

IN RE: DEVELOPMENT PLAN HEARING & \*  
PETITION FOR SPECIAL HEARING \*  
(12170 Falls Road) \*  
8<sup>th</sup> Election District \*  
2<sup>nd</sup> Council District \*  
(BECKER PROPERTY – 1<sup>st</sup> Material \*  
Amendment to 2<sup>nd</sup> Refined Plan) \*  
Arthur H. Becker, Jr. (Trustee) & \*  
Nancy D. Miller (Trustee), *Owners* \*  
Gaylord Brooks, *Developer*

BEFORE THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
FOR  
BALTIMORE COUNTY  
HOH Case No. 08-0791 &  
Zoning Case No. 2016-0091-SPH

\* \* \* \* \*

**ORDER ON DEVELOPER'S MOTION FOR RECONSIDERATION**

On August 11, 2016, Developer filed a motion for reconsideration and request for hearing in the above case. The Protestants on August 19, 2016, filed a response to the motion. Having reviewed both papers, I believe the motion must be denied.

The Developer's motion suggests the Administrative Law Judge (ALJ) should convene a public hearing to take "additional testimony, including the presentation of a revised plan involving a reduction of lots and access via a private use-in-common drive." Protestants argue granting such a request would be unfair, and they contend nothing in the Code authorizes the ALJ to grant such a request. I concur.

Whether or not granting the request would be unfair, I agree with Protestants that nothing in the development regulations authorizes or contemplates such a procedure. To the extent Developer seeks approval of a plan other than the one presented at the hearing, such a plan must first be reviewed and commented upon by County agencies. The ALJ is not authorized to approve a development plan that has not been reviewed by County staff.

THEREFORE, IT IS ORDERED by this Administrative Law Judge/Hearing Officer for Baltimore County, this 23<sup>rd</sup> day of **August, 2016**, that the Motion for Reconsideration, be and is hereby DENIED.

ORDER RECEIVED FOR FILING

Date 8-23-16

By DS

Any appeal of this Order shall be taken in accordance with Baltimore County Code,  
§ 32-4-281.

  
\_\_\_\_\_  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County

JEB/sln

ORDER RECEIVED FOR FILING

Date 8-23-16

By sw

IN RE: DEVELOPMENT PLAN HEARING & \*  
PETITION FOR SPECIAL HEARING \*  
(12170 Falls Road) \*  
8<sup>th</sup> Election District \*  
2<sup>nd</sup> Council District \*  
(BECKER PROPERTY – 1<sup>st</sup> Material \*  
Amendment to 2<sup>nd</sup> Refined Plan) \*  
Arthur H. Becker, Jr. (Trustee) & \*  
Nancy D. Miller (Trustee), *Owners* \*  
Gaylord Brooks, *Developer*

BEFORE THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
FOR  
BALTIMORE COUNTY  
**HOH Case No. 08-0791 &  
Zoning Case No. 2016-0091-SPH**

\* \* \* \* \*

**ADMINISTRATIVE LAW JUDGE'S (ALJ) COMBINED  
DEVELOPMENT PLAN AND ZONING OPINION & ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County for a public hearing on a development proposal submitted in accordance with Article 32, Title 4, of the Baltimore County Code ("B.C.C."). G. Scott Barhight, Esquire and Jennifer R. Busse, Esquire, with Whiteford, Taylor & Preston, LLP, on behalf of Arthur H. Becker, Jr. (Trustee) and Nancy D. Miller (Trustee), *Owners* of the subject property, and Gaylord Brooks, *Developer*, (hereinafter "the Developer"), submitted for approval a four-sheet redlined Development Plan ("Plan") prepared by Morris & Ritchie Associates, Inc., known as "Becker Property, 1<sup>st</sup> Material Amendment to the 2<sup>nd</sup> Refined Development Plan."

This case concerns the "northern pod" referenced in former Deputy Zoning Commissioner Murphy's 2006 Order (Protestants' Exhibit 14) involving a prior development project at the site. The tract at issue in this case (identified as Lot 10 on the earlier plan) is approximately 59 acres split-zoned RC 4 and RC 5. The Developer proposes to subdivide Lot 10 and construct eight (8) single family dwellings on the subject property.

The Developer also has filed a Petition for Special Hearing pursuant to § 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) as follows:

ORDER RECEIVED FOR FILING

Date 8-5-16

By [Signature]

- From the Baltimore County Zoning Commissioner's Policy Manual § 1A00.5.b to permit a lot (Lot 13) with a total acreage of 1.62 acres to have .4 of an acre in the RC 5 zone in lieu of the required 1.5 acres;
- From the Baltimore County Zoning Commissioner's Policy Manual § 1A00.5.b to permit a lot (Lot 14) with a total acreage of 1.62 acres to have a 1.18 acres in the RC 5 zone in lieu of the required 1.5 acres;
- From the Baltimore County Zoning Commissioner's Policy Manual § 1A00.5.b to permit a principal dwelling to be split between RC4 and RC5 for Lot 13 where sufficient density exists for the lot in each of the respective zones;
- From the Baltimore County Zoning Commissioner's Policy Manual § 1A00.5.b to permit well and septic reserve areas for Lots 10, 13 & 14 in a different zone than the proposed principal dwelling;
- To permit non-density parcels in the RC5 zone for Lots 10, 11 & 12;
- To permit a non-density parcel in the RC4 zone for Lot 14; and
- To amend the previously approved Final Development Plan (FDP)

Details of the proposed development are more fully depicted on the redlined four-sheet Development Plan that was marked and accepted into evidence as Developer's Exhibit 1A - 1D. The property was posted with the Notice of Hearing Officer's Hearing and Zoning Notice, both on November 17, 2015 in compliance with the regulations. The undersigned conducted hearings on December 17, 2015, May 16, 2016, and June 24, 2016, all at 10:00 AM, Room 205 of the Jefferson Building, 105 West Chesapeake Avenue, Towson, Maryland.

In attendance at the Hearing Officer's Hearing (HOH) in support of the Plan on behalf of the Developer was Nancy Miller, Art Becker, and Steve Smith. Also in attendance was Matthew A. Bishop, Senior Landscape Architect, with Morris & Ritchie Associates, Inc., the consulting firm that prepared the site plan. G. Scott Barhight, Esquire and Jennifer R. Busse, Esquire, with Whiteford, Taylor & Preston, LLP, represented the Developer. Michael McCann, Esquire

**ORDER RECEIVED FOR FILING**

Date 8-5-16

By [Signature]

represented the Falls Road Community Association ("F.R.C.A.") and Marcia Goldberg ("Protestants"). Several members of the community also attended the hearing and opposed the project. While their concerns covered a variety of issues, the primary contention was that the roadways and proposed access road would be unsafe and exacerbate an already dangerous situation along this stretch of Falls Road.

Numerous representatives of the various Baltimore County agencies who reviewed the Plan also attended the hearing, including the following individuals from the Department of Permits, Approvals and Inspections (PAI): Jan M. Cook, Project Manager, Dennis A. Kennedy (Development Plans Review [DPR]), Brad Knatz, Real Estate Compliance, and Aaron Tsui (Office of Zoning Review). Also appearing on behalf of the County were Jeff Livingston from the Department of Environmental Protection and Sustainability (DEPS), and Matt Diana from the Department of Planning (DOP).

During the preliminary portion of the hearing, each of the Baltimore County agency representatives identified above indicated that the redlined Development Plan (marked as Developer's Exhibit 1A – 1D) addressed any comments submitted by their agency, and they each recommended approval of the Plan. Mr. Diana confirmed that school enrollments would not exceed 115% of capacity as permitted under State law. Mr. Kennedy testified the Developer was granted a waiver under the Local Open Space regulations and will pay a fee of \$9,129 in lieu of providing the required open space. Mr. Kennedy also indicated his agency approved on November 2, 2015 a schematic Landscape Plan for the project.

In the "formal" portion of the case, the Developer presented several witnesses, including landscape architect Matt Bishop, professional engineer Josh Sharon, Steve Smith of Gaylord Brooks and traffic engineer Mickey Cornelius. The Protestants, in addition to presenting testimony

ORDER RECEIVED FOR FILING

Date 8-5-16

By DW

from members of the community, presented the testimony of traffic engineer Chris Tiesler. In this case, I do not believe it is necessary at this juncture to summarize the witness testimony. Both parties submitted post-hearing briefs which contain witness testimony summaries with page references to the transcript of the proceedings. In addition, the disputed issues in the case concern whether the existing and proposed roadways are safe (primarily with regard to the issue of sight distance) and whether the doctrine of res judicata is applicable. Relevant testimony will be identified as needed in considering these issues.

#### Res Judicata

In their post-hearing submission, Protestants contend that the Development Plan cannot be approved based on the doctrine of res judicata. Having considered the Protestants' argument and the cases cited in their brief, I am inclined to agree, as will be explained below.

Protestants correctly note that the doctrine of res judicata is applicable in quasi-judicial administrative proceedings. Seminary Galleria v. Dulaney Valley Improvement Association, 192 Md. App. 719, 734 (2010). And, even though the undersigned respectfully disagrees with several of the assertions and conclusions contained in former Deputy Zoning Commissioner Murphy's 2006 Order, the doctrine of res judicata applies even if the prior order was wrong. Esslinger v. Baltimore City, 95 Md. App. 607, 626 (1993).

In approving the development of the southern pod in 2006, Mr. Murphy at protestants' request incorporated several factual findings and/or legal conclusions pertaining to the northern pod. These findings were originally set forth in a 2004 order (Protestants' Exhibit 11) involving the project. This was done despite the fact the 2006 plan "did not propose any dwellings in the Northern Pod." Protestants' Memorandum, p.4. In my opinion, the 2006 plan constituted a "partial development plan," as that term is used in the Baltimore County Zoning Regulations (B.C.Z.R.)

**ORDER RECEIVED FOR FILING**

Date 8-5-16

By DW

§ 1B01.3.A.2 (which is applicable in the R.C. zones per B.C.Z.R. § 1A004). As such, I do not believe it was appropriate for the hearing officer to impose conditions with respect to that portion of the plan, which was labeled for "future development." Even so, the conditions were imposed in the 2006 order and that decision was not appealed which, as noted below, has consequences for the present case.

In the 2004 Order denying development of the northern pod (Protestants' Exhibit 11), Mr. Murphy cited three reasons for his decision: (1) inadequate intersection sight distance; (2) the proposed access road was not aligned with Hickory Hill Road; and (3) the proposed access was designated as a public road. Id. at pp. 28-30. Though these findings were initially stricken in response to Developer's Motion for Reconsideration, Mr. Murphy again emphasized in a 2006 Order that the factual findings and legal conclusions set forth in his 2004 Order would be applicable to any future development of the northern pod (i.e., Lot 10). Protestants' Exhibit 14, p. 19. If the Developer did not want to be burdened by these restrictions, I believe it was incumbent upon it to appeal that aspect of the order.

Peachwood Road is designated as "public" on the Development Plan (Developer's Exhibit 1C), the proposed access does not align with Hickory Hill Road and both traffic experts testified the AASHTO intersection sight distance standard was not met. This was also the case when Mr. Murphy issued his Order in 2006 withholding approval of the northern pod (i.e., Lot 10). That Order was not appealed, and as such I believe the doctrine of res judicata stands as an obstacle to the approval of the Development Plan.

Though to this point couched as "res judicata," I believe the more appropriate terminology is collateral estoppel, which is also applicable in quasi-judicial administrative determinations.

Batson v. Shiflett, 325 Md. 684, 702 (1992). While this may largely be an issue of semantics, res

ORDER RECEIVED FOR FILING

Date 8-5-16

By OW

judicata refers to claim or case preclusion while collateral estoppel pertains to issue preclusion. Long Green Valley Ass'n. v. Bellevale Farms, Inc., 432 Md. 292 (2013). The Developer was at liberty to submit a revised plan for Lot 10; in fact, the 2006 Order envisioned that it would do so, and the prior plan identified the area for "future development." As such, technically speaking, it is not res judicata but collateral estoppel (i.e., the issues and conditions set forth in the 2006 Order) which prevents me from approving the plan.

Of course, res judicata and/or collateral estoppel will not apply if the later case is "distinct" from the earlier proceeding, or if there has been a change in circumstances. Id.; Seminary, 192 Md. App. at 737. But the case law indicates the changes must be "substantial," and in this case the only salient difference between the plans is that the current proposal is for 8 rather than 10 lots. I do not believe this is sufficient to render either doctrine inapplicable.

THEREFORE, IT IS ORDERED by this Administrative Law Judge/Hearing Officer for Baltimore County, this 5<sup>th</sup> day of **August, 2016**, that the **"BECKER PROPERTY – 1<sup>st</sup> Material Amendment to 2<sup>nd</sup> Refined Plan"** redlined Development Plan, marked and accepted into evidence as Developer's Exhibit 1A – 1D, be and is hereby **NOT APPROVED**.

IT IS FURTHER ORDERED that the Petition for Special Hearing seeking relief pursuant to § 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R), as follows:

- From the Baltimore County Zoning Commissioner's Policy Manual § 1A00.5.b to permit a lot (Lot 13) with a total acreage of 1.62 acres to have .4 of an acre in the RC 5 zone in lieu of the required 1.5 acres;
- From the Baltimore County Zoning Commissioner's Policy Manual § 1A00.5.b to permit a lot (Lot 14) with a total acreage of 1.62 acres to have a 1.18 acres in the RC 5 zone in lieu of the required 1.5 acres;
- From the Baltimore County Zoning Commissioner's Policy Manual § 1A00.5.b to permit a principal dwelling to be split between RC4 and RC5 for Lot 13 where sufficient density exists for the lot in each of the respective zones;

ORDER RECEIVED FOR FILING

Date 8-5-16

By DW

- From the Baltimore County Zoning Commissioner's Policy Manual § 1A00.5.b to permit well and septic reserve areas for Lots 10, 13 & 14 in a different zone than the proposed principal dwelling;
- To permit non-density parcels in the RC5 zone for Lots 10, 11 & 12;
- To permit a non-density parcel in the RC4 zone for Lot 14; and
- To amend the previously approved Final Development Plan (FDP),

be and is hereby **DISMISSED without Prejudice as Moot.**

Any appeal of this Order shall be taken in accordance with Baltimore County Code, § 32-4-281.

  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County

JEB/dlw

ORDER RECEIVED FOR FILING

Date 8-5-16

By EW



KEVIN KAMENETZ  
County Executive

LAWRENCE M. STAHL  
Managing Administrative Law Judge  
JOHN E. BEVERUNGEN  
Administrative Law Judge

August 5, 2016

G. Scott Barhight, Esquire  
Jennifer R. Busse, Esquire  
Whiteford, Taylor & Preston, LLLP  
Towson Commons, Suite 300  
One West Pennsylvania Avenue  
Towson, MD 21204-5332

RE: Development Plan Hearing and **Petition for Special Hearing** –  
Becker Property – 1<sup>st</sup> Material Amendment to 2<sup>nd</sup> Refined Plan  
(12170 Falls Road)  
HOH Case No. 08-0791 and **Zoning Case No. 2016-0091-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 Baltimore County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Baltimore County Office of Administrative Hearings at 410-887-3868.

Sincerely,

A handwritten signature in black ink, appearing to read "JEB", is written over the printed name of John E. Beverungen.

JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County

JEB:dlw  
Enclosure

c: Jan M. Cook, Project Manager, Department of Permits, Approvals, and Inspections,  
Development Processing  
Michael R. McCann, Esquire, 118 West Pennsylvania Avenue, Towson, MD 21204-4518



# PETITION FOR ZONING HEARING(S)

F1001

To be filed with the Department of Permits, Approvals and Inspections

To the Office of Administrative Law of Baltimore County for the property located at:

Address 12170 Falls Road, Cockeysville, MD 21030

which is presently zoned RC4 & RC5

Deed References: please see attached

10 Digit Tax Account # please see attached

Property Owner(s) Printed Name(s) Arthur Becker, Jr., Trustee & Nancy Miller, Trustee

(SELECT THE HEARING(S) BY MARKING X AT THE APPROPRIATE SELECTION AND PRINT OR TYPE THE PETITION REQUEST)

The undersigned legal owner(s) of the property situate in Baltimore County and which is described in the description and plan attached hereto and made a part hereof, hereby petition for:

1. X a **Special Hearing** under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

PLEASE SEE ATTACHED

2.    a **Special Exception** under the Zoning Regulations of Baltimore County to use the herein described property for

3.    a **Variance** from Section(s)

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons:  
(Indicate below your hardship or practical difficulty or indicate below "TO BE PRESENTED AT HEARING". If you need additional space, you may add an attachment to this petition)

Property is to be posted and advertised as prescribed by the zoning regulations.

I, or we, agree to pay expenses of above petition(s), 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.

Legal Owner(s) Affirmation: I / we do so 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 / these Petition(s).

## Contract Purchaser/Lessee:

N/A

Name - Type or Print

Signature

Mailing Address

City

State

Zip Code

Telephone #

Email Address

## Legal Owners (Petitioners):

Arthur Becker, Jr., Trustee & Nancy Miller, Trustee

Name #1 - Type or Print

Name #2 - Type or Print

Signature #1

Signature #2

33 Wally Court, Timonium, Maryland

Mailing Address

City

State

21093

410-561-0518

ahbecke@verizon.net

Zip Code

Telephone #

Email Address

## Representative to be contacted:

Stephen R. Smith/Gaylord Brooks Realty Co., Inc.

Name - Type or Print

Signature

14315 Jarrettsville Pike, Suite 102, Phoenix, MD

Mailing Address

City

State

21131

410-667-0800

ssmith@gaylordbrooks.com

Zip Code

Telephone #

Email Address

## Attorney for Petitioner:

Jennifer R. Busse, Esquire

Name - Type or Print

Signature

Whiteford, Taylor & Preston

1 W. Pennsylvania Ave., Ste. 300, Towson MD

Mailing Address

City

State

21204

/410-832-2077/

jbusse@wtplaw.com

Zip Code

Telephone #

Email Address

CASE NUMBER

2016-0091-CPH

Filing Date

10 / 13 / 15

Do Not Schedule Dates:

Reviewer

AT

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

No. **127329**  
 Date: **10/13/15**

**PAID RECEIPT**

BUSINESS ACTUAL TIME DRN  
 10/14/2015 10/13/2015 10:14:31 2

REG US02 WALKIN JENA JEE  
 RECEIPT # 943313 10/13/2015 OFLN

DEPT 5 528 ZONING VERIFICATION  
 NO. 127329

Receipt Tot \$1,200.00  
 \$1,200.00 CK \$1.00 CA  
 Baltimore County, Maryland

| Fund | Dept | Unit | Sub Unit | Rev Source/ Obj | Sub Rev/ Sub Obj | Dept Obj | BS Acct | Amount |
|------|------|------|----------|-----------------|------------------|----------|---------|--------|
| 001  | 806  | 0000 |          | 6150            |                  |          |         | \$1200 |
|      |      |      |          |                 |                  |          |         |        |
|      |      |      |          |                 |                  |          |         |        |
|      |      |      |          |                 |                  |          |         |        |
|      |      |      |          |                 |                  |          |         |        |
|      |      |      |          |                 |                  |          |         |        |
|      |      |      |          |                 |                  |          |         |        |

Total: **\$1200**

Rec From:

For: **12170 FALLS ROAD**

**2016-0091-SPH**

**DISTRIBUTION**

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

**CASHIER'S  
 VALIDATION**

# DEPARTMENT OF PERMITS, APPROVALS AND INSPECTIONS

## ZONING REVIEW

### ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

The Baltimore County Zoning Regulations (BCZR) require that notice be given to the general public/neighborhood 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: 2016-0091-SPH  
Petitioner: Arthur H. Becker, Jr and Nancy Miller  
Address or Location: 12170 Falls Road

#### PLEASE FORWARD ADVERTISING BILL TO:

Name: Jennifer Busse  
Address: c/o WTP  
One W. Pennsylvania Ave., Ste. 300  
Towson, MD 21204  
Telephone Number: 410 832 2077



501 N. Calvert St., P.O. Box 1377  
Baltimore, Maryland 21278-0001  
tel: 410/332-6000  
800/829-8000

WE HEREBY CERTIFY, that the annexed advertisement of Order No 3765551

**Sold To:**

Whiteford Taylor & Preston LLP - CU00431684  
One W Pennsylvania Ave Ste 300  
TOWSON, MD 21204-5025

**Bill To:**

Whiteford Taylor & Preston LLP - CU00431684  
One W Pennsylvania Ave Ste 300  
TOWSON, MD 21204-5025

Was published in "Jeffersonian", "Bi-Weekly", a newspaper printed and published in Baltimore County on the following dates:

Nov 26, 2015

The Baltimore Sun Media Group

By *S. Wilkinson*  
Legal Advertising

**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: # 2016-0091-SPH**

12170 Falls Road  
S/side of Falls Road, 110 ft. south of Applecroft Lane  
8th Election District - 2nd Councilmanic District  
Legal Owner(s): Arthur Becker, Jr., Trustee & Nancy Miller, Trustee

**Special Hearing** to 1. To permit a lot (Lot 13) with a total acreage of 1.62 acres to have .4 of an acre in the RC 5 zone in lieu of the required 1.5 acres. 2. To permit a lot (Lot 14) with a total acreage of 1.62 acres to have 1.18 acres in the RC 5 zone in lieu of the required 1.5 acres. 3. To permit a principal dwelling to be split between RC 4 and RC 5 for lot 13 where sufficient density exists for the lot in each of the respective zones. 4. To permit well and septic reserve areas for lots 10, 11, 13, & 14 in a different zone than the proposed principal dwelling. 5. To permit non-density parcels in the RC 5 zone for lots 10, 11, 12. 6. To permit a non-density parcel in the RC 4 zone for lot 14. 7. To amend the previously approved Final Development Plan.  
**Hearing: Thursday, December 17, 2015 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.

11/365 November 26

3765551

# CERTIFICATE OF POSTING

2016-0091-SPH

RE: Case No.: \_\_\_\_\_

Petitioner/Developer: \_\_\_\_\_

Arthur Becker, Jr., Trustee & Nancy Miller, Trustee

December 17, 2015

Date of Hearing/Closing: \_\_\_\_\_

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

Attn: Kristen Lewis:

Ladies and Gentlemen:

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

12170 Falls Road

November 17, 2015

The sign(s) were posted on \_\_\_\_\_  
(Month, Day, Year)

Sincerely,

November 17, 2015

(Signature of Sign Poster)

(Date)

SSG Robert Black

(Print Name)

1508 Leslie Road

(Address)

Dundalk, Maryland 21222

(City, State, Zip Code)

(410) 282-7940

(Telephone Number)





KEVIN KAMENETZ  
County Executive

October 29, 2015

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

## 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 NUMBER: 2016-0091-SPH**

12170 Falls Road

S/side of Falls Road, 110 ft. south of Applecroft Lane

8<sup>th</sup> Election District – 2<sup>nd</sup> Councilmanic District

Legal Owners: Arthur Becker, Jr., Trustee & Nancy Miller, Trustee

Special Hearing to 1. To permit a lot (Lot 13) with a total acreage of 1.62 acres to have .4 of an acre in the RC 5 zone in lieu of the required 1.5 acres. 2. To permit a lot (Lot 14) with a total acreage of 1.62 acres to have 1.18 acres in the RC 5 zone in lieu of the required 1.5 acres 3. To permit a principal dwelling to be split between RC 4 and RC 5 for lot 13 where sufficient density exists for the lot in each of the respective zones. 4. To permit well and septic reserve areas for lots 10, 11, 13, & 14 in a different zone than the proposed principal dwelling. 5. To permit non-density parcels in the RC 5 zone for lots 10, 11, 12. 6. To permit a non-density parcel in the RC 4 zone for lot 14. 7. To amend the previously approved Final Development Plan.

Hearing: Thursday, December 17, 2015 at 10:00 a.m. in Room 205, Jefferson Building,  
105 West Chesapeake Avenue, Towson 21204

A handwritten signature in dark ink, appearing to read "Arnold Jablon", is written over a circular stamp. The stamp contains the text "Arnold Jablon" and "Director" below it.

Arnold Jablon  
Director

AJ:kl

C: Jennifer Busse, 1 W. Pennsylvania Avenue, Ste. 300, Towson 21204  
Arthur Becker, Nancy Miller, 33 Wally Court, Timonium 21093  
Stephen Smith, 14315 Jarrettsville Pike, Ste. 102, Phoenix 21131

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY FRIDAY, NOVEMBER 27, 2015**
- (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.

TO: PATUXENT PUBLISHING COMPANY  
Thursday, November 26, 2015 Issue - Jeffersonian

Please forward billing to:

Jennifer Busse  
Whiteford, Taylor & Preston  
One West Pennsylvania Avenue, Ste. 300  
Towson, MD 21204

410-832-2077

---

## 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: 2016-0091-SPH**

12170 Falls Road

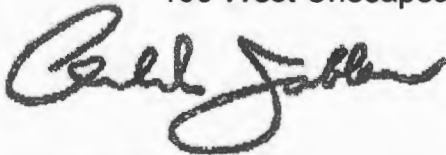
S/side of Falls Road, 110 ft. south of Applecroft Lane

8<sup>th</sup> Election District – 2<sup>nd</sup> Councilmanic District

Legal Owners: Arthur Becker, Jr., Trustee & Nancy Miller, Trustee

Special Hearing to 1. To permit a lot (Lot 13) with a total acreage of 1.62 acres to have .4 of an acre in the RC 5 zone in lieu of the required 1.5 acres. 2. To permit a lot (Lot 14) with a total acreage of 1.62 acres to have 1.18 acres in the RC 5 zone in lieu of the required 1.5 acres. 3. To permit a principal dwelling to be split between RC 4 and RC 5 for lot 13 where sufficient density exists for the lot in each of the respective zones. 4. To permit well and septic reserve areas for lots 10, 11, 13, & 14 in a different zone than the proposed principal dwelling. 5. To permit non-density parcels in the RC 5 zone for lots 10, 11, 12. 6. To permit a non-density parcel in the RC 4 zone for lot 14. 7. To amend the previously approved Final Development Plan.

Hearing: Thursday, December 17, 2015 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 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.

RE: PETITION FOR SPECIAL HEARING  
12170 Falls Road; S/S Falls Road, 110' S  
of c/line of Applecroft Lane  
8<sup>th</sup> Election & 2<sup>nd</sup> Councilmanic Districts  
Legal Owner(s): Arthur Becker, Jr, &  
Nancy Miller, Trustees

Petitioner(s)

\* BEFORE THE OFFICE  
\* OF ADMINSTRATIVE  
\* HEARINGS FOR  
\* BALTIMORE COUNTY  
\* 2016-091- 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.

**RECEIVED**

**OCT 22 2015**

*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 22nd day of October, 2015, a copy of the foregoing Entry of Appearance was mailed to Stephen Smith, Gaylord Realty Co, 14315 Jarrettsville Pike, Suite 102, Phoenix, Maryland 21131 and Jennifer Busse, Esquire, One West Pennsylvania Avenue, Suite 300, Towson, Maryland 21204, Attorney for Petitioner(s).

*Peter Max Zimmerman*

PETER MAX ZIMMERMAN  
People's Counsel for Baltimore County

—

Answers

2016-0091 SPd

12/17/2015

## COUNTY REPRESENTATIVE'S SIGN-IN SHEET

[illegible]

CASE NAME BECKER PROPERTY 1<sup>st</sup> MATERIAL AMENDMENT  
CASE NUMBER 08-0791 / 2016-0091 SPH  
DATE 12/17/2015

## NAME \_\_\_\_\_

CITY, STATE, ZIP

E - MAIL

|                   |                      |                       |                          |
|-------------------|----------------------|-----------------------|--------------------------|
| FRED SMITH        | 12712 Falls Rd       | Cockeysville MD       | BETH FRED SOCA           |
| Robert + Kara Hle | 12168 Falls Rd       | Cockeys MD            | kihle1@comcast.net       |
| Marcia Goldberg   | 12165 Falls Rd       | Cockeysville MD       | mgold66@comcast.net      |
| Ronda Kunkel      | 1509 Applecroft Lane | Cockeysville MD 21030 | MRKunkel@gmail.com       |
| Liz Buxton        | 118 W. Penn. #5 Ave  | Towson MD             | ebuxton@thevpc.org       |
| Rich Taylor       | 313 West Wynn Rd     | Towson MD             | RichardA.Taylor@MARC.com |
| E.B. von Pans     | 12132 Falls Rd       | Cockeysville MD       | EBZAKLYY@comcast.net     |
| Maryann Jones     | 12164 Falls Rd       | Cockeysville Md 21030 | maryannjonescap@aol.com  |

CASE NAME Bluer Property  
CASE NUMBER 08-0791/2016-00915A  
DATE 12/17/15

## ~~COUNTY REPRESENTATIVE'S SIGN-IN SHEET~~

[illegible]

Arthur H. Becker  
31 Wally Ct., Timonium, MD 21093  
410-561-0518 [ahbecke@verizon.net](mailto:ahbecke@verizon.net)

Nancy D. Miller  
33 Wally Ct., Timonium, MD 21093  
410-560-0061 [cnmiller3@verizon.net](mailto:cnmiller3@verizon.net)

June 24, 2016

Honorable John E. Beverungen, Esquire  
Administrative Law Judge  
Baltimore County Office of Administrative Hearings  
105 West Chesapeake Avenue, Suite 103  
Towson, Maryland 21204

Re: Becker Property  
PAI Case #s: VIII-791; 2016-091-SPH

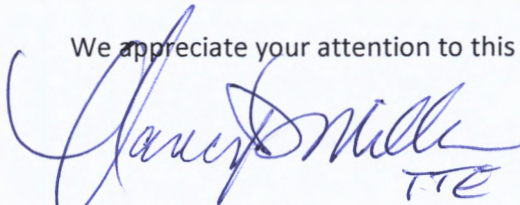
Dear Judge Beverungen:

In reference to the concerns raised by Bob and Kara Ihle during the hearing in this matter on 12/17/15, we would like to make you aware of how we responded to their concerns when we learned of them; and our own concerns about their requests.

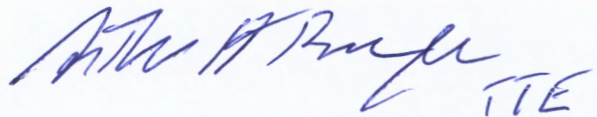
Once we learned of the Ihle's concern regarding anticipated visual impact from the development on the area of our property that is adjacent to theirs, we paid our consultants to adjust lot lines in an attempt to appease them.

The Ihles have further requested some form of restriction be placed on our property which would preserve their ability to see our land – they enjoy the view of our pond. However, any such restriction would potentially hinder our right for privacy on our property. We respectfully submit that there is absolutely no reason to hinder our ability to landscape our own property, regardless of whether the result is a change in what the Ihles can or cannot see of property not their own.

We appreciate your attention to this matter.



TTE



TTE

cc: Robert and Kara Ihle

WHITEFORD, TAYLOR & PRESTON L.L.P.

JENNIFER R. BUSSE  
DIRECT LINE (410) 832-2077  
DIRECT FAX (410) 339-4027  
jbusse@wtplaw.com

TOWSON COMMONS, SUITE 300  
ONE WEST PENNSYLVANIA AVENUE  
TOWSON, MARYLAND 21204-5025  
MAIN TELEPHONE (410) 832-2000  
FACSIMILE (410) 832-2015

BALTIMORE, MD  
BETHANY BEACH, DE\*  
BETHESDA, MD  
COLUMBIA, MD  
DEARBORN, MI  
FALLS CHURCH, VA  
LEXINGTON, KY  
PITTSBURGH, PA  
ROANOKE, VA  
WASHINGTON, DC  
WILMINGTON, DE\*

[WWW.WTPLAW.COM](http://WWW.WTPLAW.COM)  
(800) 987-8705

April 11, 2016

Robert & Kara Ihle  
12168 Falls Road  
Cockeysville, Maryland 21030

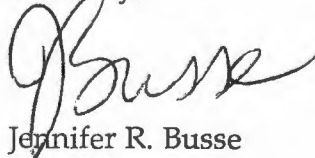
Re: **Becker Property - Continuation of Hearing Officer's Hearing and  
Zoning Case**  
**Baltimore County Case Nos. 08-0791; 2016-0091 SPH**

Dear Mr. and Mrs. Ihle:

Please be aware that the Hearing Officer's Hearing and the Zoning Case referenced above will be continued on Monday, May 16, 2006 at 10:00 a.m. in the Jefferson Building, Room 205, at 105 W. Chesapeake Avenue, Towson, Maryland 21204. Baltimore County has updated their website to note this continuation date but the property will not be re-advertised or re-posted.

Please do not hesitate to contact me with any questions or concerns.

Sincerely,



Jennifer R. Busse

JRB:tm  
443508

cc: Mr. Jan Cook  
Michael R. McCann, Esq.  
Mr. Steve Smith

## Debra Wiley

---

**From:** Martin, Tammy <TMartin@wtplaw.com>  
**Sent:** Wednesday, May 04, 2016 12:07 PM  
**To:** Debra Wiley  
**Cc:** Busse, Jennifer R.; michael@mmccannlaw.net; Jan Cook; 'ssmith@gaylordbrooks.com'  
**Subject:** Becker Property  
**Attachments:** CopitrakScan.PDF

Per your request.

**From:** Martin, Tammy  
**Sent:** Wednesday, May 04, 2016 12:01 PM  
**To:** Martin, Tammy  
**Subject:** Copitrak Scan to E-Mail

## Copitrak Scan



*Your Scan File is Attached*

C H E C K L I S T

| <u>Comment Received</u>         | <u>Department</u>                                                     | <u>Support/Oppose/ Conditions/ Comments/ No Comment</u> |
|---------------------------------|-----------------------------------------------------------------------|---------------------------------------------------------|
| <u>10-22</u>                    | DEVELOPMENT PLANS REVIEW<br>(if not received, date e-mail sent _____) | <u>C</u>                                                |
| <u>10-23</u>                    | DEPS<br>(if not received, date e-mail sent _____)                     | <u>NC</u>                                               |
| _____                           | FIRE DEPARTMENT                                                       | _____                                                   |
| _____                           | PLANNING<br>(if not received, date e-mail sent _____)                 | _____                                                   |
| <u>10-21</u>                    | STATE HIGHWAY ADMINISTRATION                                          | <u>C</u>                                                |
| _____                           | TRAFFIC ENGINEERING                                                   | <u>Contact for to obtain an entrance permit</u>         |
| _____                           | COMMUNITY ASSOCIATION                                                 | _____                                                   |
| _____                           | ADJACENT PROPERTY OWNERS                                              | _____                                                   |
| <hr/>                           |                                                                       |                                                         |
| ZONING VIOLATION                | (Case No. _____)                                                      |                                                         |
| PRIOR ZONING                    | (Case No. _____)                                                      |                                                         |
| <hr/>                           |                                                                       |                                                         |
| NEWSPAPER ADVERTISEMENT         | Date: _____                                                           |                                                         |
| SIGN POSTING <u>3 days</u>      | Date: <u>11-17-15</u> by <u>Black</u>                                 |                                                         |
| <hr/>                           |                                                                       |                                                         |
| PEOPLE'S COUNSEL APPEARANCE     | Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>   |                                                         |
| PEOPLE'S COUNSEL COMMENT LETTER | Yes <input type="checkbox"/> No <input type="checkbox"/>              |                                                         |

Comments, if any: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

12/17

**BALTIMORE COUNTY, MARYLAND**

**Inter-Office Correspondence**

**RECEIVED**

**OCT 23 2015**



**OFFICE OF ADMINISTRATIVE HEARINGS**

**TO:** Hon. Lawrence M. Stahl; Managing Administrative Law Judge  
Office of Administrative Hearings

**FROM:** Jeff Livingston, Department of Environmental Protection and  
Sustainability (EPS) - Development Coordination

**DATE:** October 23, 2015

**SUBJECT:** DEPS Comment for Zoning Item # 2016-0091-SPH  
Address 12170 Falls Road  
(Becker & Miller, Trustees Property)

Zoning Advisory Committee Meeting of October 19, 2015

X The Department of Environmental Protection and Sustainability has no  
comment on the above-referenced zoning item.

**Reviewer:** Steve Ford **Date:** 10-23-2015



KEVIN KAMENETZ  
County Executive

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

December 9, 2015

Arthur Becker Jr.  
Nancy Miller  
33 Wally Court  
Timonium MD 21093

RE: Case Number: 2016-0091 SPH, Address: 12170 Falls Road

Dear Mr. Becker & Ms. Miller:

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits, Approvals, and Inspection (PAI) on October 13, 2015. 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,

A handwritten signature in black ink, reading "W. Carl Richards, Jr." in a cursive style.

W. Carl Richards, Jr.  
Supervisor, Zoning Review

WCR: jaw

Enclosures

c: People's Counsel  
Jennifer R Busse, Esquire, 1 W Pennsylvania Avenue, Suite 300, Towson MD 21204  
Stephen R Smith, Gaylord Brooks Realty Co. Inc., 14315 Jarrettsville Pike, Suite 102  
Phoenix MD 21131

Larry Hogan, Governor  
Boyd K. Rutherford, Lt. Governor



Pete K. Rahn, Secretary  
Gregory C. Johnson, P.E., Administrator

Date: 10/21/15

Ms. Kristen Lewis  
Baltimore County Department of  
Permits, Approvals and Inspections  
County Office Building, Room 109  
Towson, Maryland 21204

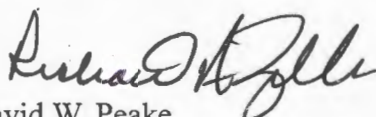
RE: Baltimore County  
Item No. 2016-0091-SPH  
Special Hearing  
Arthur Becker Jr. Trustee & Nancy Miller, Trustee  
12170 Falls Road MD25

Dear Ms. Lewis:

We have reviewed the site plan to accompany petition for variance on the subject of the above captioned, which was received on 10/21/15. A field inspection and internal review reveals that an entrance onto MD25 consistent with current State Highway Administration guidelines is required. As a condition of approval for Special Hearing, Case Number 2016-0091-SPH the applicant must contact the State Highway Administration to obtain an entrance permit.

Should you have any questions regarding this matter feel free to contact Richard Zeller at 410-229-2332 or 1-866-998-0367 (in Maryland only) extension 2332, or by email at (rzeller@sha.state.md.us).

Sincerely,

  
David W. Peake  
Metropolitan District Engineer  
Baltimore & Harford Counties

DWP/RAZ

cc: Mr. Michael Pasquariello, Utility Engineer, SHA

**BALTIMORE COUNTY, MARYLAND**  
**INTEROFFICE CORRESPONDENCE**

**TO:** Arnold Jablon, Director  
Department of Permits, Approvals  
And Inspections

**FROM:** Dennis A. Kennedy, Supervisor  
Bureau of Development Plans Review

**SUBJECT:** Zoning Advisory Committee Meeting  
For October 19, 2015  
Item No. 2016-0091

**DATE:** October 22, 2015

The Bureau of Development Plans Review has reviewed the subject zoning item and we have the following comment.

Local Open Space, Landscape and Engineering comments will be rendered during the development plan review process.

\* \* \* \* \*

DAK  
cc:file

ZAC-ITEM NO 16-0091-10192015.doc

**M E M O R A N D U M**

DATE: September 23, 2016  
TO: Zoning Review Office  
FROM: Office of Administrative Hearings  
RE: Case No. 2016-0091-SPH – Appeal Period Expired

---

The appeal period for the above-referenced case expired on September 22, 2016. There being no appeal filed, the subject file is ready for return to the Zoning Review Office and is placed in the 'pick up box.'

c: ✓ Case File  
Office of Administrative Hearings

Deb,

I made the copies and put in the mail and the 5 yellow envelopes.

WHITEFORD, TAYLOR & PRESTON L.L.P.

JENNIFER R. BUSSE  
DIRECT LINE (410) 832-2077  
DIRECT FAX (410) 339-4027  
jbusse@wtplaw.com

TOWSON COMMONS, SUITE 300  
ONE WEST PENNSYLVANIA AVENUE  
TOWSON, MARYLAND 21204-5025  
MAIN TELEPHONE (410) 832-2000  
FACSIMILE (410) 832-2015

BALTIMORE, MD  
BETHANY BEACH, DE\*  
BETHESDA, MD  
COLUMBIA, MD  
DEARBORN, MI  
FALLS CHURCH, VA  
LEXINGTON, KY  
ROANOKE, VA  
WASHINGTON, DC  
WILMINGTON, DE\*

WWW.WTPLAW.COM  
(800) 987-8705

October 13, 2015

*Via Hand Delivery*

Mr. W. Carl Richards  
Zoning Review Supervisor,  
Baltimore County Department of Permits, Approvals & Inspections  
111 W. Chesapeake Avenue  
Towson, Maryland 21204

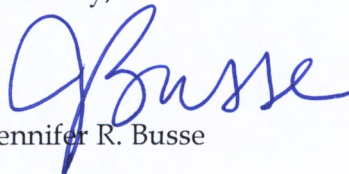
**Re: Becker Property**

Dear Carl:

On behalf of my clients, for whom we have filed for zoning relief and a Development Plan hearing for the above referenced property, please accept this letter as our request for a combined hearing.

Thank you for your consideration of this request and please do not hesitate to contact me with any questions or concerns.

Sincerely,

  
Jennifer R. Busse

cc: Mr. Steve Smith (Gaylord Brooks)  
Mr. Arthur H. Becker, Jr.  
Mrs. Nancy Miller  
Mr. Matt Bishop, RLA (MRA)

441745

2016-0091-SPH

**Michael R. McCann, P.A.**

118 W. Pennsylvania Avenue

Towson, Maryland 21204

Phone: (410) 825-2150

Facsimile: (410) 825-2149

michael@mmccannlaw.net

RECEIVED

AUG 19 2016

OFFICE OF ADMINISTRATIVE HEARINGS

August 19, 2016

Via Hand Delivery

The Honorable John Beverungen  
Administrative Law Judge  
Office of Administrative Hearings  
105 W. Chesapeake Avenue, Suite 103  
Towson, Maryland 21204

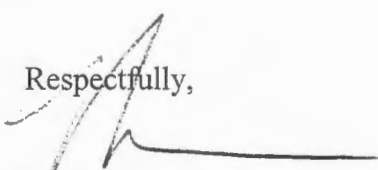
Re: Becker Property  
PAI No. 08-791

Dear Judge Beverungen:

Enclosed for filing in this matter please find Protestants' Response to Motion for Reconsideration.

Thank you for your consideration.

Respectfully,

  
Michael R. McCann

cc: counsel for developer (via U.S. Mail)

IN RE: DEVELOPMENT PLAN HEARING  
w/s Falls Road

8<sup>th</sup> Election District  
2<sup>nd</sup> Councilmanic District  
(Becker Property)

RECEIVED  
AUG 19 2016  
OFFICE OF ADMINISTRATIVE HEARINGS

\* BEFORE THE  
\* OFFICE OF ADMINISTRATIVE  
\* HEARINGS FOR  
\* BALTIMORE COUNTY

Case Nos. 08-0791  
2016-0091-SPH

\* \* \* \* \*

**PROTESTANTS' RESPONSE TO MOTION FOR RECONSIDERATION**

Protestants, Falls Road Community Association and Marcia Goldberg, by and through undersigned counsel, submit this response to the motion for reconsideration filed by the Developer and state as follows:

1. Protestants oppose the Developer's request of the ALJ to reopen the hearing in this matter so that it may submit a revised plan and present additional testimony.
2. There is no provision in the development regulations or in the OAH's Rules of Practice and Procedure that authorizes the relief requested by the Developer. If these "rules of the game" were ignored and a developer were allowed to file a new plan after each and every unfavorable ruling, then development plan hearings could conceivably never end, at least not until the developer got it right or the protestants gave up or ran out of money.
3. Further, as a matter of fundamental fairness, a developer should not be permitted to file a new plan and obtain, essentially, a second bite at the apple after failing to meet its burden to present a development plan that complies with the law. This is particularly true here, where the property was the subject of a prior proceeding and where the circumstances under which a new

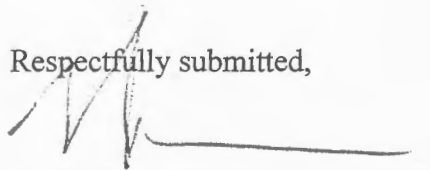
development plan for the northern pod might be approved were delineated in that proceeding. Allowing yet another hearing would actually constitute the Developer's *third* bite at the apple.

4. It would also be fundamentally unfair to Protestants, who spent considerable time and money addressing the development plan that was filed. If the Developer were allowed to file a new plan, then Protestants would be compelled to double down their efforts and spend, again, substantial time, effort and money on attorney's fees and expert witness testimony. This is particularly unfair given, again, that the Developer was told in the prior proceedings the circumstances under which a new plan would be considered.

5. The Developer's request is not the proper subject of a motion for reconsideration. In *In re: Hunt Valley Presbyterian Church* (Case No. 08-0524), the ALJ held that a motion for reconsideration required a "new or different factual situation" and indicated that simply asking the ALJ to reconsider a decision already made is not sufficient. Protestants submit that the new development plan proposed by the Developer would never constitute a "new or different factual situation," but the motion for reconsideration itself does not set forth such a situation.

WHEREFORE, Protestants respectfully request that the ALJ deny the motion for reconsideration filed by the Developer.

Respectfully submitted,



---

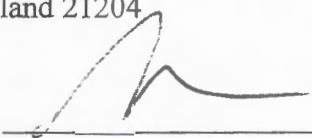
Michael R. McCann  
Michael R. McCann, P.A.  
118 W. Pennsylvania Ave.  
Towson, MD 21204  
(410) 825-2150

*Attorneys for Protestants*

CERTIFICATE OF SERVICE

I hereby certify that on this 19<sup>th</sup> day of August, 2016 copy of the foregoing Response to Motion for Reconsideration was mailed, via first-class mail, postage prepaid to:

G. Scott Barhight, Esq.  
Jennifer Busse, Esq.  
Whiteford, Taylor & Preston  
One West Pennsylvania Avenue  
Towson, Maryland 21204



---

Michael R. McCann

WHITEFORD, TAYLOR & PRESTON L.L.P.

JENNIFER R. BUSSE  
DIRECT LINE (410) 832-2077  
DIRECT FAX (410) 339-4027  
jbusse@wtplaw.com

TOWSON COMMONS, SUITE 300  
ONE WEST PENNSYLVANIA AVENUE  
TOWSON, MARYLAND 21204-5025

MAIN TELEPHONE (410) 832-2000  
FACSIMILE (410) 832-2015

BALTIMORE, MD  
BETHANY BEACH, DE\*  
BETHESDA, MD  
COLUMBIA, MD  
DEARBORN, MI  
FALLS CHURCH, VA  
LEXINGTON, KY  
PITTSBURGH, PA  
ROANOKE, VA  
WASHINGTON, DC  
WILMINGTON, DE\*

[WWW.WTPLAW.COM](http://WWW.WTPLAW.COM)  
(800) 987-8705

August 11, 2016

Via Hand Delivery

**RECEIVED**

AUG 11 2016

Honorable John E. Beverungen  
Baltimore County Office of Administrative Hearings  
The Jefferson Building  
Suite 103  
105 W. Chesapeake Ave.  
Towson, Maryland 21204

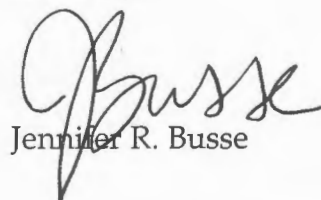
OFFICE OF ADMINISTRATIVE HEARINGS

**Re: Becker Property - PAI# 08-791; Zoning Case #2016-0091-SPH  
Motion for Reconsideration and Request for Hearing**

Dear Judge Beverungen:

Enclosed please find Owners' / Developer's Motion for Reconsideration and Request for Hearing in the above referenced matter. Thank you for your attention to this matter.

Sincerely,

  
Jennifer R. Busse

cc: Michael McCann, Esquire  
Arthur Becker  
Nancy Miller  
Steve Smith

filing  
for  
Becker HDH  
file

Attachments

444674

IN RE: DEVELOPMENT PLAN HEARING & \*  
PETITION FOR SPECIAL HEARING  
TO THE DEVELOPMENT PLAN

(12170 Falls Road) \*  
8<sup>th</sup> Election District  
2<sup>nd</sup> Councilmanic District

(BECKER PROPERTY – 1<sup>st</sup> Material  
Amendment to 2<sup>nd</sup> Refined Plan) \*

Arthur H. Becker, Jr.(Trustee) &  
Nancy D. Miller (Trustee); *Owners*  
Gaylord Brooks, *Developer* \*

BEFORE THE OFFICE OF

ADMINISTRATIVE HEARINGS

FOR

BALTIMORE COUNTY

HOH Case No. 08-0791 &  
Zoning Case No. 2016-0091-SPH

\*

\*

\*

\*

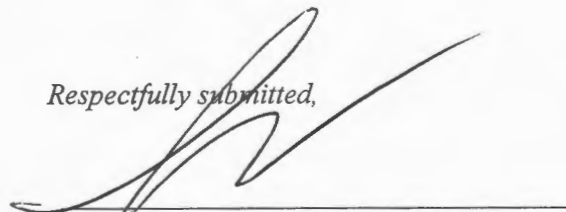
\*

**OWNERS' / DEVELOPER'S MOTION FOR RECONSIDERATION**

The Becker Trustees and Gaylord Brooks, by and through their attorneys, G. Scott Barhight and Whiteford, Taylor & Preston, L.L.P., hereby submit this Motion for Reconsideration and in support thereof states as follows:

- 1) By Administrative Law Judge's Opinion and Order on dated August 5, 2016, the Administrative Law Judge ("ALJ"), John E. Beverungen, issued his decision to not approve the Becker Property – 1<sup>st</sup> Material Amendment to 2<sup>nd</sup> Refined Plan, and dismiss, without prejudice as moot, the requested Petition for Special Hearing relief.
- 2) The Development Approval Process is an iterative process, the purpose of which is to identify and resolve issues.
- 3) Therefore, Developer respectfully requests that the ALJ reconsider its decision, order a public hearing to take additional testimony, including the presentation of a revised plan involving a reduction of lots and access via a private use-in-common drive, and allow the Developer to be heard in open court on the Motion for Reconsideration. Allowing that the record be reopened will be in the interest of judicial economy.

*Respectfully submitted,*



G. Scott Barhight  
Whiteford, Taylor & Preston L.L.P.  
One West Pennsylvania Avenue  
Suite 300  
Towson, Maryland 21204-4515  
(410) 832-2050  
*Attorneys for Owners/Developer*

RECEIVED

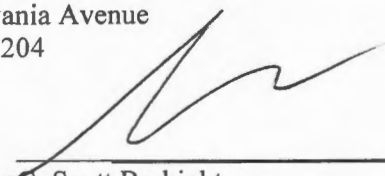
AUG 11 2016

OFFICE OF ADMINISTRATIVE HEARINGS

CERTIFICATE OF SERVICE

I hereby certify that on this 11<sup>th</sup> day of August, 2016, a copy of the foregoing Motion for Reconsideration was mailed, postage prepaid, via first class mail to:

Michael McCann, Esquire  
118 W. Pennsylvania Avenue  
Towson, MD 21204



---

G. Scott Barhight  
Whiteford, Taylor & Preston L.L.P.  
One West Pennsylvania Avenue  
Suite 300  
Towson, Maryland 21204-4515  
(410) 832-2050  
*Attorneys for Owners/Developer*

444668

IN RE: DEVELOPMENT PLAN HEARING & \*  
PETITION FOR SPECIAL HEARING  
TO THE DEVELOPMENT PLAN  
(12170 Falls Road) \*  
8<sup>th</sup> Election District  
2<sup>nd</sup> Councilmanic District

(BECKER PROPERTY – 1<sup>st</sup> Material  
Amendment to 2<sup>nd</sup> Refined Plan)

Arthur H. Becker, Jr.(Trustee) &  
Nancy D. Miller (Trustee); *Owners*  
Gaylord Brooks, *Developer*

BEFORE THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
FOR  
BALTIMORE COUNTY  
HOH Case No. 08-0791 &  
Zoning Case No. 2016-0091-SPH

\*

\*

\*

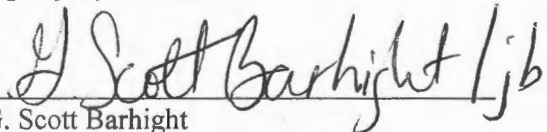
\*

\*

**OWNERS'/DEVELOPER'S REQUEST FOR HEARING**

The Becker Trustees and Gaylord Brooks, by and through their attorneys, G. Scott Barhight and Whiteford, Taylor and Preston L.L.P., hereby submits this Request for Hearing in the interest of judicial economy to take additional testimony as might be required and to allow the Owners/Developer to be heard in open court on their Motion for Reconsideration.

*Respectfully submitted,*



G. Scott Barhight  
Whiteford, Taylor & Preston L.L.P.  
One West Pennsylvania Avenue  
Suite 300  
Towson, Maryland 21204-4515  
(410) 832-2050  
*Attorneys for Owners/Developer*

**RECEIVED**

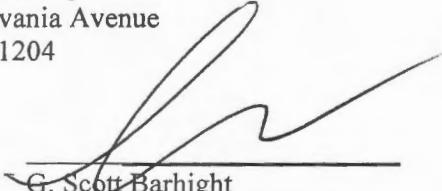
AUG 11 2016

**OFFICE OF ADMINISTRATIVE HEARINGS**

CERTIFICATE OF SERVICE

I hereby certify that on this 11<sup>th</sup> day of August, 2016, a copy of the foregoing Request for Hearing on Owners'/Developer's Motion for Reconsideration was mailed, postage prepaid, via first class mail to:

Michael McCann, Esquire  
118 W. Pennsylvania Avenue  
Towson, MD 21204



G. Scott Barhight  
Whiteford, Taylor & Preston L.L.P.  
One West Pennsylvania Avenue  
Suite 300  
Towson, Maryland 21204-4515  
(410) 832-2050  
*Attorneys for Owners/Developer*

## Debra Wiley

---

**From:** Busse, Jennifer R. <jbusse@wtplaw.com>  
**Sent:** Thursday, August 11, 2016 3:53 PM  
**To:** Debra Wiley  
**Subject:** motion for reconsideration

Hi Deb – I filed a motion for reconsideration and request for hearing on the motion this afternoon. .  
You had left but Larry stamped it in for me.  
Thanks!

Jennifer R. Busse, Esq.  
Whiteford Taylor Preston LLP  
One W. Pennsylvania Ave., Suite 300  
Towson, Maryland 21204  
t: 410-832-2077 | f: 410-339-4027  
[jbusse@wtplaw.com](mailto:jbusse@wtplaw.com) | [www.wtplaw.com](http://www.wtplaw.com) | [Bio](#) | [vCard](#)

*WTP is a proud member of two global law firm networks.*



**PANGEA NET**

---

This transmission contains information from the law firm of Whiteford, Taylor & Preston LLP which may be confidential and/or privileged. The information is intended to be for the exclusive use of the planned recipient. If you are not the intended recipient, be advised that any disclosure, copying, distribution or other use of this information is strictly prohibited. If you have received this transmission in error, please notify the sender immediately.

## Debra Wiley

---

**From:** Debra Wiley  
**Sent:** Friday, August 05, 2016 11:39 AM  
**To:** G. Scott Barhight - Whiteford, Taylor & Preston, LLP (gbarhight@wtplaw.com); 'Michael McCann'; Mike Ruby (mildmanneredcomm@aol.com); Jan Cook; Jennifer R. Busse Esq. (jbusse@wtplaw.com)  
**Subject:** Becker Property Opinion and Order (HOH Case No. 08-0791 & Zoning Case No. 2016-0091-SPH) - 12170 Falls Rd.  
**Attachments:** Admin Hearings Copier

Good Morning,

Please find attached a copy of Judge Beverungen's Opinion and Order, dated today, in reference to the above matter.

Thank you.

Debra Wiley  
Baltimore County Office of Administrative Hearings  
105 West Chesapeake Avenue, Suite 103  
Towson, Maryland 21204  
410-887-3868

\* Original exhibits are located w/ H&H file.

12/17/2015

Case No.:

Becker Property ~~NOT~~ Case No. 08-0791 +

Exhibit Sheet

Zoning " " 206-0091-SPH

Petitioner/Developer

Protestants

BALTO  
CO.

|                    |                                      |                                             |                    |
|--------------------|--------------------------------------|---------------------------------------------|--------------------|
| No. 1<br>1A-<br>1D | Redline Dev. Plan<br>4 sheet (A-D)   | 11-13-2015 DEPS<br>GWM Comment              | School<br>Analysis |
| No. 2              | Aerial (vicinity) Photograph         | 12-15-2015 DEPS<br>GWM Comment              |                    |
| No. 3              | "My Neighborhood" aerial             | Jan. 8, 2004 DPC<br>Comments - DEPRM        |                    |
| No. 4              | F.D.P. (4 sheet)                     | 11-24-15 DPC comments<br>Bureau of DPR, PAI |                    |
| No. 5              | SHA Letter                           | Sheet 3 of Dev. Plan<br>w/ annotations      |                    |
| No. 6              | SHA Letter                           | Photos of Falls Rd. vicinity                |                    |
| No. 7              | Agreement b/w Becker + Ihles         | Extract from AASHTO                         |                    |
| No. 8              | Letter dated<br>11-10-2015 (TRG)     | Sight Distance Exhibit.                     |                    |
| No. 9              | Sight Distance Plan                  | SHA Letter 3-6-2003                         |                    |
| No. 10             | Wilson access agt.                   | SHA Access Manual<br>re: design speed p. 86 |                    |
| No. 11             | Email Steve Smith<br>dated 6-17-2016 | Order in 2004 HDH                           |                    |
| No. 12             | Sharon C.V.                          | Excerpt AASHTO                              |                    |

Case No.: Becker Prop. H04

Exhibit Sheet - Continued

Petitioner/Developer

Respondent

|        |                         |                                                                                                |
|--------|-------------------------|------------------------------------------------------------------------------------------------|
| No. 13 | Cornelius CV            | Order on Mot. to Reconsider<br><del>Excerpt AASHTO manual</del><br><del>Table 3-1 Becker</del> |
| No. 14 | Stopping sight distance | Order Becker Property<br>dated 12-11-2006                                                      |
| No. 15 | SHA letter 1-6-2004     | Excerpt AASHTO                                                                                 |
| No. 16 |                         | County DPR Policy<br>Manual                                                                    |
| No. 17 |                         | Dev. Plan from 2004<br>Case                                                                    |
| No. 18 |                         | 18A-F Photos                                                                                   |
| No. 19 |                         |                                                                                                |
| No. 20 |                         |                                                                                                |
| No. 21 |                         |                                                                                                |
| No. 22 |                         |                                                                                                |
| No. 23 |                         |                                                                                                |
| No. 24 |                         |                                                                                                |

CASE NAME Becker Prop. HOH 0791 08  
CASE NUMBER 1 Zoning Case  
DATE 6/24/16 2016-0011-SPH

[illegible]

CASE NAME Becker Prop. HOH  
CASE NUMBER \_\_\_\_\_  
DATE 6/24/2016

## NAME \_\_\_\_\_

ADDRESS

CITY, STATE, ZIP

E - MAIL

[illegible]

2016-0091-SPH.

CASE NAME Becker Prop HOA  
CASE NUMBER 08-791  
DATE MAY 16, 2016 and

## PETITIONER'S SIGN-IN SHEET

Zoning Case  
No. 2016-  
0091-SPH

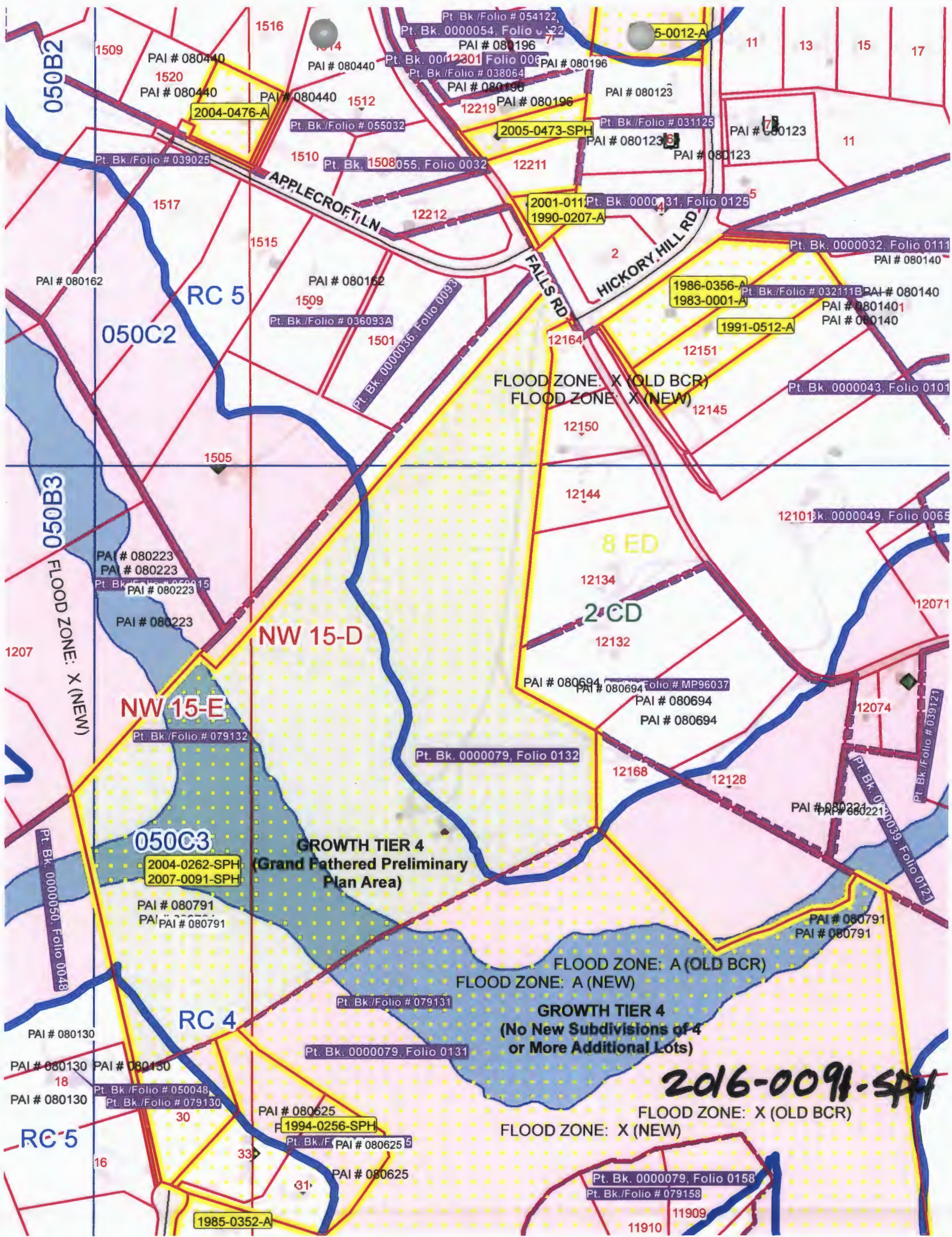
[illegible]

Becker Property  
PA1 03-711

CASE NAME \_\_\_\_\_  
CASE NUMBER \_\_\_\_\_  
DATE MAY 16, 2016

E - MAIL

[illegible]



NW 15-D

NW 15-E

**GROWTH TIER 4**  
(Grand Fathered Preliminary  
Plan Area)

FLOOD ZONE: A (OLD BCR)  
FLOOD ZONE: A (NEW)

**GROWTH TIER 4**  
(No New Subdivisions of 4  
or More Additional Lots)

**206-0091-SPH**

FLOOD ZONE: X (OLD BCR)  
FLOOD ZONE: X (NEW)

RC 5

RC 4

RC 5

8 ED

2 CD

050B3  
FLOOD ZONE: X (NEW)

050C2

050C3

APPLECROFT LN

FALLS RD

HICKORY HILL RD

PAI # 080440  
1520  
PAI # 080440

PAI # 080440  
1512

Pt. Bk./Folio # 054122  
Pt. Bk. 0000054, Folio 0122  
PAI # 080196

Pt. Bk./Folio # 038064  
PAI # 080196  
12219

PAI # 080123

Pt. Bk./Folio # 031125

PAI # 080123  
11

Pt. Bk./Folio # 055032

Pt. Bk. 1508055, Folio 0032

12211

2001-011  
1990-0207-A  
Pt. Bk. 0000031, Folio 0125

Pt. Bk. 0000032, Folio 0111  
PAI # 080140

1986-0356-A  
1983-0001-A

1991-0512-A

Pt. Bk./Folio # 032111B  
PAI # 080140  
PAI # 0801401  
PAI # 080140

Pt. Bk. 0000043, Folio 0101

Pt. Bk. 0000049, Folio 0065

PAI # 080694  
Folio # MP96037

PAI # 080694  
PAI # 080694

Pt. Bk. 0000079, Folio 0132

12168

12128

PAI # 080791  
PAI # 080791

PAI # 080791  
PAI # 080791

Pt. Bk./Folio # 079131

Pt. Bk. 0000079, Folio 0131

PAI # 080625  
1994-0256-SPH

Pt. Bk./Folio # 080625

PAI # 080625

Pt. Bk. 0000079, Folio 0158  
Pt. Bk./Folio # 079158

11910  
11909

1985-0352-A

