200.49' 233.49'

S 53°-05'-08" W 61.89'

N 35°-12'-15"E 50.80'

R=100.00' L=55.51'

S 45°-22'-16"W 42.00'

R=125.00' L=77.52' 28.34'

S 45°-22'-16"W 42.00'

50' MINIMUM BUILDING SETBACK LINE

CONCRETE MONUMENT BRASS DISC ON TOP MARKED "WINDEMERE LWR 2"

1 2 3 4

O.T.G. 34 FOLIO 10

RECEIVED for Record FEB 24 1970 A.M. P.M.

same day recorded in liber O.T.G. No. ____ folio ____ One of the ____ Records of Baltimore County and examined, per

SECTION III

"WINDEMERE"

OWNED, AND DEVELOPED BY

PHILIP O. TILGHMAN REALTY COMPANY

34 W. CHESAPEAKE AVE.

TOWSON 4, MD.

11TH ELECT. DIST. BALTO. CO., MD.

SCALE: 1"=100' REVISED NOV. 12, 1969 NOV. 14, 1969

FOR TITLE, SEE LIBER O.T.G. NO. 5011 FOLIO 540

R.A. Plat No. 11690396

H.W.S. Earned 12-4-69

R=167.50' L=242.17'

N65°-39'-57"W 201.96'

50' MIN. BLDG. SETBACK LINE

N28°-37'-53"W 225.00'

N6°-22'-07"E 175.00'

93.00' N61°-38'-32"W 210.71'

117.71'

CONCRETE MONUMENT BRASS DISC ON TOP MARKED "WINDEMERE LWR 4"

10' DRAINAGE & UTILITIES EASEMENT

S30°-23'-40"E 933.16'

1178.00'

MAYOR AND CITY COUNCIL OF BALTIMORE

456.00'

N6°-22'-07"E 172.96'

224.84'

S 31°-45'-46"E 150.40'

S 18°-57'-39"W 214.41'

N 46°-10'-31"E

"LOT I BLOCK C" SECTION V "WINDEMERE" O.T.G. 33-123

N 51°-59'-08"E 360.47'

EXISTING 10' DRAINAGE & UTILITIES EASEMENT

N 41°-10'-24"E 267.61'

N 1650.56 E 2597.85

CONCRETE MONUMENT BRASS DISC ON TOP MARKED "WINDEMERE LWR 3"

E 2500 N 1700

COORDINATES		
NO.	NORTH	EAST
1	2803.08	2271.87
2	2666.66	1481.81
3	1650.56	2077.82
4	1832.00	2254.00
5	2074.00	2536.00
6	2129.30	2434.10
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10	2642.64	2827.33
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16	2730.84	2403.43
17	2775.13	2308.42
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19	2704.39	2038.17
20	2630.20	2013.03
21	2628.10	1987.07
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26	2533.10	1947.78
27	2550.89	1930.22
28	2369.85	1906.57
29	2327.61	1897.37
30	2611.25	2161.54

APPROVED FOR BALTIMORE COUNTY HEALTH DEPARTMENT

BY Donald Koop M.D. DATE 12-5-69

DEPUTY STATE AND COUNTY HEALTH OFFICER

APPROVED FOR BALTIMORE COUNTY PLANNING BOARD

BY George E. Gavrelis DATE 2/19/70

DIRECTOR

SURVEYORS CERTIFICATE

I, LEO W. RADER, A REGISTERED LAND SURVEYOR OF THE STATE OF MARYLAND, DO HEREBY CERTIFY THAT THE LAND SHOWN HEREON HAS BEEN LAID OUT, AND THE PLAT THEREOF PREPARED IN ACCORDANCE WITH THE PROVISIONS OF THE LAW RELATING TO THE SUBDIVISION OF LAND KNOWN AS HOUSE BILL #459, CHAPTER 1016 OF THE ACTS OF 1945, AND SUBSEQUENT AMENDATORY ACTS.

Leo W. Rader DATE Nov. 17, 1969

REGISTERED LAND SURVEYOR NO. 1825

OWNERS CERTIFICATE

THE REQUIREMENTS OF SECTION 72-8, ARTICLE 17 OF THE ANNOTATED CODE OF MARYLAND, (FLACK 1947 SUPPLEMENT) AS FAR AS THEY RELATE TO THE PREPARATION OF THIS PLAT HAVE BEEN COMPLIED WITH. - PHILIP O. TILGHMAN REALTY CO.

Philip O. Tilghman DATE Nov. 19, 1969

OWNER

PRESIDENT

DATE

LEO W. RADER

REGISTERED LAND SURVEYOR

38 BELFAST ROAD

TIMONIUM, MD. CL 2-2920

HIGHWAY DEPARTMENT OF BALTIMORE COUNTY

APPROVED FOR STREET ALIGNMENT AND LOCATION

BY Thomas H. Manning DATE 12/5/69

ROAD ENGINEER

MSA SS W 336-5239 .34.10

PRT EXH 23

NOTES:

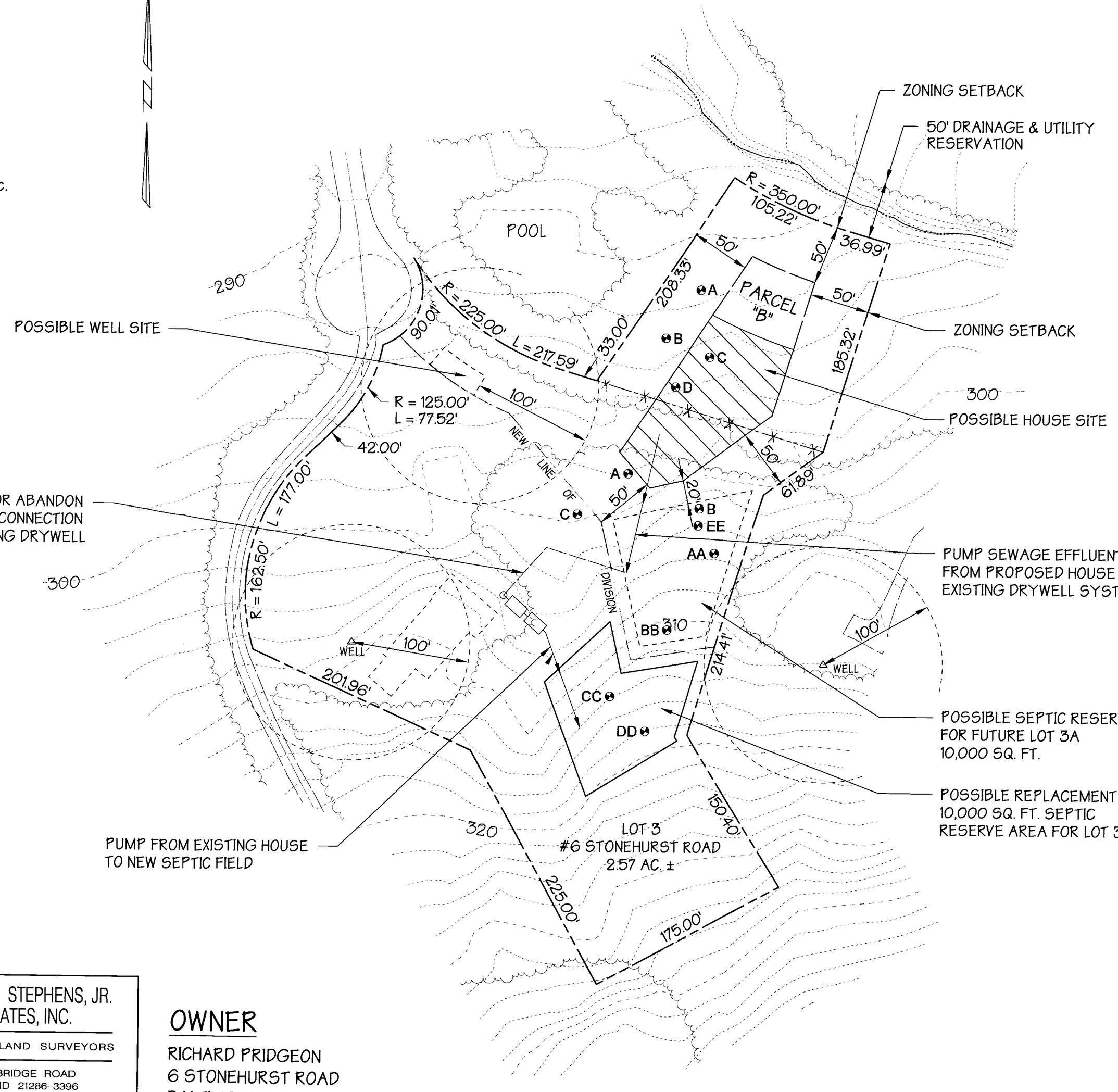
1. SUBDIVISION NAME: WINDEMERE

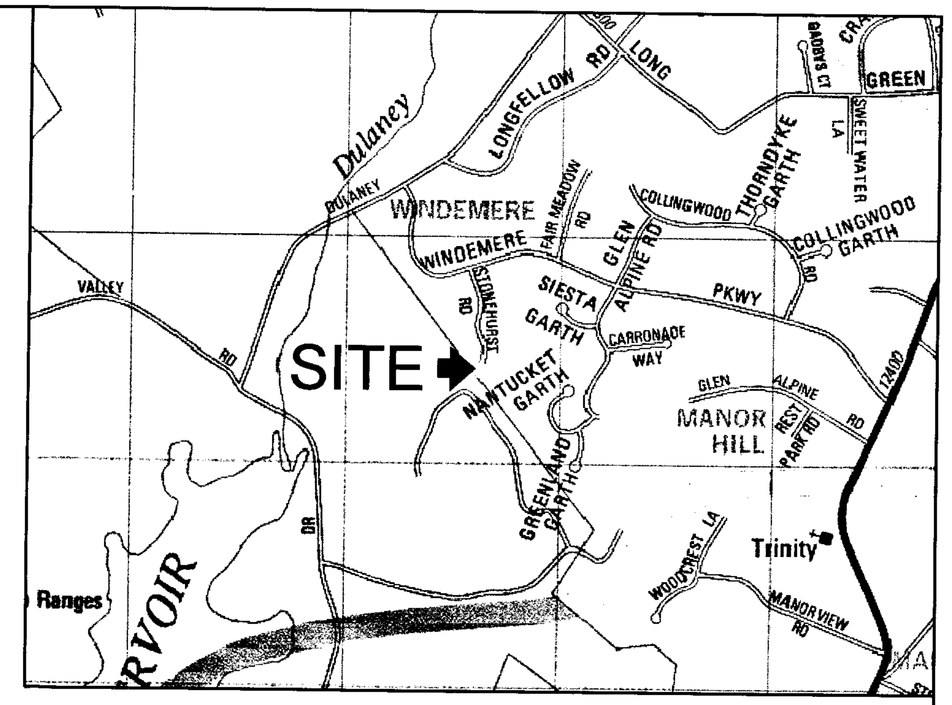
2. OWNER INFORMATION:
   RICHARD PRIDGEON
   6 STONEHURST ROAD
   BALTIMORE, MD 21057

3. ACREAGE:
   EXISTING LOT 3: 3.43 Ac.
   EXISTING PARCEL B: 0.75 Ac.
   PROPOSED LOT 3: 2.57 Ac.
   PROPOSED PARCEL B: 1.61 Ac.

4. TAX MAP: 53; PARCEL 60

5. TAX ACCOUNT NUMBERS
   LOT 3: 1600003600
   PARCEL B: 1600003601





VICINITY MAP
SCALE: 1" = 2000'

EXISTING ZONING: RC5
Correction to GWS Plan - Existing Zoning: RC 6

GEORGE WILLIAM STEPHENS, JR. AND ASSOCIATES, INC.
CIVIL ENGINEERS & LAND SURVEYORS
1020 CROMWELL BRIDGE ROAD
TOWSON, MARYLAND 21286-3396
(410) 825-8120

OWNER
RICHARD PRIDGEON
6 STONEHURST ROAD
BALTIMORE, MD. 21057

PLAN TO ACCOMPANY
DRC REQUEST
LOT 3 and PARCEL "B"
WINDEMERE, SECTION III

11th ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT
~~SCALE: 1" = 100'~~
NOT TO SCALE

BALTIMORE COUNTY
AUGUST 3, 2004

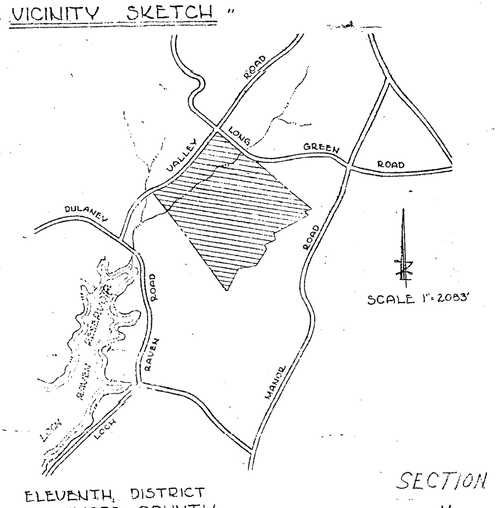
Pet Exh 16

FILE: 9869DRCpercplan080204.s01

WINDEMERE

SCALE 1" = 100'

VICINITY SKETCH



ELEVENTH DISTRICT
BALTIMORE COUNTY

SECTION I, II, III, IV - COMPLETE
" V - INCOMPLETE

APPROVAL OF DULANEY VALLEY ROAD ALIGNMENT SUBJECT TO PRELIMINARY COMMENTS AS SET FORTH ON 4/20/56.

SUBJECT ALSO TO TREE REMOVAL AT DULANEY VALLEY ROAD AND WINDEMERE ROAD AS SET BY DEPT. OF PUBLIC WORKS.

Baltimore County
ZONING SUBDIVISION PLANNING COMMITTEE
OF THE OFFICE OF [illegible] AND DEPT OF PUB. WORKS
Tentatively Reviewed (Date) 3/1/56
Chairman J. WISE COVEY
Member DAVID F. WILSON
BALTIMORE COUNTY PLANNING BOARD
Tentatively Approved (Date) 4/20/56
Director WILLIAM H. AMOS
RECOMMENDED TO BOARD OF PUBLIC WORKS
Bureau of Engineering
Tentatively Approved for Street Alignment and Location only.
Location & Size of Culvert, Sewer & Storm Drain Facilities, Including Highway Plans, subject to approval of Construction Drawings.
(Date) 4/20/56
Chief, Bureau of Engr. DAVID D. FISHER

OWNERS & DEVELOPERS
WINDEMERE CORPORATION
1817 MUNSEY BUILDING, BALTIMORE 2, MARYLAND

DATA:

total acreage of tract		238.16 ac
non-residential use		17.11 ac
R&A-4	818	
storm drainage	8.80	
gross residential acreage		230.45 ac
streets		24.51 ac
net residential acreage		196.03 ac
NUMBER OF LOTS -	183	
gross residential density		0.81 du/ac
net residential density		0.93 "

112 lots
239 - perimeter
183
56

NOTES:
1. typical lot: 150 x 250' - average area: 101 sq ft
2. building setback: front - 50'
3. pavement width: 24' with 6" B. curb. - pavement widths on Ordinary Valley & Long Green Rds. to be determined by Baltimore Co.
4. curb radius: 25' in code case

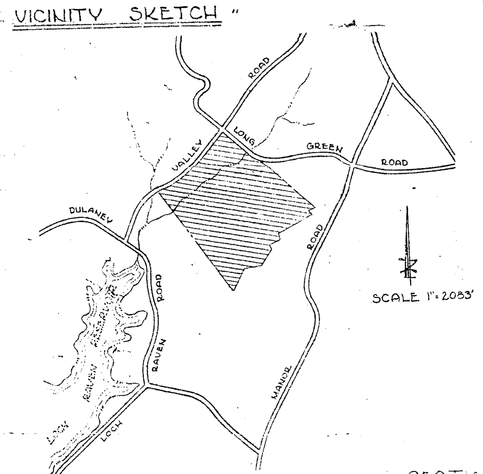
SITE PLANNERS - BERNARD M. WILLEMAIN & ASSOCIATES
22 WEST PENNSYLVANIA AVENUE, TOWSON, MARYLAND

ENGINEERS - ENGINEERING ASSOCIATES
7307 YORK ROAD, TOWSON, MARYLAND

WINDEMERE

SCALE 1" = 100'

VICINITY SKETCH



ELEVENTH DISTRICT
BALTIMORE COUNTY

SECTION I, II, III, IV - COMPLETE
" V - INCOMPLETE

APPROVAL OF DULANEY VALLEY ROAD ALIGNMENT SUBJECT TO PRELIMINARY COMMENTS AS SET FOR ON 4/26/56

SUBJECT ALSO TO TREE REMOVAL AT DULANEY VALLEY ROAD AND WINDEMERE ROAD AS SET BY DEPT. OF PUBLIC WORKS.

Baltimore County
JOINT SUBDIVISION PLANNING COMMITTEE
OF THE OFFICES OF PLANNING AND DEPT OF PUB. WORKS
Tentatively Reviewed (Date) 4/19/56
Chairman J. RUSS GOFORTH
Member DONALD P. WELCH
BALTIMORE COUNTY OFFICE OF PLANNING
Tentatively Approved (Date) 4/26/56
Director BENJAMIN H. HAYS
DEPARTMENT OF PUBLIC WORKS
Bureau of Engineering
Tentatively Approved Cay Street Alignment and Location only.
Location & Size of Culvert, Storm Drain Facilities, including Highway Work, subject to approval of Construction Drawings
(Date) 4/26/56
Chief, Bureau of Engineering DAVID H. FISHER

OWNERS & DEVELOPERS
WINDEMERE CORPORATION
1817 MUNSEY BUILDING, BALTIMORE 2, MARYLAND

SITE PLANNERS • BERNARD M. WILLEMAIN & ASSOCIATES

ENGINEERS • ENGINEERING ASSOCIATES

DATA:

total acreage of tract		238.16 ac
non-residential use		17.11 ac
reservation for storm drainage	0.18 ac	
gross residential acreage		220.45 ac
streets		24.32 ac
net residential acreage		196.13 ac
NUMBER OF LOTS -	185	
gross residential density		0.83 du/ac
net residential density		0.93 "

112 lots
73 - preliminary
185

NOTES:

1. typical lot: 180' x 250' - average area: 1.07 ac
2. building setback: front - 50'
3. pavement width: 24' with special 'B' curb. - pavement widths on Dulaney Valley & Long Green Rds. to be determined by Baltimore Co.
4. curb radius: 30' in all corners

5/5/56 6/56

pet exhd 7-1

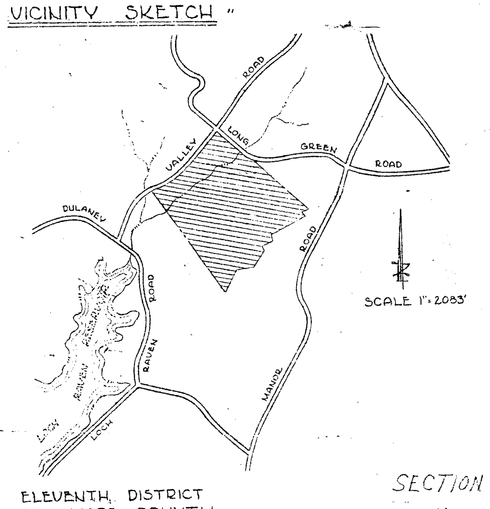
AUG - 3 2004

WINDEMERE

DRC #
Seth Long 082304H

SCALE 1" = 100'

VICINITY SKETCH



SCALE 1" = 2000'

ELEVENTH DISTRICT
BALTIMORE COUNTY

SECTION I, II, III, IV. - COMPLETE
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Baltimore County
JOINT SUBDIVISION PLANNING COMMITTEE
OF THE OFFICE OF PLANNING AND DEPT OF PUB. WORKS
Tentatively Reviewed (Date) 4/20/56
Chairman J. WEB OFFUTT
Member DAVID F. NELSON
BALTIMORE COUNTY OFFICE OF PLANNING
Tentatively Approved (Date) 4/20/56
Director NELSON H. BELL
DEPARTMENT OF PUBLIC WORKS
Bureau of Engineering
Tentatively Approved for Street Alignment and Location Only.
Location & Size of Water, Sewer & Storm Drain Facilities, Including Highway Where, Subject to approval of Construction Drawings.
(Date) 4/20/56
Chief, Bureau of Engr. DAVID E. FISHER

OWNERS & DEVELOPERS
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sewer allocations difficult to obtain. For reasons which are not quite clear in the record, the developer was dropped from the waiting list for sewer allocations.

The Baltimore County Council, in the comprehensive map process of 1980, downshifted the permissible density on the subject property from D.R. 5.5 to D.R. 2 and D.R. 3.5, with some D.R. 5.5. This downshift in zoning created the current controversy as to whether the 1977 plat is still valid.

In 1982, the Stefanowicz Corporation filed suit in the Circuit Court for Baltimore County to protect the 1977 record plat from being voided and to compel the issuance of sewer allocations. An opinion was elicited from the Director of Planning and Zoning which stated that the development plan had vested and reinstated the developer on the waiting list for sewer allocations. As a result, the lawsuit against the County was dismissed.

In reliance on the opinion of the Director of Planning and Zoning, Westchester, Inc. purchased the property from the bankruptcy proceedings which reorganized the Stefanowicz Corporation. The sewer allocations were then obtained along with utility permits for the subdivision. Further grading of the property was done and private utilities were installed under the permits. Westchester, Inc., received final building permits on July 30, 1984. The appellants, the homeowners surrounding the site for the apartment buildings, appealed the issuance of the permits to the County

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ARNOLD JABLON
(410) 494-6298

aejablon@venable.com

18 April 2006

Timothy Kotroco, Esq.
Director, Department of Permits and Development Management
111 West Chesapeake Ave.
Towson, Maryland 21204

Re: Pridgeon Property, Windemere
6 Stonehurst Road, Lot 3 and Parcel B

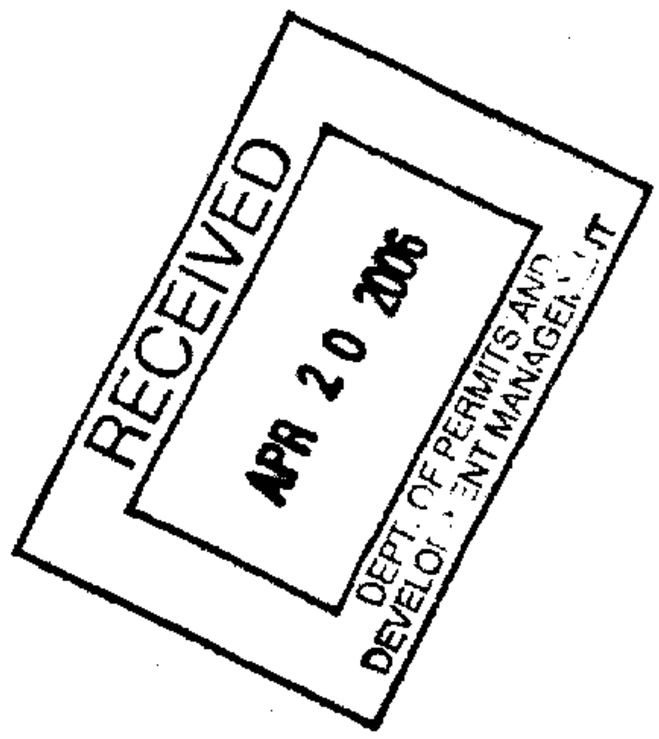
Dear Mr. Kotroco:

Please be advised that I have been retained to represent Mr. Pridgeon.

Attached hereto is our Notice of Appeal to the County Board of Appeals from your letter to me, dated 12 April 2006, in which the DRC denies Mr. Pridgeon's request to readjust his lot lines in order to make his lot buildable.

Thank you for your attention in this matter.

Sincerely,

Arnold Jablon
AEJ/aj

c: Baltimore County Board of Appeals