

IN THE MATTER OF
ANDREW AND STEPHANIE MATTES
– LEGAL OWNERS OF THE PROPERTY
 Located on the NW/S of Island View Road, 208'
 NW of c/line of Barrison Point Road
 (2534 Island View Road)
 15th Election District, 6th Councilmanic District

Theresa Guckert, David Donovan, and
 James Brown – Petitioners

* * * * *

* BEFORE THE
 * BOARD OF APPEALS
 * OF
 * BALTIMORE COUNTY
 * Case No.: 11-051-SPH

OPINION

This matter is before the Board on a Motion to Dismiss filed by Lawrence E. Schmidt, Esquire and Smith, Gildea and Schmidt, LLC. Counsel for Andrew J. Mattes and Stephanie Mattes. It arises from a Petition for Special Hearing filed by Theresa Guckert, David Donovan, and James Brown (Petitioners) who were represented by Douglas N. Silber, Esquire. Deputy People's Counsel, Carole Demilio, also appeared before the Board. The hearing on the Motion to Dismiss was held on May 8, 2012. Briefs had been filed prior to the May 8th, 2012 hearing. A public deliberation was held on May 24, 2012.

Background

Petitioners filed a Petition for Special Hearing in case number 2010-0220-SPH requesting the Zoning Commissioner to “invalidate a fishing and shell fishing facility for nonconforming use or otherwise. Other reasons to be presented at the hearing.” After a full hearing, Zoning Commissioner William J. Wiseman issued his Memorandum and Order dated April 19, 2010. In the order he denied the Petition and confirmed the validity of the existing use permit issued in 1978 for the property in question. Petitioners timely filed a Motion for Partial Reconsideration, seeking a finding that the fishing, shell fishing, and crabbing operation at the subject site was operating at an intensity that was above that which was permitted in the 1978 use permit. That Motion was denied by Commissioner Wiseman in a ruling dated June 1, 2010. In that ruling,

Wiseman “instructed” Petitioners that he believed they could raise the issue of intensification by way of a new and separate Petition for Special Hearing. The Petitioners did not file an appeal to Commissioner Wiseman’s Ruling of April 19, 2010 nor his denial of the subsequent Motion for Partial Reconsideration. Petitioners then filed the present case, asking Commissioner Wiseman to determine whether the scope and intensification of the fishing, shell fishing and crabbing business permitted by the use permit had been intensified. Respondents then filed a Motion to Dismiss the new Petition for Special Hearing arguing that the new Petition was barred by res judicata.

A hearing was held and by his order of December 20, 2010, Commissioner Wiseman denied the Motion and further found that his ruling constituted a “final order” thereby making it amenable to the filing of an immediate appeal to the Baltimore County Board of Appeals (the Board). The Board heard argument on the validity of the Motion to Dismiss and issued an Opinion and Remand Order dated August 2, 2011 finding that the appeal of the denial of the Motion to Dismiss was premature until the case was fully completed and all testimony heard. It returned the case to the Zoning Commissioner for further hearing and adjudication on the matter.¹ After conducting a full hearing, Administrative Law Judge, Lawrence M. Stahl, indicated he would hold his decision on the Motion to Dismiss sub curia until he heard the entire case.

Judge Stahl issued his decision on January 3, 2012. He denied the Motion to Dismiss on the basis of res judicata then ruled against the Petitioners on the merits of the case, with respect to the intensification issue.

1. In the meantime, the Office of Administrative Hearings of Baltimore County replaced and absorbed the hearing responsibilities of the Office of the Zoning Commissioner of Baltimore County by act of the County Council effective January 16, 2011.

Petitioners filed a timely appeal of ALJ Stahl's order to the Board of Appeals. Subsequently, Respondent filed a Motion to Dismiss the appeal again claiming that res judicata barred the filing of the second Petition before the Administrative Law Judge. This brought us to the present situation.

Decision

The Board finds that the Motion to Dismiss should be granted.

The doctrine of res judicata provides that a judgment on the merits in a previous suit between the same parties precludes a second suit predicated upon the same cause of action.

As set forth above, the present Petition for Special Hearing before the Board reads as follows " to invalidate a fishing and shell fishing facility for nonconforming use or otherwise. Other reasons to be presented at the hearing." This is the same language in the Petition for Special Hearing filed by Petitioners in 2010

In the initial decision dated April 19, 2010, Zoning Commissioner Wiseman cites two bills passed by the County Council. One bill, Bill No. 30-78 dated April 3, 1978 was "an ordinance to allow shoreline fishing and shell fishing facilities by Special Exception in DR zones in addition to permitting the continuation of existing shoreline fishing and shell fishing facilities in such zones..." The second is Bill No. 139-83 passed on October 17, 1983 by the Council, which states "for the purpose of ratifying and approving certain use permits issued under the authority of Bill No. 98-75 regarding fishing, crabbing and shell fishing operations; ratifying all actions taken by certain officials in the approval of such permits; and requiring compliance with all applicable zoning regulations with respect to any extension of such operations."

Bill No 30-78 section 3 which inserted a new paragraph, 7A, into the section 1B01.1c of the Baltimore County Zoning Regulations had four subparagraphs and stated:

7A. fishing and shell fishing facilities, shoreline class I or II except that a facility existing on July 1, 1977 may continue without a Special Exception if the use permit has been granted for it provided:

* * * * *

d) that no increase in the amount of floor or site area or in the number of boats devoted to the use nor another other change in the site plan is made.

Council Bill No. 139-83 contained section 3 which stated:

And be it further enacted that nothing contained herein shall be construed to authorize the extension, expansion or intensification of any commercial fishing, crabbing and shell fishing operations, primary or secondary, or fishing and shell fishing facilities, shoreline, class I and class II, beyond that indicated in the plans accompanying the application for use permit unless and until the applicant shall have complied with all applicable Zoning Regulations, including but not limited to the Petitioning for the grant of a Special Exception for any extension or intensification of use, and that failure to comply with such Zoning Regulations shall subject the property to all applicable penalties, including a civil penalty.

It is clear that the issue of intensification was set forth in Bill 30-78 effective April 3, 1978 and Bill 139-83, effective October 17, 1983 and could have been argued by Petitioners in their Petition for Special Hearing filed in this matter in 2010.

The statement of Ms. Guckert submitted to the Board as Petitioner's Exhibit number 2, would indicate that she contends that the operation has been expanded by some of the statements set forth in that statement. She contends that on June 8, 2009, Mr. Mattes brought in two loads of tar and chip to make a road from Island View Road to the bulkhead on Brown's Creek (page 5 of Guckert's Statement). She also contends that Mr. Mattes was bringing in loads of dirt to fill in the water front property in back of his bulkhead (see page 6 of Guckert's Statement).

The Board is persuaded that the Motion to Dismiss should be granted on the basis of several cases cited by the Respondents in this matter. In Whittle v. Board of Zoning Appeals, 211 Md 36, 125 A.2d 41 (1956) the Court stated:

If the second suit is between the same parties and is upon the same cause of action a judgment in the earlier case on the merits is an absolute bar not only to all matters which were litigated in the earlier case, but as to all matters which could have been litigated." Id 49, 125 A.2d 41.

A similar summary of this point appears in Alvey v. Alvey 225 Md 386, 390, 171 A.2d 92 (1961):

The doctrine of res judicata is that a judgment between the same parties and their privies is a final bar to any other suit upon the same cause of action and is conclusive not only as to all matters that have been decided in the original suit, but as to all matters which with propriety could have been litigated in the first suit, where the court had jurisdiction, proceedings were regular and his omission was due to his own negligence.

See also the decision of Board in case No 06-651-SPHA where the Board ruled on the issue of res judicata after a remand from the Circuit Court for Baltimore County in case no: 03-C-08-004351.

ORDER

THEREFORE, IT IS THIS 7th day of June, 2012 by the
Board of Appeals of Baltimore County

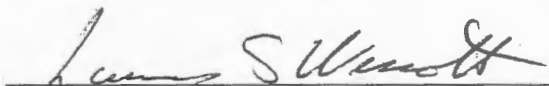
ORDERED that the Motion to Dismiss the Petition for Special Hearing, on the basis of res judicata, is hereby **GRANTED**; and it is furthered

ORDERED that the Petition for Special Hearing to determined whether the scope and intensification of fishing and shell fishing allowed by the use permit has been exceeded, is

hereby **DENIED** on the basis that it has already been decided in case no 2010-0220-SPH by the Zoning Commissioner of Baltimore County, which decision was never appealed.

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*.

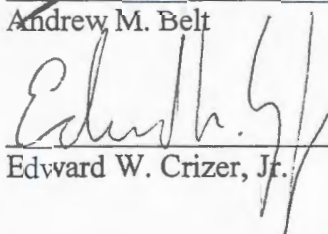
**BOARD OF APPEALS
OF BALTIMORE COUNTY**



Lawrence S. Wescott, Panel Chair



Andrew M. Belt



Edward W. Crizer, Jr.



Board of Appeals of Baltimore County

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SECOND FLOOR, SUITE 203
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410-887-3180
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June 7, 2012

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RE: *In the Matter of: Andrew & Stephanie Mattes – Legal Owners*
Theresa Guckert, David Donovan, and James Brown - Petitioners
Case No.: 11-051-SPH

Dear Counsel:

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

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **with a photocopy provided to this office concurrent with filing in Circuit Court. Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number.** 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,

Theresa Shelton/kc

Theresa R. Shelton
Administrator

TRS/klc
Enclosure
Multiple Original Cover Letter

c: Andrew & Stephanie Mattes
Ernest Hoffman
Robert Foehrkolb
Charles Wagerman, Jr.
Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Planning
Michael Field, County Attorney, Office of Law

Theresa Guckert
Gregory Kirkpatrick
Kenny Dryden
Francis Hemsley

David Donovan
Daniel Beck
Todd Lewis
Jim Grace
Arnold Jablon, Director/PAI
Nancy West, Assistant County Attorney

James Brown
Ryan Kayby
Ray Bonczewski

5/3/12

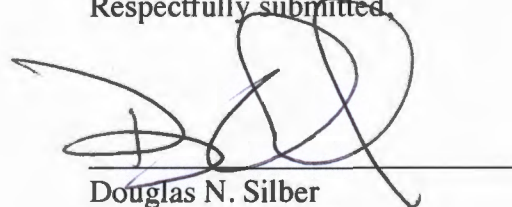
IN RE: PETITION FOR SPECIAL HEARING * BEFORE THE
2534 Island View Road; NW/S Island View Road
208' SW/S of Barrison Point Road * COUNTY BOARD OF
11th Election and 6th Councilmanic Districts
Legal Owners: Andrew and Stephanie Mattes * APPEALS FOR
Petitioners: Theresa J. Guckert, David Donovan
and James Brown * BALTIMORE COUNTY
* Case No. 2011-0051-SPH

* * * * *

MEMORANDUM OF PETITIONER

Petitioners, by and through undersigned counsel, respectfully adopt and incorporate by reference in its entirety the "People's Counsel for Baltimore County's Answer to Motion to Dismiss" filed in this action on April 5, 2012.

Respectfully submitted,



Douglas N. Silber
Post Office Box 176
Phoenix, MD 21131-0176
410-296-1030

Attorney for Petitioners

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MAY 3 2012

BALTIMORE COUNTY
BOARD OF APPEALS

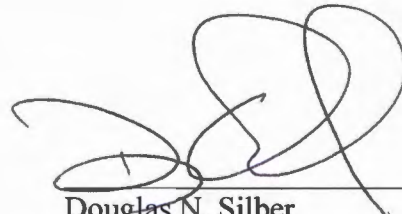
CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of May 2012, a copy of this paper was served by regular U.S. mail, and emailed, to:

Lawrence Schmidt, Esquire
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, Maryland 21204
Attorney for Respondents

and

Carole S. Demilio, Esquire
Deputy People's Counsel
Jefferson Building
105 W. Chesapeake Avenue, Room 204
Towson, Maryland 21204



Douglas N. Silber

4/5/12

RE: PETITION FOR SPECIAL HEARING * BEFORE THE
2534 Island View Road; NW/S Island View *
Road, 208' SW/S of Barrison Point Road * COUNTY BOARD OF
11th Election & 6th Councilmanic Districts
Legal Owner(s): Andrew & Stephanie Mattes* APPEALS FOR
Petitioner(s): Theresa Guckert * BALTIMORE COUNTY
* CASE No. 2011-051-SPH

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BALTIMORE COUNTY
BOARD OF APPEALS

**PEOPLE'S COUNSEL FOR BALTIMORE COUNTY'S
ANSWER TO MOTION TO DISMISS**

People's Counsel for Baltimore County ("PC") files this Answer to Motion to Dismiss filed by Andrew and Stephanie Mattes, Respondents ("Mattes") and asks the County Board of Appeals ("CBA") to deny the Motion. (Counsel for Mattes kindly agreed to extend the time to file an Answer to April 10, 2012).

INTRODUCTION

1. This matter involves two separate Petitions filed by Theresa J. Guckert, David Donovan and James Brown (collectively referred to as "Guckert") seeking determination of the legality of a commercial fishing and shellfishing operation on residentially zoned property known as 2535 Island View Road.

2. The first Petition ("Guckert I") challenged the legality of a 1978 use permit authorizing this commercial operation under Bill No. 98-75. The applicable zoning regulations are BCZR 1A04.2.B.7, (special exception uses in the R.C. 5 zone), definitions of "Fishing and Shellfishing Facility (Shoreline, Shoreline Class I and Shoreline Class II) in BCZR 101, and issuance of use permits generally codified in BCZR 500.4. (For a comprehensive history of the legislation, see People's Counsel's letter to ZC Wiseman dated October 28, 2010, attached.)

3. Zoning Commissioner William J. Wiseman, III (ZC Wiseman) denied Guckert I.

4. Guckert filed a Motion for Reconsideration asking the ZC to grant the Petition because the fishing operation expanded and intensified beyond the use authorized in the 1978 permit.

5. ZC Wiseman denied the Motion and ruled that the relief requested in the Motion for Reconsideration involved "materially different issues" from the issues stated in Guckert I and, concomitantly, from the evidence at the hearing; ZC Wiseman advised Guckert to file a separate Petition on the issue of intensification.

6. Guckert filed a second Petition ("Guckert II") "to determine whether the scope and intensification of fishing and shellfishing allowed by the use permit has been exceeded."

7. Mattes filed a Motion to Dismiss Guckert II, claiming it was barred by *res judicata*.

8. ZC Wiseman denied the Motion and Mattes appealed to CBA.

9. CBA ruled the appeal was premature since there was no final appealable order and remanded the case to be heard on the merits by the Administrative Law Judge ("ALJ").

10. ALJ Lawrence M Stahl ruled *res judicata* did not apply, conducted an evidentiary hearing, and denied Guckert II.

11. Guckert filed a timely appeal of ALJ Stahl's Order.

12. Mattes filed a Motion to Dismiss the appeal, again claiming *res judicata* barred Guckert II.

CHRONOLOGY OF PLEADINGS FILED

13. The following pleadings set out the facts stated in paragraphs 1-12 above:

- A. 02-22-10 Petition for Special Hearing filed by Guckert (Guckert I).
- B. 04-19-10 ZC Wiseman's Memorandum and Order on Guckert I.
- C. 06-01-10 ZC Ruling on Guckert's Motion for Reconsideration (Denied).
- D. 08-03-10 Petition for Special Hearing filed by Guckert (Guckert II).
- E. 09-28-10 Motion to Dismiss Guckert II filed by Mattes.
- F. 10-26-10 Answer to Motion to Dismiss filed by Guckert.
- G. 10-28-10 Answer to Motion to Dismiss filed by PC.
- H. 12-20-10 Ruling by ZC Wiseman denying Motion to Dismiss.
- I. 12-28-10 PC Motion for Partial Reconsideration of ZC Order that Order is a Final and appealable Order.
- J. 01-06-11 Mattes Answer to Motion for Partial Reconsideration.
- K. 01-19-11 Mattes' Appeal of ZC denial of Motion to Dismiss.

- L. 02-09-11 PC Motion to Dismiss Mattes' Appeal.
- M. 08-02-11 Order of CBA that Mattes' Motion to Dismiss is premature and Remanding to ALJ for hearing on Guckert II.
- N. 01-03-12 Order of ALJ - no *res judicata*, denial Guckert II on merits.
- O. 02-01-12 Guckert's appeal to CBA of ALJ's Order denying Guckert II.
- P. 03-01-12 Mattes' Motion to Dismiss Appeal.

ARGUMENT

14. The doctrine of *res judicata* does not bar separate causes of action which relate to separate transactions. Here, Guckert I sought a determination that the 1978 permit issued for the operation of a fishing, crabbing, and shell fishing facility at the site was invalid. If the petition was granted, the fishing operation at the site would be illegal and must cease, unless Mattes received a special exception under BCZR 1A04.2.B.7. It would also moot the issue of intensification and expansion.

15. The language on page 10 in ZC Wiseman's April 19, 2010 decision clearly limited relief to the validity of the permit:

"For all these reasons and based on the evidence presented, an examination of the words contained in the regulations and definitions provided and the language, purpose and legislative history, I find that the Respondent [Mattes] is entitled to conduct a commercial fishing, crabbing or shellfishing operation as allowed under the October 9, 1978 Use Permit. The legislation (and permit) also mandated that any such use existing on the date of enactment of the law could continue only *at the same level of intensity*. Any attempt to expand the use as defined by the site plan would require a special exception and would not be allowed by amending the site plan."

16. Guckert filed a Motion for Reconsideration claiming the fishing operation intensified beyond the initial 1978 permit. In his June 1, 2010 Ruling on the Motion for Reconsideration, ZC Wiseman held on page 2 that the intensification claim may be meritorious but that a Motion for Reconsideration was not the proper forum. "I have considered the arguments presented in Petitioners' Motion and understand their position that the intensification of use on this site is surely suspect and that Mr. Mattes may be skating precariously close to losing his Use Permit altogether." Furthermore in his Order on the Motion for Reconsideration, ZC Wiseman recognized on page 1 that the relief

sought in Guckert I was a wholly separate action than the relief sought in the Motion for Reconsideration: "The validity of the existing Use Permit having been decided and no longer at issue- . . ." He emphasized that Guckert I sought "to invalidate a fishing and shellfishing facility *for non-conforming use or otherwise.*" ZC Wiseman concluded the Motion for Reconsideration relied on "the issue of intensification [and] . . . is a divergence from that initially contained in the Petition, [Guckert I] the posting and public notice provided." In support of his decision, the ZC discussed the notice requirements to the public and the parties "that provides parties with the ability and time to address the issues. . . . As a result, this Commission does not have jurisdiction to review Petitioners' Motion for Reconsideration and finds that the Motion predicated on materially different issues must be denied and that Petitioners' are instructed to file a new Petition with the Department of Permits and Development Management (DPDM) raising the central issue of intensification of use at this location and request a new hearing after proper notice is provided . . ." (underlined emphasis added).

17. Logically and practically, Guckert's separate argument that the current operation is an illegal "extension, expansion and intensification" of the use authorized under the 1978 permit could not be made unless and until the ZC determined the validity of the 1978 permit.

18. By requiring Guckert to file a separate Petition, the Zoning Commissioner (i) provided the Baltimore County agencies an opportunity to review the extent of the current operation *vis a vis* the 1978 Use Permit, (ii) allowed the property owner to prepare his defense, and (iii) afforded the public the opportunity to comment on whether the business intensified since 1978. Ironically, one can only surmise that Mattes would have presented a vigorous objection on the grounds of fairness and notice if Guckert had tried to introduce evidence of intensification at the ZC hearing on Guckert I. Mattes would claim that Guckert was limited to presenting evidence on the issue stated in the Petition (Guckert I).

19. It would be unfair to Guckert to hold that petitioners waived or forfeited their legal rights by following ZC Wiseman's ruling and instructions. ZC Wiseman recognized the

core difference between the claims presented in the two cases. Moreover, there was no evidence at the ZC hearing on intensification of the fishing operation.

20. As our office stated in a letter dated October 28, 2010 submitted to ZC Wiseman:

“In the present situation, there are significant differences between the transactions in Guckert I and Guckert II. The time frames and origins are different. Guckert I focused on the validity of the 1978 issuance of the permit and its 1983 ratification. Guckert II focuses on the recent or current level of activity, and whether there has been intensification (or expansion, extension) of the 1978 approved use. As for convenience of the trial unit, ZC Wiseman found it inconvenient to try them together in Guckert I. He could have held the case open for the addition of the new claim and a reposting of the property. He found it more appropriate to instruct the Petitioners to file a new petition. Mr. Mattes did not challenge that instruction by request for reconsideration or a *de novo* appeal. As for the parties’ expectations, it is apparent that Guckert I focused on the validity of the 1978 permit, and that when petitioners sought to add the new claim about intensification, the ZC Wiseman held that the reasonable expectation was to treat the two claims separately. Under these circumstances, Guckert I and Guckert II are properly viewed as relating to different transactions. ZC Wiseman viewed them this way, without further challenge by any of the parties. This is more conclusive than anything else.”

21. The appellate courts have refused to apply *res judicata* to bar a claim involving a distinct “transaction”. In Kent County Bd. of Educ. v. Bilbrough 309 Md. 487, 494-500 (1987), the Court of Appeals adopted the pragmatic “transactional” approach of Restatement (Second) of Judgments Section 24. Judge Rodowsky explained “... that the ‘pragmatic’ test ‘defies any abstract definition which could be applied to all cases.’” 309 Md. at 499. In Bilbrough, the Court ultimately decided that an adverse judgment in a civil rights action against the Plaintiff, a former school district employee, involving his discharge did not bar a subsequent action for invasion of privacy relating to invasion of police files.

Subsequently, Judge Wilner explained the heart of the “transactional” approach in FWB Bank v. Richman 354 Md. 472, 493 (1999);

“In deciding whether a factual grouping constitutes a ‘transaction,’ the RESTATEMENT directs a pragmatic approach, ‘giving weight to such considerations as whether the facts are related in time, space, origin or motivation, whether they form a convenient trial unit, and whether their treatment as a unit

conforms to the parties' expectations or business understanding or usage." RESTATEMENT, *supra*, Section 24(2).

The Court of Special Appeals applied this test in Boyd v. Bowen 145 Md. App. 635, 655 (2002).

22. People's Counsel filed a Pre-Hearing Memorandum before ZC Wiseman and distinguished Guckert I and II from the facts in Seminary Galleria v. Dulaney Valley Improvement Association 192 Md. App. 719 (2010) and In The Matter of Howard & Melanie Becker, CBA 06-651-SPHA, cases in which People's Counsel successfully argued preclusion under the doctrine of *res judicata*:

"We recognize that where the cause of action is the same, a final decision on the merits precludes a new case filed under a new name or sporting a new legal theory. That was the situation in the Becker case, where the property owner came back with actually an application for a long pier and boatlift after a similar application had been finally denied. In the context of the Court of Appeals' transactional analysis, the issue was the same: Should there be an approval of a proposed pier and boatlift?

Our October 28 letter explained why the present case [Guckert] is distinguishable from Seminary Galleria. It is likewise distinguishable from Becker. First of all, the question of the validity of the 1978 permit pertains, in transactional terms, to different temporal and fundamental questions from the question of the much later twenty-first century intensification of the use. Secondly, the legislative sequence of Bills 98-75 and 139-83 formulate different and independent transactional situations. Thirdly, the Zoning Commissioner concluded in Guckert I that the permit issue and intensification issue involved entirely different transactions in his June 1, 2010 final Ruling on Motion for Reconsideration. Fourthly, the Zoning Commissioner instructed the Guckert to file another Petition for Special Hearing. As this was not appealed, any conclusive impact would be that the two petitions and situations do involve different causes of action.

23. Guckert I and Guckert II here are distinguishable from the cases cited in Mattes' Motion to Dismiss on page 4. *Res judicata* bars a subsequent action before an agency acting in a judicial capacity (i) if the issue was litigated before the agency and (ii) it was necessary to the agency's decision. Neither applies in the instant matter.

24. It is clear from ZC Wiseman's decisions here that no evidence pertaining to expansion or intensification was presented at the hearing on Guckert I. In denying Guckert's Motion for Reconsideration, he stated that the Motion for Reconsideration pertained to intensification while Guckert I was limited to the legality of the use permit. Specifically, in his Ruling On Petitioners' Motion for Reconsideration, dated June 1, 2010, ZC Wiseman determined intensification to be a wholly separate issue, requiring posting and public notice prior to any hearing:

"In the case before me, the decision rendered was based upon the evidence introduced material to the matters raised in the Petition, i.e., the validity of the Use Permit based upon legislative actions, prior approvals and applicable law. . . . As a result, this Commission does not have jurisdiction to review Petitioners' [Guckert] Motion for Reconsideration and finds that the Motion predicated on materially different issues must be denied and that Petitioners' are instructed to file a new Petition with the Department of Permits and Development Management (DPDM) raising the central issue of intensification of use at this location and request a new hearing after proper notice is provided in accordance with the B.C.Z.R. and Baltimore County Code (B.C.C.)."

ZC Wiseman reiterated his position in his Ruling on Motion to Dismiss, dated 12-20-10:

" . . . I find that res judicata does not bar the instant petition for special hearing [Guckert II] because the issue now presented to the Zoning Commissioner was not "actually litigated" before the Zoning Commissioner within the confines of the prior petition. Indeed, the Petitioners [Guckert] filed a Motion for Reconsideration following the denial of their prior petition for special hearing and this office denied the Motion due to the fact that the issue of intensification was not presented, argued, or considered in the first petition."

25. As to the whether the issue of intensification was necessary to decide the legality of the permit, ZC Wiseman clearly decided the permit issue without any reference to whether subsequent intensification had occurred: "The validity of the existing Use Permit having been decided and no longer at issue- Petitioners' by way of their Motion for Reconsideration now seek a finding that the fishing and shellfishing operation at the subject property is operating at an intensity that is above that which was grandfathered in

1978 when the Use Permit was issued.” June 1, 2010 Ruling on Petitioners’ Motion for Reconsideration, page 1.

26. The separate subject matters and decisions addressed in the rulings by ZC Wiseman on Guckert I and ALJ Stahl on Guckert II illustrate our position that there are two separate transactions here. Clearly they saw no overlapping or intertwining.

First, ZC Wiseman’s decision on Guckert I dated April 4, 2010 stated specifically the issues before him which he titled “QUESTIONS PRESENTED”: “(1) Whether the Use Permit granted by Commissioner DiNenna was appropriate and effective, and if so, does it run with the land so as to inure to the benefit of a subsequent purchaser who is also a commercial fisherman? (2) Does a Use Permit survive periods of non-use or does a discontinuance bring into play the non-conforming use provisions of B.C.Z.R. Section 104.1?” His “CONCLUSION” on page 10 stated at the onset: “For all these reasons and based on the evidence presented, an examination of the words contained in the regulations and definitions provided and the language, purpose and legislative history, I find that Respondent is entitled to conduct a commercial fishing, crabbing or shellfishing operation as allowed under the October 9, 1978 Use Permit.”

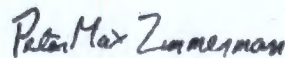
On the other hand, ALJ Stahl wrote on page 4-5 of his January 3, 2012 Order: “Although proving intensification will not support Petitioners’ [Guckert] request for the invalidation of the underlying use permit, if intensification is established by the Petitioners, Respondents [Mattes] would still be subject to the termination of identified intensified activities as well as the removal of any materials, equipment or machinery in place to carry out those activities. Therefore, I will now move to a review of the testimony and a determination as to whether or not intensification of the activities permitted in the underlying use permit have, in fact, occurred.” While not concurring in his conclusion on the merits, on page 9, ALJ Stahl clearly limited his decision: “. . . I find that the Respondents have not intensified the use of the property in excess of that which is permitted under the use permit and plan issued October 9, 1978.”

27. Moreover, the language in Bills 98-75 and 139-83 actually provide for separate causes of action. First, Bill 98-75 permits existing facilities to continue if they could

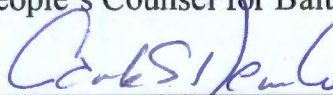
comply with specific standards within one year of the enactment of the legislation. Second, Bill 139-83, which ratified late filing permits, provided in Section 3, that nothing in this ratification ordinance "... shall be construed to authorize the extension, expansion, or intensification of any commercial fishing, crabbing, and shellfishing operations" Any such change in use would be subject to the special exception requirements. Clearly, ZC Wiseman's decision to uphold the legality of the permit did not need to address whether the property owner subsequently intensified or expanded the business.

28. Guckert's position in Guckert I would have been compromised if petitioners had to admit to the legality of the 1978 permit in order to pursue an illegal intensification of a legal permit at the same hearing. Obviously, whether they could pursue a second cause of action in Guckert II depended on an independent final decision in Guckert I. The purpose of preclusion under *res judicata* is to prohibit the same parties from retrying the same case under the guise of a changed legal theory, a new witness or new evidence. It is not intended to deny the right to pursue a cause of action because the same parties or even the same property were involved in prior litigation.

For all the above reasons, the Motion to Dismiss should be denied.



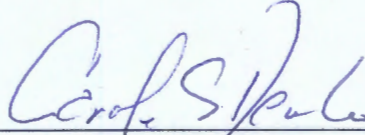
PETER MAX ZIMMERMAN
People's Counsel for Baltimore County



CAROLE S. DEMILIO
Deputy People's Counsel
Jefferson Building, Room 204
105 West Chesapeake Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of April, 2012, a copy of the foregoing People's Counsel for Baltimore County's Answer to Motion to Dismiss was mailed to Douglas Silber, Esquire, P.O. Box 176, Phoenix, MD 21131, Attorney for Petitioners, and Lawrence Schmidt, Esquire, Smith, Gildea & Schmidt, LLC, 600 Washington Avenue, Suite 200, Towson, Maryland 21204, Attorney for Respondents.

A handwritten signature in blue ink, appearing to read "Carole S. Demilio", is written over a horizontal line.

CAROLE S. DEMILIO

People's Counsel for Baltimore County

2/1/12

RECEIVED
MAR 1 2012

BALTIMORE COUNTY
BOARD OF APPEALS

IN RE: PETITION FOR SPECIAL HEARING
NW/side Island View Road, 208' SW/side of
Barrison Point Road

* BEFORE THE
* BOARD OF APPEALS

2535 Island View Road

* FOR

15th Election District
6th Councilmanic District

* BALTIMORE COUNTY

*

Andrew & Stephanie Mattes
Legal Owners/Respondents

* Case No.: 2011-0051-SPH

Theresa J. Guckert, et al
Appellants

*

* * * * *

MOTION TO DISMISS

Andrew & Stephanie Mattes, Legal Owners/Respondents, by and through their attorneys, Lawrence E. Schmidt, and Smith, Gildea & Schmidt, LLC, hereby files this Motion to Dismiss this matter with prejudice. The grounds of the Motion to Dismiss are as follows:

I. Background

Andrew & Stephanie Mattes (hereinafter "Mattes" or "Respondents") are the owners of the property known as 2534 Island View Road, a waterfront property adjacent to Brown's Creek is eastern Baltimore County¹. The subject property is composed of a part of Lot 2 and the entirety of Lots 3 & 4 as shown on the Amended Plat of Barrison Point. The subject property is approximately 0.631 acres in area and zoned RC 5.

The property is roughly rectangular in shape but its shoreline is irregular. The property is improved with a single-family detached dwelling, in which the Mattes family resides, as well as several out buildings/sheds, including a garage.

Mr. Mattes is a commercial waterman by occupation. He earns his living through the natural bounty of the Chesapeake Bay and its tributaries. Depending on the season, he crabs and fishes from the subject property. He sells his catch commercially.

¹ Previously, the subject property was known as 466 Barrison Road, however, the premises is now currently known as 2534 Island View Road due to a re-designation of local streets in the area.

He has owned and lawfully operated his commercial fishing/shell fishing operation from this property since February, 2009. Certain neighbors (Theresa J. Guckert (2530 Island View Road), David M. Donovan and James S. Brown (2502 Island View Road) collectively hereinafter "Appellants") are intent upon challenging the legality of this operation. They have appealed the Opinion and Remand Order of Administrative Law Judge Lawrence M. Stahl dated January 3, 2012. Their appeal should be dismissed for the reasons that follow.

II. Statement of the Case

The instant case is the second time the respective parties have addressed the substantive issue of whether the fishing/shell fishing operation use on the Mattes property is legally permitted. Mr. Mattes' fishing/shell fishing operation was initially subject to proceedings in Zoning Case No.: 2010-0220-SPH. In that matter, the **same** individuals (Appellants) filed a Petition for Special Hearing "to invalidate the fishing and shell fishing facility for non-conforming use or otherwise. Other reasons to be presented at the hearing." The matter came in before then Zoning Commissioner William J. Wiseman, III for a public hearing. The parties were given full opportunity to present any and all testimony and theory/argument regarding the use of the property. Following the hearing, Commissioner Wiseman issued a written Opinion and Order dated April 19, 2010 denying the Petition for Special Hearing. Commissioner Wiseman found that the fishing/shell fishing operation was in conformance with the County's zoning regulations.

The Appellants filed a Motion for Reconsideration of that decision. Commissioner Wiseman did not conduct another public hearing but disposed of the Motion for Reconsideration by written Opinion and Order dated June 1, 2010. Therein, he denied the Motion for Reconsideration. Neither Commissioner Wiseman's original ruling nor his ruling on the Motion for Reconsideration were appealed. Thus, those Orders are final.

The Appellants filed a new Petition for Special Hearing which was assigned Zoning Case No.: 2011-0051-SPH. Therein, the Appellants again sought a finding that the fishing and shell fishing facility at 2534 Island View Road is not permitted under the zoning ordinance. The Appellants contend that the facility is operating at an intensity that is above and beyond what existed in 1978, when the operation was approved by the then zoning authorities.

In response to that Petition, the Mattes', through undersigned counsel, filed a Motion to Dismiss with the Zoning COMmissioner. The Mattes' argued that the new Petition was barred by the doctrine of *res judicata* because of the decision previously issued by Commissioner Wiseman in Case No.: 2010-0220-SPH. Commissioner Wiseman denied the Motion to Dismiss on December 20, 2010 but he indicated that any party dissatisfied with his decision could immediately file an appeal to the County Board of Appeals of Baltimore County (hereinafter the "Board"). Such an appeal was filed by the Mattes. After entertaining oral argument, the Board denied the Motion to Dismiss and remanded the case to the Zoning Commissioner (now the Office of Administrative Hearings). The Board determined that Wiseman's order was interlocutory and that the Mattes' appeal was premature. The Board did not rule on the merits of the Motion to Dismiss. On remand, the case was assigned to Administrative Law Judge Lawrence M. Stahl (former Commissioner Wiseman having since retired). He conducted a public hearing on the Petition and denied it upon its merits by written Opinion and Remand Order dated January 3, 2012. The Appellants have appealed to the Board and this Motion to Dismiss is now ripe for consideration.

III. The Doctrine of *res judicata*

The doctrine of *res judicata* provides that a judgment on the merits in a previous suit between the same parties precludes a second suit predicated upon the same cause of action. The Court of Appeals stated in *Whittle v. Bd. of Zoning Appeals*, 211 Md. 36, 128 A.2d 41 (1956): "If

the second suit is between the same parties and is upon the same cause of action, a judgment in the earlier case on the merits is an absolute bar, not only as to all matters which were litigated in the earlier case, **but as to all matters which could have been litigated.**" (*emphasis added*) *Id* at 49, 125 A.2d 41. A similar summary of this point appears in *Alvey v. Alvey*, 225 Md. 386, 390, 171 A.2d 92 (1961):

The doctrine of *res judicata* is that a judgment between the same parties and their privies is a final bar to any other suit upon the same cause of action, and is conclusive, not only as to all matters that have been decided in the original suit, but as to all matters which with propriety could have been litigated in the first suit, where the court had jurisdiction, proceedings were regular, and his omission was due to his own negligence.

In *Alvey, supra*, 225 Md. at 391, 171 A.2d 92, the Court of Appeals quoted with approval the following statement from *Henderson v. Henderson*, 67 Eng. Rep. 313, 319, 3 Hare 100, 115 (1843):

[W]here a given matter becomes the subject of litigation in, and of adjudication by, a Court of competent jurisdiction, the Court requires the parties to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have from negligence, inadvertence, or even accident, omitted a part of their case. The plea of *res judicata* applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time.

See, e.g., Stavely v. State Farm Mut. Auto. Ins. Co., 376 Md. 108, 116, 839 A.2d 265 (2003); *Sugarloaf v. Waste Disposal*, 323 Md. 641, 658-59, 594 A.2d 1115 (1991); *Cicala v. Disability Review Bd.*, 288 Md. 254, 263-64, 418 A.2d 205 (1980).

Whether [a]... declaration should be given preclusive effect hinges on three factors: (1) whether the [agency] was acting in a judicial capacity; (2) whether the issue presented to the [reviewing] court was actually litigated before the [agency]; and (3) whether its resolution was necessary

to the [agency's] decision.

Batson, 86 Md. App at 356, 586 A.2d at 799 (quoting *West Coast Truck Lines v. American Industries*, 893 F.2d 229, 234-35 (9th Cir. 1990)). This test was first enunciated in *Exxon Corp. v. Fischer*, 807 F. 2d 842, 845-46 (9th Cir. 1987), and its three prongs are supported by the Supreme Court case law on issue preclusion.

The rationale for this facet of law was more clearly explained in *United States v. Utah Constr. Co.* 384 U.S. 394, 86 S.Ct. 1545, 16 L.Ed.2d 642 (1966), where the Court spoke particularly to the preclusive effect of administrative law rulings, stating that:

When an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, the courts have not hesitated to apply *res judicata* to enforce response. [citations omitted]

Id. at 422, 86 S.Ct. at 1560, 16 L.Ed.2d at 661.

Just a year before *Batson*, the Supreme Court quoted the above language from *Utah Construction Co.* in *Astoria Federal Savings & Loan Assoc. v. Solimino*, 501 U.S. 104, 107 (1991). Mr. Justice Souter added,

Such response is justified on the sound and obvious principle of judicial policy that a losing litigant deserves no rematch after a defeat fairly suffered, in adversarial proceedings, on an issue identical in substance to the one he subsequently seeks to raise. To hold otherwise would as a general matter, impose unjustifiably upon those who have already shouldered their burdens, and drain the resources of an adjudicatory system with disputes resisting resolution...The principle holds true when a court has resolved an issues, and should do so equally when the issue has been decided by an administrative agency, be it state or federal...

It is settled that *res judicata* applies to administrative proceedings. In zoning cases, the law does allow for consideration of a substantial change in the character of a neighborhood if it materially affects the relevant zoning issue. See *Whittle, supra*; *Mayor and City Council of Baltimore v. Linthicum*, 170 Md. 245, 183 A. 531 (1936); *Bensel v. Mayor and City of Baltimore* 203 Md. 506, 101 A.2d 826 (1954); *Woodlawn Area Citizens Assoc. v. Board of County*

Commr's, 241 Md. 187, 216 A.2d 149 (1966). However, *res judicata* bars litigation of the same matter with respect not only to the legal claims or issues decided in the case finally adjudicated, but also “as to all matters which with propriety could have been litigated in the first suit.” *Alvey, supra*; *MPC, Inc. v. Kenny*, 279 Md. 29, 32, 367 A.2d 486, 489 (1977); *deLeon v. Slear* 328 Md. 569, 580, 616 A.2d 380, 385 (1992); *Kim v. Council of Unit Owners of Collington Center II Condominium* 180 Md. App. 606, 952 A.2d 346 (2008). A litigant must bring forward the entire case, including all relevant facts and legal issues. Otherwise, there would be a potentially infinite series of litigation based on different facts and legal theories to achieve the same objective.

It has been said that a plaintiff (or in this case, the party filing the zoning petition) is “the master of his complaint.” *Custer v. Sweeney* 89 F 3rd 1156, 1159 (4th Cir. 1996). In this case, the Appellants framed their opposition to the operation in the original petition to include “other reasons to be presented at the hearing” and for reasons “otherwise.” Thus, they identified that any number of reasons (both specifically identified in the Petition and unidentified) would form a basis for their argument that the shell fishing operation was illegal. This could have included the allegation that the nature of the use has unlawfully intensified. Simply stated, that argument should have been raised when all of the other arguments offered in opposition were presented in the first case.

IV. The Application of *res judicata* to the Instant Case

The present case deals with the same property, shoreline, use and RC (Resource Conservation) zone addressed when the Use Permit was approved in 1978 and the legality of the use confirmed in Case No.: 2010-0220. There is no material change in the character of the neighborhood, or any other new fact that would justify revival of the case.

Here the current Petition clearly satisfies the three prong test utilized to bar suits under *res judicata* in that (1) the Zoning Commissioner was acting in a judicial capacity; (2) the issue

presented over the legality of the current shellfish operation was litigated; and (3) said operation was determined to be proper and legal as permitted under the initial 1978 permit and continuing in the present day. Therefore, litigants are not permitted to again bring an identical challenge to a legally existing operation as decided previously by the Zoning Commissioner.

Not only does *res judicata* bar further litigation on all matters which properly could have been litigated in the first suit but were not; but in the instant matter the intensification of the shellfish and crabbing facility was raised, discussed and litigated. It is referenced both in the Appellants' evidence as well as the decision from the Zoning Commissioner. Therefore, this claim was decided previously. A final determination was made by the June 1, 2010, denial of the Motion for Reconsideration, and as such, this attempt to litigate the same matter, for the same property and between the same parties is barred by *res judicata*.

V. Board's Precedent Established in Becker

The Board, and indeed the Circuit Court in the matter of Becker (Case No: 03-C-08-004351-AA) was presented with not only a similar legal issue (*res judicata*) but also a nearly identical fact pattern. In that case, the owners of a waterfront property (William R. Duval and Theresa A. Duval, hereinafter "Duvals") filed a Petition for Variance to construct a pier into the adjacent waterway. The matter was heard by the Zoning Commissioner and then appealed by certain opponents to the Board. Following a hearing, the Board denied the Variance. During the thirty (30) day period following the Board's decision, the Duvals entered into a contract to sell the property to the Howard and Melanie Becker (hereinafter the "Beckers"). The Beckers and Duvals filed a joint Motion for Reconsideration, asking that the Board consider a modified proposal for a pier. The Board denied the Motion and just as Commissioner Wiseman did in

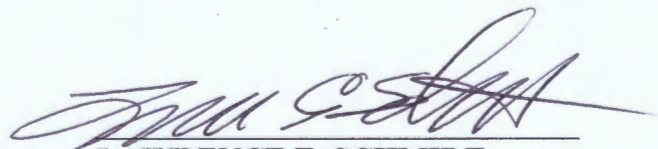
Case No.: 2010-220-SPH, *advised* the Beckers that they should file a new Petition².

Years later, the Beckers filed a new Petition for Variance for a proposed pier. The original neighbors (and the Office of People's Counsel) moved to dismiss the Petition on grounds of *res judicata*. They argued that notwithstanding the Board's prior advice, that the Beckers were precluded from filing a new petition as they could have presented their arguments as part of the first case. On appeal to the Circuit Court, the Court remanded the matter to the Board with instructions to review the case in light of the *res judicata* argument and the Board issued a ruling determining that the second petition must be barred. Although the Circuit Court's and Board's rulings are admittedly not legal precedent, the facts of these cases are strikingly similar and the Board should rule consistently in this matter. Copies of the relevant rulings in Becker are attached hereto as Exhibits 1 through 4.

WHEREFORE, the Respondents request:

- 1) That this Motion to Dismiss be granted and the Petition for Special Hearing be denied; and
- 2) For such other and further relief as the nature of their cause may require.

Respectfully submitted,



LAWRENCE E. SCHMIDT
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, MD 21204
(410) 821-0070
Attorneys for Legal Owners/Respondents

² Wiseman, in denying the Motion for Reconsideration, recommended the Appellants file a new Petition to raise the "intensification" issue.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this **1st** day of **March, 2012**, a copy of the foregoing Motion to Dismiss was mailed, first-class mail, postage pre-paid to:

Douglas N. Silber, Esquire
Douglas N. Silber, LLC
P.O. Box 176
Phoenix, MD 21131

A handwritten signature in dark ink, appearing to read 'Lawrence E. Schmidt', written over a horizontal line.

LAWRENCE E. SCHMIDT

IN THE MATTER OF
THE APPLICATION OF
WILLIAM R DUVAL, JR, AND
THERESA A. DUVAL -PETITIONERS
FOR ZONING VARIANCE ON PROPERTY

12TH ELECTION DISTRICT
7TH COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. 00-241-A
* * * * *

RULING ON MOTION FOR RECONSIDERATION
AND JOINT MOTION TO REVISE ORDER

A final Opinion and Order was issued by the Board on June 6, 2001, along with a Concurring /Dissenting Opinion. The Petitioner filed a "Motion for Reconsideration" on July 5, 2001, with the accompanying "Joint Motion to Revise Order" being filed on July 17, 2001.

The basis for the Reconsideration was as follows:

1. That William R. Duval, Jr., and Theresa A. Duval have sold the property known as 403 Bayside Drive, Baltimore County, Maryland 21222 to Howard C. Becker and Melanie I. Becker, new owners.
2. That Howard C. Becker and Melanie I. Becker have come to an agreement with Michael Mioduszewski and Susan Hagerty, regarding the pier.
3. That the parties have agreed that the boatlift shall be removed and that all of the pier, except for a pier extending 29' from the bulkhead with a 5' wide deck shall be allowed to remain on the property.
4. That the boat lift, the pilings and the pier decking, except as set forth above, have been removed from the property as shown on the photographs submitted to the Board as an attachment to said Motion.

The Petitioners had requested that:

- a) The County Board of Appeals vacate the Opinion and Order of this Board dated June 6, 2001 and adopt the proposed Order set forth as Exhibit "1" of the Motion as the Final Order in this case;
- b) For such other and further relief as the nature of this cause may require.

The Joint Motion was signed by the former owners of the subject property, the new purchasers, Susan Hagerty and Michael Mioduszewski, original Protestants, and counsel for the Petitioners and new owners and counsel for the Protestants.

PETITION OF
HOWARD AND MELANIE BECKER

* IN THE
* CIRCUIT COURT

FOR JUDICIAL REVIEW
OF THE BOARD OF APPEALS
OF BALTIMORE COUNTY

* FOR
* BALTIMORE COUNTY

IN THE CASE OF THE APPLICATION
OF HOWARD AND MELANIE BECKER-
LEGAL OWNERS/PETITIONERS FOR
SPECIAL HEARING AND VARIANCE
ON PROPERTY LOCATED AT
403 BAYSIDE DRIVE
12TH ELECTION DISTRICT
7TH COUNCILMANIC DISTRICT

*
*
*
*
* Case No.: 03-C-07-1895-08.4351

BOARD OF APPEALS
CASE NO.: 06-651-SPHA

*
*

* * * * *

MEMORANDUM OPINION AND ORDER

This matter comes before the Court as a Petition for Judicial Review of the decision of the Board of Appeals of Baltimore County dated March 18, 2008, denying Howard and Melanie Becker's Petition for Special Hearing for an extension to existing pier and proposed boatlift under § 417.3.C of the Baltimore County Zoning Regulations (BCZR) and denial of a Petition for Variance seeking relief from § 417.4 of the BCZR to allow a pier and boatlift within zero feet of the divisional line in lieu of the required ten feet. A hearing was held before this Court on December 16, 2008. The Court has carefully considered the oral arguments heard, the legal memoranda presented, the decision of the Board of Appeals, and the applicable statutory and case law in reaching its decision in this matter.

FILED JAN 23 2009

IN THE MATTER OF THE APPLICATION OF <u>HOWARD AND MELANIE BECKER</u> -LEGAL OWNERS /PETITIONERS FOR SPECIAL HEARING AND VARIANCE ON PROPERTY LOCATED AT 403 BAYSIDE DRIVE 12 TH ELECTION DISTRICT 7 TH COUNCILMANIC DISTRICT	* * * * * * * * *	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Case No. 06-651-SPHA
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* * * * * * * * *

**ORDER OF THE BOARD ON REMAND
FROM THE CIRCUIT COURT FOR BALTIMORE COUNTY**

This matter comes before the Board on remand by Order of Judge Thomas J. Bollinger, Circuit Court for Baltimore County, filed January 23, 2009, and Amended Order, filed February 5, 2009 in which Judge Bollinger remanded this matter to the County Board of Appeals to determine the issue of whether or not *res judicata* applies to the decision in this case, based upon the Board’s decision in a previous case involving the same property.

Statement of Facts

The Circuit Court succinctly set forth the facts of this case. The property in question is a triangular-shaped waterfront parcel located on the south side of Bayside Drive, just east of Winona Avenue, with frontage on Chink Creek and near its confluence with Bear Creek in Dundalk. The property consists of two lots known as Lot 62 and Lot 63 of Inverness and contains a gross area of 0.13 acre +/- and is zoned D.R. 5.5. The property is presently improved with a two-story framed dwelling, an above-ground swimming pool and a detached accessory shed.

The property was the subject of a prior zoning case #00-241-A in which the previous owners, William R. Duvall, Jr., and his wife, Teresa A. Duvall, filed a Petition for Variance for

SMITH, GILDEA & SCHMIDT LLC

MICHAEL PAUL SMITH
DAVID K. GILDEA
LAWRENCE E. SCHMIDT
D. DUSKY HOLMAN
MICHAEL G. DEHAVEN
RAY M. SHEPARD

LAUREN M. DODRILL
MICHAEL J. LIPPENHOLZ
CHARLES B. MAREK, III
ELYANA TARLOW
JASON T. VETTORI
REBECCA G. WYATT

of counsel:

JAMES T. SMITH, JR.

March 1, 2012

Theresa R. Shelton, Administrator
County Board of Appeals of Baltimore County
105 W. Chesapeake Avenue, Suite 203
Towson, MD 21204

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MAR 1 2012

BALTIMORE COUNTY
BOARD OF APPEALS

**Re: Mattes/2535 Island View Road
Case No.: 2011-0051-SPH**

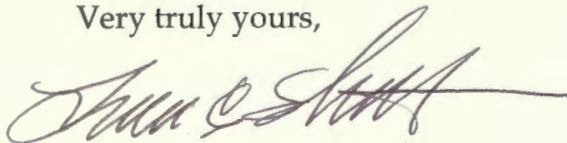
Dear Ms. Shelton:

Please find enclosed a Motion to Dismiss with accompanying exhibits for filing in the above referenced matter.

Recently, I received a copy of Douglas Silber's request for postponement of the hearing date for this matter. As I advised him via telephone, I have no objection to his request. In terms of rescheduling, I will leave it to the Board's discretion as to whether this Motion should be decided initially, or whether the Board intends to hear the entire case. I anticipate that any hearing on the merits (i.e. whether there has been an improper "intensification" of the use on the property) might entail numerous witnesses and could be lengthy.

Thank you for your consideration of the above. It would be appreciated if counsel is advised of the manner in which the Board wishes to proceed.

Very truly yours,



Lawrence E. Schmidt

LES: jkl

Enclosures

CC: Andrew & Stephanie Mattes
Douglas N. Silber, Esquire, Douglas N. Silber, LLC



KEVIN KAMENETZ
County Executive

LAWRENCE M. STAHL
Managing Administrative Law Judge
JOHN E. BEVERUNGEN
TIMOTHY M. KOTROCO
Administrative Law Judges

February 8, 2012

Douglas N. Silber, Esq.
Douglas N. Silber, L.L.C.
P.O. Box 176
Phoenix, Maryland 21131-0176

RECEIVED
FEB 8 2012

Re: Case Number: 2011-0051-SPH
Location: 2534 Island View Road

**BALTIMORE COUNTY
BOARD OF APPEALS**

Dear Mr. Silber:

Please be advised that an appeal of the above-referenced case was filed in this Office on February 1, 2012. 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 contact the Board at 410-887-3180.

Sincerely,

LAWRENCE M. STAHL
Managing Administrative Law Judge
for Baltimore County

LMS:dlw

c: ☒ Baltimore County Board of Appeals
Peter Max Zimmerman, People's Counsel for Baltimore County
Arnold Jablon, Director of Permits, Approvals and Inspections
Lawrence E. Schmidt, Esquire, Smith, Gildea & Schmidt LLC, 600 Washington Avenue,
Suite 200, Towson, MD 21204
Jim Grace, 2527 Barrison Point Road, Essex MD 21221
Francis Hemsley, 304 Teal Court, Chester MD 21619
Charles Wagerman, Jr., 2540 Island View Road, Essex MD 21221
Ray Bonczewski, 2553 Barrison Point Road, Essex MD 21221
Todd Lewis, 9400 Gun View Road, Perry Hall MD 21236
Kenny Dryden, 8016 Redstone Road, Kingsville MD 21087
Robert Foehrkolb, 7018 Greenbank Road, Baltimore MD 21220
Ryan Kayby, 917 Sue Grove Road, Essex MD 21221
Daniel Beck, 2358 Schaffers Road, Essex MD 21221
Ernest Hoffman, 2512 Island View Road, Baltimore MD 21221
Gregory Kirkpatrick, 7821 North Point Road, Baltimore MD 21219

APPEAL

REMAND - Petition for Special Hearing Case No.: 2011-0051-SPH

- ✓ Memo- **Remand** - Petition for Special Hearing (September 14, 2011) from Board of Appeals
- ✓ Memo transmitting file to Kristen Lewis from Lawrence M. Stahl (September 15, 2011) for scheduling and processing of Remand hearing
- ✓ Corrected Notice of Zoning Hearing (September 26, 2011)
- ✓ Notice of Zoning Hearing (September 26, 2011)
- ✓ Certification of Publication - (The Jeffersonian - October 25, 2011)
- ✓ Certification of Posting (Martin Ogle - October 24, 2011)
- ✓ Petitioner(s) Sign-In Sheet - One page
- ✓ Respondent(s) Sign-In Sheet - One page
- ✓ Zoning Advisory Committee Comments
 - ✓ 1 - State Highway Administration - September 12, 2011

Petitioner's Exhibits:

- ✓ 1 - Application for Zoning Use Permit issued 10/9/78 by Commissioner DiNenna - (5 Pages)
- ✓ 2 - Photos of Site - (9 Pages)
- ✓ 3 - Traffic Log - (6 Pages)

Respondent's Exhibits:

- ✓ 1 - Petition for Special Hearing (Case No. 2010-0220-SPH) dated February 22, 2010 - 1 page
- ✓ 2 - Memorandum and Order by Commissioner Wiseman (Case No. 2010-0220-SPH) dated April 19, 2010 - 11 pages
- ✓ 3 - Ruling on Petitioners' Motion for Reconsideration by Commissioner Wiseman (Case No. 2010-0220-SPH) dated June 1, 2010 - 3 pages
- ✓ 4 - Ruling on Motion to Dismiss by Commissioner Wiseman (Case No. 2011-0051-SPH) dated December 20, 2010 - 6 pages
- ✓ 5 - Appeal and cover letter from Denied Motion to Dismiss / Opinion and Remand Order (Case No. 11-051-SPH) from Board of Appeals dated August 2, 2011 - 4 pages 5
- ✓ 6 - Motion to Dismiss from Sebastian A. Cross, Esq. (Case No. 2011-051-SPH) dated September 28, 2010 - 6 pages
- ✓ 7 - Baltimore County Council Bill No. 139-83 - 2 pages
- ✓ 8A & 8B - 2 Photos of Site

Miscellaneous:

- ✓ 1- Letter from David M. Donovan to John E. Beverungen dated October 26, 2011 received via fax October 27, 2011 requesting subpoena for Gregory Kirkpatrick
- ✓ 2- Subpoena to Gregory Kirkpatrick, Anne Arundel County Sheriff's Department from Managing Administrative Law Judge dated October 27, 2011 for November 8, 2011 hearing
- ✓ 3- Email to David Donovan from Debra Wiley dated October 27, 2011 transmitting copy of subpoena for Gregory Kirkpatrick
- ✓ 4- Email between David Donovan and Kristen Lewis (September 16 and 19, 2012) regarding scheduling of case
- ✓ 5- Email to Doug Silber and Lawrence Schmidt from Patricia Zook dated January 3, 2012 transmitting copy of cover letter and Remand Order

- ✓ 6- Email to Krysundra Cannington from Patricia Zook dated January 3, 2012 transmitting copy of cover letter and Remand Order
- ✓ Closing Memorandum in Lieu of Closing Argument filed by Lawrence E. Schmidt, Esq. – November 22, 2011 (10 pages) and attaching:
 - ✓ (a) Motion to Dismiss (2011-051-SPH) filed by Sebastian A. Cross, Esq. – 7 pages
 - ✓ (b) Baltimore County Council Bill 98-75 – 30 pages
 - ✓ (c) Baltimore County Council Bill 30-78 – 4 pages
 - ✓ (d) Baltimore County Council Bill 139-83 – 2 pages
- ✓ Letter and Memorandum of Petitioners filed by Douglas N. Silber, Esq. – November 22, 2011 (12 pages) and attaching:
 - ✓ (a) Letter to Commissioner Wiseman from Peter Zimmerman dated October 28, 2010 regarding res judica – 4 pages
 - ✓ (b) Cover Letter and Memorandum and Order by Commissioner Wiseman dated April 19, 2010 – 13 pages
 - ✓ (c) Cover Letter and Ruling on Petitioners' Motion for Reconsideration by Commissioner Wiseman dated June 1, 2010 – 4 pages
 - ✓ (d) 1978 Application for Zoning Use Permit – 6 pages
- ✓ Cover Letter and Administrative Law Judge's Opinion and Remand Order (DENIED - January 3, 2012 – 10 pages)
- ✓ Notice of Appeal and receipt received on February 1, 2012 filed by Douglas N. Silber, Esq.

**** Remand File from Board of Appeals received September 14, 2011 ****

c: People's Counsel for Baltimore County
 Baltimore County Board of Appeals
 Lawrence M. Stahl, Managing Administrative Law Judge
 Arnold Jablon, Director of Permits, Approvals and Inspections
 Lawrence E. Schmidt, Esquire, Smith, Gildea & Schmidt LLC, 600 Washington Avenue,
 Suite 200, Towson, MD 21204
 Jim Grace, 2527 Barrison Point Road, Essex MD 21221
 Francis Hemsley, 304 Teal Court, Chester MD 21619
 Charles Wagerman, Jr., 2540 Island View Road, Essex MD 21221
 Ray Bonczewski, 2553 Barrison Point Road, Essex MD 21221
 Todd Lewis, 9400 Gun View Road, Perry Hall MD 21236
 Kenny Dryden, 8016 Redstone Road, Kingsville MD 21087
 Robert Foehrkolb, 7018 Greenbank Road, Baltimore MD 21220
 Ryan Kayby, 917 Sue Grove Road, Essex MD 21221
 Daniel Beck, 2358 Schaffers Road, Essex MD 21221
 Ernest Hoffman, 2512 Island View Road, Baltimore MD 21221
 Gregory Kirkpatrick, 7821 North Point Road, Baltimore MD 21219
 Peter Max Zimmerman, People's Counsel for Baltimore County

Date Sent: January 8, 2012

Law Offices
Douglas N. Silber, L.L.C.

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Email: dnsilber@gmail.com

February 1, 2012

BY HAND DELIVERY

Honorable Lawrence M. Stahl
Office of Administrative Hearings
105 W. Chesapeake Avenue, Suite 103
Towson, Maryland 21204

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FEB 01 2012

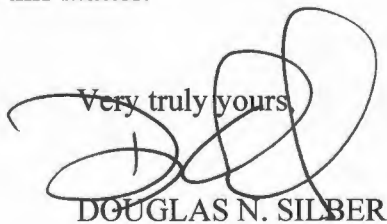
OFFICE OF ADMINISTRATIVE HEARINGS

Re: Petition for Special Hearing, Case No. 2011-0051-SPH
Property: 2534 Island View Road
Andrew Mattes, III et ux., Legal Owner, Respondent
Theresa J. Guckert, et al., Petitioners

Dear Judge Stahl:

The Petitioners hereby appeal the "Opinion and Remand Order" of January 3, 2012 to the Board of Appeals of Baltimore County. The appeal fee of \$285.00 is enclosed herewith.

Thank you for your attention to this matter.

Very truly yours,

DOUGLAS N. SILBER

Enclosures

cc: Lawrence Schmidt, Esquire
Peter Max Zimmerman, Esquire, People's Counsel
Ms. Theresa J. Guckert
Mr. David Donovan
Mr. James Brown

1/3/12

IN RE: PETITION FOR SPECIAL HEARING

NW side of Island View Road, 208' NW
c/l of Barrison Point Road
(2534 Island View Road)
15th Election District
6th Council District

Andrew J. Mattes, III, et ux,
Owners/Respondents
Theresa J. Guckert, et al
Petitioners

BEFORE THE

OFFICE OF

ADMINISTRATIVE HEARINGS

BALTIMORE COUNTY

CASE NO. 2011-0051-SPH

* * * * *

OPINION AND REMAND ORDER

This matter comes before the Office of Administrative Hearings for Baltimore County for consideration on Remand concerning an ongoing Petition for Special Hearing filed by Theresa Guckert, David Donovan and James Brown (Petitioners). The Board of Appeals (BOA) in its Order, dated August 2, 2011, found that an interlocutory appeal from the Zoning Commissioner of an Order Denying a Motion to Dismiss based on the principles of *res judicata* was not reviewable by the BOA until the completion of the entire case before the Zoning Commissioner. The BOA Remanded this matter to the Office of Administrative Hearings for further adjudication on the merits.

Appearing at the public hearing for this case were Theresa J. Guckert, David Donovan and James Brown, Petitioners, represented by Douglas N. Silber, Esquire. Also appearing in support of the Petitioners were Ernest Hoffman and Gregory Kirkpatrick. Respondents Andrew J. and Stephanie Mattes appeared, represented by Lawrence Schmidt, Esquire with Smith, Gildea & Schmidt, LLC. There were also a number of persons present in support of the position of the Respondents. These individuals are too numerous to mention and specifically identify herein.

However, all have signed in on the Respondents' Sign-In Sheets. Reference is made to the sign-in

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sheets which are contained within the file.

PROCEDURAL HISTORY

The history of this matter is considerable. Petitioners filed a Petition for Special Hearing under Case No. 2010-0220-SPH, requesting the Zoning Commissioner "to invalidate a fishing and shell fishing facility at 2534 Island View Road for non-conforming or otherwise." After a full hearing, Commissioner Wiseman, by his Memorandum and Order dated April 19, 2010, denied the Petition and confirmed therein the validity of the existing use permit for the property issued in 1978. Petitioners timely filed a Motion for partial Reconsideration, seeking a finding that the fishing, shell fishing and crabbing operation at the subject site was operating at an intensity that was above that which was permitted in the 1978 use permit. That Motion was denied by Commissioner Wiseman per his ruling dated June 1, 2010. In the body of his ruling, he "instructed" Petitioners that he believed they could raise the issue "intensification" by way a new and separate Petition for Special Hearing. Petitioners did not file an appeal to Commissioner Wiseman's ruling of April 19, 2010, nor his denial of the subsequent Motion for partial Reconsideration. Petitioners then filed the instant matter, asking the then Zoning Commissioner to determine whether the scope and intensification of the fishing, shell fishing and crabbing business permitted by the use permit had been exceeded. Respondents then filed a Motion to Dismiss the new Petition for Special Hearing, arguing that the new Petition was barred by *res judicata*. A hearing was held and per his Order of December 20, 2010, Commissioner Wiseman denied the Motion, and further found that his ruling constituted a "final Order," thereby making it amenable to the filing of an immediate appeal to the Baltimore County Board of Appeals (Board). The Board heard argument on the validity of the Motion to Dismiss and issued an Opinion and Remand Order dated August 2, 2011, finding that the appeal of the denial of the Motion to Dismiss was

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premature until the case was fully completed and all testimony heard, returning the case to the Office of Administrative Hearings for adjudication of the “intensification” issue on its merits.¹

THE INSTANT MATTER

Thus, this case returned to the Office of Administrative Hearings and was heard by this writer on November 8, 2011. At the outset, Counsel for the Respondents moved once again for dismissal of the Petitioners’ Special Hearing Request, on the grounds that it was barred by *res judicata*. The Motion was held sub curia at that time pending completion of the proceedings.

MOTION TO DISMISS

Respondents’ Counsel has taken the position that I may rule on the Motion to Dismiss made before me on November 8, 2011, irrespective of it being the same Motion made in this matter previously before Commissioner Wiseman. As the old expression goes: “There’s good news and bad news” for the Respondent. I am persuaded by the holdings in *Ross v. Ross* 90 Md. App. 176 (1992) and *Driver vs. Parke-Davis and Company* 29 Md. App. 354 (1975) that I may in fact exercise my own judgment on the Motion in spite of the ruling made earlier by Commissioner Wiseman. Counsel also looks for support of his Motion to *Whittle vs. Board of Zoning Appeals* 211 Md. 36, 128 A 2 41 (1956) in which the Court of Appeals, in discussing the *res judicata* doctrine held that the rule applied not only to bar that which was presented in an earlier case from being re-litigated in a subsequent matter, but also extended it to all matters which could have been litigated. (emphasis added) id at 49 125 A 2 41.

¹ The Office of Administrative Hearings of Baltimore County replaced and absorbed the hearing responsibilities of the Office of the Zoning Commissioner of Baltimore County by act of the County Council effective January 16, 2011.

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By BM

materials, equipment or machinery in place to carry out those activities.

Therefore, I will now move to a review of the testimony and a determination as to whether or not intensification of the activities permitted in the underlying use permit have, in fact, occurred. Counsel for Respondents had proffered, and it is not controverted by any of the parties, that the subject property covers 6 acres, or approximately 25,000 square feet. It is zoned RC 5 and is improved by a single family dwelling which is the residence of the Respondent and his family, and is also the site of an accessory shed and garage.

Gregory Kirkpatrick, an Anne Arundel County Police Deputy, testified that he had previously served as a Corporal with the Maryland National Resources Police from 1973 to 2002. He patrolled the Middle River area in 1976 by boat and on a number of occasions passed by and could see the subject site. He recalled a pier, but doesn't remember the number of boats docked there. He recalls the presence of crab pots, but was unsure as to the number kept on the property. On cross-examination he acknowledged that he remembered few details from that time, including the number and uses of crab pots on the subject property. He was certain however that he had never issued any citations for violations on the site.

Ernest Hoffman, the owner of property approximately eight lots away from the subject site (400 feet) since 1956, was called as a witness and testified that he did not definitively know or remember what was used in the water in 1978 from the subject property, but does recall some crab pots in use. He also doesn't recall, one way or the other, seeing the storage of crab pots on the property. He states that after the Respondents purchased the property, more crab pots were in evidence and were being used more extensively than before the Respondents' purchase. He has also seen boats at the dock at times, but doesn't know who owns them. It is his opinion that the business seems to be growing, as he notes more pots, more activity on the site, more boats, cars

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By BM

and the storage of crab pots on the site. To his mind "common sense" indicates that the business at the subject site has intensified. On cross-examination, he confirmed that he had never actually been on the property and that he is neither a fisherman nor a crabber.

Theresa Guckert, who has lived next door to Respondents' property since 1926, was called and testified that over the years she had visited the previous owners of the property on many occasions. She had walked around the property, but had not seen many crab pots in evidence and noted that in the 1970s there was little commercial activity on the site; and she related that the previous owner did very little crabbing. She further stated that after the Respondents bought the property there were more vehicles present and the number and use of crab pots increased significantly. She acknowledged that she is now at home most of the time and has drawn some conclusions from photos shown to her. She provided a chronological listing of vehicle traffic at Respondents' site (Petitioners' Exhibit 3), but cannot identify either the type of trucks, their ownership, or their use. She does recall that, after the 2009 hurricane, the Respondents had a number of people on the property carrying out repairs.

Andrew Mattes II was called as a "adverse witness." He testified that he bought the subject property in 2009. He stated that he was licensed to utilize 300 crab pots, an employee Gil Hardison, had a license for 900 crab pots, Respondents' wife 300 crab pots, and his father, 600 crab pots. He stated that all the pots are utilized through his business. He described storing 1,500 pots on the property during the winter, and a small number during the summer, when most are in use in the water. He pointed out, that except for repairs, he had no employees who worked on site. He further acknowledged that he has a larger boat and a small one docked at the property. He recalls that his employee's boat was at the site once or twice and that his father does not keep his boat there either.

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Upon questioning by his attorney, Respondent testified that he is a commercial fisherman and crabber. He offered that the legality and legitimacy of the existing use permit have been confirmed and resolved in Commissioner Wiseman's previous Opinion of April 19, 2010; which Order was not appealed. He maintains that everything present on the site and his activities thereon, are all within that Order and authorized under the existing use permit. He went on to note that the permit allows commercial fishing, crabbing and shell fishing operations on 50% of the subject property, or approximately 12,500 square feet. He believes that the storage of crab pots takes up approximately 2,000 square feet, and that, including all business related uses, the total square footage utilized under the permit is perhaps 3,000 square feet in total. The remainder of the property is utilized by him for his home and other non-commercial uses. He has one floating dock and pilings where the old, previous pier was located. He has not yet constructed but plans to build a permanent pier in the future. He further stated that all crab pots are stored in space permitted under the existing use permit and plan. He acknowledged that he and his wife each drive a truck. Finally, he offered that after the hurricane of 2009, storm damage and debris cleanup required the presence of a number of people and equipment on most of the subject property.

Daniel Bock, a crabber and fisherman who lives across the creek from the subject site, was called to testify and to the best of his memory that crab pots were stored two or three high on the subject property in the 1970s. He was unable to quantify the number stored in the year 1978 specifically.

FINDINGS

The determination of whether or not there has been intensification of the activities permitted under the subject use permit requires a baseline starting point. The very limited and extremely anecdotal testimony provided by Petitioners fails to establish a legally or reasonably

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sufficient starting point from which to determine if the Respondents' use of the subject property has intensified generally, let alone in specifics, over that which was authorized in the 1978 use permit.

Therefore, I believe that the only appropriate methodology to determine if such intensification has in fact occurred, is to compare the testimony of the Respondents as to what exists on site and the activities permitted to be carried on there under the actual use permit itself. The Permit clearly notes the total net area of the subject property as 25,200 net square feet. It states that the Permit allows a "commercial fishing, crabbing and shell fish operation, wholesale and retail sale of crabs and fish...."

It then states:

"The following items will be utilized in the operation and/or will be stored on the premises; storage of nets, crab pots, boats, anchors, walk-in box, live boxes and other miscellaneous equipment used in the operation thereof, berthing of fishing boat, loading and unloading of catches and gear."

The plural is used in the above description with the exception of "walk-in box." It does not apply any specific numbers or limitations as to how many of each of the listed items is permitted to be utilized under the Permit. The Permit does, however, specifically limit the use of those items on the subject site to "approximately 50% of the total net area of the property..." The Respondent testified that only approximately 3,000 square feet of the subject property is used for commercial purposes pursuant to the use permit. Clearly, the Permit on its face imposes no limit as to the number of the authorized items and activities listed and set out in the Permit and accompanying plan as long as those items and activities utilize no more than 50% of the site, or approximately 12,100 square feet. Petitioners offered no testimony whatsoever to contradict in

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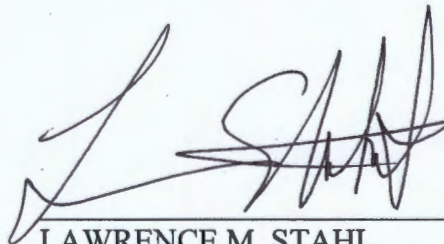
any meaningful way Respondent's testimony.

The inspection documents presented by the Petitioners (Petitioners' Exhibit 1) merely are a "snap shot" of what was on the property that day in 1978. It offers nothing beyond that. The extent to which a prior owner did or didn't avail himself of that which is permitted by the use permit is not dispositive of the issue of intensification. This is not a matter of what was on the site at any given point, but what is permitted to be on and take place from this property under the use permit which has already been validated previously by Commissioner Wiseman.

Pursuant to the advertisement, posting of the property and public hearing held on this Petition, and for reasons now set forth above, I find that the Respondents have not intensified the use of the property in excess of that which is permitted under the use permit and plan issued October 9, 1978.

THEREFORE, IT IS ORDERED, this 3rd day of January, 2012, by this Managing Administrative Law Judge for Baltimore County that the Petition for Special Hearing, be and is hereby DENIED.

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



LAWRENCE M. STAHL
Managing Administrative Law Judge
for Baltimore County

LMS:pz

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Date 1-3-12

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By [Signature]



KEVIN KAMENETZ
County Executive

LAWRENCE M. STAHL
Managing Administrative Law Judge
JOHN E. BEVERUNGEN
TIMOTHY M. KOTROCO
Administrative Law Judges

January 3, 2012

DOULAS N. SILBER, ESQUIRE
PO BOX 176
PHOENIX MD 21131-0176

Re: Petition for Special Hearing
Case No. 2011-0051-SPH
Property: 2534 Island View Road

Dear Mr. Silber:

Enclosed please find the decision rendered in the above-captioned case.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file with the Department of Permits, Applications and Inspections an appeal within thirty (30) days from the date of this Order. For further information on filing an appeal, please contact the Office of Administrative Hearings at 410-887-3868.

Sincerely,

A handwritten signature in black ink, appearing to be "L. Stahl", is written over the word "Sincerely,".

LAWRENCE M. STAHL
Managing Administrative Law Judge
for Baltimore County

LMS/pz
Enclosure

- c: Lawrence E. Schmidt, Esquire, Smith, Gildea & Schmidt LLC, 600 Washington Avenue, Suite 200, Towson, MD 21204
Jim Grace, 2527 Barrison Point Road, Essex MD 21221
Francis Hemsley, 304 Teal Court, Chester MD 21619
Charles Wagerman, Jr., 2540 Island View Road, Essex MD 21221
Ray Bonczewski, 2553 Barrison Point Road, Essex MD 21221
Todd Lewis, 9400 Gun View Road, Ferry Hall MD 21236
Kenny Dryden, 8016 Redstone Road, Kingsville MD 21087
Robert Foehrkolb, 7018 Greenbank Road, Baltimore MD 21220
Ryan Kayby, 917 Sue Grove Road, Essex MD 21221
Daniel Beck, 2358 Schaffers Road, Essex MD 21221
Ernest Hoffman, 2512 Island View Road, Baltimore MD 21221
Gregory Kirkpatrick, 7821 North Point Road, Baltimore MD 21219
Peter Max Zimmerman, People's Counsel for Baltimore County

11/22/11

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OFFICE OF ADMINISTRATIVE HEARINGS

IN RE: PETITION FOR SPECIAL HEARING
N/west side of Island View Road, 208 feet n/west
of the centerline of Barrison Point Road

2534 Island View Road

15th Election District
6th Councilmanic District

Legal Owners: Andrew & Stephanie Mattes
Petitioner: Theresa Guckert

- * BEFORE THE
- * OFFICE OF
- * ADMINISTRATIVE HEARINGS
- * FOR BALTIMORE COUNTY
- *
- * **Case No.: 2011-0051-SPH**

* * * * *

CLOSING MEMORANDUM IN LIEU OF CLOSING ARGUMENT

Andrew J. Mattes, III and Stephanie Mattes, his wife, (hereinafter the "Mattes") by and through Lawrence E. Schmidt and Smith, Gildea & Schmidt, LLC, their attorneys, submit this Closing Memorandum in Lieu of Closing Argument and respectfully state:

Background

The Mattes are the owners of the property known as 2534 Island View Road, a waterfront property is eastern Baltimore County¹. The subject property is composed of a part of Lot 2 and the entirety of Lots 3 & 4 as shown on the Amended Plat of Barrison Point. The subject property is approximately 0.631 acres in area and zoned RC 5.

As noted above, the property is waterfront, adjacent to Brown's Creek. The property is roughly rectangular in shape but the shoreline is irregular. The property is improved with a single-family detached dwelling, in which the Mattes' reside, as well as several out buildings/sheds, including a garage.

Mr. Mattes is a waterman by occupation. He earns his living through the natural bounty of the Chesapeake Bay and its tributaries. Depending on the season, he crabs and fishes from the subject property.

¹ Previously, the subject property was known as 466 Barrison Road, however, the premises is now currently known as 2534 Island View Road due to a re-designation of local streets in the area.

He has owned and lawfully operated his fishing/shell fishing operation from this property for two and a half years. Certain neighbors are intent upon challenging the legality of this operation. They should not be afforded a second bite at the apple in the interests of judicial economy.

Case History

The instant case is the second time the respective parties have addressed the substantive issue of whether the fishing/shell fishing operation use is legally permitted. The legality of Mr. Mattes' fishing/shell fishing operation was initially subject to proceedings in Zoning Case No. 2010-0220-SPH. In that matter, certain neighbors (Theresa Guckert, David Donovan and James Brown) (collectively the "Petitioners") filed a Petition for Special Hearing "to invalidate the fishing and shell fishing facility for non-conforming use or otherwise. Other reasons to be presented at the hearing." The matter came in before then Zoning Commissioner William J. Wiseman, III for public hearing. The parties were given full opportunity to present any and all testimony and theory/argument regarding the use of the property. Following the hearing, Commissioner Wiseman issued a written opinion and order dated April 19, 2010 denying the Petition for Special Hearing.

The Petitioners filed a Motion for Reconsideration of that decision. Commissioner Wiseman did not conduct another hearing but disposed of the Motion by written opinion and order dated June 1, 2010. Therein, he denied the Motion for Reconsideration. Neither Commissioner Wiseman's original ruling nor his ruling on the Motion for Reconsideration were appealed. Thus, those orders are final.

The Petitioners filed a new Petition for Special Hearing which was assigned Case No. 2011-0051-SPH. Therein, the Petitioners again seek a finding that the fishing and shell fishing

facility at 2534 Island View Road is not permitted. The Petitioners contend that the facility is operating at an intensity that is above and beyond what existed in 1978, when the operation was approved by the current zoning authorities.

In response to that Petition, the Mattes', through undersigned counsel, filed a Motion to Dismiss. The Mattes' argued that the new Petition was barred by the doctrine of res judicata. For reference, the Motion to Dismiss is attached hereto. Commissioner Wiseman denied the Motion to Dismiss on December 20, 2010. However, he indicated that any party dissatisfied with his decision could immediately file an appeal to the County Board of Appeals of Baltimore County (hereinafter the "Board"). Such an appeal was filed by the Mattes. After conducting oral argument, the Board denied the Motion to Dismiss and remanded the case to the Office of Administrative Hearings. The Board determined the Motion was premature and did not rule on its merits since the Zoning Commissioner's decision is subject to a de novo appeal.

Argument #1

Administrative Law Judge Stahl is not Precluded from Considering the Motion to Dismiss

The Mattes renew their Motion to Dismiss based upon the doctrine of res judicata. Moreover, Administrative Law Judge Stahl may consider this issue. Although the Rules of Practice and Procedure before the Zoning Commissioner provide no guidance on this issue, the Maryland Rules are helpful in determining whether Administrative Law Judge Stahl can consider and reverse the previous decision by Commissioner Wiseman. Maryland Rule 2-536, entitled "Disability of Judge" deals with instances where a Judge is unable to perform an act or duty. In the instant case, Zoning Commissioner Wiseman is no longer able to perform an act or duty due to his retirement. In instances such as this, Rule 2-536 provides that if a Judge is "unable to perform an act or duty in an action, any other Judge authorized to act in that court may perform

the act or duty if he or she can properly do so.” The Rule further provides, “otherwise, the other Judge shall grant a new trial or such other relief as justice requires.”

This Rule was considered in Ross v. Ross, 90 Md.App 176 (1992). In that case, one Judge issued an order approving a proposed Domestic Master’s report. Subsequently, the Judge retired and another Judge was assigned that case. The Court of Special Appeals held that the subsequent Judge was authorized to perform any act or duty which the previous Judge had including *reconsidering prior decisions made by the Judge*. A similar result was reached in Driver v. Parke-Davis & Co. 29 Md.App 354 (1975). Thus, Administrative Law Judge Stahl does have the authority to consider the res judicata argument.

Argument #2

Res Judicata Bars the Current Petition

As noted above, the original Motion to Dismiss is attached hereto. The arguments presented therein will not be repeated but are incorporated herein. *Res judicata* is a doctrine of law, whereby the same cause of action cannot be adjudicated a second time. *Simpkins v. Ford Motor Credit Company*, 389 Md. 426, 441 fn. 23, 886 A.2d 126 (2005). Collateral estoppel is similar doctrine. Collateral estoppel does not involve the same cause of action, but does involve the same parties. Collateral estoppel would apply if the same parties are adjudicating a matter which involves facts or issues which were actually litigated in a matter that was not the same cause of action. *Batson v. Shiflet*, 323 Md. 684 (1992). The doctrine of res judicata has been held to bar not only all matters actually litigated but all matters which might have been litigated. *Kim v. Council of Unit Owners for Collington Ctr. III Condo.*, 180 Md.App. 606, 615-16 (2008).

In the Petitioners’ original Petition, they sought an order invalidating the fishing/shell fishing operation for any reason “which might be presented at the hearing” or “otherwise.” As

such, the Petitioners raised all issues available to challenge the validity of the use and had an opportunity to present evidence in support of any theory which they thought applicable to this property and the use thereof. Commissioner Wiseman's Ruling on Motion for Reconsideration does not insulate Petitioners from the doctrine of res judicata. The matter has been fully and finally litigated.

It is not as if the situation has changed from the time Commissioner Wiseman considered the Petitioners' original attempt to terminate the fishing/shell fishing operation. Stated another way, without a substantive change to the existing fishing/shell fishing operation the doctrine of res judicata precludes further consideration of the intensification argument to question the legality of the operation.

Argument #3

The Fishing and Shell Fishing Operation at 2534 Island View Road has not Extended, Expanded or Intensified

In addressing this issue, an understanding of the legislative history of the applicable regulation is appropriate. Prior to 1975, the Baltimore County Zoning Regulations ("BCZR") did not regulate fishing/shell fishing operations. This was notwithstanding the vast shoreline of Baltimore County and the obvious existence of fishing/shell fishing operations on properties in Baltimore County that abutted the water. In an effort to address this issue, the Baltimore County Council enacted Bill No. 98-75 on November 3, 1975. That Bill defined commercial fishing, crabbing and shell fishing operations; characterizing such uses as either "primary" or "secondary" operations in the BCZR. The Bill provided that such uses would be permitted by Special Exception in the RC zones, including the RC 5 zone. However, recognizing the existence of many such operations, the legislation specifically provided that "any such use existing at the time of the date of the enactment of this subsection may continue at the same level and intensity

provided that within 365 days of the enactment date of this legislation they shall file for a use permit as prescribed under BCZR § 500.4.”

In accordance with the provisions of Bill No. 98-75, a number of watermen in Baltimore County filed to legitimize their respective fishing and shell fishing operations. In 1978, the County Council recognized that the one year grace period in which to file to legitimize existing operations on Bill No. 98-75 had expired. Thus, the Council enacted Bill No. 30-78. This deleted the language which had been added to the regulations permitting legitimization of existing operations. Bill No. 30-78 further provided that a new six (6) month period was established for those fisherman/crabbers who had “missed the boat” and had not filed for a use permit.²

A third Bill, Bill No. 139-83, was enacted five years later. The Bill did not amend any specific provision of the BCZR rather it clarified the legislative history. The Bill provided that all use permits for fishing/shell fishing operations issued or approved by the Zoning Commissioner or Deputy Zoning Commissioner prior to January 1, 1979, were “ratified, reinstated and approved.” Obviously, the purpose of this language was to legitimize existing operations for which the use permit had been obtained, notwithstanding the failure of those owners to meet the timelines prescribed under Bill No. 98-75 and Bill No. 30-78. Bill No. 139-83 further provides “that nothing contained herein shall be construed to authorize the extension, expansion or intensification of any commercial fishing, crabbing and shell fishing operations...*beyond that indicated in the plan accompany the application for use permit...*” (*emphasis added*).

² Bill No. 30-78 is dated April 3, 1978. It provides that it shall take effect forty-five days after its enactment. Assuming the Bill was enacted on April 3, 1978, approximately 45 days from April 3, 1978 is May 18, 1978 (the effective date). As such, November 18, 1978 would be six (6) months from the effective date of the Bill.

This specific language addresses a fundamental flaw in the Petitioners argument offered in this case. The Petitioners' have offered evidence about conditions on the property in 1978.³ By the clear wording of the Bill, the comparison of current conditions does not relate to what physically occurred on the property at the time of the use permit, but rather what was "indicated in the plan..."⁴

In this regard, a review of the application for use permit submitted by D. Franklin Beck, Sr., Mae Beck, his wife, and Daniel F. Beck, Jr., (their son) for the subject property is vital. The application for use permits specifically requests approval for "commercial fishing, crabbing and shellfish operation, wholesale and retail sale of crabs and fish." The application and plan attached therewith further indicates that the premises will be used for "storage of nets, crab pots, boats, anchors, walk-in box, live boxes and other miscellaneous equipment used in the operation thereof birthing a fishing boat, loading and unloading of catches and gear." The application further states a maximum of 50% of the total net area of the property will be utilized in the operation. Similarly, the plan shows areas of the site for "crab pot storage," "rowboat storage," "net storage" and a "tool shed." The plan further states, "sales may take place randomly from various locations on the property and, i.e. pier, boat, live box, ice box, etc. No building or other retail floor area are established or intended to be established for this purpose now or in the future."

Bill No. 139-83 addresses three potential changes to the use on the property, i.e. extension, expansion or intensification thereof. An *extension* has been construed under the case

³ Actually, the Petitioners have offered very little specific testimony regarding conditions on the date the use permit was issued (October 9, 1978). Rather, review of the tape recorded transcript of the hearing discloses that much of the Petitioners testimony discussed conditions "in the late 70's" or "around that time." Thus, Petitioners own case lacks specificity as to what existed on the date of the use permit.

⁴ The Petitioners appear to be trying to incorporate a nonconforming use argument, lending further support to the argument that the doctrine of *res judicata* operates to preclude this request for relief.

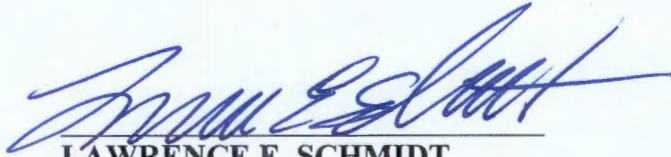
law as meaning a change in the nature of the operation into a new and different use. (See e.g. National Institutes of Health Federal Credit Union v. Hawk, 47 Md.App. 189 (1980)). That is, if the Mattes opened a restaurant selling seafood at the location, one could concluded that the new business was an extension (i.e. change) in the nature of the operation. The operation approved in 1978 was a fishing, crabbing and shell fishing operation. It has not changed in character, thus there has been no extension.

Insofar as "expansion," the term has been construed to mean an increase in the area of the property used. (See e.g. County Council of PG County v. Gardener, 293 Md.App 259 (1982)). If the Mattes' had acquired an adjacent property for use in connection with the operation, that acquisition would be considered an expansion. However, the four corners of the property today are the same as they were in 1978. Thus, there has been no expansion.

Insofar as "intensification," the term has generally been defined by the Courts in the context of non-conforming uses. Indeed, the Courts have held that intensification of a non-conforming use is permitted. (See e.g. Trip Associates v. Mayor and City Council, 392 Md.App. 565 (2006)). In applying the term to this case, an evaluation of what was shown on the plan and approved in 1978 is appropriate. The activity permitted on the property was specifically set forth in the application and the accompanying plan. As noted above, it included the storage of nets and equipment, boats, sails, etc. The nature of the activity has not intensified from what was approved. There was storage of equipment and the activities which are part and parcel of the existing fishing/shell fishing operation. These activities have continued and are not changed. Moreover, the existing use does not exceed the 50% limitation of the property shown on the plan and approved by then Zoning Commissioner Dinnea. Simply stated, the activities are still the same and there is compliance with the area limitation.

For all these reasons, the instant Petition for Special Hearing should be denied.

Respectfully submitted,



LAWRENCE E. SCHMIDT

Smith, Gildea & Schmidt, LLC

600 Washington Avenue, Suite 200

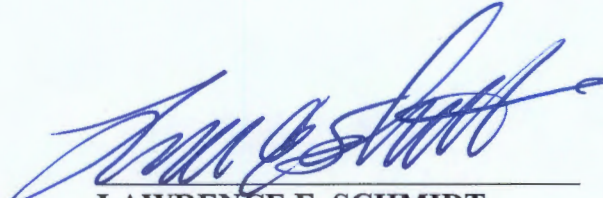
Towson, MD 21204

(410) 821-0070

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this **22nd** day of **November, 2011**, a copy of the foregoing Closing Memorandum in Lieu of Closing Argument was mailed first-class pre-paid postage to:

Douglas N. Silber, Esquire
P.O. Box 102
Phoenix, MD 21131



LAWRENCE E. SCHMIDT

4/22/11
IN RE: PETITION FOR SPECIAL HEARING
Andrew Mattes, III, et ux. Legal Owners/ Respondents
Theresa J. Guckert, et al., Petitioners

* BEFORE THE
* OFFICE OF
* ADMINISTRATIVE
• HEARINGS OF
• BALTIMORE COUNTY
•
• Case No. 2011-0051-SPH
•

* * * * *

MEMORANDUM OF PETITIONERS

Petitioners, by and through undersigned counsel, respectfully ask the Office of Administrative Hearings to determine, as a matter of fact and law, that Respondent has violated the terms of the Use Permit issued to Daniel F. Beck, Jr., Lessee and D. Franklin Beck, Sr. on October 9, 1978, for the property then known as 466 Barrison Road, and now known as 2534 Island View Road. In support, Petitioners submit this memorandum of points and authorities.¹

Relevant History

The relevant legislative history was summarized by the April 19, 2010, Memorandum and Order of William J. Wiseman, as the Zoning Commissioner for Baltimore County, in Case No. 2010-0220-SPH. By way of summary, the County Council issued bill 98-75 in order to permit "those fisherman presently in operation (on or about 1975) to file for Use Permits to

¹ As Petitioners' undersigned counsel arrived "late in the game" and believes that People's Counsel, Peter Max Zimmerman, Esquire, in his letter of October 28, 2010 to Zoning Commissioner William J. Wiseman in this matter, best addresses the *Res Judicata* issues raised in Respondents' motion to dismiss, Petitioners simply attach, as Exhibit A, a copy of People's Counsel's letter to this paper and incorporate it by reference.

'grandfather' their businesses, thereby negating the necessity of seeking special exceptions for continuation." *Memorandum and Order* at 3. Bill 98-75 further enumerated uses permitted in the R.C. 5 zone:

"Commercial fishing, crabbing or shellfishing operation – *Primary or Secondary*, except that any such use existing at the time of date of enactment of this subsection may continue at the same level of intensity provided that within 365 days of the enactment date of this legislation, they shall file for a Use Permit as prescribed under Section 500.4 of the Zoning Regulations."

In his Memorandum and Order, Commissioner Wiseman went on to state that:

Each fisherman was required to submit a site plan to the Zoning Commissioner within this timeframe so that the Zoning Commissioner could approve the continued operation of each shellfishing business in existence at the time the legislation was enacted. Each fisherman *would be bound by the site plan as to the extent of his business and would be limited to the "same level of intensity" forevermore.* *Id.* at 4. (emphasis added).

Mr. Wiseman also explained that Bill 98-75 created definitions for a Primary and Secondary commercial fishing, crabbing and shellfishing operation.² There are important and significant differences between the two types of operations. Unlike a primary operation, a secondary operation:

- (1) may only be used by the commercial fisherman who is domiciled there;
- (2) may only involve the berthing of a commercial fishing boat (i.e. *not more than one* or the bill would have deleted the "a" and added an "s" to the word "boat";
- (3) may not have live boxes and the necessary cold storage facilities; and

² Primary – A residential or commercial property fully devoted to commercial fishing activities and the retail and wholesale sale of fish, crabs and shellfish including facilities for the repair, storage, launching, berthing, securing, loading and unloading of catches and gear including nets, crab pots, oyster tongs, trout lines and clamming equipment, also live boxes and the necessary cold storage facilities.

Secondary – A residential property which is the domicile of a person engaged full or part time as a commercial fisherman and who is required under Title 4 of the Department of Natural Resources to possess a license for the purpose of catching by net, line, trap or tongs, of fish, crabs or shellfish and has limited facilities for the storage and berthing of a commercial fishing boat and the loading or unloading of catches and gear.

For this discussion, Petitioners will refer to a "primary operation" or a "secondary operation."

- (4) may not include facilities for the repair, storage, launching, berthing, securing, loading and unloading of catches and gear including nets, crab bots, oyster tongs, trout lines and clamming equipment

Pursuant to Bill 98-75, Mr. Daniel F. Beck, Jr. then represented by counsel, submitted an application for a Use Permit including a site plan. Attached to the approved permit was a "Shellfishing Inspection Record" indicating that on June 13, 1978, the property "was found to be in general compliance with the site plan submitted with the above application." In the written remarks of the Baltimore County inspector, it was stated: "*No crab pots being stored on property, nets and boxes being stored on pier. One small row boat on land. Property is neat. No apparent violation.*" (Emphasis added). Attached to the application or the inspection report were three photographs dated June 13, 1978. None of the photos indicate storage of any fishing and shellfishing paraphernalia on the property, except on the pier.

The site plan that was submitted with the application indicated six specific "boxed areas" each with clear boundary perimeters:

1. A dwelling with specific dimensions, indicating the location of the single family house which was the operators primary residence;
2. An enclosed 10'3" x 10'3" net storage area just in front of the house and slightly to the west;
3. A small 5'3" x 10'5" Tool Shed at the southeast corner of the property near the front of the property;
4. An enclosed second net storage area, south of the Tool Shed, this storage area measuring 18'3" x 18'3";
5. A "row boat storage area" in the northeast corner of the property adjacent to the concrete bulkhead at waters edge; and
6. A 60' x 50' "crab pot storage area" west of the row boat storage area and on the western half of the property in the rear.

Taken together, the written application, the site plan, the inspection report and the photographs taken by the inspector, all of which were attached to the application in the County's zoning file, and were part of Mr. Daniel F. Beck, Jr.'s application. The application did not request approval to be a "primary operation" as opposed to a "secondary operation." Clearly, however, Mr. Beck was seeking approval of a primary operation because, the property was not his primary residence, he wanted to store nets, crab pots, utilize a walk-in box and live boxes, and run a wholesale and retail operation. None of these proposed uses are allowed in a secondary operation, which also requires the operator to reside in the dwelling as his principal domicile.

The application was clear that "approximately 50 percent of the total net area of the property will be utilized in the operation." But, the application did not detail how that "approximate 50% area" would be utilized or what would be placed where. For example, the application states that a "walk-in box" will be used, but does not indicated where it will be. But clearly, the site plan submitted did not show any placement of the proposed walk-in box on the west exterior of the dwelling. The application makes clear that Mr. Beck intended to berth a single fishing boat --- the application site plan clearly said "1 boat", singular not plural. In addition to the fishing boat, he had a row boat.

Finally, the application does not specify how many crab pots would be stored within the "crab pot storage area." The best evidence as to the number of crab pots being stored would be the concurrent June 13, 1978 inspection report and photographs that indicate "no crab pots being stored on property."

The application was filed in or about October 1977 (as indicated from the cover letter from Mr. Beck's attorney), the property was inspected in June 1978, and an approval given by the Zoning Commissioner (DiNenna) on October 9, 1978. It is important to note that the

approval only spoke to *the property* and was silent on what specific uses were to be allowed.

The order was very simple, clear and concise:

“the herein described property should be and the same is hereby approved as a secondary Commercial fishing, crabbing and shellfishing operation.”

In his April 19, 2010 Memorandum and Order (at page 10), Commissioner Wiseman points out this decision by Zoning Commissioner DiNenna to approve a Secondary Operation and finds no reason to reverse or revise it. Commissioner Wiseman goes on to rule that:

Respondent is entitled to conduct a commercial fishing, crabbing or shellfishing operation as allowed under the October 9, 1978 Use permit. The legislation (and permit) also mandated that any such use existing on the date of the enactment of the law could continue *only at the same level of intensity*. (Id. at 10, emphasis in the original).

Neither Commissioner DiNenna nor Commissioner Wiseman provided a list of exactly what operation could be conducted on the subject property, what could be stored there, etc. Mr. DiNenna clearly did not use the words, “the application and the uses proposed therein are hereby approved,” as one might have expected. Nor is there any evidence that Mr. Beck or his attorney requested a correction or clarification of the approval asking that it be for a primary operation so that crab pots could be stored and repaired, and cold-storage facilities could be placed on the grounds. Any interested party or code enforcement personnel need only look to the specific operations and uses clearly allowed in a secondary operation in Bill 98-75 (as recited in footnote 1, *supra*).

When the inspector visited the property in June 1978, he saw a property that complied with the requirements of a secondary operation: no crab pots being stored on the property; nets and boxes stored only on the pier; one small rowboat on land, only one large boat in the water.³

³ Petitioners acknowledge that the site plan submitted with the application clearly shows an area marked as “crab pot storage area,” which is only allowed under a primary operation. The inspector only

In 1983, the County Council passed Bill 139-83. While the legislature had the opportunity to revisit the distinctions between primary and secondary operations, or say that if there were a conflict between the application or site plan and what Bill 98-75 allowed, that the site plan or application would control, the legislature chose not to. Bill 139-83 should not "be construed to authorize the extension, expansion or intensification of any . . . [secondary operation] . . . beyond that indicated in the plans accompanying the application" The language was not written in the affirmative; rather in the negative. Respondent argued at the November 8 hearing in essence that "as long as its on the plan it is permitted." For this inference to be supported, the legislation would have said: "Notwithstanding any limitation of use contained in the definition of primary operation or secondary operation in Bill 98-75, any Use Permit approved under Bill 98-75 is to be interpreted broadly to permit allow all uses shown in the site plan and application, even if they were not consistent with the uses in place as of the enactment of Bill 98-75." This is the interpretation that Respondents are asking the Administrative Law Judge to infer.

Respondent's counsel, as a former Zoning Commissioner, should know better than anyone that "the basic premise underlying zoning regulations is to restrict rather than expand non-conforming uses." *Jahnigen v. Staley*, 245 Md. 130, 137 (1967). Clearly, Bill 98-75, being a comprehensive rezoning legislation, provided protection and allowed continuation of prior uses which would, by law, become legally non-conforming. But, as will be discussed below, whereas

recommended approval as being in compliance with the site plan. As he saw no crab pots, neither did he see any crab pots stored outside of the "crab pot storage area." The fact that approval of a secondary operation was approved, when the application and site plan was clearly for a primary operation, does not allow the Respondent, the County, or Commissioner Wiseman to now enlarge, expand or extend the definition of a secondary operation to include crab pot storage, just as it couldn't allow for multiple commercial fishing boats, cold storage facilities or other uses, operations or facilities clearly not permitted in a secondary operation.

intensification is generally allowed in a non-conforming use, *see Jahnigen*, with respect to primary and secondary commercial fishing, crabbing or shellfishing operations that were in existence at the legislations adoption, intensification *would not be allowed*. This was reiterated in Bill 139-83. Respondent's counsel's argument flies in the face of the clear intent of Bill 98-75 and Bill 139-83.d

The Relevant Questions

The only two relevant questions are:

First: whether Respondent is conducting his operation and using his property "as allowed under the October 9, 1978 Use permit" – namely in accordance with the limits of what is allowed in a secondary operation; and

Second: whether the Respondent had violated the limitation that "such use existing on the date of the enactment of the law could continue *only at the same level of intensity*."

The Evidence Presented At the November 8, 2011 Hearing

The evidence is not much in dispute. The county inspector during his June 13, 1978 inspection takes three photographs showing no crab pots stored, no walk-in box outside or other cold storage unit, a single large boat in the water, and a single rowboat on land. Ms. Theresa Guckert also confirmed that, until the Respondent moved in to the subject property in 2009, the property had seen little or no storage of crab pots, either on land or on the pier. And Mr. Danny Beck confirmed that the subject property was only used intermittently for the storage of crab pots in the 70's, such as in the rare case of hurricane David or tropical storm. He further testified that after 1975 the crabbing stopped at the property and little or no crab pots were stored there from 1975-1978. On cross-examination by Petitioners' counsel, Mr. Beck was asked whether, during

1978 and 1977, his father had a crabbing operation at the property, to which he answered "No." (This testimony occurred at 1:10 pm at the hearing).

In fact, as Mr. Beck confirmed, his father had stopped crabbing altogether and was only using the property to fish. This was the "use existing on the date of the enactment of the law," *Wiseman, Memorandum and Order, April 19, 2010*, at 10, to which the subject property would be "limited to the same level of intensity forevermore." *Id.* at 4. This uncontroverted evidence showed that, prior to 2009, the subject property was being used in a manner consistent with that allowed under the 1978 Use Permit for a secondary operation.

During examination of the Respondent, Andrew J. Mattes, in Petitioner's case, Mr. Mattes confirmed that he used two power fishing boats and regularly stored as many as 1,500 more crab pots on the subject property when the pots were not in the water. Mr. Mattes further testified that he had a series of cold storage or other refrigeration on the outside of the dwelling with plans to install a walk-in box. Mr. Mattes further confirmed that he was joined in the operation on the subject property by his employee, (Gil Harbeson), who was licensed for 900 crabpots. Mr. Mattes also used the crabpot license limits of his father (600 crabpots), and his wife, Stephanie, who was licensed for 300 crabpots. Together with Respondent's license of 300 crabpots, Mr. Mattes believes he may operate a business of up to 2,100 crab pots at the subject property.

Mr. Mattes confirmed that in the winter, the property was used to perform repair of crab pots. And numerous recent photographs introduced by the Petitioner shows refrigerators and freezers on the west side of the dwelling, two power boats at the subject property, two piers, and a high volume of crab pots, both on the land and on the decked wood pier.

Maryland zoning case law provides examples of what constitutes an *intensification* of that use. An intensification can be even a small percentage increase of the number that existed at the time the zoning ordinance was adopted. See *Jahnigen*, 254 Md. At 138 (increase in number of row boats for rent from the original seven (7) to nine (9) was an intensification); *Nyburg v. Solmson*, 205 Md. 150 (1954) (increase in number of cars parked “from a small number to about thirty to fifty” constituted intensification). And see *Orange County v. Goldring*, 121 Cal. App. 2d 442, 263 P.2d 321 (1953), cited in *Jahnigen*, 245 at 281 (a field used for feeding 30 – 50 cattle later shifted to feed pens for 200-300 cattle was an invalid enlargement or extension of a non-conforming use). See generally, *Trip Associates, Inc. v. Mayor and City Council of Baltimore*, 392, Md. 562, 898 A.2d 449, 459-62 (2006).

Conclusion

It is clear when comparing the separate definitions of a primary operation and secondary operation in Bill 98-75 that the latter was intended in cases where the homeowner, residing on waterfront property, was engaged full or part time as a commercial fisherman, and had a commercial fishing boat. The law essentially allowed the fisherman to “work out of his home” by storing or berthing his commercial boat in front of his home and load and unload his gear and the shellfish he catches. This is similar to a licensed home improvement contractor who keeps his work truck with his tools at his house. Just as the contractor can’t store building supplies (concrete, lumber, block, etc.) at his house, the secondary operation of a shellfisherman can’t store or repair crabpots, have cold storage units outside, or have multiple commercial boats.

As for the the two relevant questions to be decided, the evidence at the hearing demonstrates clearly that the answer to the first question posed above is clearly "No."; and just as clear that the answer to the second question is "Yes."

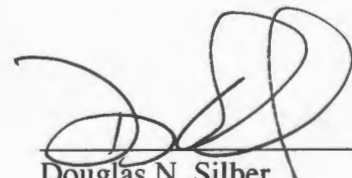
Clearly, Respondent wants to have his property be treated as a primary operation and wishes to expand and intensify his use and operation of his property well beyond that in place in 1977 and 1978. Bill 139-83 gives him his remedy: he may petition for a special exception.

Until such a petition is applied for and approved, the Administrative Law Judge should determine that the conditions of the 1978 Use Permit have been violated and that Respondent should immediately bring the subject property into compliance or, as Commissioner Wiseman stated in his June 1, 2010 *Ruling on Petitioners' Motion for Reconsideration*, risk "losing his Use Permit altogether."

Petitioner requests that the Administrative Law Judge issue an order accordingly.

Respectfully submitted,

November 22, 2011
Dated



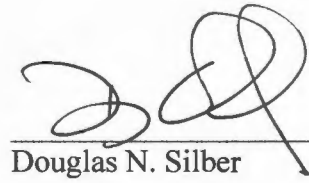
Douglas N. Silber
Post Office Box 176
Phoenix, MD 21131-0176
410-296-1030

Attorney for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of November, 2011, I served a copy of this paper, by regular U.S. Mail, postage prepaid, together with a redacted copy of the color photographs (Petitioner's Exhibit 2), upon:

Lawrence Schmidt, Esquire
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, Maryland 21204
Attorney for Respondents



Douglas N. Silber

Law Offices
Douglas N. Silber, L.L.C.

Post Office Box 176
Phoenix, Maryland 21131-0176
www.silberlawfirm.com

Telephone: 410-296-1030
Mobile: 410-404-8090
Email: dnsilber@gmail.com

November 22, 2011

BY HAND DELIVERY

Honorable Lawrence M. Stahl
Office of Administrative Hearings
105 W. Chesapeake Avenue, Suite 103
Towson, Maryland 21204

RECEIVED

NOV 22 2011

OFFICE OF ADMINISTRATIVE HEARINGS

Re: Petition for Special Hearing, Case No. 2011-0051-SPH
Andrew Mattes, III et ux., Legal Owner, Respondent
Theresa J. Guckert, et al., Petitioners

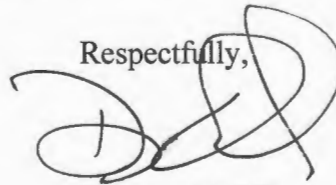
Dear Judge Stahl:

Enclosed please find the Memorandum of Petitioners in the above-referenced matter. For your ease of reference, as they have been cited in our paper, we have included in this packet copies of Commissioner Wiseman's decisions of April 19, 2010 (*Memorandum of Order*) and of June 1, 2010 (*Ruling on Petitioner's Motion for Reconsideration*) in Case No. 2010-0220-SPH. Also enclosed is a copy of the 1978 Application for Zoning Use Permit, Petitioners' Exhibit 1.

Finally, we are enclosing the redacted set of 9 pages of photographs, which are to be substituted for the non-redacted set that were received in evidence as Petitioners' Exhibit 2.

An exact duplicate copy of the enclosed papers referenced were mailed today to Mr. Schmidt, counsel for Respondent.

Respectfully,



Douglas N. Silber

Enclosures

cc: Lawrence Schmidt, Esquire
Peter Max Zimmerman, Esquire, People's Counsel
Ms. Theresa J. Guckert
Mr. David Donovan
Mr. James Brown

M E M O R A N D U M

TO: Kristen Lewis
Office of Zoning Review

FROM: Lawrence M. Stahl, Managing Administrative Law Judge
Office of Administrative Hearings 

DATE: September 15, 2011

SUBJECT: **Case No. 2011-0051-SPH – REMAND FROM BOARD OF APPEALS**
(2534 Island View Road)
Andrew Mattes – Legal Owner/Respondents;
Theresa Guckert, et al - Petitioners

The above-referenced case has been REMANDED to the Office of Administrative Hearings from the Board of Appeals. I am returning the case file to you for scheduling and further processing for the latter part of October.

Please do not hesitate to contact me if you any questions or concerns. Thanks.

c: File

BALTIMORE COUNTY, MARYLAND

Board of Appeals of Baltimore County

Interoffice Correspondence

Phone: 410-887-3180

Fax: 410-887-3182

To: Lawrence M. Stahl, Managing Administrative Law Judge

From: Sunny Cannington, Legal Secretary 

Date: September 14, 2011

Re: Remanded case

In the matter of: Andrew Mattes – Legal Owner/Respondent

Theresa Guckert, et al. – Petitioners

Case No: 11-051-SPH

Mr. Stahl,

Please be advised the above listed case has been remanded to you for further proceedings pursuant to an Opinion and Order issued by the Board. After you have issued the necessary Order or Opinion, please send a copy of this Order/Opinion to us for our records.

Please retain the file for the appeals period of 30 days. If the case is appealed again, the file would need to be returned to us. Should no appeal be taken within the appropriate time period, you may return the file to the Office of Zoning Review for closing and filing.

Thank you, should you have any questions or problems, please do not hesitate to contact us.

RECEIVED

SEP 14 2011

OFFICE OF ADMINISTRATIVE HEARINGS

RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE COUNTY
NW/Side of Island View Road, 208' SW/Side	*	BOARD OF APPEALS
of Barrison Point Road	*	FOR
2534 Island View Road	*	BALTIMORE COUNTY
15 th Election & 6th Councilmanic Districts	*	
Legal Owner(s): P.G. Developers, LLC	*	
Andrew J. Mattes, III et ux,	*	
Legal Owners/Respondents	*	
Theresa J. Guckert, et al	*	
Petitioner(s)	*	Case No. 11-051-SPH

* * * * *

APPEAL FROM DENIED MOTION TO DISMISS

OPINION AND REMAND ORDER

This matter comes before the Board as an Appeal from a denial of a Motion to Dismiss Petition based on the principles of *Res Judicata* filed by Petitioners Andrew J. Mattes, III and Stephanie L. Mattes, his wife. The Motion was denied by Zoning Commissioner William Wiseman on December 20, 2010 and subsequently appealed to this Board. On May 10, 2011, the Board of Appeals convened for oral argument only on the Motion to Dismiss. Lawrence E. Schmidt appeared on behalf of the Respondents/Appellants. Peter Max Zimmerman of the Office of People's Counsel appeared in opposition to the Appeal as well. The Petitioners appeared *pro se*. Oral arguments were heard and memorandums were submitted by the parties. A Public Deliberation was held on June 22, 2011.

BACKGROUND

The parties to this matter previously appeared before the Zoning Commissioner on a Petition for Special Hearing where the Petitioners attempted to "invalidate a fishing and shell fishing facility for non-conforming use or otherwise." See Case No. 2010-0220-SPH. Following a public hearing that was attended by numerous interested persons, the Zoning Commissioner issued an Order dated April 19, 2010 denying the Petition for Special Hearing and finding that

the Owners/Respondents were entitled to conduct a commercial fishing, crabbing or shell fishing operation on the subject property.

The Petitioners filed a timely Motion for Reconsideration, raising for the time the contention that Respondent "is operating at an intensity that is above that which existed in 1978, and thus does not reflect the intent of the zoning code." The Motion for Reconsideration was denied and the Zoning Commissioner held that the issue of intensification was not presented or argued at the public hearing on April 8, 2010 and that the Commissioner therefore lacked jurisdiction over that question.

The Petitioners followed this Ruling and filed the a Petition for Special Hearing "to determine whether the scope and intensification of Fishing and Shell fishing allowed by the Use Permit has been exceeded." The Respondents then filed a Motion to Dismiss arguing that the Petition is barred by *res judicata*, and the Petitioners and Peter Max Zimmerman, People's Counsel, filed Responses to the Motion. The parties appeared for a public hearing on the Motion to Dismiss and presented oral argument to the Zoning Commissioner.

At the conclusion of oral arguments before the Zoning Commissioner and the submission of memoranda by the parties, the Zoning Commissioner denied the Motion to Dismiss, ruling that *res judicata* did not bar the Petition at issue. In denying the Motion to Dismiss the Zoning Commissioner included the following caveat:

While ordinarily an appeal is only available when a final order disposes all claims between the parties, interlocutory orders in the Circuit Court arena are immediately appealable under three (3) exceptions. Those exceptions are: "appeals from interlocutory orders specifically allowed by statute; immediate appeals permitted under Maryland Rule 2-602; and appeals from interlocutory rulings allowed under the common law collateral order doctrine." *Schuele v. Case Handyman and Remodeling Services, LLC*, 412 Md. 555, 556 (2010).

In the case before me, I find that my denial of the Respondents' Motion to Dismiss is immediately appealable under the collateral order doctrine, which

requires that an interlocutory order: (1) conclusively determines a disputed question, (2) resolves an important issue, (3) resolves an issue that is completely separate from the merits of the action, and (4) would be effectively unreviewable if the appeal had to await the entry of a final judgment. *Id.* at 572.

Question

Is it permissible for this Board to consider an interlocutory appeal of an Order of the Zoning Commissioner Denying a Motion to Dismiss based on *res judicata* or *collateral estoppel*?

In advising the Respondent to Appeal his Denial of their Motion to Dismiss, the Zoning Commissioner cites the "Collateral Order Doctrine" found *Schuele v. Case Handyman and Remodeling Services, LLC*, 412 Md. 555, 556 (2010) as justification to do so. In applying the factors enumerated in *Schuele* to the matter at bar, it does appear at first blush that the Denial of the Motion to Dismiss on the basis of *res judicata* or *collateral estoppel* does "conclusively determine a disputed question, resolve an important issue, and resolve an issue that is completely separate from the merits of the action." However, this matter is procedurally distinguishable from *Schuele*, due the role of the Board of Appeals in matters appealed from decisions of the Zoning Commissioner.

The major distinguishing factor between *Schuele* and the case at bar lies in the fact that the Board of Appeals hears appeals involving Petition for Special Hearing matters on a *de novo* basis. *See* BCZR Section 501.6. The parties in *Schuele* were limited to appealing on an "issues/record appeal" basis to the Court of Special Appeals, or in the case of *Schuele*, by Writ of Certiorari to the Court of Appeals. The parties in this matter are guaranteed a trial *de novo* before this Board. Due to the ability of the parties to file a trial *de novo* appeal, no issues "would be effectively unreviewable if the appeal had to wait until the entry of a final judgment." Of course, if the Zoning Commissioner had granted the Motion to Dismiss, such a ruling would constitute a final ruling, and the entire matter could be appealed immediately to this Board for a

analogous situation arises in District Court criminal matter. If a criminal defendant loses a motion to suppress a confession, the ruling is not immediately appealable to the Circuit Court due to the fact that the defendant is entitled to a trial de novo of the entire matter once the court has entered its final ruling. Accordingly, the issue of whether the case at bar should have been dismissed due to *res judicata* is not yet ripe for review by this Board and the case should continue to be heard on the merits by the Zoning Commissioner.

CONCLUSION

The Board finds that an interlocutory appeal from the Zoning Commissioner of an Order Denying a Motion To Dismiss based on the principles of *res judicata* is not reviewable by this Board until the completion of the entire case before the Zoning Commissioner.

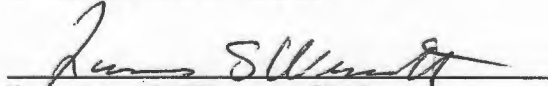
ORDER

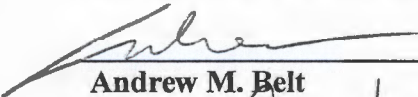
THEREFORE, IT IS THIS 2nd day of August, 2011 by the County Board of Appeals of Baltimore County

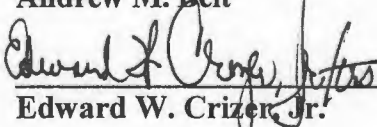
ORDERED that this matter be REMANDED to the OFFICE OF ADMINISTRATIVE HEARINGS for further adjudication on the merits.

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*.

BOARD OF APPEALS
OF BALTIMORE COUNTY


Lawrence S. Wescott, Chairman


Andrew M. Belt


Edward W. Crizer, Jr.



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

August 2, 2011

Lawrence Schmidt, Esquire
Smith Gildea & Schmidt, LLC
600 Washington Ave, Ste 200
Towson, MD 21204

Theresa Guckert
2530 Island View Road
Baltimore, MD 21221

RE: *In the Matter of: Andrew Mattes – Legal Owner/Respondents*
Theresa Guckert, et al. – Petitioners
Case No.: 11-051-SPH

Dear Mr. Schmidt and Ms. Guckert:

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

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **with a photocopy provided to this office concurrent with filing in Circuit Court. Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number.** 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,

Theresa Shelton/kc

Theresa R. Shelton
Administrator

TRS/klc
Enclosure
Duplicate Original Cover Letter

c: Andrew & Stephanie Mattes
David Donovan
James Brown
Office of People's Counsel
Lawrence M. Stahl, Managing Administrative Law Judge
Arnold Jablon, Director/PAI
Andrea Van Arsdale, Director/Planning
Nancy West, Assistant County Attorney
Michael Field, County Attorney



KEVIN KAMENETZ
County Executive

ARNOLD JABLON
*Deputy Administrative Officer
Director, Department of Permits,
Approvals & Inspections*

March 28, 2011

Lawrence Schmidt
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Ste. 200
Towson, MD 21204

Dear Mr. Schmidt:

RE: Case: 2011-0051-SPH, 2534 Island View Road

Please be advised that your appeal of the above-referenced case was filed in this office on January 19, 2011 and a rebuttal was received on March 14, 2011 by Theresa Guckert, James Brown and David Donovan. 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,

A handwritten signature in black ink, appearing to read "Arnold Jablon", is written over a faint circular stamp.

Arnold Jablon
Director

AJ:kl

c: Administrative Hearings Office
People's Counsel
Theresa Guckert, 2530 Island View Road, Baltimore 21221
David Donovan, James Brown, 2502 Island View Road, Baltimore 21221
Mr. & Mrs. Mattes, 2534 Island View Road, Baltimore 21221

APPEAL

Petition for Special Hearing
2534 Island View Road
NW/s of Island View Road, 208' NW of c/line of Barrison Point Road
15th Election District - 6th Councilmanic District
Legal Owners: Andrew & Stephanie Mattes
Petitioners: Theresa Guckert, David Donovan & James Brown
Case No.: 2011-0051-SPH

- ✓ Petition for Special Hearing (August 3, 2010)
- ✓ Zoning Description of Property
- ✓ Notice of Zoning Hearing (September 20, 2010)
- ✓ Certification of Publication (The Jeffersonian - September 30, 2010)
- ✓ Certificate of Posting (September 29, 2010) by Martin Ogle
- ✓ Entry of Appearance by People's Counsel (August 23, 2010)

✓ Petitioner(s) Sign-In Sheet - One Sheet

Protestant(s) Sign-In Sheet None

✓ County Representatives Sign-In Sheet - One Sheet

✓ Zoning Advisory Committee Comments

Petitioners' Exhibit - None provided

Protestants' Exhibits - None provided

Miscellaneous (Not Marked as Exhibit)

- ✓1. Rulings on Motion for Reconsideration for Case 2010-0220-SPH
- ✓2. Westlaw Documents
- ✓3. Letter dated September 28, 2010 from Sebastian Cross for Motion to Dismiss
- ✓4. Response to Motion to dismiss dated October 26, 2010 from Petitioners
- ✓5. Letter dated October 28, 2010 from the Office of People's Counsel
- ✓6. Letter dated November 4, 2010 from Lawrence Schmidt in response to above letter
- ✓7. People's Counsel for Baltimore County's Pre-Hearing Memorandum
- ✓8. CD-R for Hearing on Motion
- ✓9. Ruling on Motion to Dismiss (12-20-10)
- ✓10. Letter from People's Counsel dated December 28, 2010 in request for a Partial Reconsideration
- ✓11. Letter dated January 6, 2011 from Lawrence Schmidt
- ✓12. Letter dated January 11, 2011 from William Wiseman in response to Partial Motion for Reconsideration

✓ Notice of Appeal received on January 19, 2011 from Lawrence Schmidt

✓ Letter of Rebuttal to Appeal received on March 14, 2011 from Theresa Guckert, James Brown & David Donovan

Address List

Legal Owners:

Andrew & Stephanie Mattes
2534 Island View Road
Baltimore, MD 21221

Lawrence Schmidt, Esquire
Smith Gildea & Schmidt, LLC
600 Washington Ave, Ste 200
Towson, MD 21204

Petitioners/Appellants:

Theresa Guckert
2530 Island View Road
Baltimore, MD 21221

David Donovan
2502 Island View Road
Baltimore, MD 21221

James Brown
2502 Island View Road
Baltimore, MD 21221

Interoffice:

Office of People's Counsel
Lawrence M. Stahl, Managing Administrative Law Judge
Arnold Jablon, Director/PAI
Director/Office of Planning
Nancy West, Assistant County Attorney
Michael Field, County Attorney, Office of Law

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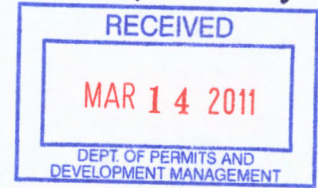
BALTIMORE COUNTY
BOARD OF APPEALS

HEAR
ZONING

March 14, 2011

Sent via Hand Delivery

Arnold Jablon, Director
Department of Permits, Approvals and Inspections
111 W. Chesapeake Ave, Room 105
Towson, MD 21204



**Re: Mattes/2534 Island View Road
Case No.: 2011-051-PH**

Dear Mr. Jablon,

Please find enclosed a rebuttal to the Notice of Appeal filed by Mr. Schmidt in the above referenced matter.

Thank you for your consideration.

Sincerely yours,


Theresa J. Guckert
2530 Island View Road


James S. Brown
2502 Island View Road


David M. Donovan
2502 Island View Road
Baltimore, MD 21221

CC: Lawrence M. Stahl, Esquire, Administrative Law Judge
Theresa R. Shelton, County Board of Appeals of Baltimore County
Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County
Andrew and Stephanie Mattes, 2534 Island View Road
Lawrence E. Schmidt, Smith, Gildea and Schmidt, LLC., 600 Washington Ave

Petitioner's Arguments against Appeal

Re: **Mattes/2534 Island View Road**
Case No.: 2011-051-PH

History:

The Petitioners (Theresa Guckert, James Brown, David Donovan) filed and were granted a public hearing (Guckert I) to question the validity of the fishing and crabbing operation at 2534 Island View Road. The request for special hearing was titled **"To invalidate the fishing and shell fishing facility for non-conforming use or otherwise. Other reasons to be presented at the hearing"**. At Guckert I, the Petitioners produced a document entitled "Brief" that outlined their arguments. They also included a binder notebook containing 22 tabbed attachments to support their arguments. A copy of the brief and the notebook was given to both the Zoning Commissioner and Mr. Schmidt at the beginning of the hearing. The commissioner denied the Petitioner's request to invalidate the Use Permit at 2534 Island View Road in his decision letter April 19th, 2010. The Petitioners then filed a timely Motion for Reconsideration arguing that the intensity of fishing and crabbing has intensified since 1978. This motion was based on the Zoning code Bill 98-75 indicating that "...Any such use existing at the time of date of enactment of this subsection **may continue at the same level of intensity** [emphasis added] providing.....as prescribed under section 500.4 of the zoning regulation." This Bill is attachment 18 of Petitioners notebook; Guckert I. Their motion was further supported in 1983 through ratification of the Use Permits (Bill 139-83) further indicating that the intensity should remain at the 1978 level. The Zoning Commissioner responded to this request and deemed the Motion for Reconsideration outside the scope of Guckert I and indicated a need for a new hearing to allow both parties a chance to present evidence regarding the past and current intensity of the fishing and crabbing operation at 2534 Island View Road. On August 3, 2010 the Petitioners filed a request for a public hearing to determine whether the scope and intensification of fishing and shell fishing allowed by the Use Permit has been exceeded. After that new hearing was scheduled, Mr. Schmidt filed a motion to dismiss on behalf of the Mattes family. The next hearing (Guckert II) was held November 19, 2011 to hear Mr. Schmidt's motion to dismiss. Mr. Wiseman issued his decision on December 20, 2011 denying the motion to dismiss, and Mr. Schmidt then filed an appeal of this decision to the appeal Board, based on res judicata.

Mr. Schmidt's verbal arguments for dismissal at hearing Guckert II include numerous precedent setting cases referring to res judicata (see attached transcript of Guckert II) and a claim that,

"the doctrine of res judicata bars subsequent litigation, not only to what was decided in the original litigation of the claim, but also of what could have been decided"

[Guckert II transcript, page 9 line 12-15].

He also claims that Mr. Wiseman's decision letter indicates that there had been testimony on intensity at Guckert I.

Arguments to deny Mr. Schmidt's appeal:

Argument against Mr. Schmidt's claim of res judicata that intensity should have been discussed at Guckert I:

It was the intent of the Petitioners at Guckert I to **invalidate** the 2534 Island View Road Use Permit, to claim both fraud at its inception ~30 years ago, and expiration due to non-conforming use history (~29 years ago because the fishing and crabbing had stopped for the past ~29 years). These arguments were outlined in a Brief that was presented at the beginning of the Guckert I hearing. The arguments presented by the Petitioners were intended to show that the Use Permit had either expired due to non-use ~29 years ago or was falsely conceived at its inception. The key word is **invalidate**. This does not mean that we wanted to revoke a valid use permit, but rather to invalidate the legitimacy of the Use Permit from its conception. The timing is critical. There was no effort to argue current vs. prior intensity because only if the Use Permit was currently valid, would the current vs. prior intensity come into play as indicated in the Zoning regulations Bill 98-75 and Bill 139-83. It was the belief of the Petitioners that to argue intensity would waste the courts time, as we felt the Use Permit was invalid ~29-30 years ago, and thus there was no logical reason to include an argument on current intensity. Mr. Wiseman's decision from Guckert I states very clearly that the

*"Petitioners focused their effort at attacking **the validity** [emphasis added] of the Use Permit and establishing a nonconforming use history" [page 5, Decision letter Mr. Wiseman, April 19, 2010].*

Mr. Schmidt claims that the title of the first request for special hearing is open ended. He states, *"It talks about whether it's non-conforming or as I've already quoted, for other reasons to be presented at the hearing, **whether the shell fishing operation should be allowed.**"* [emphasis added]. [Transcript Guckert II, page 24 lines 4-6]

He further states that this title of the Request for Special Hearing allowed the Petitioner's to *"present any issue which may be relevant to whether the Mattes' fishing and shell fishing facility is permitted on this site."* [Transcript Guckert II, page 3 line 7-9].

The Petitioners' disagree with Mr. Schmidt's interpretation of the title. The title does not include the sweeping open ended argument that Mr. Schmidt presents. The title indicates that the Petitioners intended to present only evidence that could **invalidate** the Use Permit. The petitioners never intended to examine all aspects of "whether the shell fishing operation should be allowed". Nor did we intend that in a single hearing we would "present any issue which may be relevant to whether the Mattes' fishing and shell fishing facility is permitted on this site." Our goal was solely to invalidate the Use Permit, from its inception or due to events that would invalidate it soon after it was awarded. There was no intention to present current or past intensity arguments at Guckert I, and the Brief indicates this.

It should be noted that the Petitioners believed that the Use Permit would fall under the statutes of a non-conforming use. The Commissioner threw out these arguments as we learned at Guckert I that the Use Permit is not considered a non-conforming use. Nonetheless it was on this basis that we felt the Use Permit had been invalidated within the first 2 years of its inception due to the fishing and shell fishing having not been utilized in 1980. We felt this invalidated the Use Permit under Non-conforming Use doctrines.

It is interesting to note that Mr. Schmidt's colleague Mr. Cross also uses the term 'valid' to describe the use permit when it was issued in 1978.

"As established through testimony and stated in the decision itself, a valid use permit was obtained for this property in 1978, which was later ratified in 1983, and continues today."

[second paragraph, Letter from Sebastian Cross to Mr. Wiseman, May 24, 2010]

It is implicit through the use of this term that efforts to invalidate the Use Permit would likely reflect actions at or near the time of its activation, not 30 years later.

An argument to **invalidate** a Use Permit based on current intensity levels is unprecedented, and is not logical. Mr. Schmidt cites no case to argue that a Use Permit was or could be invalidated due to inappropriate intensity of the operation. There is no documented mechanism to invalidate a Use Permit because [~30 years after it was conceived] appropriate levels of intensity were exceeded. A Use Permit might potentially be revoked, or terminated, or limited, or suspended by a Commissioner but revocation, termination, suspension or limitation, by definition would mean that it was valid at one point in time. We did not ask that the Use Permit be revoked. We asked that it be invalidated in Guckert I. The Petitioners argued in Guckert I that the Use Permit was conceived on false pretense and thus was invalid at its inception or shortly after it was awarded.

An argument of current vs. past intensity would be justified, if the Use Permit was valid and a complaint was raised about those levels of intensity at some later point in time. This is exactly what occurred when we filed our Motion for Reconsideration after Guckert I, but this was not our argument in Guckert I. Mr. Wiseman's decision letter on our Motion for Reconsideration dated June 1, 2010 indicated that we would need a new hearing to allow both sides to fully present data and to compare past vs. present intensity. Thus, because in Guckert I we were interested in **invalidating**

the Use Permit due to events ~29-30 years ago, there is no logic to support a discussion of current vs. prior intensity in Guckert I. Thus Mr. Schmidt's argument for res judicata is based largely on the title of the Special Hearing Request and we believe his extrapolated definition of the intended scope of that title is not valid.

Mr. Schmidt's argument of res judicata is further eroded by the fact that the Petitioners included a Brief in their Guckert I hearing exhibits, outlining their intended and actual arguments to be heard at that hearing. This brief and Mr. Wiseman's decision letter describing the hearing and the Petitioner's argument (Page 3, Decision letter Guckert I, April 19, 2010) did not include any arguments based on prior or current intensity. Any comments presented at Guckert I describing intensity were primarily a means to discuss the history of the property, and to establish the fact that the 2534 Island View Road fishing and crabbing facility did exist prior to 1978 and was abandoned in 1979. Again, Mr. Schmidt has a copy of the Petitioner's notebook and 'the Brief' that was distributed at the start of the Guckert I hearing.

It is difficult to support an argument that relies on Mr. Schmidt's current interpretation of the title of the Guckert I Special Hearing Request, a definition that he and his legal team appear to have contrived nearly 6 months after the Guckert I hearing and only after the Petitioner's filed for a new hearing on intensity. We argue that the Brief, a document that outlines the intended and actual scope of the Guckert I hearing [that was given to Mr. Schmidt at the beginning of Guckert I hearing] is a more definitive source of the intended and actual scope of Guckert I.

Argument to deny Mr. Schmidt's claim that the topic of intensity was a part of the testimony heard at Guckert I:

At Guckert II, Mr. Schmidt quoted a single sentence from Mr. Wiseman's decision on Guckert I to indicate that testimony on intensity had already been heard at Guckert I.

"And I would just take your original decision, Mr. Wiseman, and refer you to page 6, which you start at the top by saying, 'Hearing Testimony,' and you start off by describing the testimony of Ms. Guckert, and you say 'in her opinion, Mattes has intensified the use of the site and should lose the permit altogether'."

[Guckert II transcript, page 24, lines 9-13].

No comment regarding intensity exists in Ms. Guckert's 7 page detailed letter concerning the fishing and shell fishing operation at 2534 Island View Road [Petitioners notebook, Attachment 3, Guckert I]. Thus, the Commissioner's recollection might represent a side comment by Ms. Guckert that gave Mr. Wiseman this impression, but this impression is outside the scope of the intended arguments in Guckert I, and is given appropriately negligible emphasis in Mr. Wiseman's decision as a mere 17 words in his 11 page decision (April 19, 2010). In that same decision, Mr. Wiseman accurately summarizes [on page 3] the Guckert I arguments put forth by the Petitioners as:

"(1) Whether the Use Permit granted by Commissioner DiNenna was appropriate and effective.....

(2) Does the Use Permit survive periods of non-use..."

There is no mention of intensity in his description of the Petitioner's arguments. A comment by Ms. Guckert does not equate to litigation on intensity. In such a quasi-legal setting, it is difficult to accept 17 words as a thorough litigation of such an important aspect of the Zoning Regulation surrounding these Use Permits.

None of Mr. Schmidt's comments in the attached transcript from Guckert II include any other arguments to indicate that prior vs. current levels of intensity were actually litigated in Guckert I, only the 17 words he cites in Mr. Wiseman's decision letter. There is no transcript from the first hearing (tape/CD was inadvertently not made) so there is no detailed description of this hearing except the decision letter from Mr. Wiseman (wherein he includes a summary of the hearing). Similarly, nothing in Mr. Wiseman's decision letter [April 19, 2010] suggest a litigation of prior vs. current levels of intensity, outside of these 17 words.

It should be noted that the Motion for Reconsideration filed by the Petitioners is 8 pages long with 5 pages of detailed comparison of intensity of fishing and crabbing as it currently exists vs. the intensity of 1978. It is difficult to

comprehend how Mr. Schmidt could consider 17 words that he cites in Mr. Wiseman's decision, equivalent to a thorough review and litigation of such a complex issue.

It is also worth noting that Mr. Schmidt had several opportunities to claim res judicata regarding the Petitioner's Motion for Reconsideration but only did so many months following the Commissioner's decision on Guckert I and many months after the Petitioner's Motion for Reconsideration and many months after the Commissioner's decision to allow a second hearing on intensity. After the Petitioner's filed the Motion for Reconsideration, Mr. Schmidt's colleague Mr. Cross responded on May 24, 2010 and did not include any comments in his two page document to indicate that the intensity levels had already been discussed. The Commissioner recommended in his Decision on the Petitioner's Motion for Reconsideration that we submit the request for a new hearing on intensity. Mr. Schmidt did not file a Motion for Reconsideration or appeal the Commissioner's decision recommending a second hearing on intensity. In fact, Mr. Schmidt did not file his Motion to Dismiss until the Petitioners had already scheduled a date for the hearing on intensity, several months after filing the Motion for Reconsideration.

In short, there has never been a direct litigation with evidence presented from opposing parties to compare prior vs. current levels of intensity. Only in the Petitioner's Motion for Reconsideration (May 10, 2010) is there a comparison of the two intensities, and only after the Petitioner's requested a hearing based on the Commissioner's recommendation did Mr. Schmidt decide that this matter should have been litigated at Guckert I.

Argument for Precedence:

It is worth noting that there were never any public announcements of the Use Permits when they were applied for in 1978 or when they were ratified in 1983. The Use Permit in 1978 essentially takes a residential property and converts it to a commercial property in the heart of a residential neighborhood. No such change could ordinarily occur without a public notice and hearing. It is disturbing to us that this could have happened in 1978. This certainly does not reflect the transparency expected in such critical Zoning changes. There was no knowledge of the Use Permit by Ms. Guckert, who has lived next door to 2534 Island View Road since the 1920's. She was not aware of either the Use Permit documents or altered zoning of her next door property until 2009 when we challenged the Mattes family. Ms. Guckert was a very active member of both the Barrison Point and Back River Neck Peninsula Community home owner associations that have successfully protected much of the area from commercialization (See Petitioner's notebook, Attachment 3, Guckert I). She is well aware of zoning procedures and is still active in following issues surrounding commercialization on the Peninsula. We now know from a list provided by the County Zoning Office that there are 48 such facilities in RC and DR zones in Baltimore County in waterfront neighborhoods (Petitioner's notebook, Attachment 17, Guckert I). Despite the fact that water front properties are highly desirable, there has never been a hearing to address intensity at any of the properties on the list. This is most likely due to the secrecy that has surrounded these zoning regulations since the late 70's. Most Home Owner Association activists that we have queried are not even aware that Use Permit holders are limited to their 1978 levels of intensity. Thus, this case has garnered much interest in the community as Mr. Wiseman describes in his decision April 19, 2010. This is an important and likely precedent setting case that should not be dismissed.

Concluding Remarks:

We the Petitioners are no longer trying to invalidate the use permit as in Guckert I. In the second request for special hearing we ask to determine whether the scope and intensification of fishing and shell fishing allowed by the Use Permit has been exceeded in keeping with Bill 98-75 and Bill 139-83. Both Bills indicate that levels of intensity should remain at the 1978 levels. This is a completely different transaction than asking that the Use Permit be declared invalid at its inception.

While arguing in Guckert II to convince the Zoning Commissioner to dismiss the case, Mr. Schmidt addressed these comments to Mr. Wiseman:

"... So this isn't about fairness, this isn't a court of equity, this isn't – you're not granting equitable relief. You got to apply the Zoning Regulations. I mean believe me, I argue fairness all the time at the Board of Appeals and it gets me absolutely nowhere."
(Transcript Guckert II, page 28, line 14, 11/18/10).

The Petitioners feel otherwise. It is reasonable for any Baltimore County resident to expect and trust that the Zoning Commissioner within the quasi-legal setting of a Public Hearing, using the framework of the Zoning Regulations will attempt to identify fair and equitable solutions to complex zoning issues. It is most revealing that Mr. Schmidt, who served as a Zoning Commissioner for 13 years, would publicly argue otherwise. While serving his clients' self-interests by attempting to have this case dismissed, his comments reveal a genuine concern that the Commissioner might allow a public hearing on intensity. These comments appear intended to warn against trying to find 'equitable relief' and 'fairness.' In so doing, Mr. Schmidt has inadvertently provided the strongest argument that a hearing on current vs. prior intensity of the fishing and shell fishing operation at 2534 Island View Road is likely the only mechanism to achieve a fair and equitable solution to this complex situation.

2/9/11

RE: PETITION FOR SPECIAL HEARING * BEFORE THE
2534 Island View Road; NW/S Island View *
Road, 208' SW/S of Barrison Point Road * COUNTY BOARD OF
11th Election & 6th Councilmanic Districts APPEALS FOR
Legal Owner(s): Andrew & Stephanie Mattes* BALTIMORE COUNTY
Petitioner(s): Theresa Guckert *
* CASE No. 2011-051-SPH

BALTIMORE COUNTY
BOARD OF APPEALS

FEB - 9 2011

RECEIVED

* * * * *

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY'S
MOTION TO DISMISS APPEAL

People's Counsel for Baltimore County moves to dismiss the appeal filed by Andrew and Stephanie Mattes on January 19, 2011 because the appeal is premature, being taken from an interlocutory ruling on a motion to dismiss, and states further:

1. Petitioners Theresa Guckert, David Donovan and James Brown ("Guckert") filed the present Petition for Special Hearing under BCZR Baltimore County Zoning Regulation (BCZR) Section 500.7 pertaining to the use of property at 2534 Island View Road. ("Guckert II"). The Petitioners, who own neighboring property in the area, asked the Zoning Commissioner to determine if the fishing, shellfishing, and/or crabbing use at the property conflicts with legislative restrictions in Bill 98-75 and 139-83 against intensification, extension and expansion of the R.C. 5 Zone use allowed and ratified in the 1978 permit. There is a public interest in the implementation and integrity of the zoning law and the zoning maps.

2. The Respondents, now Appellants here, are Property Owners Andrew Mattes and Stephanie Mattes. They moved to dismiss the Petition for Special Hearing on the ground that it is barred by *res judicata*.

3. The *res judicata* inquiry relates to whether Zoning Commissioner (ZC) William Wiseman's denial of the earlier petition filed February 22, 2010 in Case

No. 10-220-SPH (Guckert I) concludes and bars the present petition (Guckert II). As noted, the present request is for a determination “whether the scope and intensification of fishing and shellfishing activity allowed by the use permit has been exceeded.” In Guckert I, the Petition for Special Hearing sought to “invalidate a fishing and shell fishing facility for nonconforming use or otherwise.”

4. Our office, People’s Counsel for Baltimore County, (“People’s Counsel”) submitted a letter dated October 28, 2010 in answer to the Motion to Dismiss. We reviewed the litigation history of the earlier Petition (“Guckert I”) and explained why, contrary to Respondents’ argument, Guckert II is not barred by the *res judicata* doctrine.

5. After correspondence from Respondents and a Memorandum in reply filed by People’s Counsel, Zoning Commissioner Wiseman conducted a hearing for oral argument to review preliminarily the *res judicata* issue.

6. Subsequently, on December 20, 2010, Commissioner Wiseman issued his Ruling on Motion to Dismiss. He denied that motion to dismiss at the lower level, finding that the Guckert II petition is not barred by *res judicata*.

7. At the same time, Commissioner Wiseman said there could be an immediate appeal of this “collateral order.”

8. Our office agreed with the Commissioner’s ruling on *res judicata*, but disagreed with his decision that there could be an immediate appeal. Therefore, we filed the attached Motion for Partial Reconsideration on December 28, 2010.

9. On January 19, 2011, the Respondents filed the present appeal.

10. For the reasons stated in our Motion for Partial Reconsideration, this is a classic case of a premature appeal of an interlocutory denial of a preliminary motion to dismiss. It is elementary that appeals lie only from final orders.

11. In the analogous judicial setting, there is ordinarily no appellate jurisdiction to review a denial of a motion raising preliminary objections (to dismiss) or a denial of a motion for summary judgment. Porter-Hayden Co. v.

Commercial Union Ins. Co. 339 Md. 150, 163-65 (1995), attached. While there are narrow exceptions under the "collateral order" doctrine, this doctrine does not apply here. Respondents may still defend on the merits and, in any event, may litigate *res judicata* on appeal of a final judgment.

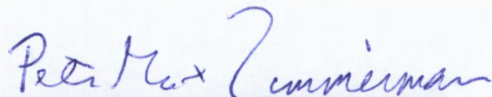
12. Meanwhile, as this piecemeal appeal proceeds, the fishing, shellfishing, and/or crabbing operation proceeds unabated despite the allegation that it has expanded or intensified illegally, beyond the scope allowed in the 1978 permit.

13. This unprecedented appeal is thus not only premature as a matter of law, but also imposes a practical burden on the Petitioners, our office, and on the administration of justice in the administrative and judicial processes.

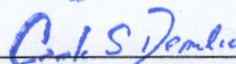
14. The case should, therefore, proceed on the merits at the Zoning Commissioner level, now renamed in part as the administrative law judge level. If any party appeals a final order, the *res judicata* issue may be addressed in the context of the integrated appeal proceedings, rather than piecemeal.

15. This case presents a matter of great public interest, as it will set a precedent for the disposition of such piecemeal appeals.

Wherefore, People's Counsel requests that the County Board of Appeals hold a preliminary hearing on this motion, and then proceed to dismiss the appeal.



PETER MAX ZIMMERMAN
People's Counsel for Baltimore County



CAROLE S. DEMILIO
Deputy People's Counsel
Jefferson Building, Room 204
105 West Chesapeake Avenue
Towson, MD 21204
(410) 887-2188

REQUEST FOR HEARING

People's Counsel requests a preliminary hearing on this Motion to Dismiss Appeal because it involves a threshold legal issue.

Peter Max Zimmerman

PETER MAX ZIMMERMAN

People's Counsel for Baltimore County

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of February, 2011, a copy of the foregoing People's Counsel for Baltimore County's Motion to Dismiss Appeals was mailed to Theresa Guckert, 2530 Island View Road, Baltimore, Maryland 21221, David Donovan and James Brown, 2502 Island View Road, Baltimore, MD 21221, Petitioners, and Lawrence Schmidt, Esquire, Smith, Gildea & Schmidt, LLC, 600 Washington Avenue, Suite 200, Towson, Maryland 21204, Attorney for Respondents.

Peter Max Zimmerman

PETER MAX ZIMMERMAN

People's Counsel for Baltimore County

1/19/11

IN RE: PETITION FOR SPECIAL HEARING

NW/Side Island View Road, 208' SW/
Side of Barrison Point Road
(2534 Island View Road)

15th Election District
6th Councilmanic District

Andrew J. Mattes, III, et ux.
Appellants/Legal Owners

Theresa J. Guckert, et al
Petitioners

* BEFORE THE
* ZONING COMMISSIONER
* OF
* BALTIMORE COUNTY
*
*
* **Case No.: 2011-051-SPH**

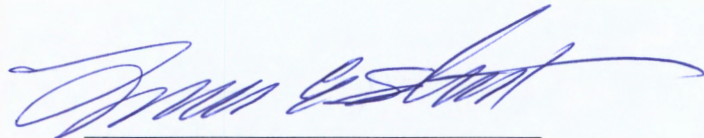
* * * * *

NOTICE OF APPEAL

Appellants/Legal Owners, Andrew J. Mattes, III, et ux., by and through their attorneys, Lawrence E. Schmidt and Smith, Gildea & Schmidt, LLC, feeling aggrieved by the decision of the Zoning Commissioner of Baltimore County in the Ruling on Motion to Dismiss dated December 20, 2010, attached hereto and incorporated herein as **Exhibit #1**, hereby appeals the aforementioned Ruling on Motion to Dismiss to the County Board of Appeals of Baltimore County.

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

Respectfully submitted,



LAWRENCE E. SCHMIDT
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, MD 21204
(410) 821-0070
Attorney for Appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19th day of **January, 2011**, a copy of the foregoing Notice of Appeal was mailed first class, postage pre-paid to:

Lawrence M. Stahl, Esquire
Administrative Law Judge
105 W. Chesapeake Avenue, Suite 103
Towson, MD 21204

Theresa R. Shelton
County Board of Appeals of Baltimore County
105 W. Chesapeake Avenue, Suite 203
Towson, MD 21204

Peter Max Zimmerman, Esquire
People's Counsel for Baltimore County
105 West Chesapeake Avenue, Suite 204
Towson, MD 21204

Theresa J. Guckert
2530 Island View Road
Baltimore, MD 21221

David M. Donovan & James S. Brown
2502 Island View Road
Baltimore, MD 21221



LAWRENCE E. SCHMIDT

Exhibit #1

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
NW/S Island View Road, 208' NW c/line of		
Barrison Point Road	*	ZONING COMMISSIONER
(2534 Island View Road)		
15 th Election District	*	OF
6 th Council District	*	
	*	BALTIMORE COUNTY
Andrew J. Mattes, III, et ux,		
Owners/Respondents	*	
Theresa J. Guckert, et al	*	Case No. 2011-0051-SPH
Petitioners		

* * * * *

RULING ON MOTION TO DISMISS

This matter comes before the Zoning Commissioner on a Motion to Dismiss the Petition filed by Sebastian A. Cross of Gildea & Schmidt, LLC on behalf of Legal Owners/Respondents, Andrew J. Mattes, III and Stephanie L. Mattes, his wife.¹ The Office of People's Counsel and the Petitioners, Theresa Guckert, David Donovan and James Brown, filed an Opposition to the Motion, and the parties appeared before the Zoning Commissioner for a motions hearing on November 18, 2010. As will be explained in greater detail, I find that the instant petition is not barred by *res judicata* and the Motion to Dismiss will therefore be denied.

BACKGROUND

The parties to this matter previously appeared before the Zoning Commissioner on a Petition for Special Hearing where the Petitioners attempted to "invalidate a fishing and shell fishing facility for non-conforming use or otherwise." See Case No. 2010-0220-SPH. Following a public hearing that was attended by numerous interested persons, the Zoning Commissioner

¹ The Motion to Dismiss a preliminary motion filed to exclude a hearing on the merits of the Petition for Special Hearing filed by neighboring property owners who seek to restrict or limit the commercial fishing and crabbing activities at 2534 Island View Road. Specifically, Petitioners have requested a hearing to determine whether the scope and intensification of fishing and shellfishing allowed by the use permit has been exceeded.

SMITH, GILDEA & SCHMIDT LLC

MICHAEL PAUL SMITH
DAVID K. GILDEA
LAWRENCE E. SCHMIDT
D. DUSKY HOLMAN

MICHAEL G. DEHAVEN
MICHAEL J. LIPPENHOLZ
CHARLES B. MAREK, III
ELYANA TARLOW
JASON T. VETTORI
REBECCA G. WYATT
RECEIVED

January 19, 2011

Sent via Hand Delivery

Arnold Jablon, Director
Department of Permits, Approvals and Inspections
111 W. Chesapeake Avenue, Room 105
Towson, MD 21204

JAN 19 2011

ATB

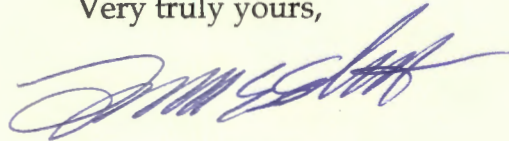
**Re: Mattes/2534 Island View Road
Case No.: 2011-051-SPH**

Dear Mr. Jablon:

Please find enclosed a Notice of Appeal for filing in the above referenced matter. Additionally, I am enclosing our check for Two Hundred Sixty-Five (\$265.00) for the filing of the Notice of Appeal.

Thank you for your prompt attention to this most important matter.

Very truly yours,



Lawrence E. Schmidt

LES: jkl
Enclosures

CC: Lawrence M. Stahl, Esquire, Administrative Law Judge
Theresa R. Shelton, County Board of Appeals of Baltimore County
Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County
Andrew & Stephanie Mattes, 2534 Island View Road
Theresa J. Guckert, 2530 Island View Road
David M. Donovan & James S. Brown, 2502 Island View Road

1/10/11

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

WILLIAM J. WISEMAN III
Zoning Commissioner

January 10, 2011

Peter Max Zimmerman
People's Counsel for Baltimore County
Jefferson Building
105 West Chesapeake Avenue
Towson, Maryland 21204

**RE: PETITION FOR SPECIAL HEARING – RULING ON MOTION FOR
PARTIAL RECONSIDERATION**

NW/S Island View Road; 208' NW of c/l of Barrison Point Road
(2534 Island View Road)

15th Election District, 6th Council District

Andrew J. Mattes, et ux, *Owners/Respondents*; Theresa J. Guckert, et al, *Petitioners*

Case No. 2011-0051-SPH

Dear Mr. Zimmerman:

I am in receipt of your Motion for Partial Reconsideration filed in the above-captioned matter and received in my office on December 28, 2010. I am also in receipt of Mr. Schmidt's opposition to that Motion, filed on behalf of the Respondents, who are legal owners of the property in question.

You indicate that the scope of your Motion for Reconsideration concerns only the Zoning Commissioner's decision to treat as an immediately-appealable collateral order the ruling on Respondents' Motion to Dismiss, which was filed December 20, 2010. In doing so, you cite *Dorsey v. Bethel AME Church* 375 Md. 59 (2003), which stands for the proposition that when legislation is silent, only final administrative orders may be appealed as of right. Although I have read and agree with you as to the holding in *Dorsey*, I continue to believe that my December 20 ruling on the Motion to Dismiss is immediately appealable, and I will therefore deny your Motion for Partial Reconsideration.

The Court of Appeals did rule in 2009 that an administrative order based on collateral estoppel grounds was not immediately appealable under the Administrative Procedures Act ("APA"). *Tamara A. v. Montgomery County*, 407 Md. 180 (2009). Of course, while the APA may be used as a guide, it is not binding in the Zoning Commissioner's Rules of Practice and Procedure, Rule 4L.

ORDER RECEIVED FOR FILING

Date

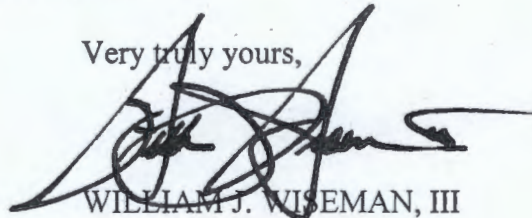
By

Peter Max Zimmerman,
People's Counsel for Baltimore County
January 10, 2011
Page 2

Like a "double jeopardy" defense, a ruling on a *res judicata* defense is effectively unreviewable on appeal, given that a litigant (in this case the Mattes') would have to participate in a trial on the merits with all of its costs and expenses, and only at a later juncture could his legal defense be vindicated, which defense would have immunized him from standing trial in the first instance. *See, Sattazahn v. Pennsylvania*, 537 US 101, 120 n. 1 (2003) (purpose of double jeopardy clause is "akin to that served by the doctrines of *res judicata* and collateral estoppel"). In *Shoemaker v. Smith*, 353 Md. 143 (1999), the court of appeals recognized that there are certain issues which are "not effectively reviewable after the termination of trial because it involves a right to avoid the trial itself." *Id.* at 169. The *Shoemaker* court held that "double jeopardy claims" fell within this category, and in my opinion, *res judicata* claims do as well, given that they are the civil analogue to double jeopardy claims.

The *res judicata* doctrine (where applicable) is designed to spare a litigant the time and expense of a trial, and as such is effectively unreviewable on appeal, at which point the "harm" is already done. In other words, if Mr. Schmidt is correct in his argument that the Petitioners' newly-filed case (2011-0051-SPH) is barred by *res judicata*, the interests of justice would not be served if Respondents were vindicated only after enduring at least two more rounds of administrative hearings, followed by protracted judicial review. As such, I continue to believe that it is not only fair, but in the interest of judicial economy to resolve this pivotal legal issue at the earliest possible juncture. Accordingly, though informal in nature, please consider this letter as a denial of the Rule 4K Motion for Partial Reconsideration filed in the above matter.

Very truly yours,



WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:dlw

- c: Lawrence E. Schmidt, Esquire, Gildea & Schmidt, LLC, 600 Washington Avenue, Suite 200,
Towson, Maryland 21204
Theresa J. Guckert, 2530 Island View Road, Baltimore, MD 21221
David M. Donovan and James S. Brown, 2502 Island View Road, Baltimore, MD 21221
Andrew and Stephanie Mattes, 2534 Island View Road, Baltimore, MD 21221
Stuart Kelly, Code Enforcement, DPDM; File

ORDER RECEIVED FOR FILING

Date

By



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

December 28, 2010

HAND DELIVERED

William J. Wiseman, III, Zoning Commissioner
The Jefferson Building
105 W. Chesapeake Avenue, Suite 103
Towson, Maryland 21204

RECEIVED

DEC 28 2010

Re: PETITION FOR SPECIAL HEARING
Andrew Mattes, III. et ux., Legal Owners
Theresa Guckert, et al, Petitioners
2534 Island View Road
Case No: 2011-051-SPH

ZONING COMMISSIONER

Dear Mr. Wiseman,

This is a Rule 4K Motion for Partial Reconsideration of the Zoning Commissioner's Ruling on Motion to Dismiss dated December 20, 2010. The reconsideration relates only to the Commissioner's ruling that the denial of the Mattes Respondents' Motion to Dismiss is a "collateral" interlocutory order subject to immediate appeal to the County Board of Appeals.

We appreciate the Commissioner's agreement with our position that the Guckert/Donovan/Brown Petition for Special Hearing is not barred by *res judicata* or *collateral estoppel*. Indeed, law, equity, fairness, and justice all compel this conclusion.

We disagree, however, with the Commissioner's ancillary ruling that the denial of the motion to dismiss is a "collateral" or "final" order subject to appeal now. As with the denial of any preliminary motion to dismiss, the issue of law is reviewable upon appeal of the final order on the merits. There is neither legal authority nor any good reason to support an immediate appeal under the present circumstances.

The general rule is that an administrative decision is not reviewable until there is a final decision on the merits. Dorsey v. Bethel AME Church 375 Md. 59, 74-77 (2003). Where, as here, the statutory provision for appellate review [Code Section 32-3-401] is silent as to finality, the Court of Appeals explained,

December 28, 2010

Page 2

"Nevertheless, when there is no final administrative decision, this Court has consistently held that, in the absence of a statutory provision expressly authorizing judicial review of interlocutory administrative decisions, and in the absence of an interlocutory administrative decision with immediate legal consequences causing irreparable harm, 'the parties must ordinarily await a *final administrative decision* before resorting to the courts.'" 375 at 74-75.

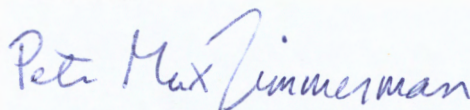
The same logic applies here.

There is no statutory provision authorizing the appeal of an interlocutory order of the Zoning Commissioner. Nor is there any irreparable harm to Respondents from the denial of the motion to dismiss. Indeed, the greater harm would be inflicted by the piecemeal prolongation of this litigation --- potentially taking years to get to the appellate courts -- while Respondents continue the activity which Petitioners claim is an illegal intensification of the use allowed in the 1978 permit. Moreover, when the case returns to the Commissioner after the conclusion of the piecemeal appeal --- and huge expenditure of resources --- the hearing on the merits would be more difficult because of the passage of time, the duration of the activity, and the potential weakening of memories or disappearance of witnesses concerning the 1978 activity. Even if there were discretion to engage in a sort of practical balancing of benefits and costs, there is absolutely no good reason to authorize an immediate appeal. Indeed, this case illustrates why the appellate courts do not allow such piecemeal appeals.

The Zoning Commissioner should promptly schedule a hearing on the merits and proceed to make a final decision. Indeed, such a hearing on the merits might illuminate the facts and expedite a conclusion of this litigation. If not, all of the issues will then be subject to appeal *de novo* by any party aggrieved or feeling aggrieved.

In conclusion, the case should proceed to an expeditious Commissioner hearing on the merits regardless of whether Respondents file an immediate appeal. The reason is that jurisdiction remains with the Zoning Commissioner.

Sincerely,



Peter Max Zimmerman

People's Counsel for Baltimore County

PMZ/rmw

cc: Theresa Guckert, Petitioner
David Donovan and James Brown, Petitioners
Lawrence Schmidt, Esq. and Sebastian Cross, Esq., attorneys for Respondents

12/20/10

IN RE: PETITION FOR SPECIAL HEARING *
NW/S Island View Road, 208' NW c/line of *
Barrison Point Road *
(2534 Island View Road) *
15th Election District *
6th Council District *

BEFORE THE
ZONING COMMISSIONER
OF
BALTIMORE COUNTY

Andrew J. Mattes, III, et ux,
Owners/Respondents *

Theresa J. Guckert, et al
Petitioners *

Case No. 2011-0051-SPH

* * * * *

RULING ON MOTION TO DISMISS

This matter comes before the Zoning Commissioner on a Motion to Dismiss the Petition filed by Sebastian A. Cross of Gildea & Schmidt, LLC on behalf of Legal Owners/Respondents, Andrew J. Mattes, III and Stephanie L. Mattes, his wife.¹ The Office of People's Counsel and the Petitioners, Theresa Guckert, David Donovan and James Brown, filed an Opposition to the Motion, and the parties appeared before the Zoning Commissioner for a motions hearing on November 18, 2010. As will be explained in greater detail, I find that the instant petition is not barred by *res judicata* and the Motion to Dismiss will therefore be denied.

BACKGROUND

The parties to this matter previously appeared before the Zoning Commissioner on a Petition for Special Hearing where the Petitioners attempted to "invalidate a fishing and shell fishing facility for non-conforming use or otherwise." See Case No. 2010-0220-SPH. Following a public hearing that was attended by numerous interested persons, the Zoning Commissioner

¹ The Motion to Dismiss a preliminary motion filed to exclude a hearing on the merits of the Petition for Special Hearing filed by neighboring property owners who seek to restrict or limit the commercial fishing and crabbing activities at 2534 Island View Road. Specifically, Petitioners have requested a hearing to determine whether the scope and intensification of fishing and shellfishing allowed by the use permit has been exceeded.

issued an Order dated April 19, 2010 denying the Petition for Special Hearing and finding that the Owners/Respondents are entitled to conduct a commercial fishing, crabbing or shellfishing operation on the subject property. *Id.*

The Petitioners filed a timely Motion for Reconsideration, raising for the first time the contention that the Respondent "is operating at an intensity that is above that which existed in 1978, and thus does not reflect the intent of the zoning code." The Motion for Reconsideration was denied and the undersigned Zoning Commissioner held that the issue of intensification was not presented or argued at the public hearing on April 8, 2010 and that the Commissioner therefore lacked jurisdiction over that question. Specifically, the Ruling on Petitioner's Motion for Consideration held as follows:

"This Commission does not have jurisdiction to review Petitioners' Motion for Reconsideration and finds that the Motion predicated on materially different issues must be denied and that Petitioners' are instructed to file a new Petition with the Department of Permits and Development Management (DPDM) raising the central issue of intensification of use at this location and request a new hearing after proper notice is provided in accordance with the B.C.Z.R. and Baltimore County Code (B.C.C.)."

Ruling on Motion for Reconsideration, p. 3.

The Petitioners followed this Ruling and filed the instant Petition for Special Hearing "*to determine whether the scope and intensification of Fishing and Shellfishing allowed by the Use Permit has been exceeded.*" The Respondents then filed a Motion to Dismiss arguing that the Petition is barred by *res judicata*, and the Petitioners and Peter Max Zimmerman, People's Counsel, filed Responses to the Motion. The parties appeared for a public hearing on the Motion to Dismiss and presented oral argument to the Zoning Commissioner.

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Date

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By

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RULING

After considering the written memoranda and oral argument presented in this matter, I do not find that the instant petition is barred by *res judicata* and therefore shall deny the Respondents' Motion to Dismiss. As the Respondents state in their Motion, the test for whether a legal determination should be given preclusive effect hinges on three factors:

- (1) whether the [agency] was acting in a judicial capacity; (2) whether the issue presented to the [reviewing] court was actually litigated before the [agency]; and
- (3) whether its resolution was necessary to the [agency's] decision.

Batson v. Shiflett, 86 Md.App. 340, 356 (1991); *See also Seminary Galleria, LLC v. Dulaney Valley Improvement Ass'n, Inc.*, 192 Md.App. 719, 736 (2010).

While the Respondents are correct in stating that the Zoning Commissioner has already reviewed a petition for special hearing involving the same parties and property, I find that *res judicata* does not bar the instant petition for special hearing because the issue now presented to the Zoning Commissioner was not "actually litigated" before the Zoning Commissioner within the confines of the prior petition. Indeed, the Petitioners filed a Motion for Reconsideration following the denial of their prior petition for special hearing and this office denied the Motion due to the fact that the issue of intensification was not presented, argued, or considered in the first petition. The Ruling denying the Motion for Reconsideration specifically noted that the issue before the Zoning Commissioner in the first petition was "the validity of the Use Permit based upon legislative actions, prior approvals and applicable law." *See* Ruling, p. 2. The undersigned Commissioner was not presented with evidence concerning intensification of the use allowed by the permit, and did not consider the imposition of conditions limiting the activity or number of crab pots that can be stored at 2534 Island View Road. Furthermore, the Petitioners were directly instructed in the Ruling to file a new Petition raising the issue of

intensification of use at this location. *Id.* at p. 3. Accordingly, it would be patently unfair to now dismiss this Petition without giving the Petitioners the opportunity to raise an issue that was not litigated in their prior petition.

This Motion does raise an important distinction between the doctrines of *res judicata* and *collateral estoppel*. Under the doctrine of *res judicata*, a judgment on the merits in a prior suit bars a second suit involving the same parties or their privies based on the same cause of action. *John Crane, Inc. v. Puller*, 169 Md.App. 1, 24 (2006). Under the doctrine of *collateral estoppel*, on the other hand, the second action is based upon a different cause of action and the judgment in the prior suit precludes relitigation of issues actually litigated and necessary to the outcome of the first action. *Id.* at 24-25.

There is no question that this Commission has already reached a final determination that the Respondents are entitled to conduct a commercial fishing and shellfishing operation on the subject property under a Use Permit dated October 9, 1978. *See* Case No. 2010-0220-SPH, p. 10. For the purposes of the instant Petition, this issue will not be revisited as any new evidence on this point is barred by *collateral estoppel*. However, the Zoning Commissioner also determined that “any such use existing on the date of enactment of the law could continue only *at the same level of intensity* and that “any attempt to expand the use as defined by the site plan would require a special exception and would not be allowed by amending the site plan.” *Id.* The parties did not raise the issue of intensification in the prior Petition and it was not actually litigated in Case No. 2010-0220-SPH. Accordingly, the instant petition will be permitted to proceed on the limited issue of whether the Owners/Respondents have exceeded the scope and intensification of fishing and shellfishing allowed by the use permit.

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Date

By

FINAL ORDER SUBJECT TO APPEAL

While ordinarily an appeal is only available when a final order disposes all claims between parties, interlocutory orders in the Circuit Court arena are immediately appealable under three (3) exceptions. Those exceptions are: "appeals from interlocutory orders specifically allowed by statute; immediate appeals permitted under Maryland Rule 2-602; and appeals from interlocutory rulings allowed under the common law collateral order doctrine." *Schuele v. Case Handyman and Remodeling Services, LLC*, 412 Md. 555, 566 (2010).

In the case before me, I find that my denial of the Respondents' Motion to Dismiss is immediately appealable under the collateral order doctrine, which requires that an interlocutory order: (1) conclusively determines a disputed question, (2) resolves an important issue, (3) resolves an issue that is completely separate from the merits of the action, and (4) would be effectively unreviewable if the appeal had to await the entry of a final judgment. *Id.* at 572. My denial of the Respondents' Motion determines an important, disputed question that is separate from the merits of the action and would essentially be unreviewable once the parties and the new Office of Administrative Hearings (currently Zoning Commissioner's Office) commence a lengthy hearing to reach a final judgment on the merits.

While this office understands that interlocutory appeals are generally disfavored, this case presents the rare scenario where the final determination of a preliminary legal issue would serve to lessen the burden on the administrative review process and promote judicial economy. This is not a decision that this Commission takes lightly, but this case requiring evidence encompassing a thirty (30) year period of time could result in a particularly lengthy and complex hearing that is potentially avoidable if the Board of Appeals has an initial opportunity to determine the legal issue presented in the Respondents' Motion to Dismiss. Since this scenario falls under the

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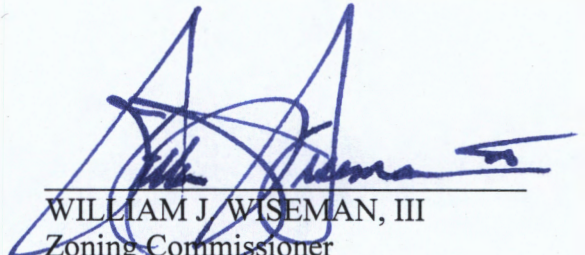
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collateral order doctrine, I find that this decision constitutes a final order and is therefore subject to immediate appeal should the aggrieved parties chose to do so.

WHEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 20th day of December, 2010, that the Motion to Dismiss filed in the above-captioned matter be and the same is hereby DENIED; and

IT IS FURTHER ORDERED that this ruling constitutes a final order subject to an appeal if filed within thirty (30) days of the date hereof.

WJW:dlw


WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

ORDER RECEIVED FOR FILING

Date

12-20-10

By

WJW



BALTIMORE COUNTY

M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

WILLIAM J. WISEMAN III
Zoning Commissioner

December 20, 2010

Lawrence E. Schmidt, Esquire
Sebastian A. Cross, Esquire
Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, MD 21204

RE: PETITION FOR SPECIAL HEARING – RULING ON MOTION TO DISMISS
NW/S Island View Road; 208' NW of c/l of Barrison Point Road
(2534 Island View Road)
15th Election District, 6th Council District
Andrew J. Mattes, et ux, *Owners/Respondents*; Theresa J. Guckert, et al, *Petitioners*
Case No. 2011-0051-SPH

Dear Counsel:

Enclosed please find a copy of the decision rendered in the above-captioned matter.

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
Enclosure

c: Theresa J. Guckert, 2530 Island View Road, Baltimore, MD 21221
David M. Donovan and James S. Brown, 2502 Island View Road, Baltimore, MD 21221
Andrew and Stephanie Mattes, 2534 Island View Road, Baltimore, MD 21221
Peter Max Zimmerman, Office of People's Counsel
Stuart Kelly, Code Enforcement, DPDM; File

11/10/10

RE: PETITION FOR SPECIAL HEARING
2534 Island View Road; NW/S Island View
Road, 208' SW/S of Barrison Point Road
11th Election & 6th Councilmanic Districts
Legal Owner(s): Andrew & Stephanie Mattes
Petitioner(s): Theresa Guckert

* BEFORE THE
* ZONING COMMISSIONER
* FOR
* BALTIMORE COUNTY
* 2011-051-SPH

* * * * *

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY'S
PRE-HEARING MEMORANDUM

This case presents a serious zoning law issue. Petitioners Theresa Guckert, David Donovan and James Brown ("Guckert") have filed the present Petition for Special Hearing under BCZR Baltimore County Zoning Regulation (BCZR) Section 500.7. ("Guckert II"). They ask the Zoning Commissioner to determine if the fishing, shellfishing, and/or crabbing use at 2534 Island View Road conflicts with legislative restrictions in Bill 98-75 and 139-83 against intensification, extension and expansion of the R.C. 5 Zone use allowed and ratified in the 1978 permit. There is a public interest in the implementation and integrity of the zoning law and the zoning maps.

Our office, People's Counsel for Baltimore County ("People's Counsel"), previously submitted a letter dated October 28, 2010 in answer to a Motion to Dismiss filed by Respondents Andrew and Stephanie Mattes ("Mattes"). We reviewed the litigation history of an earlier Petition ("Guckert I") and explained why, contrary to Respondents' argument, Guckert II is not barred by the *res judicata* doctrine.

By letter dated November 4, 2010, the Mattes Respondents then argued that People's Counsel has no authority to participate in the present case, Guckert II. As we shall explain below, People's Counsel has not only the authority to participate, but also the responsibility. The Respondents claimed, in addition, that People's Counsel's position concerning *res judicata* contradicts the position taken in a previous case, the Becker case. In fact, there is no contradiction. The situations in these cases are distinguishable.

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ZONING COMMISSIONER

I. People's Counsel's charter function encompasses special hearing cases

The Baltimore County Zoning Regulations include Section 500.7 to afford parties the opportunity to secure determinations of zoning law where there are questions of interpretation, application, and implementation. It is a useful and productive process which helps protect the integrity of the comprehensive zoning maps.

People's Counsel for Baltimore County appears in zoning cases to defend the comprehensive zoning maps and master plan in the public interest. Sec. 524.1 of the Baltimore County Charter. The scope of the function and responsibility extends broadly to zoning and related cases, including special hearings and development cases which involve zoning issues.

Section 524.1(a)(3)A, it states in pertinent part,

"Powers and duties. The People's Counsel shall have the following powers and duties:

He shall appear as a party before the zoning commissioner of Baltimore County, his deputy, the county board of appeals, the planning board, and the courts on behalf of the interests of the public in general to defend any duly enacted master plan and/or comprehensive zoning maps as adopted by the county council, and in any matter or proceeding now pending now brought involving zoning reclassification and/or variance from or special exception under the Baltimore County Zoning Regulations as now or hereafter in force or effect, in which he may deem the public interest to be involved." (Emphasis supplied).

The charter language speaks broadly to the responsibility to defend the comprehensive zoning maps. While zoning reclassifications, variances, and special exceptions are included as the most familiar types of zoning cases, the charter language refers to them in the conjunctive, following the word "and ..." This language is not restrictive. Indeed, it would manifestly subvert the essential purpose to defend the comprehensive zoning maps if parties could eviscerate the office's function in important cases which determine the interpretation and application of the zoning law.

With the approval and recognition of courts and administrative agencies, People's Counsel has consistently participated in numerous special hearing cases in the last several decades to determine important issues involving the interpretation and implementation of

the zoning law. These cases often have involved the permissibility of uses, including such issues as changes in nonconforming uses, estoppel, vested rights, and *res judicata*.

In the past, some parties have occasionally made attempts to argue that the People's Counsel's function is narrow, circumscribed, and limited to reclassifications, special exceptions, and variances. But the charter language is broader than that, and the appellate courts have consistently recognized it. On the few occasions where parties have raised objections, the Zoning Commissioner, Board of Appeals and the Maryland courts have sustained People's Counsel's participation.

In perspective, beginning with People's Counsel v. A.V. Williams 45 Md. App. 617 (1980), a zoning reclassification case, the appellate courts have consistently approved the participation of our office. In addition to reclassification, variance, and special exception cases, the many reported appellate decisions have included, among others, zoning special hearings, development cases, and direct litigation which either approved or recognized the standing of People's Counsel.

In 1989, the Court of Appeals approved or recognized the authority of People's Counsel to participate in special hearing cases. People's Counsel v. Maryland Marine Mfg. Co. 316 Md. 491 (1989), determination of the geographic extension of zoning lines into navigable waters. Board of Child Care v. Harker 316 Md. 683 (1989), zoning of child care facilities, including preemption and immunity issues based on State law. More recent special hearing cases include Marzullo v. Kahl 366 Md. 158 (2001), legal interpretation, estoppel, and vested rights issues; Riffin v. People's Counsel 137 Md. App. 90, cert. denied 363 Md. 660 (2001), in part, determination of legality of bungee jumping operation; Lucas v. People's Counsel 147 Md. App. 209 (2002), in part, determination of character of helicopter use – helistop, heliport, or airport; Antwerpen v. Baltimore County 163 Md. App. 194 (2005), transitional law issues and vested rights; and People's Counsel v. Surina 400 Md. 662 (2007), legal interpretation issues, relating permitted uses, immunity and infrastructure; and Seminary Galleria v. Dulaney Valley Improvement Association 192 Md. App. 719 (2010), *res judicata* issues.

There have also been special hearing cases which concluded with unreported opinions. The 3600 Georgetown Road (New England Motor Freight) litigation, which involved nonconforming use issues. Ford v. People's Counsel for Baltimore County No. 1309, Sept. Term, 2008 (issued November 18, 2009) involved special hearing and *res judicata* issues. Recently, in Fifth Street v. Ciarpella, No. 810, September Term, 2009, (mandate issued August 9, 2010, the Court of Special Appeals affirmed the CBA's and Zoning Commissioner's determination as to the permissibility of the Dock of the Bay use, and whether it was operating as a nightclub or restaurant. People's Counsel participated in those proceedings.

The Court of Appeals has also approved and recognized the participation of People's Counsel in development cases where zoning issues are involved. People's Counsel v. Crown Development Corp. 328 Md. 303 (1992) is the landmark decision. In Crown Development, the issue of transfer of zoning density arose in a County Review Group proceeding involving a residential development. It was the only issue raised by People's Counsel upon intervention at the Circuit Court. Judge McAuliffe wrote:

"People's Counsel has been given a broad charge to protect the public interest in zoning and related matters. See Baltimore County Charter Sec. 524.1. Density regulation is an important part of the zoning process. West Mont. Assn. V. MNCP & P Com'n 309 Md. 183 (1987). Although participation in the development process may often be outside the intended ambit of People's Counsel's authority, where protection against a violation of a density regulation is involved, People's Counsel has a legitimate interest."

Subsequently, in Sycamore Realty Co. v. People's Counsel 344 Md. 57 (1996), People's Counsel participated in a development case with important zoning estoppel issues.

The office likewise participated in the Oella Mill, LLP case No. I-498 and 02-412-SPH, where there were a number of zoning density, residential transition area, and floodplain issues relating to the C.C.C. District, the RTA law, and the floodplain management law. The developer challenged People's Counsel's participation. The Hearing Officer/Zoning Commissioner judged that People's Counsel has a right to participate. On pages 6-7 of his July 8, 2002 decision, excerpt attached, Zoning Commissioner Lawrence Schmidt -- now attorney for Respondents Mattes -- wrote,

"A review of the Baltimore County Charter (Section 524.1) as well as the cases cited above is persuasive to a finding that People's Counsel is a proper party. The appellate courts of this state have confirmed that People's Counsel may participate in all matters related to the defense of duly enacted Master Plan and/or Comprehensive Zoning Maps as adopted by the County Council. The appellate courts have given wide latitude and broad discretion to People's Counsel's duties in this respect. This includes participation in development plan hearings. Therefore, I find that People's Counsel is a proper party to this case. Moreover, it is to be noted that the concerned citizens of Oella (Protestants) raised and participated in the identical arguments offered by People's Counsel so that those issues were properly raised and considered in any event."

People's Counsel went on to participate in the CBA proceedings as well.

There have also been declaratory judgment cases involving defense of the master plan and the comprehensive zoning maps where the office has intervened and participated. Security Management v. Baltimore County 104 Md. App. 234, cert. denied 339 Md. 643 (1995), cert. denied 516 U.S. 1115 (1996), civil rights issues; Freeland Legacy Alliance v. Baltimore County, No. 46, September Term, 2010, pending, contract zoning, spot zoning, and police power issues.

* * *

There is another point to be noted for cases where there exists another party have standing or the right to participate, Judge McAuliffe reiterated in Crown Development, 328 Md. at 317,

"[w]here there exists a party having standing to bring an action ... we shall not ordinarily inquire as to whether another party on the same side also has standing."

This being true at the appellate court level, it plainly applies to the administrative process, where the criteria for participation are "not very strict." Dorsey v. Bethel A.M.E. Church 375 Md. 59, 72-73 (2003). Here, as the Petitioners are undoubtedly interested parties, there is actually no need to inquire whether People's Counsel may also participate.

In any event, our office takes seriously its charter responsibility and has deemed it in the public interest to participate here in defense of the comprehensive zoning maps, well within the scope of the assigned charter function. For all of these reasons, People's Counsel has the authority and responsibility to participate.

II. The Becker case is distinguishable

In our October 28, 2010 letter, we discussed the recent Court of Special Appeals decision in Seminary Galleria v. Dulaney Valley Improvement Association 192 Md. App. 719 (2010). We recognize that where the cause of action is the same, a final decision on the merits precludes a new case filed under a new name or sporting a new legal theory. That was the situation in the Becker case, where the property owner came back with actually an application for a long pier and boatlift after a similar application had been finally denied. In the context of the Court of Appeals' transactional analysis, the issue was the same: Should there be an approval of a proposed pier and boatlift?

Our October 28 letter explained why the present case is distinguishable from Seminary Galleria. It is likewise distinguishable from Becker. First of all, the question of the validity of the 1978 permit pertains, in transactional terms, to different temporal and fundamental questions from the question of the much later twenty-first century intensification of the use. Secondly, the legislative sequence of Bills 98-75 and 139-83 formulate different and independent transactional situations. Thirdly, the Zoning Commissioner concluded in Guckert I that the permit issue and intensification issue involved entirely different transactions in his June 1, 2010 final Ruling on Motion for Reconsideration. Fourthly, the Zoning Commissioner instructed the Guckert to file another Petition for Special Hearing. As this was not appealed, any conclusive impact would be that the two petitions and situations do involve different causes of action.

Conclusion

For all of the above reasons, the Mattes Respondents' request for dismissal based on *res judicata* is inappropriate and in error. Moreover, there is no legal authority to preclude our office from participation. Essential principles of law and justice compel a determination of the Guckert II Petition for Special Hearing on the merits.

Peter Max Zimmerman

PETER MAX ZIMMERMAN

People's Counsel for Baltimore County

Carole S. Demilio

CAROLE S. DEMILIO

Deputy People's Counsel

Jefferson Building, Room 204

105 West Chesapeake Avenue

Towson, MD 21204

(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of November, 2010, a copy of the foregoing People's Counsel for Baltimore County's Pre-Hearing Memorandum was mailed to Theresa Guckert, 2530 Island View Road, Baltimore, Maryland 21221, David Donovan and James Brown, 2502 Island View Road, Baltimore, MD 21221, and Lawrence Schmidt, Esquire, Giidea & Schmidt, LLC, 600 Washington Avenue, Suite 200, Towson, Maryland 21204, Attorney for Legal Owner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN

People's Counsel for Baltimore County

7/8/02

IN RE: DEVELOPMENT PLAN HEARING and * BEFORE THE
PETITION FOR SPECIAL HEARING -
W/S Oella Avenue, E of Patapsco River, * ZONING COMMISSIONER
190' NW of c/I Oella Hollow Road
(The Oella Mill Property) * OF BALTIMORE COUNTY
1st Election District - 1st Council District

Oella Mill LLP, Owner;
Forest City Residential Group/
East Coast Development, Developer

* Cases Nos. I-498 & 02-412-SPHA

HEARING OFFICER'S OPINION AND DEVELOPMENT PLAN ORDER

This matter comes before this Hearing Officer/Zoning Commissioner for a combined public hearing, pursuant to Section 26-206.1 of the Baltimore County Code (B.C.C.). Pursuant to the development review regulations codified in Title 26 thereof, the Owners/Developers seek approval of a development plan prepared by Daft-McCune-Walker, Inc. for the proposed redevelopment of the subject property by Oella Mill LLP, Owners, and Forest City Residential Group, East Coast Development division (hereinafter referred to as "Forest City"), Contract Purchaser/ Developer, with 175 luxury apartment units, to be known as Oella Mills. In addition, the Owners/ Developers request a special hearing to approve a waiver, pursuant to Sections 126-171, 26-172(b) and 26-203(C)(8) and 26-278 of the Baltimore County Code to permit renovations to a historic structure and variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) as follows: to permit apartment windows facing a property line other than a street line to be located as close as 8 feet in lieu of the minimum required 25 feet; to permit 26 parking spaces to be located so as not to adjoin or have direct access to an aisle; and, to permit a minimum width of 18.5 feet for two-way aisles in lieu of the minimum required 22 feet.¹ The proposed subdivision and requested zoning relief are more particularly described on the red-lined development plan submitted and marked into evidence as Developer's Exhibit 7.

¹ The Developer's originally filed Petition for Special Hearing also sought a waiver to allow construction (i.e., wooden steps) in a riverine floodplain, pursuant to Sections 26-171, 26-172(b) and 26-276 of the Baltimore County Code. During the hearing, the proposed construction was abandoned and that part of the Petition for Special Hearing withdrawn as unnecessary.



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

October 28, 2010

HAND DELIVERED

William J. Wiseman, III, Zoning Commissioner
The Jefferson Building
105 W. Chesapeake Avenue, Suite 103
Towson, Maryland 21204

RECEIVED

OCT 28 2010

Re: PETITION FOR SPECIAL HEARING
Andrew Mattes, III, et ux., Legal Owners
Theresa Guckert, et al, Petitioners
2534 Island View Road
Case No: 2011-051-SPH

ZONING COMMISSIONER

Dear Mr. Wiseman,

This letter addresses the question, raised by Respondent/Property Owner Andrew Mattes, whether *res judicata* bars the present Petition for Special Hearing. The petition pertains to 2534 Island View Road, an R.C. 5 (Rural-Residential) Zone property owned by Mr. Mattes and Stephanie Mattes. The petitioners are Theresa Guckert of 2530 Island View Road and David Donovan and James Brown of 2502 Island View Road.

The *res judicata* inquiry relates to whether Zoning Commissioner (ZC) William Wiseman's denial of the earlier petition filed February 22, 2010 in Case No. 10-220-SPH (Guckert I) concludes and bars the present petition (Guckert II). The present request is for a determination "whether the scope and intensification of fishing and shellfishing activity allowed by the use permit has been exceeded." In Guckert I, the Petition for Special Hearing sought to "invalidate a fishing and shell fishing facility for nonconforming use or otherwise."

Our office is a strong advocate for implementation of the *res judicata* doctrine where it properly applies. We have asserted this defense in many cases where unsuccessful zoning petitioners have filed successive cases couched in the guise of different language, format, theories, argument, or "new evidence." The most prominent of these cases is Seminary Galleria v. Dulaney Valley Improvement Ass'n 192 Md. App. 719 (2010). Nevertheless, for reasons to follow, the *res judicata* doctrine does not bar Guckert II because it involves a different "transaction" from that involved in Guckert I.

In the Memorandum and Order filed April 19, 2010 in Guckert I, the Zoning Commissioner found "... that the Use Permit was properly granted in 1978, ratified in 1983, and continues with validity today." He relied on Bill 139-83, which ratified or validated permits granted after the expiration of a previous legislative deadline set by Bill 98-75. Petitioners then filed a motion for reconsideration to determine whether the fishing and shellfishing operation was operating at an intensity above that allowed by the 1978 permit. In his June 1, 2010 final ruling, ZC Wiseman found that this issue was a "divergence from that initially contained in the Petition, the posting and public notice provided." He added,

"In the case before me, the decision rendered was based upon the evidence introduced material to the matters raised in the Petition, i.e. the validity of the Use Permit based upon legislative actions, prior approvals, and applicable law."

ZC Wiseman found that he did not have jurisdiction over this separate matter, and he concluded,

"Petitioners are instructed to file a new Petition with ... (DPDM) raising the central issue of intensification of use at this location and request a new hearing after proper notice is provided ..."

This is precisely what Petitioners did on August 3, 2010. Following ZC Wiseman's instruction to the letter, they filed Guckert II.

As ZC Wiseman indicated, the legal issues are traceable to Bill 98-75. This designated fishing, crabbing, and shellfishing facilities as special exception uses in R.C. 5 and other zones. It did allow existing facilities to continue if they could meet certain permit requirements within a year of the date of enactment (November 7, 1975). See Bill 98-75, Section 4, Page 27. The legislation set the further condition that such uses continue at the same intensity as existing and allowed under the permit. The 1978 permit issued for the 2534 Island View Road site was beyond the deadline, but subsequent Bill 139-83 ratified the late permits. Bill 139-83, Section 3, also reinforced the prohibition against intensification of the use. It stated that nothing in this ratification ordinance "... shall be construed to authorize the extension, expansion, or intensification of any commercial fishing, crabbing, and shellfishing operations" Any such change in use would be subject to the special exception requirements.

The process was somewhat similar to the process established for nonconforming trucking facilities under Bill 18-76. See BCZR § 410.1, 410A.1. So, when the Council in Bill 139-83 ratified the Island View Road permit and other permits issued after the Bill 98-75 deadline of November 7, 1976, the uses were still subject to the aforementioned limitation on extension, expansion, and intensity.

The crucial point here is that Guckert I raised the validity of the 1978 permit, while Guckert II raises the question whether the use satisfies the condition that it "continue at the same level of intensity..." It would be unjust and inequitable to hold that petitioners have forfeited their legal rights by following ZC Wiseman's ruling and instructions in Guckert I. The law is in

October 28, 2010

Page 3

accord. In his Guckert I ruling upon motion for reconsideration, ZC Wiseman recognized the core difference between the claims presented in the two cases. In the language used by the Maryland appellate courts, the two petitions involve distinct "transactions." In other words, the claims and causes of action are different.

To be sure, a petitioner must bring the entire case forward, including legal theories and facts which with propriety could be litigated concerning the claim. So, a changed legal theory, a new witness or new evidence are not excuses to refile a claim which is essentially the same. But this does not resolve the question of the boundary of the case or claim, and whether there are distinct cases or claims involving the same parties, which involve separate "transactions."

In Kent County Bd. of Educ. v. Bilbrough 309 Md. 487, 494-500 (1987), the Court of Appeals adopted the pragmatic "transactional" approach of Restatement (Second) of Judgments Section 24. Judge Rodowsky explained "... that the 'pragmatic' test 'defies any abstract definition which could be applied to all cases'". 309 Md. at 499. In Bilbrough, the Court ultimately decided that an adverse judgment in a civil rights action against the Plaintiff, a former school district employee, involving his discharge did not bar a subsequent action for invasion of privacy relating to invasion of police files.

Subsequently, Judge Wilner explained the heart of the "transactional" approach in FWB Bank v. Richman 354 Md. 472, 493 (1999);

"In deciding whether a factual grouping constitutes a 'transaction,' the RESTATEMENT directs a pragmatic approach, 'giving weight to such considerations as whether the facts are related in time, space, origin or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations or business understanding or usage.'" RESTATEMENT, *supra*, Section 24(2).

The Court of Special Appeals applied this test in Boyd v. Bowen 145 Md. App. 635, 655 (2002).

In the present situation, there are significant differences between the transactions in Guckert I and Guckert II. The time frames and origins are different. Guckert I focused on the validity of the 1978 issuance of the permit and its 1983 ratification. Guckert II focuses on the recent or current level of activity, and whether there has been intensification (or expansion, extension) of the 1978 approved use. As for convenience of the trial unit, ZC Wiseman found it inconvenient to try them together in Guckert I. He could have held the case open for the addition of the new claim and a reposting of the property. He found it more appropriate to instruct the Petitioners to file a new petition. Mr. Mattes did not challenge that instruction by request for reconsideration or a *de novo* appeal. As for the parties' expectations, it is apparent that Guckert I focused on the validity of the 1978 permit, and that when petitioners sought to add the new claim about intensification, the ZC Wiseman held that the reasonable expectation was to treat the two claims separately. Under these circumstances, Guckert I and Guckert II are properly viewed as relating to different transactions. ZC Wiseman viewed them this way, without further challenge by any of the parties. This is more conclusive than anything else.

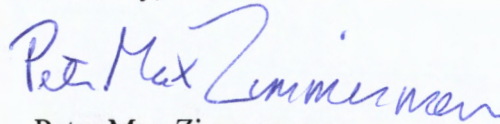
William J. Wiseman, III, Zoning Commissioner

October 28, 2010

Page 4

Thank you for your consideration.

Sincerely,



Peter Max Zimmerman

People's Counsel for Baltimore County

PMZ/rmw

cc: Theresa Guckert, Petitioner
David Donovan and James Brown, Petitioners
Andrew and Stephanie Mattes, Legal Owners
Sebastian Cross, attorney for Respondent/Property Owner

10/26/10
October 26, 2010

Sent via Hand Delivery:

Honorable William J. Wiseman, III
Zoning Commissioner
Jefferson Building
105 W. Chesapeake Avenue, Suite 103
Towson, MD 21204

RECEIVED

OCT 25 2010

ZONING COMMISSIONER

Re: Mattes, 2534 Island View Road
Case No.: 2011-051-SPH
Response to Motion to Dismiss

Dear Commissioner Wiseman:

We the Petitioners are writing in response to the Motion to Dismiss filed on Sept 28, 2010, by Sebastian Cross, Gildea & Schmidt, LLC on behalf of Stephanie and Andrew Mattes, 2534 Island View Road.

The Motion to Dismiss contends that the first public hearing on this property had already examined the intensity of the fishing and shell fishing prior to Oct 1978 at 2534 Island View Road and thus this should not be revisited. We disagree with this motion and claim that such a discussion was outside of the claims of the first hearing. An examination of the Brief that the petitioners provided to both the Commissioner and the Mattes family/representatives at the first hearing does not indicate a focus or intention to discuss intensity. The Petitioners concur with the Commissioner's comments in the Ruling on Petitioner's Motion for Reconsideration that states "...the issue of intensification which is a divergence from that initially contained in the [first hearing] Petition, the posting and public notice provided."

The intent of the first public hearing attempted to invalidate the Use Permit based first, on non-conforming use statutes and second, a falsified application. The comments at the first hearing dealing with intensity of fishing were primarily from the Mattes family supporters and focused largely on demonstrating that fishing had occurred *after* the Use Permit was awarded in 1978 (to demonstrate that the facility was used in the first and subsequent years after the Use Permit was awarded). The second part of the Petitioner's argument in the first hearing was that Mr. Daniel Beck, Jr. was the applicant on two secondary use permits, which would require that he held a primary residence both on Island View Road and Schaffer's Lane. Mr. Dan Beck, Jr. did not live at 2534 Island View Road at the time the Use Permit was filed, and thus the Petitioners argued that the 2534 Island View Road Use Permit was falsified. Neither of the Petitioner's arguments at the first hearing included an examination of the intensity of fishing during the period of the Use Permit application, June-Oct 1978. Thus, virtually no discussion occurred at the first public hearing describing the intensity of fishing and crabbing at 2534 Island View Road that existed prior to Oct 1978.

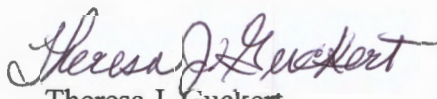
The second public hearing on the crabbing and fishing operation at 2534 Island View Road was requested, based on the suggestion of the Commissioner, in response to the Petitioner's Motion for Reconsideration. The Commissioner's response indicated that to have ruled on the Motion for

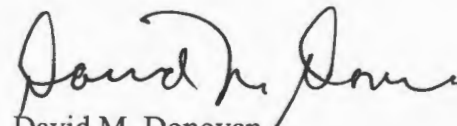
Reconsideration without a second hearing "...would be legally deficient.." and that "This cannot be done without requiring the requisite notice that provides parties with the ability and time to address the issues." The Commissioner further states "...that Petitioners' are instructed to file a new Petition...." and based on this statement, the petitioners filed for the second hearing.

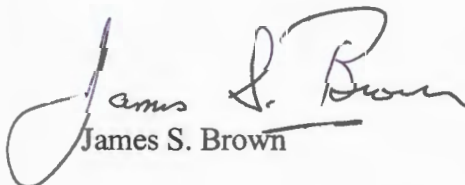
For clarification, there were a few passing comments at the first hearing regarding fishing and crabbing prior to 1978. However, these were used primarily in the context of documenting that 2534 Island View Road was both the residence and a fishing facility utilized by Mr. Beck, Sr., prior to Oct 1978 (a condition that was likely requisite in order for the Commissioner to rule in favor of the Secondary Use Permit at 2534 Island View Road). These comments were cited in the Commissioner's decision and in the Petitioner's Motion for Reconsideration, but these were not the focus of the first hearing and were not indicated as a key part of the Decision rendered by the Commissioner. There was never a detailed, focused discussion on the intensity of the fishing and crabbing at 2534 Island View Road that existed prior to Oct 1978.

We concur with the request of Mr. Cross in his letter accompanying the Motion to Dismiss and the consensus verbal agreement arising from the conference call conversation (Wiseman, Schmidt, Cross, Donovan, 10/5/10) that no data on prior or current levels of intensity should be discussed at the hearing on Nov. 19, but discussion should be limited to the merits of the Motion to Dismiss.

Sincerely,


Theresa J. Guckert


David M. Donovan


James S. Brown

CC: Andrew and Stephanie Mattes, 2534 Island View Road
Theresa J. Guckert, 2530 Island View Rod
Sebastian A. Cross, Gildea & Schmidt, LLC.
P. Zimmerman, People's Counsel

9/28/10

IN RE: PETITION FOR SPECIAL HEARING
NW/Side Island View Road, 208' SW/
Side of Barrison Point Road
15th Election District
6th Councilmanic Districts

Andrew J. Mattes, III, et ux,
Legal Owners/Respondents

Theresa J. Guckert, et al
Petitioners

* BEFORE THE
* ZONING COMMISSIONER
* OF
* BALTIMORE COUNTY
*
* Case No. 2011-051-SPH

* * * * *

MOTION TO DISMISS

Legal Owner/Respondent, Andrew J. Mattes, III, by and through his attorneys, Lawrence E. Schmidt, Sebastian A. Cross and Gildea & Schmidt, LLC, hereby files this Motion to Dismiss this matter with prejudice. The grounds of the Motion are as follows:

I. STATEMENT OF FACTS

This zoning case involves 2534 Island View Road, formerly 466 Barrison Road, in eastern Baltimore County. On October 5, 1977, Robert J. Romadka, Esquire, on behalf of the then property owners, D. Franklin Beck, Sr. and Mae M. Beck, his wife, and their son, Daniel F. Beck, Jr., filed an application for a Zoning Use Permit and site plan for a "Commercial fishing, crabbing and shellfishing operation". This application was submitted consistent with Baltimore County Council Bill No. 98-75 and Section 500.4 of the Baltimore County Zoning Regulations (B.C.Z.R.). In connection with the application, an inspection of the property was conducted on June 13, 1978. On October 9, 1978, Zoning Commissioner S. Eric DiNenna (deceased) issued a Use Permit to use 50% of the land "as a secondary commercial fishing, crabbing and shellfishing operation."

The instant matter first came before the Zoning Commissioner for consideration of a Petition for Special Hearing filed by adjacent neighbor, Theresa J. Guckert (2530 Island View Road), and interested residents David M. Donovan and James S. Brown (2502 Island View Road). As filed,

Petitioners requested a special hearing “to invalidate the fishing and shell fishing facility for non-conforming use or otherwise” through Case No. 2010-0220-SPH.

Upon examination of the evidence presented, the relevant regulations and definitions provided in the BCZR and the legislative history of the Bills surrounding fishing and shellfish operations, the Zoning Commissioner found the fishing and shellfishing on site were proper and the use permit granted in 1978 and ratified in 1983 were valid. Therefore, the Petition for Special Hearing to invalidate the fishing and shellfishing facility was denied. During both the hearing itself and as referenced in the decision, the level of intensity of this current operation was discussed in relation to the 1978 approval, with evidence presented and findings made by the Zoning Commissioner on said issue.

Upon issuing said order denying the petition on April 19, 2010, followed by a denial of a Motion for Reconsideration filed by Petitioners on June 1, 2010, the 30-day appeal period expired with no appeal filed as to either of these decisions. Rather than instituting an appeal, Petitioners have now submitted another Petition for Special Hearing to determine whether the scope and intensification of the fishing and shellfishing operation allowed by use permit has been exceeded. This petition seeks to relitigate an issue already presented and decided by the Zoning Commissioner involving the same parties and the same property. As such, this Petition should be dismissed based on *res judicata* as explained below.

II. RES JUDICATA

The doctrine of *res judicata* provides that a judgment on the merits in a previous suit between the same parties precludes a second suit predicated upon the same cause of action. The Court of Appeals stated in *Whittle v. Bd. of Zoning Appeals*, 211 Md. 36, 128 A.2d 41 (1956): “If the second suit is between the same parties and is upon the same cause of action, a judgment in the earlier case on the merits is an absolute bar, not only as to all matters which were litigated in the

earlier case, but as to all matters which could have been litigated." (*emphasis added*) *Id* at 49, 125 A.2d 41. A similar summary of this point appears in *Alvey v. Alvey*, 225 Md. 386, 390, 171 A.2d 92 (1961):

The doctrine of *res judicata* is that a judgment between the same parties and their privies is a final bar to any other suit upon the same cause of action, and is conclusive, not only as to all matters that have been decided in the original suit, but as to all matters which with propriety could have been litigated in the first suit, where the court had jurisdiction, proceedings were regular, and his omission was due to his own negligence.

In *Alvey, supra*, 225 Md. at 391, 171 A.2d 92, the Court of Appeals quoted with approval the following statement from *Henderson v. Henderson*, 67 Eng. Rep. 313, 319, 3 Hare 100, 115 (1843):

[W]here a given matter becomes the subject of litigation in, and of adjudication by, a Court of competent jurisdiction, the Court requires the parties to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have from negligence, inadvertence, or even accident, omitted a part of their case. The plea of *res judicata* applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time.

See, e.g., *Stavely v. State Farm Mut. Auto. Ins. Co.*, 376 Md. 108, 116, 839 A.2d 265 (2003); *Sugarloaf v. Waste Disposal*, 323 Md. 641, 658-59, 594 A.2d 1115 (1991); *Cicala v. Disability Review Bd.*, 288 Md. 254, 263-64, 418 A.2d 205 (1980).

Whether [a]... declaration should be given preclusive effect hinges on three factors: (1) whether the [agency] was acting in a judicial capacity; (2) whether the issue presented to the [reviewing] court was actually litigated before the [agency]; and (3) whether its resolution was necessary to the [agency's] decision.

Batson, 86 Md. App at 356, 586 A.2d at 799 (quoting *West Coast Truck Lines v. American Industries*, 893 F.2d 229, 234-35 (9th Cir. 1990)). This test was first enunciated in *Exxon Corp. v. Fischer*, 807 F. 2d 842, 845-46 (9th Cir. 1987), and its three prongs are supported by the Supreme Court caselaw on issue preclusion.

The rationale for this facet of law was more clearly explained in *United States v. Utah Constr. Co.* 384 U.S. 394, 86 S.Ct. 1545, 16 L.Ed.2d 642 (1966), where the Court spoke particularly to the preclusive effect of administrative law rulings, stating that:

When an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, the courts have not hesitated to apply *res judicata* to enforce response. [citations omitted]

Id. at 422, 86 S.Ct. at 1560, 16 L.Ed.2d at 661.

Just a year before *Batson*, the Supreme Court quoted the above language from *Utah Construction Co.* in *Astoria Federal Savings & Loan Assoc. v. Solimino*, 501 U.S. 104, 107 (1991).

Mr. Justice Souter added,

Such response is justified on the sound and obvious principle of judicial policy that a losing litigant deserves no rematch after a defeat fairly suffered, in adversarial proceedings, on an issue identical in substance to the one he subsequently seeks to raise. To hold otherwise would as a general matter, impose unjustifiably upon those who have already shouldered their burdens, and drain the resources of an adjudicatory system with disputes resisting resolution...The principle holds true when a court has resolved an issues, and should do so equally when the issue has been decided by an administrative agency, be it state or federal...

It is settled that *res judicata* applies to administrative proceedings. In zoning cases, the law does allow for consideration of a substantial change in the character of a neighborhood if it materially affects the relevant zoning issue. See *Whittle, supra*; *Mayor and City Council of Baltimore v. Linthicum*, 170 Md. 245, 183 A. 531 (1936); *Bensel v. Mayor and City of Baltimore*

203 Md. 506, 101 A.2d 826 (1954); *Woodlawn Area Citizens Assoc. v. Board of County Commr's*, 241 Md. 187, 216 A.2d 149 (1966). However, *res judicata* bars litigation of the same matter with respect not only to the legal claims or issues decided in the case finally adjudicated, but also "as to all matters which with propriety could have been litigated in the first suit." *Alvey, supra*; *MPC, Inc. v. Kenny*, 279 Md. 29, 32, 367 A.2d 486, 489 (1977); *deLeon v. Slear* 328 Md. 569, 580, 616 A.2d 380, 385 (1992); *Kim v. Council of Unit Owners of Collington Center II Condominium* 180 Md. App. 606, 952 A.2d 346 (2008). A litigant must bring forward the entire case, including all relevant facts and legal issues. Otherwise, there would be a potentially infinite series of litigation based on different facts and legal theories to achieve the same objective.

III. ARGUMENT

The present case deals with the same property, shoreline, use and R.C. (Resource Conservation) zone addressed in the previous Use Permit case approved in 1978 and confirmed by Case No. 2010-0220. There is no material change in the character of the neighborhood, or any other new fact that would justify revival of the case.

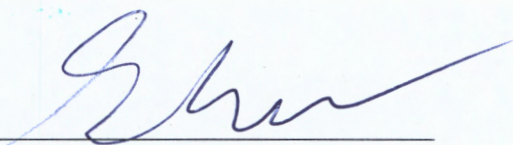
Here the current Petition clearly satisfies the three prong test utilized to bar suits under *res judicata* in that (1) the Zoning Commissioner was acting in a judicial capacity; (2) the issue presented over the legality of the current shellfish operation was litigated; and (3) said operation was determined to be proper and legal as permitted under the initial 1978 permit and continuing in the present day. Therefore, litigants are not permitted to again bring an identical challenge to a legally existing operation as decided previously by the Zoning Commissioner.

Not only does *res judicata* bar further litigation on all matters which properly could have been litigated in the first suit, but in the instant matter the intensification of the shellfish and crabbing facility was raised, discussed and litigated. It is referenced both in the Petitioner's evidence as well as the decision from the Zoning Commissioner. Therefore, not only was this

matter decided previously, the current Petition does not even differently frame the issue as to the facts or issue of law presented. As such, a final determination was made by the June 1, 2010 denial of the Motion for Reconsideration, and as such, this attempt to relitigate the same matter, for the same property and between the same parties is barred by *res judicata*.

Based on the foregoing, Respondents ask that this Motion to Dismiss be granted and the Petition for Special Hearing be denied.

Respectfully submitted,



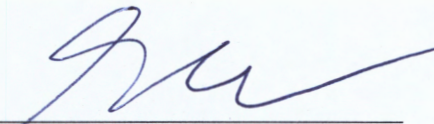
SEBASTIAN A. CROSS
Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, MD 21204
(410) 821-0070
Attorneys for Legal Owners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of **September, 2010**, a copy of the foregoing Motion to Dismiss was mailed, first-class mail, postage pre-paid to:

Theresa J. Guckert
2530 Island View Road
Baltimore, MD 21221

David M. Donovan & James S. Brown
2505 Island View Road
Baltimore, MD 21221



SEBASTIAN A. CROSS

~~Bld~~ - 10/15 - 10am
TB

GILDEA & SCHMIDT, LLC

600 WASHINGTON AVENUE

SUITE 200

TOWSON, MARYLAND 21204

TELEPHONE 410-821-0070

FACSIMILE 410-821-0071

www.gildeallc.com

DAVID K. GILDEA

LAWRENCE E. SCHMIDT

D. DUSKY HOLMAN

SEBASTIAN A. CROSS

CHARLES B. MAREK, III

JASON T. VETTORI

September 28, 2010

Sent via Hand Delivery

Honorable William J. Wiseman, III
Zoning Commissioner
Jefferson Building
105 W. Chesapeake Avenue, Suite 103
Towson MD 21204

RECEIVED

SEP 28 2010

Re: Mattes/2534 Island View Road
Case No.: 2011-051-SPH
Motion to Dismiss

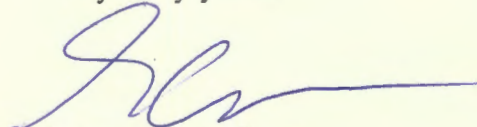
ZONING COMMISSIONER

Dear Commissioner Wiseman:

Enclosed please find our Motion to Dismiss the above referenced case based on *res judicata*. As this hearing is currently set for October 15, 2010, we respectfully request that hearing date to be assigned for oral argument on this Motion. If presentation of testimony and evidence on this case is required, we suggest that it be presented at a later date, to minimize the inconvenience of any witnesses that may be called to testify.

Please advise if this request regarding October 15, 2010 is agreeable with your office and contact us with any further information you may require. As always, I am

Very truly yours,



Sebastian A. Cross

SAC: sf

Enclosure

CC: Andrew & Stephanie Mattes, 2534 Island View Road
Theresa J. Guckert, 2530 Island View Road
David M. Donovan & James S. Brown, 2505 Island View Road
Lawrence E. Schmidt, Esquire



Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 2534 Island View Rd 21221
which is presently zoned RCS

(This petition **must** be filed in person, in the zoning office, in triplicate, with original signatures.)

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

(This box to be completed by planner)

To determine whether the scope and intensification of Fishing and shellfishing allowed by the use permit has been Exceeded!

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 bound 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.

Petitioner:

~~County Department Name:~~

Petitioner: Hheresa J. Guckert

Name - Type or Print

Hheresa J. Guckert

Signature

2530 Island View Rd 410 391

Address

Balto.

City

MD

State

21221

Zip Code

Attorney For Petitioner:

Name - Type or Print

Signature

Company

Address

City

Date

By

State

Telephone No.

Zip Code

Legal Owner(s):

Andrew J. Mattes, 3rd

Name - Type or Print

Stephanie L. Mattes

Signature

2534 Island View Rd

Address

BALTO.

City

MD

State

21221

Zip Code

Signature

2534 Island View Rd

Address

BALTO.

City

MD

State

21221

Zip Code

Representative to be Contacted:

David M. Donovan

Name

2502 Island View Rd

Address

Balto

City

MD

State

21221

Zip Code

443-690-4251

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

Case No.

REV 9/15/98

2011-0051-SPH

UNAVAILABLE FOR HEARING

Reviewed By

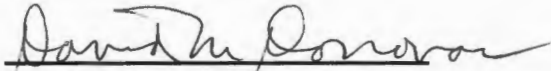
A-TSUI

Date

8/3/2010

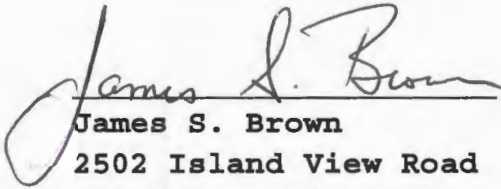
PETITION FOR SPECIAL HEARING (Attachment)
2534 ISLAND VIEW ROAD

PETITIONER NO. 2



David M. Donovan
2502 Island View Road
Baltimore, Md. 21221
443-690-4251

PETITIONER NO. 3



James S. Brown
2502 Island View Road
Baltimore, Md. 21221

2011-0051-SPH

ZONING DESCRIPTION

2534 ISLAND VIEW ROAD

Beginning at a point on the northwest side of Island View Road (40 feet wide) distant 208 feet from it's intersection with the northwest side of Barrison Point Road thence being all of Lots 2, 3 and 4, Section C as shown on the plat entitled Amended Plat of Barrison Point recorded among the Baltimore County plat records in Plat Book 8 Folio 82. Saving and excepting the northernmost 10 feet of said Lot 2.

Containing 21,860 square feet or 0.502 acre of land, more or less.

Being known as 2534 Island View Road. Located in the 15TH Election District, 6TH Councilmanic District of Baltimore County, Md

2011-0051-SPH

**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: 2011 - 0051 - \$ PH
2010 - 0220 - SPH
Petitioner: THERESA GUCKERT
Address or Location: 2534 ISLAND VIEW ROAD

PLEASE FORWARD ADVERTISING BILL TO:

Name: JAMES J. BROWN
Address: 2502 ISLAND VIEW ROAD
BALTO., MD. 21221
Telephone Number: (443) 366-1741

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET AND FINANCE
MISCELLANEOUS CASH RECEIPT

No. **74984**

Date: **2-1-12**

Fund	Dept	Unit	Sub Unit	Rev Source/ Obj	Sub Rev/ Sub Obj	Dept Obj	BS Acct	Amount
001	806	0000		6150				

Total: **265.00**

Rec
From: **DOUGLAS N. SILBER LLC**

For: **APPEAL 2011-0051-SPH**
"ANDREW MATTES"
2534 ISLAND VIEW RD

DISTRIBUTION

WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER GOLD - ACCOUNTING
PLEASE PRESS HARD!!!!

PAID RECEIPT

BUSINESS ADDRESS TIME DATE
2/2/2012 2:01/2012 11:49:41 5

RECEIPT # 54275 2/01/2012 0611

RECEIPT # 54275 2/01/2012 0611

RECEIPT # 54275 2/01/2012 0611

RECEIPT # 54275 2/01/2012 0611

RECEIPT # 54275 2/01/2012 0611

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RECEIPT # 54275 2/01/2012 0611

RECEIPT # 54275 2/01/2012 0611

**NOTICE OF ZONING
HEARING**

The Administrative Law Judges 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: # 2011-0051-SPH

2534 Island View Road
N/west side of Island View Road, 208 feet n/west of the centerline of Barrison Point Road

15th Election District
6th Councilmanic District
Legal Owner(s): Andrew & Stephanie Mattes

Petitioner: Theresa Guckert
Special Hearing: to determine whether the scope and intensification of fishing and shell fishing allowed by the use permit has been exceeded.

Hearing: Tuesday, November 8, 2011 at 10:00 a.m. in Room 205, Jefferson Building, 105 West Chesapeake Avenue, Towson 21204.

ARNOLD JABLON, DIRECTOR
OF PERMITS, APPROVALS
AND INSPECTIONS FOR
BALTIMORE COUNTY

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Contact the Administrative Hearings Office at (410) 887-3868.

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

JT/10/695 Oc 25 289282

CERTIFICATE OF PUBLICATION

10/27/, 2011

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 10/25/, 2011.

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

S. Wilkinson

LEGAL ADVERTISING

11-18-10

**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: # 2011-0051-SPH
2534 Island View Road
N/West side of Island View Road, 208 feet n/west of the centerline of Barrison Point Road

15th Election District
6th Councilmanic District
Legal Owner(s): Andrew & Stephanie Mattes

Petitioner: Theresa Guckert
Special Hearing: to determine whether the scope and intensification of fishing and shell fishing allowed by the use permit has been exceeded.

Hearing: Friday, October 15, 2010 at 10:00 a.m. In Room 106, County Office Building, 111 West Chesapeake 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.

9/469 Sept. 30 255875

CERTIFICATE OF PUBLICATION

9/30, 20 10

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 9/30, 20 10.

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

J. Wilkinson

LEGAL ADVERTISING

**NOTICE OF ZONING
HEARING**

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

Case: # 2011-0051-SPH
2534 Island View Road
N/West side of Island View Road, 208 feet n/west of the centerline of Barrison Point Road
15th Election District
6th Councilmanic District
Legal Owner(s): Andrew & Stephanie Mattes

Petitioner: Theresa Guckert
Special Hearing: to determine whether the scope and intensification of fishing and shell fishing allowed by the use permit has been exceeded.

Hearing: Friday, October 1, 2010 at 11:00 a.m. in Room 104, Jefferson Building, 105 West Chesapeake 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.

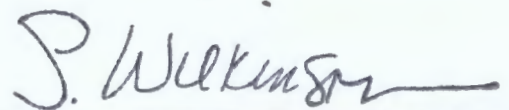
9/27/10 Sept. 16 254380

CERTIFICATE OF PUBLICATION

9/16/, 2010

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 9/16/, 2010.

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



LEGAL ADVERTISING

CERTIFICATE OF POSTING
CERTIFICATE OF POSTING

RE: CASE NO: 2011-0051-SPH

PETITIONER/DEVELOPER _____

THERESA GUCKERT

DATE OF HEARING/CLOSING: _____

November 8, 2011

BALTIMORE COUNTY DEPARTMENT OF
PERMITS AND DEVELOPMENT MANAGEMENT
COUNTY OFFICE BUILDING, ROOM 111
111 WEST CHESAPEAKE AVENUE

ATTENTION:

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 AT 2534 ISLAND VIEW RD

THIS SIGN(S) WERE POSTED ON _____

October 24, 2011

(MONTH, DAY, YEAR)

SINCERELY,

Martin Ogle 10/24/11
SIGNATURE OF SIGN POSTER AND DATE:

MARTIN OGLE
(SIGN POSTER)
60 CHELMSFORD COURT
BALTIMORE, MD 21220
(ADDRESS)
PHONE NUMBER: 443-629-3411

ZONING NOTICE

CASE # 2011-0051-SPH

**A PUBLIC HEARING WILL BE HELD BY
THE ZONING COMMISSIONER
IN TOWSON, MD**

ROOM 205 JEFFERSON BUILDING 105 WEST

PLACE: CHESAPEAKE AVENUE, TOWSON 21204

DATE AND TIME: TUESDAY, NOVEMBER 8, 2011
AT 10:00 A.M.

REQUEST: SPECIAL HEARING TO DETERMINE WHETHER
THE SCOPE AND INTENSIFICATION OF FISHING AND
SHELL FISHING ALLOWED BY THE USE PERMIT
HAS BEEN EXCEEDED

POSTPONEMENTS DUE TO WEATHER OR OTHER CONDITIONS ARE SOMETIMES NECESSARY.
TO CONFIRM HEARING CALL 887-3391

DO NOT REMOVE THIS SIGN AND POST UNTIL DAY OF HEARING, UNDER PENALTY OF LAW

HANDICAPPED ACCESSIBLE

10/24/2011

Myah Ogle 10/24/11

CERTIFICATE OF POSTING

RE: Case No 2011-0051-SPH

Petitioner/Developer THERESA
GUCKERT

Date Of Hearing/Closing: 10/15/10

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

Attention:

Ladies and Gentlemen

This letter is to certify under penalties of perjury that the necessary
sign(s) required by law were posted conspicuously on the property
at 2534 ISLAND VIEW RD

This sign(s) were posted on September 29, 2010
Month, Day, Year
Sincerely,

Martin Ogle 9/29/10
Signature of Sign Poster and Date
Martin Ogle
60 Chelmsford Court
Baltimore, Md, 21220
443-629-3411





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

May 8, 2012

NOTICE OF DELIBERATION

IN THE MATTER OF: ANDREW & STEPHANIE MATTES – LEGAL OWNERS
THERESA GUCKERT, DAVID DONOVAN & JAMES BROWN – PETITIONERS
CASE #: 11-051-SPH 2534 ISLAND VIEW ROAD / 15TH E; 6TH C

Re: Petition for Special Hearing to determine whether the scope and intensification of fishing and shell fishing allowed by the use permit has been exceeded.

Having concluded argument only on the subject Motion to Dismiss, with no evidence or testimony as to the merits of the case received on 5/8/12, a public deliberation has been scheduled for the following:

ASSIGNED FOR: THURSDAY, MAY 24, 2012 AT 9:15 A.M.

LOCATION : Jefferson Building - Second Floor
Hearing Room #2 - Suite 206
105 W. Chesapeake Avenue

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.

Theresa R. Shelton
Administrator

c: Counsel for Legal Owners
Legal Owners

: Lawrence Schmidt, Esquire
: Andrew & Stephanie Mattes

Counsel for Appellants/Petitioners
Petitioners listed on the Petition for Special Hearing

: Douglas N. Silber
: Theresa Guckert, Petitioner #1;
: David Donovan, Petitioner #2
: James Brown, Petitioner #3

Ernest Hoffman
Kenny Dryden
Francis Hemsley

Gregory Kirkpatrick
Todd Lewis
Jim Grace

Daniel Beck
Ray Bonczewski

Ryan Kayby

Robert Foehrkolb
Charles Wagerman, Jr.

Office of People's Counsel
Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Planning
Michael Field, County Attorney, Office of Law

Arnold Jablon, Director/PAI
Nancy West, Assistant County Attorney



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

March 7, 2012

NOTICE OF ASSIGNMENT / ARGUMENT ONLY ON MOTION TO DISMISS

MOTION ONLY HEARING at which time the Board will hear argument only on the subject Motion to Dismiss, with no evidence or testimony as to the merits of the case to be received.

IN THE MATTER OF: ANDREW & STEPHANIE MATTES – LEGAL OWNERS
THERESA GUCKERT, DAVID DONOVAN & JAMES BROWN – PETITIONERS
CASE #: 11-051-SPH 2534 ISLAND VIEW ROAD / 15TH E; 6TH C

Re: Petition for Special Hearing to determine whether the scope and intensification of fishing and shell fishing allowed by the use permit has been exceeded.

This is an agreed date by Counsel for oral argument on the Motion to Dismiss only, no evidence or testimony as to the merits of the case to be received.

ASSIGNED FOR ARGUMENT ONLY: TUESDAY, MAY 8, 2012, at 10:00 a.m.

LOCATION: Hearing Room #2, Second Floor, Suite 206
Jefferson Building, 105 W. Chesapeake Avenue, Towson

NOTICE: This matter has been assigned in accordance with Section 3-6-301(b), *Baltimore County Code*.

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). For further information, see Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.

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

Theresa R. Shelton, Administrator

c: Counsel for Legal Owners
Legal Owners

: Lawrence Schmidt, Esquire
: Andrew & Stephanie Mattes

Counsel for Appellants/Petitioners
Petitioners listed on the Petition for Special Hearing

: Douglas N. Silber
: Theresa Guckert, Petitioner #1;
: David Donovan, Petitioner #2
: James Brown, Petitioner #3

Ernest Hoffman
Kenny Dryden
Francis Hemsley

Gregory Kirkpatrick
Todd Lewis
Jim Grace

Daniel Beck
Ray Bonczewski

Ryan Kayby

Robert Foehrkolb
Charles Wagerman, Jr.

Office of People's Counsel
Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Planning
Michael Field, County Attorney, Office of Law

Arnold Jablon, Director/PAI
Nancy West, Assistant County Attorney



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 28, 2012

NOTICE OF POSTPONEMENT

IN THE MATTER OF: ANDREW & STEPHANIE MATTES – LEGAL OWNERS
THERESA GUCKERT, DAVID DONOVAN & JAMES BROWN – PETITIONERS
CASE #: 11-051-SPH 2534 ISLAND VIEW ROAD / 15TH E; 6TH C

Re: Petition for Special Hearing to determine whether the scope and intensification of fishing and shell fishing allowed by the use permit has been exceeded.

1/3/12 - Opinion and Remand Order DENYING the Petition for Special Hearing.

*This matter was assigned for Wednesday, March 14, 2012 and has been postponed. The matter will be re-assigned upon an agreed date by the parties. Upon the date being established a Notice of Re-Assignment will be mailed to all parties. **TO BE RE-ASSIGNED.***

NOTICE: This matter has been assigned in accordance with Section 3-6-301(b), *Baltimore County Code*.

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). For further information, see Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.

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

Theresa R. Shelton
Administrator

c: Counsel for Legal Owners
Legal Owners

: Lawrence Schmidt, Esquire
: Andrew & Stephanie Mattes

Counsel for Appellants/Petitioners
Petitioners listed on the Petition for Special Hearing

: Douglas N. Silber
: Theresa Guckert, Petitioner #1;
: David Donovan, Petitioner #2
: James Brown, Petitioner #3

Ernest Hoffman
Kenny Dryden
Francis Hemsley

Gregory Kirkpatrick
Todd Lewis
Jim Grace

Daniel Beck Ryan Kayby Robert Foehrkolb
Ray Bonczewski Charles Wagerman, Jr.

Office of People's Counsel
Lawrence M. Stahl, Managing Administrative Law Judge
Arnold Jablon, Director/PAI
Director/Office of Planning
Nancy West, Assistant County Attorney
Michael Field, County Attorney, Office of Law



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 9, 2012

NOTICE OF ASSIGNMENT

IN THE MATTER OF: ANDREW & STEPHANIE MATTES – LEGAL OWNERS
THERESA GUCKERT, DAVID DONOVAN & JAMES BROWN – PETITIONERS
CASE #: 11-051-SPH 2534 ISLAND VIEW ROAD / 15TH E; 6TH C

Re: Petition for Special Hearing to determine whether the scope and intensification of fishing and shell fishing allowed by the use permit has been exceeded.

1/3/12 - Opinion and Remand Order DENYING the Petition for Special Hearing.

ASSIGNED FOR: WEDNESDAY, MARCH 14, 2012 @ 10:00 A.M.

HEARING LOCATION: Hearing Room #2, Second Floor, Suite 206
Jefferson Building, 105 W. Chesapeake Avenue, Towson

NOTICE: This matter has been assigned in accordance with Section 3-6-301(b), *Baltimore County Code*.

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). For further information, see Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.

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

Theresa R. Shelton
Administrator

c: Counsel for Legal Owners
Legal Owners

: Lawrence Schmidt, Esquire
: Andrew & Stephanie Mattes

Counsel for Appellants/Petitioners
Petitioners listed on the Petition for Special Hearing

: Douglas N. Silber
: Theresa Guckert, Petitioner #1;
: David Donovan, Petitioner #2
: James Brown, Petitioner #3

Ernest Hoffman
Kenny Dryden
Francis Hemsley

Gregory Kirkpatrick
Todd Lewis
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Daniel Beck
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Robert Foehrkolb
Charles Wagerman, Jr.

Office of People's Counsel
Lawrence M. Stahl, Managing Administrative Law Judge
Arnold Jablon, Director/PAI
Director/Office of Planning
Nancy West, Assistant County Attorney
Michael Field, County Attorney, Office of Law

TO: PATUXENT PUBLISHING COMPANY
Tuesday, October 25, 2011 Issue - Jeffersonian

Please forward billing to:
James Brown
2502 Island View Road
Baltimore, MD 21221

443-356-1741

NOTICE OF ZONING HEARING

The Administrative Law Judge 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: 2011-0051-SPH

2534 Island View Road

N/west side of Island view Road, 208 feet n/west of the centerline of Barrison Point Road

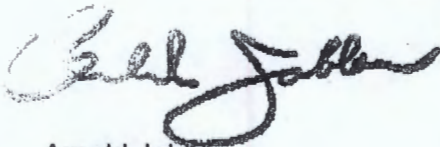
15th Election District – 6th Councilmanic District

Legal Owners: Andrew & Stephanie Mattes

Petitioner: Theresa Guckert

Special Hearing to determine whether the scope and intensification of fishing and shell fishing allowed by the use permit has been exceeded.

Hearing: Tuesday, November 8, 2011 at 10:00 a.m. in Room 205, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204



Arnold Jablon
Director, Permits, Approvals & Inspections

- NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ADMINISTRATIVE HEARINGS OFFICE AT 410-887-3868.
- (2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.



KEVIN KAMENETZ
County Executive

ARNOLD JABLON
Deputy Administrative Officer
Director, Department of Permits,
Approvals & Inspections

September 26, 2011

NOTICE OF ZONING HEARING

The Administrative Law Judge 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: 2011-0051-SPH

2534 Island View Road

N/west side of Island view Road, 208 feet n/west of the centerline of Barrison Point Road

15th Election District – 6th Councilmanic District

Legal Owners: Andrew & Stephanie Mattes

Petitioner: Theresa Guckert

Special Hearing to determine whether the scope and intensification of fishing and shell fishing allowed by the use permit has been exceeded.

Hearing: Tuesday, November 8, 2011 at 10:00 a.m. in Room 205, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204

A handwritten signature in black ink, appearing to read "Arnold Jablon".

Arnold Jablon
Director, PAI

AJ:kl

C: Theresa Guckert, 2530 Island View Road, Baltimore 21221

David Donovan, 2502 Island View Road, Baltimore 21221

Mr. & Mrs. Mattes, 2534 Island View Road, Baltimore 21221

Lawrence Schmidt, 600 Washington Avenue, Ste. 200, Towson 21204

- NOTES: (1) THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY MONDAY, OCTOBER 24, 2011.**
- (2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ADMINISTRATIVE HEARINGS OFFICE AT 410-887-3868.
- (3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.



KEVIN KAMENETZ
County Executive

ARNOLD JABLON
Deputy Administrative Officer
Director, Department of Permits,
Approvals & Inspections

September 26, 2011

CORRECTED NOTICE OF ZONING HEARING

The Administrative Law Judge 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: 2011-0051-SPH

2534 Island View Road

N/west side of Island view Road, 208 feet n/west of the centerline of Barrison Point Road

15th Election District – 6th Councilmanic District

Legal Owners: Andrew & Stephanie Mattes

Petitioner: Theresa Guckert

Special Hearing to determine whether the scope and intensification of fishing and shell fishing allowed by the use permit has been exceeded.

Hearing: Tuesday, November 8, 2011 at 10:00 a.m. in Room 205, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204

A handwritten signature in cursive script, appearing to read "Arnold Jablon".

Arnold Jablon
Director, BAI

AJ:kl

C: Theresa Guckert, 2530 Island View Road, Baltimore 21221
David Donovan, 2502 Island View Road, Baltimore 21221
Mr. & Mrs. Mattes, 2534 Island View Road, Baltimore 21221
Lawrence Schmidt, 600 Washington Avenue, Ste. 200, Towson 21204

- NOTES: (1) THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY MONDAY, OCTOBER 24, 2011.**
- (2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ADMINISTRATIVE HEARINGS OFFICE AT 410-887-3868.
- (3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.



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

Jefferson Building - Second Floor
Hearing Room #2 - Suite 206
105 W. Chesapeake Avenue

May 11, 2011

NOTICE OF DELIBERATION

IN THE MATTER OF: ANDREW & STEPHANIE MATTES – LEGAL OWNERS
THERESA GUCKERT, DAVID DONOVAN & JAMES BROWN – PETITIONERS
CASE #: 11-051-SPH 2534 ISLAND VIEW ROAD / 15TH E; 6TH C

Re: Petition for Special Hearing to determine whether the scope and intensification of fishing and shell fishing allowed by the use permit has been exceeded.

Having concluded argument only on the subject Motion to Dismiss, with no evidence or testimony as to the merits of the case received ON 5/10/2011, a public deliberation has been scheduled for the following:

ASSIGNED FOR: WEDNESDAY, JUNE 22, 2011 AT 9:15 A.M.

LOCATION : Jefferson Building - Second Floor
Hearing Room #2 - Suite 206
105 W. Chesapeake Avenue

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.

Theresa R. Shelton
Administrator

c: Counsel for Appellant /Respondent/Legal Owners
Appellant /Respondent/Legal Owners

: Sebastian Cross, Esquire
: Lawrence Schmidt, Esquire
: Andrew & Stephanie Mattes

Petitioners listed on the Petition for Special Hearing

: Theresa Guckert, Petitioner #1;
: David Donovan, Petitioner #2
: James Brown, Petitioner #3

Office of People's Counsel
Lawrence M. Stahl, Managing Administrative Law Judge
Arnold Jablon, Director/PAI
Director/Office of Planning
Nancy West, Assistant County Attorney
Michael Field, County Attorney, Office of Law



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

Jefferson Building - Second Floor
Hearing Room #2 - Suite 206
105 W. Chesapeake Avenue

March 31, 2011

NOTICE OF ASSIGNMENT / ARGUMENT ONLY **ON PEOPLE'S COUNSEL FOR BALTIMORE COUNTY'S MOTION TO DISMISS**

MOTION ONLY HEARING at which time the Board will hear argument only on the subject Motion to Dismiss, with no evidence or testimony as to the merits of the case to be received.

IN THE MATTER OF: ANDREW & STEPHANIE MATTES – LEGAL OWNERS
THERESA GUCKERT, DAVID DONOVAN & JAMES BROWN – PETITIONERS
CASE #: 11-051-SPH 2534 ISLAND VIEW ROAD / 15TH E; 6TH C

Re: Petition for Special Hearing to determine whether the scope and intensification of fishing and shell fishing allowed by the use permit has been exceeded.

This is an agreed date by Counsel for oral argument on the Motion to Dismiss only, no evidence or testimony as to the merits of the case to be received.

ASSIGNED FOR ARGUMENT ONLY : TUESDAY, MAY 10, 2011, at 1 p.m.

NOTICE: This matter has been assigned in accordance with Section 3-6-301(b), *Baltimore County Code*.

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). For further information, see Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.

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

Theresa R. Shelton
Administrator

c: Counsel for Appellant /Respondent/Legal Owners
Appellant /Respondent/Legal Owners

: Sebastian Cross, Esquire
: Lawrence Schmidt, Esquire
: Andrew & Stephanie Mattes

Petitioners listed on the Petition for Special Hearing

: Theresa Guckert, Petitioner #1;
: David Donovan, Petitioner #2
: James Brown, Petitioner #3

Office of People's Counsel
Lawrence M. Stahl, Managing Administrative Law Judge
Arnold Jablon, Director/PAI
Director/Office of Planning
Nancy West, Assistant County Attorney
Michael Field, County Attorney, Office of Law

TO: PATUXENT PUBLISHING COMPANY
Thursday, September 30, 2010 Issue - Jeffersonian

Please forward billing to:
James Brown
2502 Island View Road
Baltimore, MD 21221

443-356-1741

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: 2011-0051-SPH

2534 Island View Road

N/west side of Island view Road, 208 feet n/west of the centerline of Barrison Point Road

15th Election District – 6th Councilmanic District

Legal Owners: Andrew & Stephanie Mattes

Petitioner: Theresa Guckert

Special Hearing to determine whether the scope and intensification of fishing and shell fishing allowed by the use permit has been exceeded.

Hearing: Friday, October 15, 2010 at 10:00 a.m. in Room 106, County Office Building,
111 West Chesapeake Avenue, Towson 21204

WILLIAM J. WISEMAN III
ZONING COMMISSIONER FOR BALTIMORE COUNTY

- NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
- (2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.



BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

TIMOTHY M. KOTROCO, *Director*
Department of Permits and
Development Management

September 20, 2010

NEW 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: 2011-0051-SPH

2534 Island View Road

N/west side of Island view Road, 208 feet n/west of the centerline of Barrison Point Road

15th Election District – 6th Councilmanic District

Legal Owners: Andrew & Stephanie Mattes

Petitioner: Theresa Guckert

Special Hearing to determine whether the scope and intensification of fishing and shell fishing allowed by the use permit has been exceeded.

Hearing: Friday, October 15, 2010 at 10:00 a.m. in Room 106, County Office Building,
111 West Chesapeake Avenue, Towson 21204

Timothy Kotroco
Director

TK:kl

C: Theresa Guckert, 2530 Island View Road, Baltimore 21221
David Donovan, 2502 Island View Road, Baltimore 21221
Mr. & Mrs. Mattes, 2534 Island View Road, Baltimore 21221
Lawrence Schmidt, 600 Washington Avenue, Ste. 200, Towson 21204

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY THURS., SEPTEMBER 30, 2010.**
- (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
Thursday, September 16, 2010 Issue - Jeffersonian

Please forward billing to:

James Brown
2502 Island View Road
Baltimore, MD 21221

443-356-1741

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: 2011-0051-SPH

2534 Island View Road

N/west side of Island view Road, 208 feet n/west of the centerline of Barrison Point Road

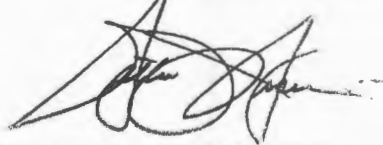
15th Election District – 6th Councilmanic District

Legal Owners: Andrew & Stephanie Mattes

Petitioner: Theresa Guckert

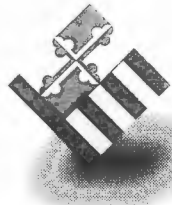
Special Hearing to determine whether the scope and intensification of fishing and shell fishing allowed by the use permit has been exceeded.

Hearing: Friday, October 1, 2010 at 11:00 a.m. in Room 104, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204



WILLIAM J. WISEMAN III
ZONING COMMISSIONER FOR BALTIMORE COUNTY

- NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
- (2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.



BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

TIMOTHY M. KOTROCO, *Director*
Department of Permits and
Development Management

August 25, 2010

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: 2011-0051-SPH

2534 Island View Road

N/west side of Island view Road, 208 feet n/west of the centerline of Barrison Point Road

15th Election District – 6th Councilmanic District

Legal Owners: Andrew & Stephanie Mattes

Petitioner: Theresa Guckert

Special Hearing to determine whether the scope and intensification of fishing and shell fishing allowed by the use permit has been exceeded.

Hearing: Friday, October 1, 2010 at 11:00 a.m. in Room 104, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204

A handwritten signature in black ink, reading "Timothy Kotroco".

Timothy Kotroco
Director

TK:kl

C: Theresa Guckert, 2530 Island View Road, Baltimore 21221
David Donovan, 2502 Island View Road, Baltimore 21221
Andrew & Mattes, 2534 Island View Road, Baltimore 21221

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY THURS., SEPTEMBER 16, 2010.**
- (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.



BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

TIMOTHY M. KOTROCO, *Director*
Department of Permits and
Development Management

September 22, 2010

Theresa Guckert
2530 Island View Rd.
Baltimore, MD 21221

Dear: Theresa Guckert

RE: Case Number 2011-0051-SPH, 2534 Island View Rd.

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on August 03, 2010. This letter is not an approval, but only a **NOTIFICATION**.

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:lnw

Enclosures

c: People's Counsel
Andrew & Stephanie Mattes; 2534 Island View Rd.; Baltimore, MD 21221
David Donovan; 2502 Island View Rd.; Baltimore, MD 21221

BW FB- 10/11 11AM-106
Reset to 10-15 11-18

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence



RECEIVED

SEP 08 2010

ZONING COMMISSIONER

TO: Timothy M. Kotroco
FROM: Dave Lykens, DEPRM - Development Coordination
DATE: September 8, 2010
SUBJECT: Zoning Item # 11-051-SPH
Address 2534 Island View Road
(Mattes Property)

Zoning Advisory Committee Meeting of August 9, 2010

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

X Development of this property must comply with the Chesapeake Bay Critical Area Regulations (Sections 33-2-101 through 33-2-1004, and other Sections, of the Baltimore County Code).

Additional Comments: This property is within a Limited Development Area (LDA) and Buffer Management Area (BMA) within the Chesapeake Bay Critical Area. All lot coverage and BMA requirements must be met. A minimum 15% tree cover must exist on site at all times.

Reviewer: Paul Dennis

Date: August 24, 2010



BALTIMORE COUNTY
M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

JOHN J. HOHMAN, *Chief*
Fire Department

August 12, 2010

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

ATTENTION: Zoning Review

Distribution Meeting of: August 9, 2010

Item No.: **Variance:** 2011-0028SPHA, 2011-0032A, 2011-0047A – 0049A, 2011-0026SPHXA

Administrative Variance: 2011- 0050A, 2011-0052 - 0053A, 2011-0055A – 0056A.

Special Hearing: 2011-0028SPHA, 2011-0051SPH, 2011-0057SPH, 2011-026SPHXA

Special Exception: 2011-0026SPHXA

Pursuant to your request, the referenced plans have been reviewed by the **Baltimore County Fire Marshal's Office** and the comment below is applicable for the above listed properties.

Comments:

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

Don W. Muddiman, Acting Lieutenant
Baltimore County Fire Marshal's Office
700 E. Joppa Road, 3RD Floor
Towson, Maryland 21286
410-887-4880
Mail Stop: 1102

cc: File

BW TB - 10/11 11 AM
10/15 10 AM
11/18 9 AM

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: August 11, 2010

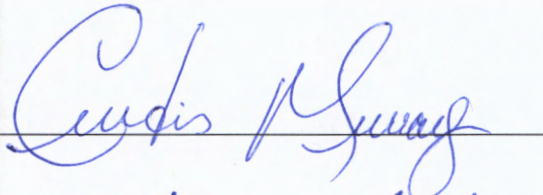
FROM: Arnold F. 'Pat' Keller, III
Director, Office of Planning

SUBJECT: Zoning Advisory Petition(s): **Case(s) 11-051- Special Hearing**

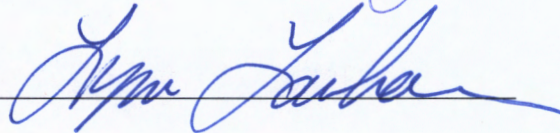
The Office of Planning has reviewed the above referenced case(s) and has no comments to offer.

For further questions or additional information concerning the matters stated herein, please contact Laurie Hay in the Office of Planning at 410-887-3480.

Prepared By:



Division Chief:
CM/LL



RECEIVED

AUG 23 2010

ZONING COMMISSIONER

BALTIMORE COUNTY, MARYLAND
INTEROFFICE CORRESPONDENCE

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

FROM: ^{DAK} Dennis A. Kennedy, Supervisor
Bureau of Development Plans
Review

SUBJECT: Zoning Advisory Committee Meeting
For August 23, 2010
Item Nos. 2011- 026, 028, 032, 047,
048, 049, 050, 051, 052, 053, 054,
055, 056 and 057

DATE: August 10, 2010

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

DAK:CEN:cab

cc: File

G:\DevPlanRev\ZAC -No Comments\ZAC-08232010 -NO COMMENTS.doc



Martin O'Malley, Governor
Anthony G. Brown, Lt. Governor

State Highway
Administration

Beverley K. Swalm-Staley, Secretary
Neil J. Pedersen, Administrator

MARYLAND DEPARTMENT OF TRANSPORTATION

Date: August 18, 2010

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

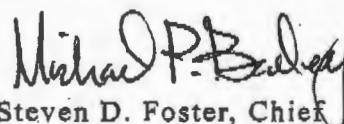
RE: Baltimore County
Item No. 2011-0051-SPH
2534 Island View RD
MATTES PROPERTY
SPECIAL HEARING -

Dear Ms. Matthews:

Thank you for the opportunity to review your referral request on the subject of the above captioned. We have determined that the subject property does not access a State roadway and is not affected by any State Highway Administration projects. Therefore, based upon available information this office has no objection to Baltimore County Zoning Advisory Committee approval of Item No. 2011-0051-SPH.

Should you have any questions regarding this matter, please contact Michael Bailey at 410-545-5593 or 1-800-876-4742 extension 5593. Also, you may E-mail him at (mbailey@sha.state.md.us).

Very truly yours,


For Steven D. Foster, Chief
Engineering Access Permits
Division

SDF/mb

RE: PETITION FOR SPECIAL HEARING * BEFORE THE
2534 Island View Road; NW/S Island View *
Road, 208' SW/S of Barrison Point Road * ZONING COMMISSIONER
11th Election & 6th Councilmanic Districts
Legal Owner(s): Andrew & Stephanie Mattes* FOR
Petitioner(s): Theresa Guckert *
* BALTIMORE COUNTY
* 2011-051-SPH

* * * * *

ENTRY OF APPEARANCE

Pursuant to Baltimore County Charter § 524.1, please enter the appearance of People's Counsel for Baltimore County as an interested party in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and the passage of any preliminary or final Order. All parties should copy People's Counsel on all correspondence sent and all 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
Jefferson Building, Room 204
105 West Chesapeake Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of August, 2010, a copy of the foregoing Entry of Appearance was mailed to David Donovan, 2502 Island View Road, Baltimore, MD 21221, Representative for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

RECEIVED

AUG 23 2010

.....

IN RE: REMAND FROM BOARD OF APPEALS * BEFORE THE
PETITION FOR SPECIAL HEARING *
NW/S Island View Road; 208' NW of * OFFICE OF
c/line of Barrison Point Road *
(2534 Island View Road) * ADMINISTRATIVE HEARINGS
15th Election District, 6th Council District *
Andrew J. Mattes, et ux, * FOR BALTIMORE COUNTY
Owners/Respondents; *
Theresa J. Guckert, et al, *Petitioners* * Case No. 2011-0051-SPH

* * * * *

SUBPOENA

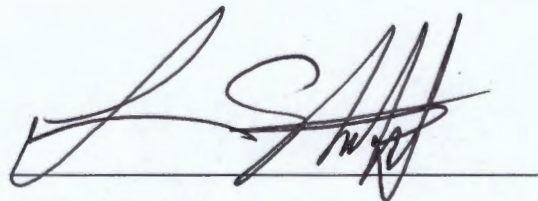
TO: Gregory Kirkpatrick
Anne Arundel County Sheriff's Department
7 Church Circle
Annapolis, Maryland 21401

Gregory Kirkpatrick
7821 North Point Road
Baltimore, Maryland 21219

You are hereby summoned and commanded to be and appear personally before the
Administrative Law Judge for Baltimore County on Tuesday, the 8th day of November, 2011, at
10:00 AM in Room 205 of the Jefferson Building, in Towson, Maryland, regarding the above
captioned matter.

Private Process Server:

Please process in accordance with Zoning Commissioner's Rule 4(C).



Administrative Law Judge
for Baltimore County

Issued: 10/27/11



BALTIMORE COUNTY
M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

October 13, 2010

WILLIAM J. WISEMAN III
Zoning Commissioner

Lawrence E. Schmidt, Esquire
Sebastian A. Cross, Esquire
Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, MD 21204

Theresa J. Guckert
2530 Island View Road
Baltimore, MD 21221

RE: **PETITION FOR SPECIAL HEARING**
NW/S Island View Road; 208' NW of c/l of Barrison Point Road
(2534 Island View Road)
15th Election District, 6th Council District
Andrew & Stephanie Mattes, *Legal Owners*; Theresa Guckert, *Petitioner*
Case No. 2011-0051-SPH

Dear Gentlemen and Ms. Guckert:

Please be advised that the above-referenced matter has been set for Thursday, November 18, 2010, at 9:00 AM, in Room 106, County Office Building, 111 West Chesapeake Avenue, Towson, MD 21204. The purpose of the hearing is to hear argument on the "Motion to Dismiss" filed by Sebastian Cross on behalf of Andrew Mattes.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "William J. Wiseman III", written over a circular stamp.

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:dlw
Enclosure

c: David M. Donovan and James S. Brown, 2502 Island View Road, Baltimore, MD 21221
Andrew and Stephanie Mattes, 2534 Island View Road, Baltimore, MD 21221
People's Counsel; Kristen Matthews, Zoning Review, DPDM; File



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 28, 2012

Lawrence Schmidt, Esquire
Smith, Gildea & Schmidt, LLC
600 Washington Ave, Ste 200
Towson, MD 21204

Douglas Silber, Esquire
P.O. Box 176
Phoenix, MD 21131

RE: *In the Matter of: Andrew and Stephanie Mattes- Legal Owners*
Case No. 11-051-SPH

Dear Counsel:

This will acknowledge receipt of Mr. Silber's correspondence dated February 23, 2012 in which a continuance has been requested, without objection from Mr. Schmidt, of the March 14, 2012 hearing in the subject matter. The continuance is granted.

As requested and in order to schedule a hearing before the Board of Appeals, without conflict; I am providing dates available on the docket. The Board sits on Tuesday, Wednesday and Thursday of each week. The docket is currently scheduled through the end of March 2012. The following dates open for assignment:

Wednesday, April 4, 2012 at 10:00;
Wednesday, April 18, 2012 at 10:00;
Tuesday, May 8, 2012 at 10:00; and
Wednesday, May 9, 2012 at 10:00

Please contact this office upon receipt of this letter to confirm availability. The Notice of Re-Assignment will be issued to all parties at the time an agreeable date is established.

Thanking you in advance for your time and cooperation in this matter. Should you have any questions, please call me at 410-887-3180.

Very truly yours,

A handwritten signature in cursive script that reads "Theresa R. Shelton".
Theresa R. Shelton
Administrator

Duplicate Original

Encl: Notice of Postponement

Law Offices
Douglas N. Silber, L.L.C.

Post Office Box 176
Phoenix, Maryland 21131-0176
www.silberlawfirm.com

Telephone: 410-296-1030
Mobile: 410-404-8090
Email: dnsilber@gmail.com

February 23, 2012

Ms. Theresa R. Shelton
Board of Appeals of Baltimore County
Jefferson Building, Suite 203
105 West Chesapeake Avenue
Towson, MD 21204

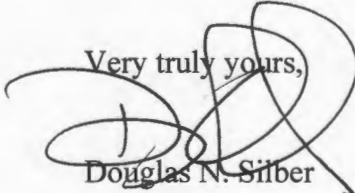
Re: Mattes – Legal Owners
Guckert et al. – Petitioners
Case No. 11-051-SPH

Dear Ms. Shelton:

Per my earlier telephone call, I will be just returning from vacation the afternoon of March 14 and thus ask to postpone the hearing to a later date. I spoke yesterday with my opposing counsel, Lawrence Schmidt, and he has no objection to this request.

Given my schedule for the balance of March, I would prefer a hearing date in April or, if necessary, May. Please advise Mr. Schmidt and I what dates are available.

Thank you for your consideration of this request.

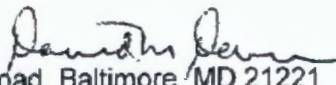
Very truly yours,

Douglas N. Silber

cc: Lawrence Schmidt, Esquire
Ms. Theresa Guckert
Mr. David Donovan
Mr. James Brown

RECEIVED
FEB 27 2012

BALTIMORE COUNTY
BOARD OF APPEALS

To: Christian Lewis
Baltimore County Zoning Review Office
Towson, MD
FAX: 410-887-3048

From: David Donovan 
2502 Island View Road, Baltimore, MD 21221
443-690-4251

Re: Request for Postponement of Special Hearing
Case Number : 2011-0051-SPH

Date: September 7, 2010

Due to conflicts with prior medical appointments for critical witnesses, we ask that the hearing date be changed.

Other dates that would also conflict with medical appointments in October include Oct 4, 6, and 20.

Thank you for your consideration.

OK to postpone
MLC

410. 821. 0070

Larry Schmidt

represents

600 Washington Ave
SE 2nd
21204

Legal owner,

call him to
work out
dates.

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: Andrew & Stephanie Mattes – Legal Owners 11-051-SPH
Theresa Guckert, David Donovan & James Brown - Petitioners

DATE: June 22, 2011

BOARD/PANEL: Lawrence S. Wescott, Chairman
Andrew M. Belt
Edward W. Crizer, Jr.

RECORDED BY: Sunny Cannington/Legal Secretary

PURPOSE: To deliberate the following:

1. Motion to Dismiss filed by Office of People's Counsel

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

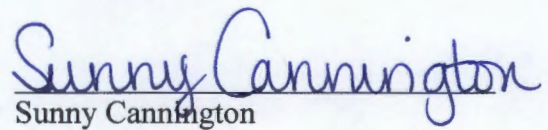
- The Board discussed that this matter involves the appeal of an interlocutory decision by the Zoning Commissioner. The Office of People's Counsel filed a Motion to Dismiss. The Board held a hearing on the Motion to Dismiss and opposition. The Board did not get into the merits of the case or the merits of the res judicata issues which are still pending below. In the Zoning Commissioner's Ruling, he cited a criminal case in the circuit court having to do with double jeopardy and likened double jeopardy with res judicata.
- The Board determined that the question currently before them is whether the appeal should be allowed at this juncture.
- In the course of matters on appeal from the Zoning Commissioner, a de novo hearing is held by the Board of Appeals. This de novo process allows for any and all issues before the Zoning Commissioner to be re-heard on the merits from the beginning, before the Board. The Board feels that to start an appeal hearing, piecemeal, from the Zoning Commissioner, would begin a slippery slope and the Board would end up hearing each detail individually, before final orders are issued by the Zoning Commissioner.

DECISION BY BOARD MEMBERS: The Board determined that this matter is prematurely on appeal to this Board and this matter needs to be concluded before the Zoning Commissioner prior to the appeals process.

FINAL DECISION: After thorough review of the facts, testimony, and law in the matter, the Board unanimously agreed to GRANTING People's Counsel's Motion to Dismiss and REMANDING this matter to the Office of Administrative Hearings (formerly the Zoning Commissioner) for further proceedings.

NOTE: These minutes, which will become part of the case file, are intended to indicate for the record that a public deliberation took place on the above 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,


Sunny Cannington

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: Andrew & Stephanie Mattes – Legal Owners 11-051-SPH
 Theresa Guckert, David Donovan & James Brown - Petitioners

DATE: May 24, 2012

BOARD/PANEL: Lawrence S. Wescott, Chairman
 Andrew M. Belt
 Edward W. Crizer, Jr.

RECORDED BY: Sunny Cannington/Legal Secretary

PURPOSE: To deliberate the following:

1. Motion to Dismiss filed by Lawrence E. Schmidt, Esquire on behalf of Legal Owners, Andrew and Stephanie Mattes.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

- The Board reviewed the history of this matter. The Petitioners filed a Petition for Special Hearing with the Zoning Commissioner, prior to the change over to the Administrative Law Judges, to invalidate the fishing and shell fishing facility for non-conforming use or otherwise. The Zoning Commissioner denied the first Petition. The Petitioners filed a Motion for Reconsideration. The Zoning Commissioner denied the Motion for Reconsideration. The Petitioners then filed a second Petition for Special Hearing requesting that the Zoning Commissioner determine whether the scope and intensification of the fishing and shell fishing allowed by the use permit has been exceeded. A Motion to Dismiss was filed by the Owners of the property, Mr. and Mrs. Mattes, arguing that this issue fell under Res Judicata. The Zoning Commissioner denied the Motion to Dismiss. The matter was appealed to the Board who remanded this matter because there had been no final determination by the Zoning Commissioner. The Administrative Law Judge heard the matter on Remand and determined that the issue was not barred by Res Judicata and ruled that based on the merits of the case, no intensification had occurred. The matter was again appealed to the Board.
- The Board determined that the issue presently before them is whether the Petition regarding intensification should be denied due to Res Judicata, meaning an issue was argued or could have been argued at the time of the initial case. The Board discussed the Whittle case which states that all matters that could have been argued at the time should have been argued.

- The Board determined that the requests sound different on the Petitions but the heart of the matter is still the same. Therefore, since the matter has previously been decided, the issues are barred by Res Judicata at this time.
- The Board sympathizes with the neighbors. The Board is also aware that the fishing and shell fishing business does have a tendency to intensify over time. The Board determined that based on the Code, their ruling will not allow the property owners to run amuck, and in the event of intensification in the future, the Petitioners can seek relief at that time by complaining to Code Enforcement.

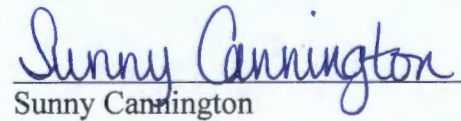
DECISION BY BOARD MEMBERS:

The Board determined that the case currently before the board is barred by the doctrine of Res Judicata.

FINAL DECISION: After thorough review of the facts, testimony, and law in the matter, the Board unanimously agreed to GRANT the Motion to Dismiss filed by Lawrence E. Schmidt, Esquire on behalf of Legal Owners, Andrew and Stephanie Mattes.

NOTE: These minutes, which will become part of the case file, are intended to indicate for the record that a public deliberation took place on the above 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,


Sunny Cannington

GILDEA & SCHMIDT, LLC

600 WASHINGTON AVENUE

SUITE 200

TOWSON, MARYLAND 21204

TELEPHONE 410-821-0070

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DAVID K. GILDEA

LAWRENCE E. SCHMIDT

D. DUSKY HOLMAN

SEBASTIAN A. CROSS

CHARLES B. MAREK, III

JASON T. VETTORI

November 4, 2010

Sent via Hand Delivery

Honorable William J. Wiseman, III

Zoning Commissioner

Jefferson Building

105 W. Chesapeake Avenue, Suite 103

Towson, MD 21204

RECEIVED

NOV 04 2010

ZONING COMMISSIONER

Re: Mattes/2534 Island View Road
Case No.: 2011-051-SPH

Dear Commissioner Wiseman:

This is to acknowledge receipt of a copy of a letter from Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County relative to the above matter dated October 28, 2010.

As you know, my office has previously filed a Motion to Dismiss the Petition for Special Hearing, which was filed in this case by Theresa J. Guckert, David M. Donovan and James S. Brown. I will not repeat herein the argument offered in that motion and, if necessary, will restate them and reply to the arguments offered by People's Counsel and the Petitioners at the hearing which has been scheduled for this case on November 18, 2010.

Instead, it is the purpose of this letter to address the issue as to whether Mr. Zimmerman has the authority to participate in this case, and more specifically, advance the position set forth within his letter.

As you know, People's Counsel is a creation of statute; more particularly, the Charter of Baltimore County. Therein, within Section 524.1, the Office of People's Counsel is created and its authority is set forth. Under the basic tenets of statutory construction, the authority of the Office is limited to that delineated specifically in the authorizing statute. Section 524.1(a) provides that the People's Counsel, "shall represent the interests of the public in general in zoning matters as hereinafter set forth." Further on, under Section 524.1(a)(3), the powers and duties of the Office are specifically delineated. Therein, it is indicated that the People's Counsel shall, "defend any duly enacted master plan and/or comprehensive zoning maps as adopted by the County Council, and in any matter or proceeding now pending or hereafter

brought involving zoning reclassification and/or variance from or special exception under the Baltimore County Zoning Regulations, as now or hereafter in force and effect, in which he may deem the public interest to be involved." As specifically stated, there are four types of proceedings in which the People's Counsel may participate. They are, (1) to defend a master plan/comprehensive plan; (2) to participate in any case involving zoning reclassification; (3) to participate in any variance case; (4) or participate in any special exception.

The subject case involves none of these issues. It is a Petition for Special Hearing. It does not involve a master plan/comprehensive plan, a zoning reclassification, a special exception or a variance. Thus, the People's Counsel has no right to participate under the statute.

Secondly, and perhaps more importantly, the premise of the Office of People's Counsel is to "represent the interests of the public in general." Thus, the Office does not represent any individual in particular. This is significant in this case, particularly when compared to with similar matters in which People's Counsel has participated.

As a member of the Maryland Bar yourself, you are well aware that private counsel represents clients as they find them. A practitioner who engages in domestic law may, in one case, represent a spouse accusing another of adultery, while in the next, that attorney may defend an adulterer. The Office of People's Counsel is different, however. It shall represent the "public interest" on a consistent basis. It would be assumed that the "public interest" would not diverge from case to case, based upon the whim of the individual who is People's Counsel.

In this case, the issue is significant because of People's Counsel's prior participation in the case of Howard and Melanie Becker (Case No. 06-651-SPHA). As you might recall, this case was at one time before you on the Beckers' Petitions for Special Hearing and Variance. The matter is now pending at the Circuit Court for Maryland for Baltimore County (Case No. 03-C-09-008390).

In *Becker*, the Beckers and their predecessors in title had originally participated in proceedings before the Zoning Commissioner, then Board of Appeals, regarding the requested approval for a pier on their property. Ultimately, their application was denied. Years later, the Beckers re-filed the application, again seeking relief for approval of a pier. The matter was heard before your office, appealed to the Board of Appeals and is now pending at the Circuit Court. People's Counsel has vehemently opposed the Beckers' position, in large part based upon the doctrine of *res judicata*. A copy of People's Counsel's memorandum to the Court is attached hereto. Therein, People's Counsel adopted none of the arguments or theories of law which are expressed in its letter to you regarding the Mattes case. Instead, People's Counsel argued that, "*res judicata* bars litigation of the same matter in the same respect not only to the legal claims or issues decided in the case finally adjudicated,

Honorable William J. Wiseman, III

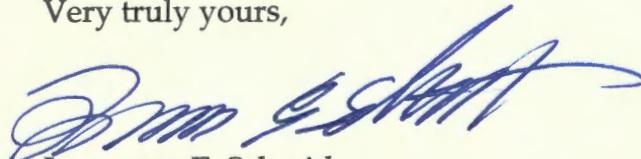
November 4, 2010

Page 3

but also as to all matters with which propriety could have been litigated in the first suit." (Memorandum, pg. 14-15). Further, People's Counsel stated, "a litigant must bring forward the entire case, including all relevant facts and legal issues." (Memorandum, pg. 15). Also "significantly, the *res judicata* doctrine also bars new litigation based on facts or legal argument which might have been presented in the earlier litigation." (Memorandum, pg. 16).

Candidly, it is difficult for me to decipher how People's Counsel's defense of the public interest in the Becker matter could be so divergent from the argued public interest in the Mattes case. As People's Counsel has so eloquently recited the doctrine of *res judicata* in *Becker* and is bound, under law, to consistently protect the "public interest," I therefore, for the reasons presented herein, respectfully urge you to ignore People's Counsel's letter. It is apparent that the Office of People's Counsel is both acting beyond the scope of their authority and outside of their charge as specifically delineated in the Charter of Baltimore County.

Very truly yours,



Lawrence E. Schmidt

LES: jkl

Enclosure

CC: Andrew & Stephanie Mattes, 2534 Island View Road
Theresa J. Guckert, 2530 Island View Road
David M. Donovan & James S. Brown, 2505 Island View Road
Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County

IN THE MATTER OF
THE APPLICATION OF
HOWARD AND MELANIE BECKER -LEGAL
OWNERS /PETITIONERS
FOR SPECIAL HEARING AND VARIANCE
ON PROPERTY LOCATED AT 403 BAYSIDE
DRIVE 12TH ELECTION DISTRICT
7TH COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. 06-651-SPHA

* * * * *

**ORDER OF THE BOARD ON REMAND
FROM THE CIRCUIT COURT FOR BALTIMORE COUNTY**

This matter comes before the Board on remand by Order of Judge Thomas J. Bollinger, Circuit Court for Baltimore County, filed January 23, 2009, and Amended Order, filed February 5, 2009 in which Judge Bollinger remanded this matter to the County Board of Appeals to determine the issue of whether or not *res judicata* applies to the decision in this case, based upon the Board's decision in a previous case involving the same property.

Statement of Facts

The Circuit Court succinctly set forth the facts of this case. The property in question is a triangular-shaped waterfront parcel located on the south side of Bayside Drive, just east of Winona Avenue, with frontage on Chink Creek and near its confluence with Bear Creek in Dundalk. The property consists of two lots known as Lot 62 and Lot 63 of Inverness and contains a gross area of 0.13 acre +/- and is zoned D.R. 5.5. The property is presently improved with a two-story framed dwelling, an above-ground swimming pool and a detached accessory shed.

The property was the subject of a prior zoning case #00-241-A in which the previous owners, William R. Duvall, Jr., and his wife, Teresa A. Duvall, filed a Petition for Variance for

SMITH, GILDEA & SCHMIDT LLC

MICHAEL PAUL SMITH
DAVID K. GILDEA
LAWRENCE E. SCHMIDT
D. DUSKY HOLMAN

MICHAEL G. DEHAVEN
MICHAEL J. LIPPENHOLZ
CHARLES B. MAREK, III
ELYANA TARLOW
JASON T. VETTORI
REBECCA G. WYATT

January 6, 2011

Honorable William J. Wiseman, III
Zoning Commissioner
Jefferson Building
105 W. Chesapeake Avenue, Suite 103
Towson, MD 21204

**Re: Mattes/2534 Island View Road
Case No.: 2011-051-SPH**



Dear Commissioner Wiseman:

This is in response to Peter Max Zimmerman's (People's Counsel of Baltimore County) letter of December 28, 2010; which was filed as a Motion for Partial Reconsideration of your Order dated December 20, 2010. Therein, Mr. Zimmerman argues that you have improperly conferred upon the parties the right to appeal that decision.

Needless to say, we disagree. You have appropriately cited the basis under Maryland law by which an order that might otherwise be considered interlocutory can be appealed. You have cited *Schuele v. Case Handyman and Remodeling Services, LLC* 412 Md. 555 (2010) and the doctrine of collateral order as established under common law. You have based your decision upon that doctrine.

Rather than arguing the applicability of that doctrine and the parameters therefore, Mr. Zimmerman alleges that permitting an appeal would cause "irreparable harm." As you have stated, irreparable harm is not a tenet of the collateral order doctrine; which requires that the order; 1) Conclusively determine a disputed question; 2) Resolve an important issue; 3) Resolve an issue that is different from the merits; and 4) Would be effectively unreviewable if it had to await a final judgment on the action. As is obvious, none of these requirements require a finding of "irreparable harm."

As to the substance of Mr. Zimmerman's contention, a hearing on the issue of "intensification" will no doubt require significant trial expense and effort. Witnesses may need to be located and interviewed. A multiple day evidentiary hearing may be required; at significant expense and effort to the parties. A decision as to the *res judicata* question and the

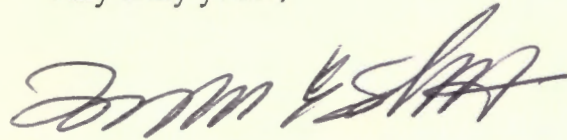
Honorable William J. Wiseman, III

January 6, 2011

Page 2

issues raised within the Motion to Dismiss may well resolve (and end) the dispute between the parties before an expensive and lengthy hearing "on the merits" even begins. Thus, both legally and practically, we believe that your decision that the *res judicata* be fully adjudicated before trial is proper and should not be reversed.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Lawrence E. Schmidt", with a stylized, cursive script.

Lawrence E. Schmidt

LES: jkl

CC: Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County
Andrew & Stephanie Mattes, 2534 Island View Road
Theresa J. Guckert, 2530 Island View Road
David M. Donovan & James S. Brown, 2502 Island View Road

SMITH, GILDEA & SCHMIDT LLC

MICHAEL PAUL SMITH
DAVID K. GILDEA
LAWRENCE E. SCHMIDT
D. DUSKY HOLMAN

LAUREN M. DODRILL
MICHAEL J. LIPPENHOLZ
CHARLES B. MAREK, III
ELYANA TARLOW
JASON T. VETTORI
REBECCA G. WYATT
of counsel:
MICHAEL G. DEHAVEN

March 8, 2011

Sent via Hand Delivery

Ms. Theresa R. Shelton
County Board of Appeals of Baltimore County
105 W. Chesapeake Avenue, Suite 203
Towson, MD 21204

Re: **Mattes/2535 Island View Road**
Case No.: 2011-051-SPH

RECEIVED
MAR - 8 2011
BALTIMORE COUNTY
BOARD OF APPEALS

Dear Ms. Shelton:

Kindly be advised that I represent Andrew J. Mattes, III and Stephanie Mattes, owners of the property located at 2534 Island View Road. There is an appeal currently pending before the Board (Case No.: 2011-051-SPH) related to that property.

The essential background of this matter is as follows. Mr. & Mrs. Mattes operate a shellfishing/crabbing facility from the subject property. Certain neighbors (Theresa J Guckert, David M. Donovan & James S. Brown, hereinafter the "Protestants") filed a Petition for Special Hearing which challenged the validity of the use and was heard as Case No.: 2010-220-SPH. By Opinion and Order in that case by then Zoning Commissioner William J. Wiseman, III, dated April 19, 2010, and a subsequent ruling on a Motion for Reconsideration dated June 1, 2010, the Commissioner denied the Petition for Special Hearing and determined that the shellfishing/ crabbing facility was permitted under the BCZR. No appeal of the Commissioner's orders was filed.

Subsequently, the Protestants filed a new Petition in Case No.: 2011-051-SPH. The new case dealt with the same property and again challenged the propriety of the shellfishing/crabbing operation. In response thereto, I filed a Motion to Dismiss on behalf of my clients. Therein, I argued that the subsequent Petition was barred by *res judicata*. As you know, this doctrine provides for the finality of litigation and prohibits additional litigation when a matter has been provided.

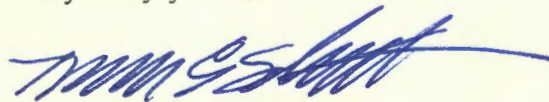
Ms. Theresa R. Shelton
March 8, 2011
Page 2

Commissioner Wiseman denied my Motion to Dismiss. Although holding that *res judicata* did not bar the subsequent Petition, he also ruled that his decision was immediately appealable. Clearly, he did not intend his decision to be interlocutory in character. He thought (and I agree) that the *res judicata* issue should be resolved before the parties go to the expense to litigate (if necessary) the second petition. Pursuant to the express written terms of his decision, I filed an appeal of Commissioner Wiseman's decision to the Board on January 11, 2011. The file was thereafter transmitted to the Board and the case is now pending. Mr. Zimmerman filed a Motion to Dismiss Appeal on February 9, 2011, alleging that the appeal is premature, notwithstanding the Commissioner's written decision.

The defending of these Petitions by the neighbors has caused significant financial hardship on my clients and they have no desire to expend funds to respond to these ongoing pleadings/motions. As to the legal authority that *res judicata* does apply, I direct the Board to an identical matter that was previously considered. (In re: Howard & Melanie Becker, Case No.: 06-651-SPHA). Rather than prepare additional pleadings at cost to my clients, I enclose herewith a copy of Mr. Zimmerman's Memorandum filed in the Becker case and adopt the arguments of law in this matter. I have also enclosed a copy of the Board's Opinion and Order finding *res judicata* in the Becker case.

As to Mr. Zimmerman's Motion as whether the Commissioner's Order is ripe for appeal, I would appreciate your advice as to how the Board intends to handle this question. Is it appropriate/necessary for me to file a written response pleading to Mr. Zimmerman's Motion? Will the case be set for oral argument on Mr. Zimmerman's Motion? Your advice is appreciated so that I can protect my clients' interests.

Very truly yours,



Lawrence E. Schmidt

LES: jkl

Enclosures

CC: Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County
Andrew & Stephanie Mattes, 2534 Island View Road
Theresa J. Guckert, 2530 Island View Road
David M. Donovan & James S. Brown, 2502 Island View Road

IN THE PETITION OF HOWARD & MELANIE BECKER FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

* IN THE
*
* CIRCUIT COURT

IN THE CASE OF HOWARD & MELANIE BECKER,
LEGAL OWNERS/PETITIONERS
FOR VARIANCE ON PROPERTY LOCATED ON THE
S/S BAYSIDE DRIVE, 75' E C/LINE WINONA AVENUE*
(403 BAYSIDE DRIVE)

FOR

12th Election District, 7th Councilmanic District

* BALTIMORE COUNTY

Case No. 06-651-SPHA
Before the County Board of Appeals

* Case No.: 03-C-08-004351

* * * * *

MEMORANDUM OF PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

Introduction

This zoning case is about waterfront construction. The Baltimore County Zoning Regulations (BCZR) address waterfront construction to define and control boundaries, location, access, visual impact, and compatibility. BCZR § 417.3 sets ground rules for divisional boundaries extending from land boundaries into the water. BCZR § 417.4 works in tandem to set a minimum setback for waterfront construction of ten feet from each divisional line. This protects the access rights and view of nearby property owners. It also serves the public interest to minimize waterway congestion.

The BCZR Appendix and Zoning Policy Manual contain drawings on different shoreline configurations. Contentious issues tend to occur where the shoreline is irregular and concave. The divisional lines of properties on such shorelines converge toward each other. As a result, the space available for piers and boatlifts is more limited than on straight or convex shorelines. That is the situation in the present case, as the property owners seek permission for a pier extension and boatlift, which avoid or deviate from the basic rules.

IN THE PETITION OF HOWARD & MELANIE BECKER FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

* IN THE
*
* CIRCUIT COURT

IN THE CASE OF HOWARD & MELANIE BECKER,
LEGAL OWNERS/PETITIONERS
FOR VARIANCE ON PROPERTY LOCATED ON THE
S/S BAYSIDE DRIVE, 75' E C/LINE WINONA AVENUE*
(403 BAYSIDE DRIVE)

*
FOR

12th Election District, 7th Councilmanic District

* BALTIMORE COUNTY

Case Nos. 06-651-SPHA & 03-C-08-004351
~~Before the County Board of Appeals~~

* Case No.: 03-C-09-008390

* * * * *

MEMORANDUM OF PEOPLE'S COUNSEL FOR BALTIMORE COUNTY TABLE OF CONTENTS

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April 7, 2011

Sent via Hand Delivery

Arnold Jablon, Director
Department of Permits, Approvals and Inspections
111 W. Chesapeake Ave, Room 105
Towson, MD 21204



**Re: Mattes/2534 Island View Road
Case No.: 2011-051-PH**

Dear Mr. Jablon,

Please find enclosed additional attachments to be amended to our rebuttal of the Notice of Appeal filed by Mr. Schmidt in the above referenced matter.

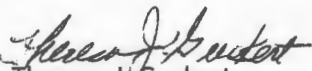
When submitting our rebuttal on March 14, 2011, we expected that many of the documents that we cited in our Rebuttal would be included in the case file. We were recently informed by Ms. Cannington that several of our cited documents, although a part of the prior hearing on this property, would **NOT** be included in the case file brought forward from the Zoning Commissioners office for this appeal. In order that our rebuttal documentation be complete, we ask that you amend our rebuttal by attaching these documents.

quod vide

1. Brief of Petitioner's position at Guckert I (first hearing) Case # 2010-0220-SPH; April 8, 2010
2. Ms. Guckert's statement to the Commissioner at Guckert I (Tab 3 of the Petitioner's Notebook; April 8, 2010)
3. Mr. Wiseman's decision on first hearing Guckert I; April 19, 2010
4. Petitioner's Motion for reconsideration resulting from Mr. Wiseman's decision on Guckert I; May 10, 2010
5. Mr. Cross's response to the Motion for Reconsideration; May 24, 2010

Thank you for your consideration.

Sincerely yours,

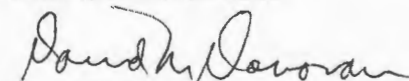

Theresa J. Guckert

2530 Island View Road



James S. Brown

2502 Island View Road


David M. Donovan

2502 Island View Road

Baltimore, MD 21221

CC: Lawrence M. Stahl, Esquire, Administrative Law Judge
Theresa R. Shelton, County Board of Appeals of Baltimore County
Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County
Andrew and Stephanie Mattes, 2534 Island View Road
Lawrence E. Schmidt, Smith, Gildea and Schmidt, LLC., 600 Washington Ave

Statement of :
Theresa Guckert
2530 Island View Road
Essex, MD 21221

In 1926 my family moved to what is now known as 2530 Island View Road. I live in the house immediately next door to 2534 Island View Road. I have lived here for over 83 years. I have been very involved with many community organizations since the 1960s that are designed to protect the neighborhoods and the Environment on the Back River Neck Peninsula:

1. Barrision Point Improvement Association - member 1960's till present, serving as Secretary for one year.
2. Back River Neck Community Association - member 1980's till present, President for one year and Treasurer for 15 years.
3. Baltimore County Forestry Board - member and treasurer for 19 years till present
4. Essex Police Community Relations (concerned citizens interacting with police to maintain community relations) - Attend Monthly meeting for 15 years, Secretary 4 years.

The associations that I have worked with while living at 2530 Island View Road have helped to keep the Back River Neck Community clean, free of over-development and the environmentally critical areas protected from environmental insult. Since I have lived here - there has never been a licensed secondary crabbing and fishing facility in my neighborhood. Franklin D. Beck Sr. did performing fishing and crabbing until 1979, but he never had a commercial license..

Mr. and Mrs. D. Franklin Beck Sr. where married in June 1940 and bought the property (466 Barrison Road) that is currently 2534 Island View Road. Mr. Beck Sr. was a fisherman and crabber waterman from Havre de Grace. At 2534 Island View Road, he used only a trot line, never crab pots.

In the 1970s Dan Beck Jr. moved to 294-C Schaffers Road property across the creek. He did not own it but rented the property until Nov 10, 1986 when he then purchased the property know as 2358 Schaffers Road . He never moved back to Island View Road after moving to Schaffer Road across Brown's Creek. He also never fished from this property after

moving to 294-C Schaffers Rd or 2358 Schaffers Rd.. I was intimate with the Beck family and especially Ms. Beck, because her eye sight began failing in the 1990's and I would write checks for her to sign when needed. I helped Mae Beck with her record keeping and I went in and out of 2534 Island View Road every week for about 28 years. Danny to this day often refers to me as Aunt Teresa, because I was the family neighbor since he was born. I thus had an intimate knowledge of how Ms. Becks money was being spent and the on goings at the residence.

After Mrs. D. Franklin (Mae) Beck died in 2008, the property 2534 Island View Rd was inherited by her son Daniel (Danny) Beck Jr. who then sold it to Mr. and Mrs. Mattes in February 2009. In April 2009 I spoke with Mr. Mattes after he started to bring in loads of crab pots and he told me that he was a commercial waterman. I said I did not think that he was allowed but he stated that his lawyer and Mr. Dan Beck Jr.'s lawyer said it was a legal commercial crabbing and fishing facility.

My house is located close to the property line next to 2534 Island View Road, and the bedroom is on the side closest to 2534 Island View Road. The noise of trucks coming and going and people talking early in the morning was a problem for me for the thirty-nine years Mr. Beck Sr. lived next door. Their was no existing driveway, other than a grass driveway, along the property line. The trucks just ran on the grass.

I had peace and quiet from the time Mr. Beck Sr. died in 1979 till Feb 2009 when Mr. Mattes bought the property. No fishing or crabbing was done from 2534 Island View Road from time Mr. Beck Sr. died – over thirty years ago. Now, the noise level from running trucks up and down the macadam and people talking at all hours, power washing crab pots, operating equipment for soft crabs, it is as though I have moved from a peaceful and quiet retreat home into an industrial park. Mr. Mattes soft shell crab operations run pumps 24 hours. Waterman get started at 4AM. My peace and quiet is gone. At my age, I often take naps in the afternoon. These naps are now routinely interrupted with boats and trucks arriving and departing all spring, summer and fall ..

After so many years of serving in community organizations to try to protect the peninsula from environmental insult it is maddening and depressing to live next door to someone who is cavalier toward the environment and disregards both DEPRM and MDE regulations. Since Mr. Mattes bought the property he does whatever he wants with total disregard for

I have never had problems with code enforcement, but after I reported Mr. Mattes for violations I had two different county officials come to my house to check violations from an anonymous source. I can not say it was Mr. Mattes but it seems strange that I never had any complaints before 2009. No violations were found on my properties.

I will not take up the commissioner's time reading a time log that I created concerning 2534 Island View Rd. but I have them listed below with short comments for your viewing:

May 9, 2009 Brought in one small boat and then a large boat "Bay Prowler"

May 14, 2009 - 5:15 PM Brought in truck load of crab pots (with #1827 on pot).

May 15, 2009 - 3:00 PM Brought in another truck load of crab pots.

-6:00 PM Brought in another truck load of crab pots.

May 16, 2009 - 6:10 PM Brought in another truck load of crab pots.

May 19, 2009 - 9:45 PM Brought in another truck load of crab pots.

May 21, 2009 - Loaded his boat (Bay Prowler) with crab pots.

May 23, 2009- 11:55 AM Took his boat filled with crab pots out.

???Time Took another load of crab pots out on his boat.

May 24, 2009 - 12:58 PM Took another load of crab pots out on his boat.

5:00 PM Another load of crab pots arrive by truck.

May 27, 2009 - Out all day with Bay Prowler.

May 30, 2009- 2:20 PM Brought in about 8 bushels of crabs and took them away on truck.

June 12, 2009- Setup sloughing box for Soft Crabs.

June 4, 2009- 1:45 PM Brought in about 4 bushel of crabs and took them away on truck.

June 5, 2009- Brought in Eel Pots.

June 6, 2009 - Sold soft crab at his property to Albert Kirchmyer property owner at
2509 Barrison Point Road.

June 9, 2009- Sold soft crab at his property to J. Mes

June 8, 2009 - Brought ins two loads of tar & chip to Creek the grass beside my fence
To make a road from Island View Road to the bulkhead on Brown's Creek.

June 10, 2009- Put his Eel Pots out.

3/18/2010 10:39:47 PM

June 10,2009- Spread and packed down the tar & chip to make a road beside my fence.

June 20,2009- Tornado hit Island View Road

June 26,2009- 9:15AM Delaware Valley Fish Company from Norristown, PA bought Eels.

June 27,2009- Sold soft crabs

Jul 12, 2009- Maryland Oil Company filled in tank near holly tree near water.

Jul 17, 2009- Maryland Oil Company filled in tank near holly tree near water.

Jul 27, 2009- Maryland Oil Company filled in tank near holly tree near water.

Sep 8, 2009- Brought in four loads of dirt on dump trucks and dumped.

Sep 9, 2009- Brought in two loads of dirt on dump truck that I know of.
He started in the slope (as you look at the water it would be left
Side of the house. He had no silt fence to protect the bay and had
No DEPRM permit for bring in the dirt and filling in this water
Front property.

Sep 18,2009-10:30AM Brought in another load of dirt on dump truck and dumped.

11:59AM Brought in another load of dirt on dump truck and dumped.

Sep 19,2009- Spread dirt

Sep 22,2009-7:15AM Noise outside of my bedroom again. Liberty Oil Company
Delivered fuel oil to tank by the water.

Sep 23,2009- Brought in another three loads of dirt on dump truck and dumped
The dirt near the front of the water front.

Oct 4, 2009-8:00AM Saw Mr. Mattes red truck coming down Back River Neck Rd
With another load of new crab pots heading for Island View Rd.

Oct 8, 2009-4:55PM More crab pots brought in by Mr. Mattes

Oct 12,2009-4:45PM Mr. Mattes had the dirt that was delivered spread till 5:4PM.
Mr. Mattes had the front loader dredge behind his boat
To his bulkhead at 6:10PM.

Oct 15, 2009 - 2:25PM County vehicle came and gave Mr. Mattes a yellow sheet of paper.

3/18/2010 10:39:47 PM

Oct 16, 2009- 8:50AM Pickup truck (63T-410) came in next door. The a huge green truck with a flat bed attached arrived with what I describe as front end loader. The huge green front end loader left after a few minutes.

9:30AM Liberty Oil to fill both tanks (house & Boat)

Oct 25, 2009- Loads to crab pots on trailer.

Oct 25, 2009 Took trailer with crab pots away. He did not crab the last two weeks Of October from next door.

Nov 27, 2009- 7:00AM Washed his crab pots with pressure washer –very noisy lasted till 3:00 PM. The boat is back.

Dec 1, 2009 Brought in load of crab pots.

Dec 2, 2009- 7:00AM Washed his crab pots with pressure washer – very noisy lasted till 1:00PM.

Dec 20, 2009 Came in with a plow on his truck when clearing the new road he Created by my fence he push the snow on to my terrace.

December All the logs he had dropped in his yard from the tornado - up and Down Island View Road – he spilt and sold fire wood with me Having to listen to his machines running all day.

Jan 7, 2010- He cut down a health Evergreen next to the road he created.

January He was running machines all day cutting up firewood that he was Taking away to sell.

April 5, 2010

Mr. Wisemann
Zoning Commissioner
Baltimore County Gov.
Towson, Maryland 21204

Dear Mr. Wiseman,

I am writing to support the effort by Dave Donovan, Jim Brown and Theresa Guckert to have Baltimore County abolish the fishing facility at 2534 Island View Road. I lived at 2549 Barrison Point Road for 20 years (1967-1987). Daniel Beck Sr. and his wife May Beck resided at 466 Barrison Road (currently 2534 Island View Road during that time). My home at 2549 Barrison Point Road had a clear view of the Beck property on Island View Road. I am shocked that after 30 years of no fishing, this commercial operation is now allowed to reinstate in this residential neighborhood. I strongly object to this commercial fishing/crabbing operation at this location and ask that the county Code Enforcement terminate this business.

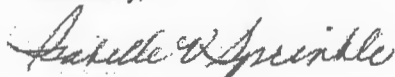
I moved away from Barrison Point in 1987 but I inherited my mothers property across the street from 466 Barrison Road (2534 Island View Road.) My property is located on Section C lots 22, 23, 24 and part of lot 21 of the area plat, and is currently for sale. With my property located immediately across the street from the commercial fishing/crabbing operation at 2534 Island View Road (the property owned by Andy and Stephanie Mattes), I am a highly impacted party by the commercial operation on Island View Road.

I live in Lancaster PA and monies I hope to obtain from the sale of my Island View Road property is an important part of my retirement income. The appearance of surrounding properties can be a very important factor for any potential buyer, and this is an even greater concern in such a down-turned economy. I am concerned that a commercial fishing and shell fishing facility will result in a greatly reduced property value for my property that I am currently trying to sell.

I strongly oppose re-starting a commercial fishing/crabbing operation at this location, and would very much like to see Baltimore County protect me and my property value from the negative impact that such a commercial facility will have on the neighborhood.

Thank you for your efforts on my behalf. Please call me if I can help by giving a more detailed listing of my concerns.

Sincerely,



Isabelle Sprinkle
1734 Saffin Cir
Lancaster, PA
17601-4650
Phone: 717-393-3640

To: Zoning Commissioner
Baltimore County, MD

From: Bill Porter

Re: Fishing and Shell fishing facility at 2534 Island View Road

Date: April 5, 2010

I am writing to support my neighbors who oppose the commercial fishing and shell fishing facility at 2534 Island View Road. I own five of the few remaining undeveloped water front lots on Island View Road, that I inherited from my father about 10 years ago. These lots are in a highly desirable location, just ~200 feet from 2534 Island View Road [on the same side of the road as 2534 Island View Road].

Island View Road is too small to support such a facility and I fear that a commercial facility will take away from my residential property values. Such a commercial facility is out of place in this residential section of the neighborhood.

I expect that the proceeds from the sale of my property on Island View Road will soon be needed to support my much needed retirement funds. My health is deteriorating. I have advanced Parkinson's Disease and have lost sight in one eye with only partial sight in the second. I live in an assisted living facility in Rockville, MD.

Please condemn this fishing facility and help protect my property values.

Thank you for your consideration.

D. Donovan

cc: Dave Donovan

LS

2011-0051

2011-

SPH Remand

11/8

10 AM 205

Debra Wiley - Fwd: Subpoena

From: Debra Wiley
To: ddonovan0@yahoo.com
Date: 10/27/2011 9:44 AM
Subject: Fwd: Subpoena

Good Morning,

Per our conversation, please see attached subpoena for Mr. Gregory Kirkpatrick. As I indicated, please keep in mind that you may be asked that this was, in fact, served.

Thanks and have a great day !

Debbie Wiley
 Legal Administrative Secretary
 Office of Administrative Hearings
 105 West Chesapeake Avenue, Suite 103
 Towson, Md. 21204
 410-887-3868
 410-887-3468 (fax)
 dwiley@baltimorecountymd.gov

Kristen Lewis - Fw: case #2011-0051-SPH

From: David Donovan <ddonovan0@yahoo.com>
To: "klewis@baltimorecountymd.gov" <klewis@baltimorecountymd.gov>
Date: 9/19/2011 6:46 AM
Subject: Fw: case #2011-0051-SPH
CC: dave donovan <ddonovan0@yahoo.com>

Hi Kristen,
I forgot to mention that I am also away all of Thanksgiving week.
Thanks in advance for your consideration.
Best,
Dave

David M. Donovan
2502 Island View Road
Baltimore, MD 21221
home 410-574-8476
cell 443-690-4251
ddonovan0@yahoo.com
(that is a zero after my name)

From: David Donovan <ddonovan0@yahoo.com>
To: "klewis@baltimorecountymd.gov" <klewis@baltimorecountymd.gov>
Cc: dave donovan <ddonovan0@yahoo.com>; dave donovan <dmdjsb@comcast.net>
Sent: Friday, September 16, 2011 12:23 PM
Subject: case #2011-0051-SPH

Hi Kristen,

I just spoke to Debbie and she says the file for case case #2011-0051-SPH just went from Admin. Hearing office to you.
I wanted to check with you about scheduling the next hearing for this matter. (Mattes crabbing 2534 Island View Road).
I have a good bit of travel in the next few weeks...so was hoping you could take these dates into consideration or call me if possible, just before you schedule the hearing just in case something else has popped up.

Oct 13...bad
Oct 20bad
Nov 1-5...bad.

Many thanks
Dave
David M. Donovan
2502 Island View Road
Baltimore, MD 21221
home 410-574-8476
cell 443-690-4251

From: Patricia Zook
To: dnsilber@gmail.com; Ischmidt@gildeallc.com
CC: Wiley, Debra
Date: 1/3/2012 12:27 PM
Subject: Fwd: 2011-0051-SPH -- 2534 Island View Rd
Attachments: 20120103121716621.pdf

Counsel -

Attached is the cover letter and the remand Order in the above-referenced matter. Please share this information with your clients.

Patti Zook
Baltimore County
Office of Administrative Hearings
105 West Chesapeake Avenue, Suite 103
Towson MD 21204
410-887-3868
pzook@baltimorecountymd.gov

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>>> "Patti Zook" <pzook@baltimorecountymd.gov> 1/3/2012 12:17 PM >>>

This E-mail was sent from "zoneprt1" (Aficio MP 2550).

Scan Date: 01.03.2012 12:17:16 (-0500)
Queries to: dwiley@baltimorecountymd.gov

From: Patricia Zook
To: Cannington, Krysundra
CC: Wiley, Debra
Date: 1/3/2012 12:53 PM
Subject: Fwd: 2011-0051-SPH -- 2534 Island View Rd (fyi)
Attachments: 20120103121716621.pdf

Attached is a copy of the remand Order for the above-referenced matter for your reference/information. The file will remain in our office pending the 30 day appeal period.

Patti Zook
Baltimore County
Office of Administrative Hearings
105 West Chesapeake Avenue, Suite 103
Towson MD 21204
410-887-3868
pzook@baltimorecountymd.gov

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>>> "Patti Zook" <pzook@baltimorecountymd.gov> 1/3/2012 12:17 PM >>>
This E-mail was sent from "zoneprt1" (Aficio MP 2550).

Scan Date: 01.03.2012 12:17:16 (-0500)
Queries to: dwiley@baltimorecountymd.gov

Bill Wiseman - crabs

From: John Beverungen
To: Adam Rosenblatt
Date: 11/17/10 10:30 AM
Subject: crabs

this is taken from the Galleria 2010 case, cited by the protestants...it shows why *res judicata*, but not collateral estoppel, is applicable....

matters which *could have been* litigated." *Id.* at 49, 125 A.2d 41 (emphasis added).

A similar summary of this point appears in *Alvey v. Alvey*, 225 Md. 386, 390, 171 A.2d 92 (1961):

The doctrine of *res judicata* is that a judgment between the same parties and their privies is a final bar to any other **735* suit upon the same cause of action, and is conclusive, not only as to all matters that have been decided in the original suit, but as to all matters which with propriety **could** have been **litigated** in the first suit, where the court had jurisdiction, proceedings were regular, and his omission was due to his own negligence.

In *Alvey, supra*, 225 Md. at 391, 171 A.2d 92, the Court of Appeals quoted with approval the following statement from *Henderson v. Henderson*, 67 Eng. Rep. 313, 319, 3 Hare 100, 115 (1843):

[W]here a given matter becomes the subject of litigation

John E. Beverungen
County Attorney
Baltimore County Office of Law
400 Washington Avenue
Towson, Maryland 21204
(410) 410-887-4420

Confidentiality Statement

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Bill Wiseman - issue

From: John Beverungen
To: Adam Rosenblatt
Date: 11/16/10 5:28 PM
Subject: issue

this is from a 2009 md. case, citing a 2006 SCT case...not good for the argument that Bill's ruling on res judicata is subject to immediate interlocutory appeal.....

Although we have not had the occasion to consider, either under the **collateral order** doctrine or under [SG § 10-222\(b\)](#), whether immediate review will lie from an order denying a motion to terminate a proceeding based on collateral estoppel or **res judicata**, the U.S. Supreme Court recently decided that issue. In [Will v. Hallock, 546 U.S. 345, 126 S.Ct. 952, 163 L.Ed.2d 836 \(2006\)](#), the Court, in a unanimous opinion, held that the denial of a motion to dismiss based on the bar of an existing judgment, whether the bar is statutory in nature or under common law **res judicata** principles, is not subject to immediate appeal under the **collateral order** doctrine, as applied in the Federal courts.

John E. Beverungen
County Attorney
Baltimore County Office of Law
400 Washington Avenue
Towson, Maryland 21204
(410) 410-887-4420

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From: Debra Wiley
To: Zimmerman, Peter; Ischmidt@gildeallc.com; scross@gildeallc.com
Date: 10/25/2010 2:14 PM
Subject: Fwd: 2011-0051-SPH - 2534 Island View Rd. - Nov. 18th

Good Afternoon,

As you may know, Bill is enjoying vacation time with his family. Therefore, I am attaching correspondence just hand-delivered in reference to the above hearing set for November 18th.

Thanks and have a great day.

Debbie Wiley
Legal Administrative Secretary
Office of the Zoning Commissioner
105 West Chesapeake Avenue, Suite 103
Towson, Md. 21204
410-887-3868
410-887-3468 (fax)
dwiley@baltimorecountymd.gov

From: Debra Wiley
To: Rosenblatt, Adam
Date: 10/25/2010 2:15 PM
Subject: Fwd: 2011-0051-SPH

Hi Adam,

Please find attached correspondence just hand-delivered in reference to the above. Thanks.

Debbie Wiley
Legal Administrative Secretary
Office of the Zoning Commissioner
105 West Chesapeake Avenue, Suite 103
Towson, Md. 21204
410-887-3868
410-887-3468 (fax)
dwiley@baltimorecountymd.gov

From: Debra Wiley
To: Rosenblatt, Adam
Date: 10/22/2010 11:47 AM
Subject: Island View Road

Hi Adam,

Bill asked that I forward for your review the following:

1. Order for Case No. 2010-0220-SPH
2. Motion for Reconsideration filed by Donovan, et al
3. Order on Motion for Reconsideration
4. Petitions filed in both cases (2011-0051-SPH & 2010-0220-SPH)
5. Motions filed by Gildea & Schmidt

(The above items were put in inter-office mail this morning.)

Bill wants you to know that the exact legal issues are being dealt with in the Case of *Becker v. Mioduszewski* pending in the Circuit Court - Judge Bollinger has the case. The Board of Appeals gave me a Case No. of 03-C-098390 but Bill thinks the Case No. may be 03-C-08-4351. Please check this out because chances are there may be helpful Memorandums filed that already discuss the application of res judicata - on these facts.

P.S. There is a lot of exhibits in the first file should you want to go through them.

Thanks and have a great weekend !

Debbie Wiley
Legal Administrative Secretary
Office of the Zoning Commissioner
105 West Chesapeake Avenue, Suite 103
Towson, Md. 21204
410-887-3868
410-887-3468 (fax)
dwiley@baltimorecountymd.gov

From: Debra Wiley
To: Lewis, Kristen
Date: 10/14/2010 8:21 AM
Subject: Case No. 2011-0051-SPH

Hi Kristen,

Please see attached; a hard copy was also mailed. Sorry about the use of your previous last name -- I copied information from a previous letter.

Have a great day !

Debbie Wiley
Legal Administrative Secretary
Office of the Zoning Commissioner
105 West Chesapeake Avenue, Suite 103
Towson, Md. 21204
410-887-3868
410-887-3468 (fax)
dwiley@baltimorecountymd.gov

From: Debra Wiley
To: Rosenblatt, Adam
Date: 10/14/2010 8:22 AM
Subject: Case No. 2011-0051-SPH - Nov. 18th

Good Morning Adam,

Please find attached a hearing notice in reference to the above; Bill is asking if you could attend. A hard copy was put in the mail to you also.

Thanks.

Debbie Wiley
Legal Administrative Secretary
Office of the Zoning Commissioner
105 West Chesapeake Avenue, Suite 103
Towson, Md. 21204
410-887-3868
410-887-3468 (fax)
dwiley@baltimorecountymd.gov

11-18

From: Kristen Lewis
To: Wiley, Debra
Date: 10/8/2010 9:12 AM
Subject: Re: Case No. 2011-0051-SPH - 2534 Island View Road

Good morning,

After talking to Bill briefly this morning, I realize that I was mistaken in thinking that this case needed to be readvertised and reposted. Since that would be the purpose of me issuing a new hearing notice, I was advised to send the file back to your office so that you can do a letter to the involved parties notifying them of the date agreed upon. Thanks I will bring the file over today sometime.

>>> Debra Wiley 10/6/2010 10:33 AM >>>
Good Morning,

Please be advised that the above-referenced matter has been set for Thursday, November 18, 2010, at 9:00 AM, in Room 106, County Office Building, 111 West Chesapeake Avenue, Towson, MD 21204. The purpose of the hearing is to hear argument on the "Motion to Dismiss" filed by Sebastian Cross on behalf of Andrew Mattes.

Our office has been advised that Kristen Lewis with the Office of Zoning Review has the case file and will follow-up with forwarding a revised hearing notice reflective of November 18, 2010.

Please feel free call if you have any questions or concerns.

Debbie Wiley
Legal Administrative Secretary
Office of the Zoning Commissioner
105 West Chesapeake Avenue, Suite 103
Towson, Md. 21204
410-887-3868
410-887-3468 (fax)
dwiley@baltimorecountymd.gov

BW 11/18
9AM
106

From: Debra Wiley
To: ddonovan0@yahoo.com; scross@gildeallc.com
CC: Lewis, Kristen; Zimmerman, Peter; Ischmidt@gildeallc.com
Date: 10/6/2010 10:33 AM
Subject: Case No. 2011-0051-SPH - 2534 Island View Road

Good Morning,

Please be advised that the above-referenced matter has been set for Thursday, November 18, 2010, at 9:00 AM, in Room 106, County Office Building, 111 West Chesapeake Avenue, Towson, MD 21204. The purpose of the hearing is to hear argument on the "Motion to Dismiss" filed by Sebastian Cross on behalf of Andrew Mattes.

Our office has been advised that Kristen Lewis with the Office of Zoning Review has the case file and will follow-up with forwarding a revised hearing notice reflective of November 18, 2010.

Please feel free call if you have any questions or concerns.

Debbie Wiley
Legal Administrative Secretary
Office of the Zoning Commissioner
105 West Chesapeake Avenue, Suite 103
Towson, Md. 21204
410-887-3868
410-887-3468 (fax)
dwiley@baltimorecountymd.gov

10/13 Spoke to Ms. Mattes
Advised her 10/15 5 p/p +
New hearing info + that
ltr. would be forth-
coming....
(410-262-6966)

From: Kristen Lewis
To: Wiley, Debra
Date: 10/6/2010 9:04 AM
Subject: Fwd: Re: 2534 Island View Road - Case No. 2011-0051-SPH

Hi Debbie,

Ok thanks, I just put that case in on November 18, 2010 at 9:00 a.m. in Room 106. I will send out a new notice to those listed in the file.

>>> Debra Wiley 10/6/2010 8:59 AM >>>

Hi Kristen,

I believe you were holding some dates for Bill in November for the above-referenced case. Please find attached dates available for Theresa Guckert, Jim Brown and David Donovan as well.

Thanks.

Debbie Wiley
Legal Administrative Secretary
Office of the Zoning Commissioner
105 West Chesapeake Avenue, Suite 103
Towson, Md. 21204
410-887-3868
410-887-3468 (fax)
dwiley@baltimorecountymd.gov

11/17, 11/18 &
11/19

From: David Donovan <ddonovan0@yahoo.com>
To: Bill Wiseman <wwiseman@baltimorecountymd.gov>
CC: dave jim donovan <dmdjsb@comcast.net>, dave donovan <ddonovan0@yahoo.com>
Date: 10/6/2010 5:50 AM
Subject: Re: 2534 Island View Road

Theresa Guckert, Jim Brown and myself are available on Nov 17, 18, and 19.

Best,
Dave

David M. Donovan
2502 Island View Road
Baltimore, MD 21221
home 410-574-8476
cell 443-690-4251
ddonovan0@yahoo.com
(that is a zero after my name)

From: David Donovan <ddonovan0@yahoo.com>
To: Bill Wiseman <wwiseman@baltimorecountymd.gov>
Cc: dave donovan <ddonovan0@yahoo.com>; dave jim donovan <dmdjsb@comcast.net>
Sent: Tue, October 5, 2010 11:18:30 AM
Subject: Re: 2534 Island View Road

Mr. Commissioner,
I was not able to reach Ms Guckert,
She does not have a voice mail.....but she usually checks her caller id and
calls back shortly.
hopefully soon.
I will keep trying.
dave

David M. Donovan
2502 Island View Road
Baltimore, MD 21221
home 410-574-8476
cell 443-690-4251
ddonovan0@yahoo.com
(that is a zero after my name)

BW 10/5 11 AM

From: Debra Wiley
To: Wiseman, Bill; ddonovan0@yahoo.com
CC: jlewis@gildeallc.com; lschmidt@gildeallc.com; scross@gildeallc.com
Date: 10/1/2010 12:10 PM
Subject: Conference Call Confirmation Re: Case No. 2011-0051-SPH - Mattes/2534 Island View Rd.
Attachments: RE: Conference Call re: Case No. 2011-0051-SPH - Mattes/2534 Island View Road

Good Afternoon,

In reference to the above subject, this is to confirm that the **conference call** will take place on Tuesday, October 5th at 11 AM. At that time, Commissioner Wiseman will contact Mr. Donovan on his cell phone.

Thanks for your cooperation.

Debbie Wiley
Legal Administrative Secretary
Office of the Zoning Commissioner
105 West Chesapeake Avenue, Suite 103
Towson, Md. 21204
410-887-3868
410-887-3468 (fax)
dwiley@baltimorecountymd.gov

From: "Jennifer Lewis" <jlewis@gildeallc.com>
To: "Debra Wiley" <dwiley@baltimorecountymd.gov>
CC: <lschmidt@gildeallc.com>, "Sebastian Cross" <scross@gildeallc.com>
Date: 10/1/2010 11:55 AM
Subject: RE: Conference Call re: Case No. 2011-0051-SPH - Mattes/2534 Island View Road

Debbie:

11am on Tuesday works for Larry and Sebastian. I have changed it on the calendar. Will you notify Mr. Donovan of this date?

Thanks,
Jen

Jennifer Kohn Lewis

Gildea & Schmidt, LLC

600 Washington Avenue

Suite 200

Towson, MD 21204

(410) 821-0070

(410) 821-0071 - fax

jlewis@gildeallc.com

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-----Original Message-----

From: Debra Wiley [mailto:dwiley@baltimorecountymd.gov]
Sent: Friday, October 01, 2010 11:45 AM
To: jlewis@gildeallc.com
Subject: Conference Call re: Case No. 2011-0051-SPH - Mattes/2534 Island View Road

Jennifer,

Mr. Donovan is unfortunately not available for Monday's conference call at 2 PM. Bill is suggesting perhaps Tuesday, 10/5, since both he and Mr. Donovan are available. Please take a look at the dates below on behalf of Larry and Sebastian and get back to us.

Tues., 10/5 - Open all day - Donovan
(Bill is available all day)

Wed., 10/6 - Not available - Donovan
(Bill NOT available)

Thurs., 10/7 - Open all day except 11 to noon - Donovan
(Bill NOT available - hearings all day)

Fri., 10/8 - Open all day except 9 to 10 - Donovan
(Bill NOT available - hearings)

Thanks for your cooperation.

Debbie Wiley
Legal Administrative Secretary
Office of the Zoning Commissioner
105 West Chesapeake Avenue, Suite 103
Towson, Md. 21204
410-887-3868
410-887-3468 (fax)
dwiley@baltimorecountymd.gov

From: David Donovan <ddonovan0@yahoo.com>
To: <dwiley@baltimorecountymd.gov>
CC: dave donovan <ddonovan0@yahoo.com>
Date: 10/1/2010 11:21 AM
Subject: Fw: got your message

David M. Donovan
2502 Island View Road
Baltimore, MD 21221
home 410-574-8476
cell 443-690-4251
ddonovan0@yahoo.com
(that is a zero after my name)

----- Forwarded Message -----

From: David Donovan <ddonovan0@yahoo.com>
To: Bill Wiseman <wwiseman@baltimorecountymd.gov>
Cc: dave donovan <ddonovan0@yahoo.com>; dave jim donovan <dmdjsb@comcast.net>
Sent: Fri, October 1, 2010 10:05:35 AM
Subject: got your message

Hi Bill,

Got your message...no conf call today.

I too had called the People's counsel, to do just as you suggested, but could not find a fax number for them on the web and they were not answering. Let me know if I need to deal with that or if you are going to drop it off.

Theresa G. said she did just get her letter today.
No one is home for me to check on my letter.

My daily schedule at work is 6Am till 2:30PM..after that I am driving or at the gym till 5ish.

Next week:

Mon Oct 4....open till 12 noon....not available in the afternoon.

Tues open all day

Wed not available all day

Thurs open all day except 11-noon.

Friday open all day except 'doughnut meeting' 9-10AM.

It is my understanding that this phone conf. is just to confirm that we agree to a hearing to discuss their motion (no new data or witnesses). I certainly do not want to bring a new hearing official up to speed on the entire case, so needless to say would NOT want the full blown hearing with new witnesses, data etc...when you are not available.

Thanks for your continued efforts.
Dave

David M. Donovan
2502 Island View Road

From: Debra Wiley
To: Lewis, Kristen
Date: 9/29/2010 1:48 PM
Subject: Case No. 2011-0051-SPH

Kristen,

The above referenced is set for 10/15 and we've received correspondence from Sebastian Cross. Can you fax us the petitions so Bill can get back to Sebastian with a response.

Thanks.

Debbie Wiley
Legal Administrative Secretary
Office of the Zoning Commissioner
105 West Chesapeake Avenue, Suite 103
Towson, Md. 21204
410-887-3868
410-887-3468 (fax)
dwiley@baltimorecountymd.gov

410-821-0070

Rainbow Hall

ddonovano@yahoo.com
Fax 301-504-8571

DAVE DONOVAN
Call - 443-690-4251
301-504-9150 Call

Matters
Does Bill
have to
hear.
Assigned
to
Tom
Sehreday as
Rainbow
Hall

From: Krysundra Cannington
To: Donovan, David; Schmidt, Larry; Shelton, Theresa
CC: Counsel, People's; Jablon, Arnold; donovan, dave jim; Ischmidt@gildea...
Date: 4/5/2011 9:49 AM
Subject: RE: Fw: case : 2011-0051-SPH

Good morning Mr. Donovan and Mr. Schmidt,

Please be advised that upon request of Mr. Donovan, I investigated the possibility of missing documents in case number 1-051-SPH. Upon confirmation from the Zoning Review Office, this Board understands that there are two cases involving the subject property. The documents Mr. Donovan indicated are related to the matter which is not on appeal before this Board. To the best of my knowledge, the Board has received the complete file to include all documents with relation to the appeal in 11-051-SPH.

This matter is currently scheduled for Argument on People's Counsel's Motion to Dismiss on May 10, 2011 at 1:00 p.m.

Should you have any questions, please do not hesitate to contact this office.

Thank you.

Krysundra "Sunny" Cannington
Legal Secretary
Board of Appeals of Baltimore County
Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204
(410) 887-3180

>>> Larry Schmidt <lschmidt@sgs-law.com> 4/4/2011 2:40 PM >>>
My apologies. The argument is May 10, not May first. My prior e-mail incorrectly deleted the "0"/

Lawrence E. Schmidt
Smith, Gildea & Schmidt, LLC
600 Washington Avenue
Suite 200
Towson, MD 21204
(410) 821-0070
(410) 821-0071 - fax
lschmidt@sgs-law.com

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-----Original Message-----

From: Larry Schmidt
Sent: Monday, April 04, 2011 2:38 PM
To: 'Theresa Shelton'; David Donovan

Cc: Arnold Jablon; Krysundra Cannington; People's Counsel; dave jim donovan; lschmidt@gildeallc.com; smattes3@verizon.net
Subject: RE: Fw: case : 2011-0051-SPH

Theresa: Mr. Donovan has decided to represent himself in this matter (without legal counsel) and although I respect his absolute right to do so, he is not entitled to any deference or special privilege because he is not a lawyer and may or may not know the rules of evidence and/or procedure relative to appeals. This is notwithstanding the lengthy document that he inappropriately filed with Mr. Jablon which has now been forwarded to the Board.

The decision that was appealed to the Board was Commissioner Wiseman's decision in case number 2011-0051-SPH. That is the case (and the only case) that is before the Board of Appeals. I understand that the Board is going to receive argument regarding this matter on May 1, 2011. The Board may or may not receive evidence at that hearing; at their discretion. Moreover, the parties may or may not reach a stipulation as to information and/or evidence that the Board shall consider.

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Sent: Monday, April 04, 2011 7:56 AM
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Subject: Re: Fw: case : 2011-0051-SPH

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If you need anything further, or please do not hesitate to call me.

Thank you.

Theresa

Theresa R. Shelton, Administrator
Board of Appeals for Baltimore County
Suite 203, The Jefferson Building
105 W. Chesapeake Avenue
Towson, MD 21204

410-887-3180
410-887-3182 (FAX)
tshelton@baltimorecountymd.gov

I took the Green @ Work Energy Challenge Pledge.

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>>> David Donovan <ddonovan0@yahoo.com> 4/2/2011 10:14 AM >>>
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Board of Appeals, and a list of those materials was provided.

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home 410-574-8476
cell 443-690-4251
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(that is a zero after my name)

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To: Donovan, David
CC: Cannington, Krysundra; Counsel, People's; Jablon, Arnold; donovan, da...
Date: 4/4/2011 7:56 AM
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From: David Donovan <ddonovan0@yahoo.com>
To: <tshelton@baltimorecountymd.gov>
CC: <kcannington@baltimorecountymd.gov>, <peoplescounsel@baltimorecountymd.g...>
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4/1 - Donovan called Debbie
3" Binder
~ attachment
should have been
in file.

Matter 11-051-SPH
Donovan

From: Theresa Shelton
To: Donovan, David
Date: 3/2/2011 9:34 AM
Subject: Re: 2534 Island View Road

Good Morning:

The Board is NOT in receipt of the file as of this date.

Theresa

Theresa R. Shelton, Administrator
Board of Appeals for Baltimore County
Suite 203, The Jefferson Building
105 W. Chesapeake Avenue
Towson, MD 21204

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>>> David Donovan <ddonovan0@yahoo.com> 3/2/2011 9:03 AM >>>

Hi Theresa,

I was just pinging you to see if the 2534 Island View Road file has reached your office yet?

thanks

Dave

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Baltimore, MD 21221
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ddonovan0@yahoo.com
(that is a zero after my name)

----- Original Message -----

From: Theresa Shelton <tshelton@baltimorecountymd.gov>
To: David Donovan <ddonovan0@yahoo.com>

Cc: Krysundra Cannington <kcannington@baltimorecountymd.gov>
Sent: Tue, February 1, 2011 11:34:08 AM
Subject: Re: hello and transcription service

Mr. Donovan:

I spoke with the Board's Legal Secretary, Ms. Cannington, about the transcript (complete or excerpts) and she would be willing to do the transcription for you, if you decided to have it done. She can be reached at the Board's number 410-887-3180. However, if you would prefer another transcriptionist, just let me know and I will provide other contact information to you.

As discussed, you will be receiving a letter when the file and appeal have been forwarded to this office.

If you have any questions or concerns, please feel free to contact the office.

Theresa

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Board of Appeals for Baltimore County
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>>> David Donovan <ddonovan0@yahoo.com> 2/1/2011 10:45 AM >>>
Theresa,
Nice chatting today.
Please send me the name and contact information of the transcription service that the board trusts.

thanks...stay warm.

dave

David M. Donovan

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Baltimore, MD 21221

home 410-574-8476

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ddonovan0@yahoo.com

(that is a zero after my name)

CASE NAME Duckert 2011-051-SPH
 CASE NUMBER _____
 DATE 11-18-10

CASE NAME Duckert 2011-051-SPH
 CASE NUMBER _____
 DATE 11-18-10

[illegible]

CASE NAME ~~2011~~ Mexico
CASE NUMBER 2011-0051-Split
DATE 11/8/2011

[illegible]

CASE NAME WATERS
CASE NUMBER 2011-051-574
DATE 11/8/11

[illegible]

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND

Legislative Session 1975, Legislative Day No. 21

BILL NO. 98-75

Mr. Huddles, Councilman

By the County Council, October 6, 1975

A BILL
ENTITLED

AN ACT to amend the Baltimore County Zoning Regulations to establish four new zoning classifications intended to insure the preservation of Baltimore County's Natural Resources, by repealing subparagraph 100.1.A.2 of Section 100 of the Zoning Regulations of Baltimore County and enacting a new subparagraph 100.1.A.2 in lieu thereof; by adding certain new definitions to Section 101 of said regulations; by adding new subsection 103.3 to Section 103 of said regulations; and by repealing Article 1A, and Sections 1A00 and 1A01 thereunder, of said regulations and enacting new sections 1A00 through 1A04, under new Article 1A entitled "Resource-Conservation Zones", in lieu thereof.

WHEREAS, THE COUNTY COUNCIL HAS CONSIDERED THE FINAL REPORT OF THE PLANNING BOARD, ENTITLED PROPOSED ZONING AMENDMENTS: ZONING CLASSIFICATIONS FOR RESOURCE CONSERVATION, IN ACCORDANCE WITH SECTIONS 22-20 AND 22-21 OF THE BALTIMORE COUNTY CODE (1974 SUPPLEMENT); AND,

WHEREAS, THE COUNTY COUNCIL HAS CONSIDERED TESTIMONY AT THE PUBLIC HEARING HELD IN ACCORDANCE WITH SECTION 22-21 OF THE BALTIMORE COUNTY CODE (1974 SUPPLEMENT); AND,

WHEREAS, THE COUNTY COUNCIL HAS REVIEWED IN WORK SESSION AND LEGISLATIVE SESSION THE PLANNING BASIS OF THE FINAL REPORT AS ELABORATED BY THE STAFF OF THE OFFICE OF PLANNING AND ZONING OF BALTIMORE COUNTY; AND,

WHEREAS, THE COUNTY COUNCIL HAS CONSIDERED THE COMPREHENSIVE PLAN FOR BALTIMORE COUNTY APPROVED BY THE PLANNING BOARD OCTOBER 13, 1975.

1. SECTION 1. Be it enacted by the County Council of Baltimore County, Maryland,
2. that subparagraph 100.1.A.2, under section 100 of the Baltimore County Zoning Regu-
3. lations, be and it is hereby repealed and new subparagraph 100.1.A.2 be and it is

10/30/84

Eileen Kennehan

IN THE MATTER OF
JAMES R. MYRICK, ET UX
FOR SPECIAL EXCEPTION FOR
A FISHING FACILITY IN AN R.C.
ZONE; FOR SPECIAL HEARING
REGARDING AMENDED SITE PLAN;
FOR VARIANCES TO PERMIT SET-
BACKS AND TO ALLOW PARKING
AREAS TO BE PAVED WITH CRUSHER
RUN IN LIEU OF MACADAM
ON PROPERTY LOCATED ON THE
SOUTHWEST SIDE OF GOOSE NECK
RD., 626.89' NORTHWEST OF THE
CENTER LINE OF GOOSE HARBOR
RD. - 15th DISTRICT

BEFORE

RE X(3)

COUNTY BOARD OF APPEALS

OF

BALTIMORE COUNTY

No. 84-147-XSPHA

Shelley
Rainbow

O P I N I O N

This case comes before this Board on appeal from a decision of the Baltimore County Zoning Commissioner dated January 16, 1984, denying all the relief prayed for by the Petitioners. The Board will note that the hearing in this case consumed three full days of direct testimony, the introduction of over 50 exhibits, many of which are multiple exhibits, and produced much controversial testimony. In addition, there were lengthy memorandums submitted for the Board's consideration by Petitioners' attorney, Protestants' attorney and People's Counsel, plus a lengthy Findings of Fact and Conclusions of Law by the Baltimore County Zoning Commissioner. All of this has been carefully considered by this Board, but we will not attempt in this Opinion to detail or summarize these factors but will attempt to confine this Opinion to the specific issues before us. It will be noted, however, that the following persons testified during these three days of hearing.

Testifying for Petitioners

1. Captain Harry Phillips - Charter Boat Captain
2. James Myrick - Petitioner and property owner
3. Kenneth Hubbard - Commercial crabber
4. Patti Chatterton - Neighborhood resident
5. Dennis Fandl - Neighborhood resident
6. Anthony Reale - Area resident and customer

Testifying for Protestants

7. Mrs. Ruth Gress - Next door neighbor
8. Mr. Theodore Gress - Husband of Mrs. Gress
9. William O. Luetke - Professional engineer and land surveyor
10. Richard Davis - Attorney and real estate broker

1/10/84 IN RE:

PETITIONS SPECIAL EXCEPTION,
SPECIAL HEARING, AND ZONING
VARIANCES

SW/S of Goose Neck Road,
626.89' NW of the centerline
of Goose Harbor Road - 15th
Election District

James B. Myrick, et ux
Petitioners

* BEFORE THE

* ZONING COMMISSIONER

* OF BALTIMORE COUNTY

* Case No. 84-147-XSPHA

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request a special exception to allow expansion of their shellfishing business to a Class I status. They also request approval, by special hearing, to expand their business to property owned by them and located across a public road from their primary property. They request that the two properties be considered contiguous and therefore treated as one for zoning purposes. The Petitioners want to amend the original site plan, filed in 1978 and marked Petitioners' Exhibit 3, to include both lots and to show the "renovation" of an existing garage shown thereon. Other minor additions and/or deletions to that site plan are also requested. Additionally, the Petitioners seek variances to permit side yard setbacks of 2.5 feet, 15 feet, and 25 feet instead of the required 50 feet, a setback of 20 feet to the centerline of the street instead of the required 75 feet, a distance between buildings of 38 feet instead of the required 100 feet, and to allow the requested parking areas to be paved with crusher run material. These requests are more fully described on Petitioners' Exhibit 9.

The Petitioners appeared and were represented by Counsel. Testifying were James B. Myrick, Petitioner; Robert Eurice, President of the Baltimore County Watermen's Association; Daniel Beck, Vice President of that Association; Craig Rogers, a limo man on surveying crews; and Dennis Fandl, a neighbor. Numerous Protestants appeared. Mr. and Mrs. Theodore Gress and Steven Bauer were represented by Counsel

ORDER RECEIVED FOR FILING

DATE

BY

ADMINISTRATIVE ASSISTANT

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judge further noted that he was reserving judgment on marital property and other issues was strong evidence of the court's intention to do so. *Scott v. Scott*, 103 Md. App. 500, 653 A.2d 1017 (1995).

Declaratory judgment requires separate document — Appellate court vacated summary judgment granted by the trial court in the declaratory judgment action, because under Md. R. 2-601(a), the judgment could not be part of a memorandum; the declaratory judgment had to be entered on a separate document. *Info. Sys. & Network Corp. v. Fed. Ins. Co.*, 145 Md. App. 457, 805 A.2d 1141 (2002), cert. denied, 372 Md. 430, 813 A.2d 258 (2002).

Despite a trial court's failure to enter a separate document explaining its reasoning in entering summary declaratory judgment upholding a "pizza delivery" exclusion from coverage in an automobile insurance policy, Maryland's highest court exercised its powers of discretionary review; it held that since the exclusion was not permitted pursuant to § 17-103 of the Transposition Article, it was of no effect, and the insured delivery person should have been provided coverage. *Salamon v. Progressive Classic Ins. Co.*, 379 Md. 301, 841 A.2d 858 (2004).

Trial court erred in failing to issue a separate declaratory judgment, as required by (a), when it rendered an opinion and order in a tax sale purchaser's action against a county, seeking a particular rate of interest for sales that were void because taxes were not delinquent; although the court ordered the purchaser to return certain interest that had already been paid, the declaration was not included and such was accordingly error. *Heartwood 88, Inc. v. Montgomery County*, 156 Md. App. 333, 846 A.2d 1096 (2004).

Separate document requirement may be waived. — The separate document requirement of this section may be waived and it was waived where the circuit court clearly intended the docket entries made by that court's clerk, based upon the jury verdict, to be a final judgment, and where no party objected to the absence of a separate document. *Suburban Hosp. v. Kirson*, 362 Md. 140, 763 A.2d 185 (2000).

Applied in *Spates v. Montgomery County*, 87 Md. App. 590, 590 A.2d 1074 (1991); *Sisk & Sons v. Friendship Packers, Inc.*, 326 Md. 152, 604 A.2d 69 (1992); *Ginsberg v. McIntire*, 348 Md. 526, 704 A.2d 1246 (1998); *First Baptist Church of Friendly v. Beeson*, 154 Md. App.

650, 841 A.2d 347 (2004); *Univ. Sys. of Md. v. Balt. Sun Co.*, 381 Md. 79, 847 A.2d 427 (2004); *Walk v. Hartford Cas. Ins. Co.*, 382 Md. 1, 852 A.2d 98 (2004).

Quoted in *Dawson's Charter Serv. v. Chin*, 68 Md. App. 433, 511 A.2d 1138 (1986); *Atlantic Food & Beverage Sys. v. City of Annapolis*, 70 Md. App. 721, 523 A.2d 648 (1987); *Anthony v. Clark*, 335 Md. 579, 644 A.2d 1070 (1994); *Porter Hayden Co. v. Commercial Union Ins. Co.*, 339 Md. 150, 661 A.2d 691 (1995); *ABF Freight Sys. v. Gilchrist*, 125 Md. App. 419, 725 A.2d 631 (1999); *In re Vy N.*, 131 Md. App. 479, 749 A.2d 247 (2000); *Burns v. Scottish Dev. Co.*, 141 Md. App. 679, 787 A.2d 786 (2001).

Stated in *Seifert v. Gary*, 82 Md. App. 337, 571 A.2d 871 (1990); *Woodfin Equities Corp. v. Hartford Mut. Ins. Co.*, 110 Md. App. 616, 678 A.2d 116 (1996); *Doe v. Doe*, 122 Md. App. 295, 712 A.2d 132 (1998); *Kobrine, L.L.C. v. Metzger*, 151 Md. App. 260, 824 A.2d 1031 (2003); *In re Ariel G.*, 153 Md. App. 698, 837 A.2d 1044 (2003).

Cited in *Boucher v. Shomber*, 65 Md. App. 470, 501 A.2d 97 (1985); *Ramsey, Inc. v. Davis*, 66 Md. App. 717, 505 A.2d 899 (1986); *Exxon Corp. v. Schoene*, 67 Md. App. 412, 508 A.2d 142 (1986); *Southern Four, Inc. v. Parker*, 81 Md. App. 85, 566 A.2d 808 (1989); *B & K Rentals & Sales Co. v. Universal Leaf Tobacco Co.*, 319 Md. 127, 571 A.2d 1213 (1990); *Haughton v. Haughton*, 319 Md. 460, 573 A.2d 42 (1990); *Furst v. Isom*, 85 Md. App. 407, 584 A.2d 108, cert. denied, 323 Md. 1, 590 A.2d 158 (1991); *Sykes v. Nationwide Ins. Co.*, 327 Md. 261, 608 A.2d 1242 (1992); *Curry v. Hillcrest Clinic, Inc.*, 99 Md. App. 477, 638 A.2d 115 (1994), aff'd, 337 Md. 412, 653 A.2d 934 (1995); *Falcinelli v. Cardascia*, 339 Md. 414, 663 A.2d 1256 (1995); *ACandS, Inc. v. Godwin*, 340 Md. 334, 667 A.2d 116 (1995); *Blake v. Blake*, 341 Md. 326, 670 A.2d 472 (1996); *West Am. Ins. Co. v. Popa*, 108 Md. App. 73, 670 A.2d 1021 (1996), aff'd, 352 Md. 455, 723 A.2d 1 (1998); *O'Brien v. O'Brien*, 367 Md. 547, 790 A.2d 1 (2002); *Long v. State*, 371 Md. 72, 807 A.2d 1 (2002); *R.A. Ponte Architects, Ltd. v. Investors' Alert, Inc.*, 149 Md. App. 219, 815 A.2d 816 (2003); *Creveling v. Gov't Emples. Ins. Co.*, 376 Md. 72, 828 A.2d 229 (2003); *Superior Court of Cal., County of Stanislaus, Family Support Div. ex rel. Jones v. Ricketts*, 153 Md. App. 281, 836 A.2d 707 (2003); *S. Mgmt. Corp. v. Taha*, 378 Md. 461, 836 A.2d 627 (2003); *Bacon & Assocs. v. Rolly Tasker Sails Co.*, 154 Md. App. 617, 841 A.2d 53 (2004); *Greenbriar Condo. v. Brooks*, — Md. App. —, — A.2d — (Sept. 2, 2004).

Rule 2-602. Judgments not disposing of entire action.

(a) **Generally.** Except as provided in section (b) of this Rule, an order or other form of decision, however designated, that adjudicates fewer than all of

— No just reason for delay exists here
 — I decided in Case No. 2010-0220 that Matter had a right to use property as a fishing & shell fishing facility
 — IF I DENY HIS MOTION IN THE NEWLY FILED CASE under these circumstances - it's my JUDGMENT

Westlaw.

126 S.Ct. 952

Page 1

546 U.S. 345, 126 S.Ct. 952, 163 L.Ed.2d 836, 74 USLW 4098, 06 Cal. Daily Op. Serv. 472, 2006 Daily Journal D.A.R. 671, 19 Fla. L. Weekly Fed. S 72, 24 A.L.R. Fed. 2d 701
(Cite as: 546 U.S. 345, 126 S.Ct. 952)

▷

Supreme Court of the United States
Richard WILL et al., Petitioners,
v.
Susan HALLOCK et al.
No. 04-1332.

Argued Nov. 28, 2005.
Decided Jan. 18, 2006.

Background: Corporation and its owner brought *Bivens* suit against government agents, alleging that the agents intentionally damaged computer equipment that was seized in investigation. The United States District Court for the Northern District of New York, David N. Hurd, J., 281 F.Supp.2d 425, denied defendants' motion for judgment on the pleadings. Defendants appealed. The United States Court of Appeals for the Second Circuit, 387 F.3d 147, affirmed. Certiorari was granted.

Holdings: The Supreme Court, Justice Souter, held that:

(1) it is not mere avoidance of a trial, but avoidance of a trial that would imperil a substantial public interest, that counts when asking whether a district court order is "effectively unreviewable" if review is to be left until after entry of a final judgment, as required under the collateral order doctrine, and
(2) district court order rejecting the judgment bar of the Federal Tort Claims Act (FTCA) as a defense to the instant action was not immediately appealable under the collateral order doctrine.

Vacated and remanded.

West Headnotes

[1] Federal Courts 170B ⚡572.1

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(C) Decisions Reviewable
170BVIII(C)2 Finality of Determination

170Bk572 Interlocutory Orders Appealable

170Bk572.1 k. In General. Most Cited Cases

The statutory authority of the Courts of Appeals to review all "final decisions" of the district courts includes appellate jurisdiction over a narrow class of decisions that do not terminate the litigation but are sufficiently important and collateral to the merits that they should nonetheless be treated as final. 28 U.S.C.A. § 1291.

[2] Federal Courts 170B ⚡572.1

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(C) Decisions Reviewable
170BVIII(C)2 Finality of Determination
170Bk572 Interlocutory Orders Appealable

170Bk572.1 k. In General. Most Cited Cases

The "collateral order doctrine" is best understood not as an exception to the final decision rule laid down in statute which gives courts of appeals jurisdiction over all final decisions of district courts that are not directly appealable to the Supreme Court, but as a practical construction of the rule. 28 U.S.C.A. § 1291.

[3] Federal Courts 170B ⚡572.1

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(C) Decisions Reviewable
170BVIII(C)2 Finality of Determination
170Bk572 Interlocutory Orders Appealable

170Bk572.1 k. In General. Most Cited Cases

The "collateral order doctrine" accommodates a small class of rulings, not concluding the litigation, but conclusively resolving claims of right that are separable from, and collateral to, rights asserted in

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661 A.2d 691
 339 Md. 150, 661 A.2d 691
 (Cite as: 339 Md. 150, 661 A.2d 691)

H

Court of Appeals of Maryland.
 PORTER HAYDEN COMPANY

v.
 COMMERCIAL UNION INSURANCE COM-
 PANY.

No. 132 Sept. Term, 1993.

July 17, 1995.

Reconsideration Denied Aug. 17, 1995.

Insured installer of asbestos containing insulation products sought declaratory judgment that liability insurer had duty to defend and indemnify it in connection with products liability lawsuits. The Circuit Court, Baltimore City, Hilary D. Caplan, J., entered judgment in favor of insured on fewer than all claims. Insurer appealed. The Court of Special Appeals, Harrell, J., 97 Md.App. 442, 630 A.2d 261, reversed. Certiorari was granted. The Court of Appeals, Eldridge, J., held that there was no final appealable judgment.

Judgment of Court of Special Appeals vacated, case remanded.

West Headnotes

[1] Declaratory Judgment 118A ◀392.1

118A Declaratory Judgment
 118AIII Proceedings
 118AIII(H) Appeal and Error
 118Ak392 Appeal and Error
 118Ak392.1 k. In General. Most Cited

Cases

No appealable final judgment resulted from partial summary judgment in favor of insured, dismissal of liability insurer's counterclaims, and denial of insurer's motions for summary judgment; insured's motion sought declaratory judgment only with respect to two policies, trial court did not certify final judgment as to fewer than all claims, and dismissal of counterclaims did not dispose of all

coverage issues. Code, Courts and Judicial Proceedings, §§ 12-301 et seq., 12-303 et seq.; Md.Rule 2-602(a, b).

[2] Appeal and Error 30 ◀78(1)

30 Appeal and Error
 30III Decisions Reviewable
 30III(D) Finality of Determination
 30k75 Final Judgments or Decrees
 30k78 Nature and Scope of Decision
 30k78(1) k. In General. Most Cited

Cases

Denial of motion for summary judgment is ordinarily not final judgment from which appeal may be taken. Code, Courts and Judicial Proceedings, §§ 12-301 et seq., 12-303 et seq.

[3] Appeal and Error 30 ◀72

30 Appeal and Error
 30III Decisions Reviewable
 30III(D) Finality of Determination
 30k67 Interlocutory and Intermediate Decisions
 30k72 k. Affecting Collateral Matters and Proceedings. Most Cited Cases
 Under certain circumstances, denial of motion for summary judgment may be appealable under collateral order doctrine.

*691 *151 Louis G. Close, Jr. (Leigh S. Halstad, Whiteford, Taylor & Preston, all on brief), Baltimore, and Leigh S. Halstad, Baltimore, for petitioner.

Theodore A. Howard (Richard H. Gimer, Richard A. Iff, Hopkins & Sutter, all on brief), Washington, DC, for respondent.

**692 Argued before MURPHY, C.J., and ELDRIDGE, RODOWSKY, CHASANOW, KARWACKI, BELL and RAKER, JJ.

County Council of Baltimore County Maryland

Legislative Session 1978, Legislative Day No. 10

BILL NO. 30-78

Mr. John W. O'Rourke, Councilman

By the County Council, April 3, 1978

A BILL ENTITLED

AN ORDINANCE to allow shoreline fishing AND SHELL FISHING facilities, by special exception, in D.R. zones in addition to permitting the continuation of existing shoreline fishing AND SHELLFISHING facilities in such zones, by repealing the definitions of "commercial fishing, crabbing, and shellfishing operation" and enacting in lieu thereof the definitions "fishing AND SHELLFISHING facility, shoreline, fishing AND SHELLFISHING facility, shoreline, Class I, and fishing AND SHELLFISHING facility, shoreline, Class II" in Section 101 of the Baltimore County Zoning Regulations; by repealing and re-enacting subparagraph 1A01.2.C.6, 1A02.2.B.10, 1A04.2.B.7; and by adding new subparagraph 7A to paragraph 1B01.1.C; all of the Baltimore County Zoning Regulations.

WHEREAS, the County Council has received a final report from the Baltimore County Planning Board, and has held a public hearing thereon, recommending the adoption of legislation allowing shoreline fishing AND SHELLFISHING facilities by special exception in D.R. zones in addition to permitting the continuation of existing shoreline fishing AND SHELLFISHING facilities in such zones; and

WHEREAS, the County Council has determined that the adoption of the legislation referred to herein is in the best interests of the citizens of Baltimore County and that it affects

Case No: 11-051-SPH

Case Name: Andrew + Stephanie Mattes

Exhibit List

Party: Protestants

Date: May 8, 2012

Exhibit No:	Description:
1	Petition for Special Hearing
2	statement of: Theresa Guckert
3	letter from Bill Porter 4-5-10
4	letter from Isabelle Sprinkle 4-5-10
5	Kentco. Board of Ed v. Bilbrough
6	Seminary Galleria LLC v. D.V. Improvement Assoc.
VERIFIED BY	trw DATE: 5/8/12



Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 2534 Island View Road, Baltimore, MD 21221
which is presently zoned RC-5

(This petition **must** be filed in person, in the zoning office, in triplicate, with original signatures.)

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

(This box to be completed by planner)

To invalidate a fishing and shell fishing facility for non-conforming use or otherwise. Other reasons to be presented at the hearing.

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:

PETITIONER: Theresa J. Guckert

Name - Type or Print

Theresa J. Guckert

2530 Island View Road 410-391-3521

Address Telephone No.

Baltimore MD 21221

City State Zip Code

Attorney For Petitioner:

Name - Type or Print

Signature

Company

Address Telephone No.

City State Zip Code

Legal Owner(s):

ANDREX J. MATTES, 3RD

Name - Type or Print

Signature

STEPHANIE L. MATTES

Name - Type or Print

Signature

2534 ISLANDVIEW ROAD

Address Telephone No.

BALTO. MD. 21221

City State Zip Code

Representative to be Contacted:

James s. Brown

Name

2502 Island View Road 443-386-1741

Address Telephone No.

Baltimore MD 21221

City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

Case No. _____

REV 9/15/98

UNAVAILABLE FOR HEARING _____

Reviewed By _____ Date _____

Pro. Ex #1 Mattes CBA-11-051-SPH 5-8-12

Statement of :
Theresa Guckert
2530 Island View Road
Essex, MD 21221

In 1926 my family moved to what is now known as 2530 Island View Road. I live in the house immediately next door to 2534 Island View Road. I have lived here for over 83 years. I have been very involved with many community organizations since the 1960s that are designed to protect the neighborhoods and the Environment on the Back River Neck Peninsula:

1. Barrision Point Improvement Association - member 1960's till present, serving as Secretary for one year.
2. Back River Neck Community Association - member 1980's till present, President for one year and Treasurer for 15 years.
3. Baltimore County Forestry Board - member and treasurer for 19 years till present
4. Essex Police Community Relations (concerned citizens interacting with police to maintain community relations) - Attend Monthly meeting for 15 years, Secretary 4 years.

The associations that I have worked with while living at 2530 Island View Road have helped to keep the Back River Neck Community clean, free of over-development and the environmentally critical areas protected from environmental insult. Since I have lived here - there has never been a licensed secondary crabbing and fishing facility in my neighborhood. Franklin D. Beck Sr. did performing fishing and crabbing until 1979, but he never had a commercial license..

Mr. and Mrs. D. Franklin Beck Sr. where married in June 1940 and bought the property (466 Barrison Road) that is currently 2534 Island View Road. Mr. Beck Sr. was a fisherman and crabber waterman from Havre de Grace. At 2534 Island View Road, he used only a trot line, never crab pots.

In the 1970s Dan Beck Jr. moved to 294-C Schaffers Road property across the creek. He did not own it but rented the property until Nov 10, 1986 when he then purchased the property know as 2358 Schaffers Road . He never moved back to Island View Road after moving to Schaffer Road across Brown's Creek. He also never fished from this property after

On 5-2-12
Matters
cBA-11-051-SPH 5-8-12

To: Zoning Commissioner
Baltimore County, MD

From: Bill Porter

Re: Fishing and Shell fishing facility at 2534 Island View Road

Date: April 5, 2010

I am writing to support my neighbors who oppose the commercial fishing and shell fishing facility at 2534 Island View Road. I own five of the few remaining undeveloped water front lots on Island View Road, that I inherited from my father about 10 years ago. These lots are in a highly desirable location, just ~200 feet from 2534 Island View Road [on the same side of the road as 2534 Island View Road].

Island View Road is too small to support such a facility and I fear that a commercial facility will take away from my residential property values. Such a commercial facility is out of place in this residential section of the neighborhood.

I expect that the proceeds from the sale of my property on Island View Road will soon be needed to support my much needed retirement funds. My health is deteriorating. I have advanced Parkinson's Disease and have lost sight in one eye with only partial sight in the second. I live in an assisted living facility in Rockville, MD.

Please condemn this fishing facility and help protect my property values.

Thank you for your consideration.

D. Donovan

cc: Dave Donovan

Pro. Ex # 3 Matters CAA 11-051-504 5-8-12

April 5, 2010

Mr. Wisemann
Zoning Commissioner
Baltimore County Gov.
Towson, Maryland 21204

Dear Mr. Wiseman,

I am writing to support the effort by Dave Donovan, Jim Brown and Theresa Guckert to have Baltimore County abolish the fishing facility at 2534 Island View Road. I lived at 2549 Barrison Point Road for 20 years (1967-1987). Daniel Beck Sr. and his wife May Beck resided at 466 Barrison Road (currently 2534 Island View Road during that time). My home at 2549 Barrison Point Road had a clear view of the Beck property on Island View Road. I am shocked that after 30 years of no fishing, this commercial operation is now allowed to reinstate in this residential neighborhood. I strongly object to this commercial fishing/crabbing operation at this location and ask that the county Code Enforcement terminate this business.

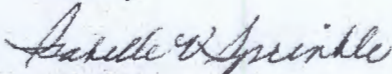
I moved away from Barrison Point in 1987 but I inherited my mothers property across the street from 466 Barrison Road (2534 Island View Road.) My property is located on Section C lots 22, 23, 24 and part of lot 21 of the area plat, and is currently for sale. With my property located immediately across the street from the commercial fishing/crabbing operation at 2534 Island View Road (the property owned by Andy and Stephanie Mattes), I am a highly impacted party by the commercial operation on Island View Road.

I live in Lancaster PA and monies I hope to obtain from the sale of my Island View Road property is an important part of my retirement income. The appearance of surrounding properties can be a very important factor for any potential buyer, and this is an even greater concern in such a down-turned economy. I am concerned that a commercial fishing and shell fishing facility will result in a greatly reduced property value for my property that I am currently trying to sell.

I strongly oppose re-starting a commercial fishing/crabbing operation at this location, and would very much like to see Baltimore County protect me and my property value from the negative impact that such a commercial facility will have on the neighborhood.

Thank you for your efforts on my behalf. Please call me if I can help by giving a more detailed listing of my concerns.

Sincerely,



Isabelle Sprinkle
1734 Saffin Cir
Lancaster, PA
17601-4650
Phone: 717-393-3640

5-8-12
Pro. Ex # 4 Mattes CBA-11-051-SPH

Case No: CBA 11-051-SPT Case Name: Andrew + Stephanie Matter

Exhibit List

Party: Petitioners / People's Counsel Date: 5-8-12

Exhibit No:	Description:
1	Time line created by People's Counsel
VERIFIED BY _____	DATE: _____

TIME: **GUCKERT I**
1978 USE PERMIT

GUCKERT II
2009 OPERATION

MOTIVE: TERMINATE OPERATION:

LIMIT SCOPE OF
OPERATION:

(1) WAS USE PERMIT
LAWFULLY ISSUED?

(1) DOES CURRENT
USE EXCEED
SCOPE OF PERMIT?

(2) DOES PERMIT PASS
TO CURRENT OWNERS?

(3) DOES PERMIT LAPSE
FOR NONUSE?

SPACE:

CRAB POTS NOT ISSUE

CRAB POTS v. TROT LINE

CONDUCTED AT
BULKHEAD

CONDUCTED ON ENTIRE
LOT

VOLUME OF CATCH &
CUSTOMERS NOT ISSUE

VOLUMES CRUCIAL
TO INTENSIFICATION &
EXPANSION ISSUES

ORIGIN:

1978 PERMIT AND
PRE-1978 USE

2009 USE

PROCESS:

PETITION FOR SPECIAL
HEARING TO INVALIDATE
A FISHING FACILITY
PERMIT

PETITION FOR SPECIAL
HEARING TO PROHIBIT
EXPANSION AND
INTENSIFICATION OF
FISHING FACILITY BEYOND
1978 PERMIT AUTHORIZATION

PARTIES: DAN BECK JR (RESIDENT
IN 1978?)

MATTES FISHING FACILITY

TRIAL UNIT: NOTICE FOR ILLEGAL
PERMIT ISSUE ONLY

NOTICE FOR ILLEGAL
EXPANSION/
INTENSIFICATION

PARTIES'

EXPECTATION: ZC WISEMAN LIMITS
ISSUES

ZC WISEMAN INSTRUCTS
NEW PLEADING

(1) WHETHER THE ACTS COMPLAINED OF AND THE DEMAND FOR RELIEF ARE THE SAME

ORIGINAL PERMIT IN 1978 v. HOW SITE IS USED BY MATTES IN 2009

(2) WHETHER THE THEORY OF RECOVERY IS THE SAME

TERMINATE FISHING FACILITY v. LIMIT SCOPE OF FISHING FACILITY

(3) WHETHER THE WITNESSES AND DOCUMENTS NECESSARY AT THE TRIAL ARE THE SAME

PERMIT APPLICATION, 1978 FACTS v. WITNESSES OF CURRENT OPERATION

(4) WHETHER THE *MATERIAL* FACTS ALLEGED ARE THE SAME

DID PROPER PARTY APPLY FOR PERMIT AND UTILIZE SITE v. HAS THE USE CHANGED FROM 1978 TO CURRENT

LS 11/8
10Am

Case No.: 2011-0051-SPH (Remand)

Exhibit Sheet

Petitioner Developer

Protestant

No. 1	Application & OSE PERMIT -10-9-78	
No. 2	PHOTOS OF SITE	
No. 3	TRAFFIC LOG	
No. 4		
No. 5		
No. 6		
No. 7		
No. 8		
No. 9		
No. 10		
No. 11		
No. 12		

APPLICATION FOR ZONING
USE PERMIT

This Use Permit is requested in accordance with Section 500.4 and B.Co.Bill 98-75 of the Baltimore County Zoning Regulations.

The property in question is situated in the 15th Election District of Baltimore County, and is more specifically located on the south side of Barrison Road, 9/10 mi. feet south of Holly Neck Road. The total net area is 25,200 sq. feet. This property is presently zoned RC-5

The use for which this permit is requested is commercial fishing crabbing and shellfish operation, wholesale & retail sale of crabs and fish. The following items will be utilized in the operation and/or will be stored on the premises: storage of nets, crab pots, boats, anchors, walk-in box live boxes and other miscellaneous equipment used in the operation thereof, berthing of fishing boat, loading & unloading of catches and gear. Approximately 50 percent of the total net area of the property will be utilized in the operation.

Said use is more specifically detailed on the attached scale drawing.

Daniel Beck
Daniel Beck Lessee
Address 294-C Schaffers Road
Baltimore, Md. 21221

D. Franklin Beck, Sr.
D. Franklin Beck, Sr.
Mae Beck
Mae Beck Legal Owner
Address 466 Barrison Road
Baltimore, Maryland 21221

IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 9th day of Oct, 1978, that the herein described property should be and the same is hereby approved as a secondary Commercial fishing, crabbing and shellfishing operation.

PETITIONER'S

EXHIBIT NO. 1

[Signature]
Zoning Commissioner of
Baltimore County



EXHIBIT NO.

2

PETITIONER'S



Page 2





Page 3



①

June 22, 2011

Hearing at 9:15 A.M. Andy was at the hearing, therefore, he could have on the boat. The boat came in at 2:15 P.M.

6-23-11 Boat did not go out

6-28 Scooter + Red Truck

6-29 Red Truck

6-30 Scooter + Red Truck

7-1 Scooter + Red Truck

7-2 Red Truck

Sunday 7-3 " " + Blue Gray Truck

~~Sunday~~ 7-4 " " (Holiday) "

7-5 " " + Blue Gray Truck

7-6 " " " " "

7-7 " " " " "

7-8 " " " " "

7-9 " " " " "

7-10 Sunday

7-11 " " " " "

7-12 " " " " "

7-13 " " " " "

7-14 " " " " "

7-15 " " " " "

7-16 " " " " "

7-17 Sunday

PETITIONER'S
EXHIBIT NO. 3

(2)

7-18-11 Red & Blue Gray Truck

7-19

7-20

7-21

7-22

7-23

7-24 Sunday

7-25 Red Truck

7-26 Red truck & Blue Gray ~~Plus Red Van 38015 M1~~

7-27 " " Plus Red Van 38015 M1

7-28

7-29

7-30

7-31 Sunday

8-1 Red & Blue truck

8-2

8-3 ~~Red~~ Gray truck washed Pats from 8:00 A.M. till 3:50 P.M.

8-4 Both trucks

8-5 " " Washed Pats

8-6 Started to Store Pats

8-7 Sunday Blue Gray truck washing Pats

8-8 I was not home

8-9

8-10 Returned home late noticed more pats stored

8-11 Both trucks

8-12 No trucks Motorcycle Washing Pats ^{my} Blue truck came in late

8-13-11 Both trucks

8-14 Sunday

8-15 Blue Grey truck. Washing pots before 8:10 A.M.

8-16 Red truck

8-17 Both trucks washing pots

8-18 Blue Grey truck

8-19 Red truck in after 8. Blue Grey truck. Washing pots

8-20 Both trucks

8-21 Sunday - Both trucks

8-22 Both trucks left 12:30 Returned after 1:00 P.M.

8-23 Both trucks left 1:45 P.M.

8-24 Both trucks

8-25 Both trucks

8-26 Both trucks - odor from unwashed pots

8-27 Both trucks left early

8-28 Sunday

8-29 Both trucks

8-30 Both trucks. Notice pots on other side of house. Red Van 9:30 P.M.

8-31 Both trucks + Red Van

9-1 Both trucks + Red Van

9-2 Both trucks + Red Van

9-3 Blue Grey Truck

9-4 Sunday Crab truck went out

9-5 Blue Grey truck - Crab truck went out

9-6 Both trucks left around 1:30 P.M. Crab truck went out

Case No.:

2011-0051-SPH

Exhibit Sheet

RESPONDENT

Petitioner/Developer

Protestant

No. 1	Petition For Special Hearing - 2010-0220 SPH	
No. 2	MEMORANDUM AND ORDER 4-19-10 COMMISSIONER 2010-0220 SPH WISEMAN ET AL	
No. 3	RULING ON PETITIONERS' MOTION FOR RECONSIDERATION 2010-0220 ET AL 1-22-10 TO 6-1-10	
No. 4	RULING ON Motion to Dismiss 2011-0051-SPH 12-20-10	
No. 5	APPEAL FROM DENIED MOTION TO DISMISS - Bd. of APPEALS-Order/Remand 8-2-11	
No. 6	MOTION TO DISMISS 2011-0051-SPH 9-28-10	
No. 7	BALTIMORE COUNTY COUNCIL BILL # 139-83	
No. 8	PHOTOS OF SITE A & B	
No. 9		
No. 10		
No. 11		
No. 12		



Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 2534 Island View Road, Baltimore, MD 21221
which is presently zoned RC-5

(This petition **must** be filed in person, in the zoning office, in triplicate, with original signatures.)

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

(This box to be completed by planner)

To invalidate a fishing and shell fishing facility for non-conforming use or otherwise. Other reasons to be presented at the hearing.

RESPONDENT' S

EXHIBIT NO. 1

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.

PETITIONER: Theresa J. Guckert

Name - Type or Print

Theresa J. Guckert

Signature

2530 Island View Road 410-391-3521

Address

Baltimore

MD

21221

City

State

Zip Code

Attorney For Petitioner:

Name - Type or Print

Signature

Company

Address

Telephone No.

City

State

Zip Code

Legal Owner(s):

ANDREW J. MATTES, 3 RD

Name - Type or Print

Signature

STEPHANIE L. MATTES

Name - Type or Print

Signature

2534 ISLAND VIEW RD

Address

BALTO

MD

Telephone No.

21221

City

State

Zip Code

Representative to be Contacted:

James s. Brown

Name

2502 Island View Road

443-386-1741

Address

Baltimore

MD

21221

City

State

Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

Case No. 2010-0220-SPH

REV 9/15/98

UNAVAILABLE FOR HEARING

Reviewed By ru

Date

2/22/10

IN RE: PETITION FOR SPECIAL HEARING *

NW/Side Island View Road, 208' SW/Side of *

Barrison Point Road *

(2534 Island View Road) *

15th Election District *

6th Council District *

Andrew J. Mattes, III, et ux, *

Legal Owners/Respondents *

Theresa J. Guckert, et al *

Petitioners

BEFORE THE

ZONING COMMISSIONER

OF

BALTIMORE COUNTY

Case No. 2010-0220-SPH

* * * * *

MEMORANDUM AND ORDER

STATEMENT OF THE CASE

RESPONDENT' S

EXHIBIT NO. 162

This zoning case involves 2534 Island View Road, formerly 466 Barrison Road, in eastern Baltimore County. On October 5, 1977, Robert J. Romadka, Esquire, on behalf of the then property owners, D. Franklin Beck, Sr. and Mae M. Beck, his wife, and their son, Daniel F. Beck, Jr., filed an application for a Zoning Use Permit and site plan for a "Commercial fishing, crabbing and shellfishing operation".¹ This application was submitted consistent with Baltimore County Council Bill No. 98-75 and Section 500.4 of the Baltimore County Zoning Regulations (B.C.Z.R.). An inspection of the property was conducted on June 13, 1978. On October 9, 1978 Zoning Commissioner S. Eric DiNenna (also deceased) issued a Use Permit to use 50% of the land "as a secondary commercial fishing, crabbing and shellfishing operation". This matter now comes before the undersigned Zoning Commissioner for consideration of a Petition for Special Hearing filed by adjacent neighbor, Theresa J. Guckert (2530 Island View Road), and

¹ D. Franklin Beck (12/1/79) and Mae Beck (7/14/08) departed this world vesting title to the property in Daniel F. Beck, Jr. who sold the land and improvements to Andrew J. Mattes, III and Stephanie L. Mattes, his wife, on February 3, 2009.

RESPONDENT' S

EXHIBIT NO.

No 3

IN RE: PETITION FOR SPECIAL HEARING *

NW/Side Island View Road, 208' SW/Side of *

Barrison Point Road *

(2534 Island View Road) *

15th Election District *

6th Council District *

Andrew J. Mattes, III, et ux, *

Legal Owners/Respondents *

Theresa J. Guckert, et al *

Petitioners

BEFORE THE

ZONING COMMISSIONER

OF

BALTIMORE COUNTY

Case No. 2010-0220-SPH

* * * * *

RULING ON PETITIONERS' MOTION FOR RECONSIDERATION

This matter comes before the Zoning Commissioner on a Motion for Reconsideration filed by Petitioners', Theresa J. Guckert, James S. Brown and David M. Donovan, of the decision rendered in the above-captioned matter. The Motion is filed pursuant to Rule 4K of Appendix G of the Baltimore County Zoning Regulations (B.C.Z.R.), wherein the Rules of Practice and Procedure before the Zoning Commissioner are provided. Rule 4K permits a party to file a Motion for Reconsideration within thirty (30) days of an Order issued. The Motion must state with specificity the grounds and reasons for the request.

The validity of the existing Use Permit having been decided and no longer at issue – Petitioners' by way of their Motion for Reconsideration now seek a finding that the fishing and shellfishing operation at the subject property is operating at an intensity that is above that which was grandfathered in 1978 when the Use Permit was issued. As more particularly set forth in my Order, dated April 19, 2010, the issue originally presented in the underlying Petition for Special Hearing involved a request "to invalidate a fishing and shellfishing facility *for non-conforming use or otherwise*. On May 10, 2010, the Petitioners in their Motion introduce for consideration

RESPONDENT' S

EXHIBIT NO.

Nb4

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
NW/S Island View Road, 208' NW c/line of		
Barrison Point Road	*	ZONING COMMISSIONER
(2534 Island View Road)		
15 th Election District	*	OF
6 th Council District	*	
	*	BALTIMORE COUNTY
Andrew J. Mattes, III, et ux,		
Owners/Respondents	*	
Theresa J. Guckert, et al	*	Case No. 2011-0051-SPH
Petitioners		

* * * * *

RULING ON MOTION TO DISMISS

This matter comes before the Zoning Commissioner on a Motion to Dismiss the Petition filed by Sebastian A. Cross of Gildea & Schmidt, LLC on behalf of Legal Owners/Respondents, Andrew J. Mattes, III and Stephanie L. Mattes, his wife.¹ The Office of People's Counsel and the Petitioners, Theresa Guckert, David Donovan and James Brown, filed an Opposition to the Motion, and the parties appeared before the Zoning Commissioner for a motions hearing on November 18, 2010. As will be explained in greater detail, I find that the instant petition is not barred by *res judicata* and the Motion to Dismiss will therefore be denied.

BACKGROUND

The parties to this matter previously appeared before the Zoning Commissioner on a Petition for Special Hearing where the Petitioners attempted to "invalidate a fishing and shell fishing facility for non-conforming use or otherwise." See Case No. 2010-0220-SPH. Following a public hearing that was attended by numerous interested persons, the Zoning Commissioner

¹ The Motion to Dismiss a preliminary motion filed to exclude a hearing on the merits of the Petition for Special Hearing filed by neighboring property owners who seek to restrict or limit the commercial fishing and crabbing activities at 2534 Island View Road. Specifically, Petitioners have requested a hearing to determine whether the scope and intensification of fishing and shellfishing allowed by the use permit has been exceeded.

RESPONDENT'S

EXHIBIT NO.

No 5

RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE COUNTY
NW/Side of Island View Road, 208' SW/Side	*	BOARD OF APPEALS
of Barrison Point Road	*	
2534 Island View Road	*	FOR
15 th Election & 6th Councilmanic Districts	*	
Legal Owner(s): P.G. Developers, LLC	*	BALTIMORE COUNTY
Andrew J. Mattes, III et ux,	*	
Legal Owners/Respondents	*	
Theresa J. Guckert, et al	*	
Petitioner(s)	*	Case No. 11-051-SPH

* * * * *

APPEAL FROM DENIED MOTION TO DISMISS

OPINION AND REMAND ORDER

This matter comes before the Board as an Appeal from a denial of a Motion to Dismiss Petition based on the principles of *Res Judicata* filed by Petitioners Andrew J. Mattes, III and Stephanie L. Mattes, his wife. The Motion was denied by Zoning Commissioner William Wiseman on December 20, 2010 and subsequently appealed to this Board. On May 10, 2011, the Board of Appeals convened for oral argument only on the Motion to Dismiss. Lawrence E. Schmidt appeared on behalf of the Respondents/Appellants. Peter Max Zimmerman of the Office of People's Counsel appeared in opposition to the Appeal as well. The Petitioners appeared *pro se*. Oral arguments were heard and memorandums were submitted by the parties. A Public Deliberation was held on June 22, 2011.

BACKGROUND

The parties to this matter previously appeared before the Zoning Commissioner on a Petition for Special Hearing where the Petitioners attempted to "invalidate a fishing and shell fishing facility for non-conforming use or otherwise." See Case No. 2010-0220-SPH. Following a public hearing that was attended by numerous interested persons, the Zoning Commissioner issued an Order dated April 19, 2010 denying the Petition for Special Hearing and finding that

IN RE: PETITION FOR SPECIAL HEARING
NW/Side Island View Road, 208' SW/
Side of Barrison Point Road
15th Election District
6th Councilmanic Districts

Andrew J. Mattes, III, et ux,
Legal Owners/Respondents

Theresa J. Guckert, et al
Petitioners

* BEFORE THE
* ZONING COMMISSIONER
* OF
* BALTIMORE COUNTY
*
* Case No. 2011-051-SPH

* * * * *

MOTION TO DISMISS

Legal Owner/Respondent, Andrew J. Mattes, III, by and through his attorneys, Lawrence E. Schmidt, Sebastian A. Cross and Gildea & Schmidt, LLC, hereby files this Motion to Dismiss this matter with prejudice. The grounds of the Motion are as follows:

I. STATEMENT OF FACTS

This zoning case involves 2534 Island View Road, formerly 466 Barrison Road, in eastern Baltimore County. On October 5, 1977, Robert J. Romadka, Esquire, on behalf of the then property owners, D. Franklin Beck, Sr. and Mae M. Beck, his wife, and their son, Daniel F. Beck, Jr., filed an application for a Zoning Use Permit and site plan for a "Commercial fishing, crabbing and shellfishing operation". This application was submitted consistent with Baltimore County Council Bill No. 98-75 and Section 500.4 of the Baltimore County Zoning Regulations (B.C.Z.R.). In connection with the application, an inspection of the property was conducted on June 13, 1978. On October 9, 1978, Zoning Commissioner S. Eric DiNenna (deceased) issued a Use Permit to use 50% of the land "as a secondary commercial fishing, crabbing and shellfishing operation."

The instant matter first came before the Zoning Commissioner for consideration of a Petition for Special Hearing filed by adjacent neighbor, Theresa J. Guckert (2530 Island View Road), and interested residents David M. Donovan and James S. Brown (2502 Island View Road). As filed,

RESPONDENT' S

EXHIBIT NO.

NO 6

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 1983, Legislative Day No. 22
BILL NO. 139-83

Mr. Lauenstein, Councilman

RESPONDENT'S

By the County Council, October 17, 1983

EXHIBIT NO. 7

A BILL
ENTITLED

AN ACT concerning

Fishing, Crabbing and Shellfishing Operations

FOR the purpose of ratifying and approving certain use permits issued under the authority of Bill No. 98-75 regarding fishing, crabbing and shellfishing operations; ratifying all actions taken by certain officials in the approval of such permits; and requiring compliance with all applicable Zoning Regulations with respect to any extension of such operations.

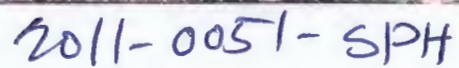
1. SECTION 1. Be it enacted by the County Council of Baltimore County, Maryland, that
2. all use permits issued or approved by the Zoning Commissioner or Deputy Zoning Commis-
3. sioner prior to January 1, 1979, and allowing the continuation of existing commercial
4. fishing, crabbing and shellfishing operations primary or secondary (now known as fishing
5. and shellfishing facilities, shoreline Class I and Class II) be and they are hereby
6. ratified, reinstated and approved.

7. SECTION 2. And be it further enacted, that all actions taken by the Zoning Com-
8. missioner or Deputy Zoning Commissioner in issuing or approving said use permits under
9. the authority, or purported authority, of Council Bill No. 98-75, are hereby ratified,
10. reinstated and approved.

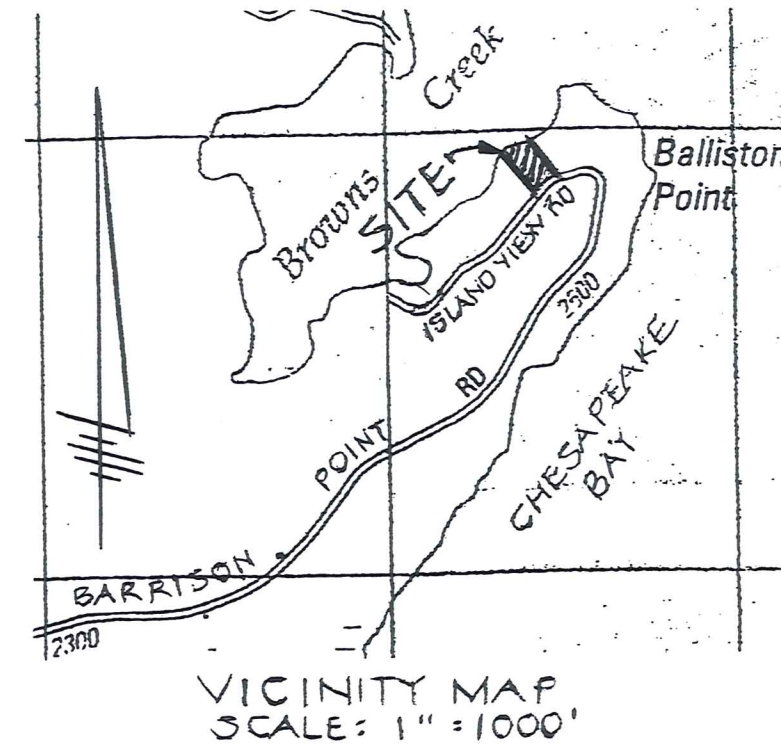
11. SECTION 3. And be it further enacted, that nothing contained herein shall be
12. construed to authorize the extension, expansion or intensification of any commercial
13. fishing, crabbing and shellfishing operations, primary or secondary, or fishing and
14. shellfishing facilities, shoreline, Class I and II, beyond that indicated in the plans
15. accompanying the application for use permit unless and until the applicant shall have
16. complied with all applicable Zoning Regulations, including but not limited to the peti-
17. tioning for the grant of a Special Exception for any extension or intensification of use,
18. and that failure to comply with such Zoning Regulations shall subject the applicant to
19. all applicable penalties, including a civil penalty.

20. SECTION 4. And be it further enacted, that this Act shall take effect forty-five
21. days after its enactment.

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.



OWNER
 ANDREW J. MATTES, 3RD
 STEPHANIE L. MATTES
 2534 ISLAND VIEW ROAD
 BALTIMORE, MD. 21221-6411
 L. 27604 F. 293 ACCT. NO. 2100014765



NOTES

1. ZONING.....RC.5 (MAP 105B2)
2. AREA.....21,860 S.F. = 0.502 ACRE +/-
3. PUBLIS WATER AND SEWER
4. NO HISTORIC STRUCTURES, ARCHEOLOGICAL SITE OR UNDERGROUND STORAGE TANKS EXIST
5. SITE IS LOCATED IN THE CBCA
6. A PORTION OF THE SITE IS LOCATED IN THE 100 YEAR FLOOD ZONE
7. BUILDING COVERAGE.....7.3 %

PREVIOUS ZONING HISTORY

- USE PERMIT FOR COMMERCIAL FISHING, CRABBING AND SHELLFISHING OPERATION GRANTED OCTOBER 9, 1978
- USE PERMIT RATIFIED IN BILL 139-83
- PUBLIC HEARING: CASE # 2010-0220-SPH
 DECISION APRIL 19, 2010 - USE PERMIT IS VALID
 MOTION FOR RECONSIDERATION: DECISION JUNE 1, 2010
 NEW HEARING IS REQUIRED TO EXAMINE INTENSITY OF FISHING AND SHELLFISHING

**PLAT TO ACCOMPANY PETITION
 FOR SPECIAL HEARING
 2534 ISLAND VIEW ROAD
 ELECTION DISTRICT 15C6
 BALTIMORE COUNTY, MD
 SCALE: 1 INCH = 30 FEET FEB. 19, 201**

