

FOURTH DRAFT

A CITIZENS PERSPECTIVE ON THE BALTIMORE COUNTY DEVELOPMENT REVIEW PROCESS

PHASE I: REVIEW OF DEVELOPMENT PLAN ORDERS

Prepared By Richard D. Klein
**COMMUNITY & ENVIRONMENTAL
DEFENSE SERVICES**
811 Crystal Palace Court
Owings Mills, Maryland 21117
410-654-3021
800-773-4571
Fax: 410-654-3028
E-mail: info@ceds.org
Web Page: www.ceds.org/bcmd

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EXECUTIVE SUMMARY

CEDS initiated a study of the Baltimore County development review process with the purpose of determining how effective it is in resolving citizens concerns regarding proposed development projects. This report contains the results of the first of a four-phase study of the process. In this first phase 149 development plan orders issued by three County hearing officers were reviewed in detail.

A dramatic difference was found in the rate at which citizens appealed these orders. For every 39 orders issued by Deputy Hearing Officer Murphy, one was appealed by citizens. Citizens took an appeal of one out of eleven orders issued by Hearing Officer Wiseman. Hearing Officer Schmidt had the highest frequency of appeals by citizens: one out of every four, though only 18 of his orders were available for review.

The rate of appeals is probably the most telling statistic with respect to how citizens view the effectiveness of the process in resolving their concerns. Appealing a hearing officer decision is a very serious matter for citizens. It is expensive, time-consuming, and stressful.

That citizens were generally more satisfied with Mr. Murphy's decisions is evident from the rate of appeals. The apparently higher level of satisfaction may be due to Mr. Murphy's greater tendency to add conditions to development plan approvals. Mr. Murphy conditioned 53% of his approvals compared to 44% and 22% for Mr. Wiseman and Mr. Schmidt, respectively. The author suspects that a number of the conditions added by all three hearing officers were intended to address the concerns of citizens who testified before the hearing officer.

Mr. Murphy was also the only hearing officer to reduce the number of lots to bring a plan into compliance with County law and to address citizen concerns. He took this action in two cases. Finally, Mr. Murphy was the only hearing officer to deny development plan approval, an action he reluctantly took in four cases. But in each order where he denied approval, Mr. Murphy went to lengths to explain what an applicant had to do to gain approval.

Mr. Murphy's greater use of conditions, lot reductions, and plan denials may account for a rate of citizens appeals one-fourth that of Mr. Wiseman and a tenth of Mr. Schmidt's. Apparently, applicants were far more satisfied with the hearing officer orders than citizens. Applicants only appealed one of the 149 orders issued during the three year period of this study.

It's not surprising that applicants appealed so few decisions. Even in the four instances when a development plan was initially denied, two of the four plans were subsequently approved with only a slight reduction in the number of lots. In other words, applicants pretty much got all the lots or square-footage of floor space they asked for in their 149 development plan submissions.

Do these statistics mean that Mr. Wiseman and Mr. Schmidt were bad hearing officers? Of course not. But it is apparent that Mr. Murphy conducted hearings in a way that left citizens with a greater sense that they were heard and that an effort was made to resolve their concerns. If the County wishes to maintain citizen confidence in the development review process, then it is critical that the next Deputy Hearing Officer display a similar willingness to use their full authority to reduce negative community impacts while approving responsibly designed development projects.

In Phase II, of this study the nearly 300 citizens who testified before the Hearing Officers will be asked about how effective the process was in resolving their concerns. The Phase II findings will show if, in fact, citizens felt one hearing officer was more effective in resolving their concerns and how the process might be improved.

INTRODUCTION

In some very important respects, Baltimore County has one of the most citizen-friendly development review processes in the nation, at least with respect to major residential development projects. This observation comes from my role as president of Community & Environmental Defense Services (CEDS). Through CEDS I have the opportunity to help citizens throughout the nation with concerns about a wide variety of activities which may affect a neighborhood or the environment. For the most part these activities are residential or commercial development projects along with landfills, highways, pipelines, mining, and a long list of other land uses. Because of this experience I have become familiar with the development review process administered by hundreds of local governments spread over most of the 50 states. Following are some of the ways the Baltimore County process is more citizen-friendly than most:

- In most places citizens get one opportunity to publicly voice concerns and seek resolution of concerns regarding a development proposal. In Baltimore County they get two: the Community Input Meeting then the Hearing Officer's Hearing.
- In most places citizens get a week or two of notice before the one public hearing. In Baltimore County citizens usually get three- to four-weeks of notice prior to the Community Input Meeting then six- to eight-months prior to the Hearing Officer's Hearing.
- In most places citizens have difficulty just viewing plans much less getting an actual copy. In Baltimore County the plans are mailed to adjoining property owners and community associations active in the vicinity of each project.
- In most places citizens have difficulty gaining access to staff and never get to sit in on their deliberations about a project. In Baltimore County citizens can attend two meetings where staff share their concerns about a project: the Concept Plan Conference and the Development Plan Conference.

But even with these virtues, the Baltimore County process is far from perfect. There is substantial anecdotal evidence that citizens feel the process ignores their concerns and allows projects to proceed despite severe flaws. In this report I present the results of the first of a four-phase evaluation to determine if the facts support these anecdotes and, if so, how the process can be improved.

My motivation for initiating this study is pretty simple. I enjoy winning development cases on behalf of citizens, particularly when their concerns can be fully resolved while allowing a fundamentally sound project to proceed. I can also take satisfaction from helping to defeat a fatally-flawed project. My hope is that this study will show how Baltimore County residents can be more successful in resolving their concerns through win-win solutions or by keeping the truly bad projects from the making it to a Hearing Officer's Hearing.

I also hate to see citizens invest hundreds of hours and thousands of dollars in strategies which produce few of the outcomes they are seeking. Frequently, the end result of this investment is a

settlement which could have been achieved with far less citizen time and money had the applicant, the County, and citizens just negotiated in good faith at the Community Input Meeting and for the two- to eight-months that precedes the Hearing Officer's Hearing.

THE FOUR PHASES OF THIS STUDY

Over the years I have asked many of those involved in the development review process how well it was working for the Baltimore County citizens who participate in the process. The folks I asked included the citizens who frequently participate in the process, County officials who oversee various portions of the process, the attorneys who represent citizens concerned about proposed development projects, and Hearing Officers. While all of these people knew about specific cases or specific portions of the process, no one seemed to have an overall understanding as to how well the process was working for citizens. It was this which prompted me to make an attempt to carry out a comprehensive review of the process.

The purpose of this study is to assess the effectiveness of the process in resolving the concerns of Baltimore County residents affected by project proposals and to identify opportunities to improve the process from the citizen perspective. The vast majority of citizen involvement occurs through the Concept Plan and Development Plan phases of the process, both of which will be described later in this report. This study focuses on these two plans as opposed to variances, special hearings, special exceptions, and so forth. This study will be conducted in the following four phases.

Phase I

The written decisions documenting Hearing Officer development plan decisions will be reviewed for the following information:

- what are the general characteristics of projects that come before the Hearing Officer in the form of a development plan;
- how much time elapses between each step in the development review process;
- how often do citizens attend a Hearing Officer's Hearing (HOH);
- how often do citizens testify about concerns at the hearing;
- what issues do citizens testify about;
- how often do citizens reach an agreement with the applicant;
- how often are citizens represented by an attorney;
- does representation by an attorney increase the probability of success;
- how often are conditions added to development plans which might resolve citizen concerns;
- how often does a Hearing Officer withhold development plan approval;
- how often is the Hearing Officer's decision appealed; and
- what is the outcome of these appeals.

Phase II

While Phase I will reveal much useful information about how the process works, it will not show how citizens perceive the process. In Phase II of this study, questionnaires will be mailed to the

citizens who attended the Hearing Officer Hearings included in Phase I. The questionnaire will request the following information:

- did the citizen attend the Community Input Meeting (CIM);
- what concerns did they voice at the CIM;
- what efforts did County staff or the applicant make to resolve their concerns at the CIM;
- were their questions answered fully at the CIM;
- were they treated courteously and with respect at the CIM;
- did they testify at the HOH;
- if yes, then what issues did they testify about;
- did they feel the Hearing Officer took the time to fully understand their concerns;
- did the Hearing Officer engage the applicant in a discussion as to how each citizen concern could be resolved;
- did this discussion result in resolution of the citizen's concern;
- if not did the Hearing Officer clearly explain why a citizen's concerns could not be resolved;
- did the citizen feel they were treated with respect and civility by all parties at the hearing;
- did they come away from the hearing feeling it was conducted in a fair manner;
- did the citizen appeal the Hearing Officer's decision;
- if they did appeal, then did this action result in the resolution of their concerns;
- how much did they spend in their effort to resolve concerns about the project;
- did they find County staff helpful, respectful, and fully cooperative;
- did they seek assistance from their County Council representative or other elected officials; and, if so,
- were these officials helpful.

Phase III

If Phase II shows that more than a very small fraction of citizens come away feeling their concerns were not fully resolved, then the following will be undertaken in Phase III of the study.

- A. A panel of citizens will be convened who have been active in the Baltimore County development review process. The citizen panel will be asked to consider each unresolved concern. The panel will also be asked for their thoughts on what conditions the Hearing Officer could have imposed to resolve each concern. County staff and independent experts will be consulted as needed to help the panel devise possible solutions.
- B. A panel of attorneys who specialize in representing citizens before the Hearing Officer will be convened. The panel will be asked to assess whether the Hearing Officer had the facts needed to render a decision on each concern and the legal authority to impose the condition recommended by the citizen panel. If the attorney panel finds the Hearing Officer lacked the necessary authority then panel members will be asked what changes to County law would provide the necessary authority.

The results of Phase III will be provided to the County Executive, the County Council, and the 500+ community associations and other citizen groups with an interest in improving the Baltimore County development review process. Hopefully, this will result in the groundswell of grassroots support the County Council and the County Executive will need to make the process more effective in reaping the benefits of growth without imposing further growing pains on us citizens.

Phase IV

The first three phases of this study will be repeated every two- to four-years to assess how effective improvements made during the intervening period have been in increasing the percentage of citizens who feel the process was effective in resolving their concerns.

Before getting to the results of the first phase of this study, I offer the following overview of the development review process.

THE BALTIMORE COUNTY DEVELOPMENT REVIEW PROCESS

The development review process is governed by Article 32, Title 4, of the Baltimore County Code. Title 4 is also known as the *Development Regulations*. These regulations can be viewed online at:

http://www.amlegal.com/baltimoreco_md/

Section 32-4-211 through 32-4-229, of the development regulations outlines the following process for the review of projects not granted a limited exemption (§32-4-106):

INFORMATION CONFERENCE

The informational conference takes place prior to the submission of a concept plan. Development regulation §32-4-211(a) gives the applicant the option of requesting an informational conference. The applicant provides county agency staff with 17 specific items of information then meets with each agency representative to discuss the proposed project. Potential issues are identified along with possible solutions.

PRECONCEPT PLAN CONFERENCE

While the development regulations make a distinction between the informational and preconcept plan conference, in practice the two have evolved into essentially the same thing. Development regulation §32-4-212 makes this step in the process mandatory for projects proposed on land zoned R.C. 6, while applicants pursuing projects in any other zoning district may request a Preconcept Plan Conference. The applicant provides County agencies with information regarding the site and the proposed project. A meeting is scheduled with the applicant, their consultants, and staff representing the agencies which will comment on the plan. As with the Information Conference, the purpose is to discuss the intended project and the requirements that a concept plan must meet. Potential issues are identified along with possible solutions.

CONCEPT PLAN CONFERENCE

Development regulation §32-4-213(b) sets forth a long list of information that must be presented on or accompany a concept plan. Regulation §32-4-216(a) requires that a Concept Plan Conference (CPC) take place within ten working days after the concept plan is received by the Department of Permits & Development Management (PDM). At the CPC agency staff meet with the applicant and the applicant's attorney-consultants to discuss potential issues and possible solutions. Agency staff will usually submit written Concept Plan Comments. Though the CPC is open to the public, it is not a forum for public comment. However, citizens are usually allowed an opportunity to ask questions. The Concept Plan Conference is advertised on the PDM Development Hearings & Meetings webpage at:

<http://www.baltimorecountyonline.info/MeetingsandEvents/pdm>

and an announcement is posted on a bulletin board in the PDM office in Room 123, of the County Office Building, 111 West Chesapeake Avenue, in Towson. Citizens can also subscribe to a monthly newsletter for their Councilmatic District announcing CPC's and other development-related events. Information on how to subscribe can be found by going the PDM webpage link given above.

PLANNING BOARD REFERRAL

Development regulation §32-4-215 requires that a project be referred to the Baltimore County Planning Board if a conflict is noted between the development depicted on the Concept Plan and the Baltimore County Master Plan. The Master Plan can be viewed at:

<http://www.baltimorecountyonline.info/Agencies/planning/masterplanning/index.html>

The development regulations do not prohibit further review of the Concept Plan while the Planning Board considers the question of conflict. Development regulation §32-4-231 also requires the Hearing Officer to refer a project to the Planning Board if:

- The plan involves a building, structure or site included on the landmarks preservation commission preliminary or final list or is located within a county historic district;
- The applicant has made a written request for a variance to the Chesapeake Bay Critical Areas Regulations; or
- The proposal is a planned unit development.

COMMUNITY INPUT MEETING

Development regulation §32-4-217 sets forth the following purpose for the Community Input Meeting (CIM):

The purpose of the community input meeting is to provide a forum for:

- (1) *Discussion; and*
- (2) *Resolution of community concerns and developer constraints within the context of this title and county regulations and policies.*

The regulations require that within ten working days of the CPC, the development site be posted with a sign giving the date, time, and location of the Community Input Meeting (CIM) for the project. The CIM must be held within 21- to 30-days of the posting date. The CIM usually takes place at a location near the site, such as a library, school, etc. A copy of the Concept Plan and the Concept Plan Comments are mailed to those owning property adjoining the proposed development site and to community associations identified by the Office of Planning¹. The applicant and their attorney-consultants attend the CIM along with at least one County representative, who is usually the PDM project manager having responsibility for the area in which the site is located. Development regulation §32-4-217(d) sets forth the following purpose and procedures for the CIM.

(d) Conduct of the community input meeting.

- (1) *A representative of the Department of Permits and Development Management shall:*
 - (i) *Conduct the community input meeting;*
 - (ii) *Take minutes of the meeting to be placed in the Development Plan file; and*
 - (iii) *Prepare a list of comments or conditions raised by any participant at the meeting and sign the list and place it in the Development Plan file.*
- (2) *At the community input meeting the applicant shall present the concept plan for comment and discussion by any participant.*

(e) Proposed comments and conditions.

- (1) *At the community input meeting, a participant may raise any comment relevant to the concept plan or propose any condition to be imposed by the Hearing Officer on the approval of the Development Plan.*
- (2) *If a comment or condition is unresolved, the Director of Permits and Development Management may require:*
 - (i) *An additional meeting to be held; and*
 - (ii) *Representatives of any county reviewing agency to attend the meeting in order to address the comments or conditions.*
- (3) *As part of the Development Plan review, the appropriate agency shall:*
 - (i) *Address the comments or proposed or requested conditions that are not resolved through the community input meeting; and*
 - (ii) *Submit the comments or proposed or requested conditions to the Hearing Officer according to § 32-4-226 of this subtitle.*

¹ To verify that your association is registered with the Office of Planning visit the following website:
http://www.co.ba.md.us/Agencies/planning/community_planning/community_associations.html

DEVELOPMENT PLAN SUBMITTAL

Development regulation §32-4-221(b) requires that the applicant file a Development Plan within 12 months of the end of the CIM. The Development Plan is a more detailed version of the Concept Plan and is the plan the Hearing Officer will consider for approval. If the applicant and staff diligently pursued the responsibilities presented above, then the Development Plan should show that all the citizen concerns presented at the CIM have been resolved.

PRELIMINARY DEVELOPMENT PLAN REVIEW

Development regulation §32-4-225 requires that the Development Plan must be reviewed within 15 working days of receipt by the County for general conformance to the Concept Plan presented at the CIM and the specific contents required by development regulations §32-4-221(b) and (c) and 32-4-222 through 32-4-224.

DEVELOPMENT PLAN CONFERENCE

Development regulation §32-4-226 requires that a Development Plan Conference (DPC) be held following a thorough review of the plan by various County agencies. The DPC must take place at least ten working days prior to the Hearing Officer's Hearing on the Development Plan. As with the Concept Plan Conference, agency staff meet with the applicant and the applicant's attorney-consultants to discuss issues which must be resolved prior to the Hearing Officer's Hearing. Written Development Plan Comments are provided to the applicant. Though the DPC is open to the public, it is not a forum for public comment. However, citizens are usually allowed an opportunity to ask questions and can request copies of County agency comments. Those who attended the CIM (and signed-in) will be mailed the Development Plan, the comments, and notice of the date, time, and location of the Hearing Officer's Hearing. The Development Plan Conference is also advertised on the PDM *Development Hearings & Meetings* webpage:

<http://www.baltimorecountyonline.info/MeetingsandEvents/pdm>

and an announcement is posted on a bulletin board in the PDM office at Room 123, of the County Office Building, 111 West Chesapeake Avenue, in Towson. Citizens can also subscribe to a monthly newsletter for their Councilmatic District announcing DPC's and other development-related events. Information on how to subscribe can be found by going to the PDM webpage address given above.

HEARING OFFICER'S HEARING

Development regulation §32-4-225(c) requires PDM to schedule a Hearing Officer's Hearing (HOH) within 21- to 30-days after the development plan is found in general conformance to the Concept Plan and the specific contents required by development regulation §32-4-224. A sign must be posted on the site for at least 15 days prior to the HOH. The sign must provide the date, time, and location of the HOH along with the name-number of the person to contact for further information. The hearing is usually held in the New Courts Building or the County Office Building in Towson. Development regulation §32-4-229 sets forth the specific factors the Hearing Officer must consider and the criteria for:

- approving the plan;
- approving the plan with conditions; or
- denying approval.

The Hearing Officer has 15 days after the end of the hearing to issue a final decision. The development regulations cited above obligate the Hearing Officer to not only consider but to seek resolution of citizen concerns presented at the Community Input Meeting and at the Hearing Officer's Hearing. Development regulation §32-4-229(d) sets forth the Hearing Officer's authority to add conditions which will resolve these concerns. This regulation reads:

- (d) *Conditions imposed by Hearing Officer.*
- (1) *This subsection does not apply to a Development Plan for a Planned Unit Development.*
- (2) *In approving a Development Plan, the Hearing Officer may impose any conditions if a condition:*
- (i) *Protects the surrounding and neighboring properties;*
 - (ii) *Is based upon a comment that was raised or a condition that was proposed or requested by a participant;*
 - (iii) *Is necessary to alleviate an adverse impact on the health, safety, or welfare of the community that would be present without the condition; and*
 - (iv) *Does not reduce by more than 20 %:*
 1. *The number of dwelling units proposed by a residential Development Plan in a DR 5.5., DR 10.5, or DR 16 zone; or*
 2. *The square footage proposed by a non-residential Development Plan.*
- (3) *The Hearing Officer shall base the decision to impose a condition on factual findings that are supported by evidence.*

BOARD OF APPEALS

Development regulation §32-4-229(b)(2) allows those aggrieved by the Hearing Officer's decision to take an appeal to the County Board of Appeals (CBA). The CBA usually bases its decision upon the record created before the Hearing Officer. Development regulation §32-4-281(e) allows the Board of Appeals to take the following actions with respect to the Hearing Officer's decision:

- (1) *In a proceeding under this section, the Board of Appeals may:*
- (i) *Remand the case to the Hearing Officer;*
 - (ii) *Affirm the decision of the Hearing Officer; or*
 - (iii) *Reverse or modify the decision of the Hearing Officer if the decision:*
 1. *Exceeds the statutory authority or jurisdiction of the Hearing Officer;*
 2. *Results from an unlawful procedure;*
 3. *Is affected by any other error of law;*
 4. *Is unsupported by competent, material, and substantial evidence in light of the entire record as submitted; or*

5. Is arbitrary or capricious.

Those aggrieved by the CBA decision may take an appeal to Circuit Court, then to the Maryland Court of Special Appeals, and finally the Maryland Court of Appeals. But like the U.S. Supreme Court, the Court of Appeals only hears those cases it chooses to.

Once the Hearing Officer approves a Development Plan the applicant must submit even more information as County staff review the project at a greater level of detail. Eventually, if all applicable laws, regulations, policies, and guidance requirements are met the project goes to record plat, building and grading permits are issued along with all other approvals the applicant needs before breaking ground.

PHASE I RESULTS

I decided to focus on the most readily available detailed source of information on citizen involvement in the Baltimore County development review process. This source are the Hearing Officer's Opinions and Development Plan Orders posted on the PDM website at:

<http://www.baltimorecountyonline.info/Agencies/permits/commissionerdecisions/index.html>

When I began Phase I research on May 10, 2007, there were 149 development plan decisions posted on this site. These decisions involved 142 separate development projects. Five projects came before the Hearing Officer twice and one was the subject of three separate hearings. These decisions were issued by the Hearing Officer (or Deputy Hearing Officer) between March 2004 and April 2007.

Three individuals presided over the 149 hearings. Lawrence E. Schmidt served in the dual role of Zoning Commissioner and Hearing Officer. Mr. Schmidt was succeeded by William J. Wiseman. John V. Murphy served as the Deputy Zoning Commissioner and the Deputy Hearing Officer.

PROJECT CHARACTERISTICS

Of the 149 decisions, the vast majority (97%) were residential projects consisting of 7,377 proposed units or about 50 units per project. Three of the residential projects also had a commercial component. Of the remaining six projects, four were commercial, one was a church, and the last was a retreat center. The decisions contained square-footage of proposed floor space for some projects, but not all. The non-residential projects would create at least 1,906,283 square-feet of floor space.

PROJECTS WHICH DID NOT GO THROUGH THE CIM-HOH PROCESS

A number of other development projects were reviewed by the County during the three-year period of this study. These projects were not subject to the CIM-HOH process because of the limited exemptions² contained in Development Regulation §32-4-106.

To determine how much development was exempted from the CIM-HOH process, I consulted the Quarterly Subdivision Reports, which are prepared by the Office of Planning and posted on the Planning Statistics webpage at:

http://www.baltimorecountyonline.info/Agencies/planning/planning_statistics/

The Office of Planning provided me with the database used to prepare these reports. I requested data for the same period as for the 148 decisions included in this study: March 2004 through April 2007. Unfortunately, the database only contained information for projects or plats approved or recorded through to the end of 2006.

Table 1: Characteristics of Development in Baltimore County Which Did Not Go Through The CIM-HOH Process During the Period of March 2004 To December 2006

Project Type	Number or Total	Average	Minimum	Maximum
Commercial Projects	14			
Square Feet of Floor Space	577,180	44,399	1,800	224,993
Industrial Projects	2			
Square Feet of Floor Space	83,800	41,300	20,800	63,000
Institutional Projects	4			
Office Projects	4			
Square Feet of Floor Space	127,330	42,443	8,362	108,000
Mixed Projects	9			
Residential Projects	217			
Acres	2,439	11.2	0.3	232.8
Lots	502	2.3	1.0	3.0

² Following are examples of projects exempted from the CIM-HOH process: building one isolated home, residential accessory structures or minor commercial structures, and residential subdivisions consisting of three or fewer lots.

Table 1, provides a summary of projects approved during this period which do not appear to have gone through the CIM-HOH process. These projects range from a single residential lot to a quarter-million square-foot Walmart store.

Following are the statistics for the two processes. Of the 7,871 residential dwelling units approved during the three-year period of this study, 94% went through the CIM-HOH process and the remaining 6% were mostly minor subdivisions (≤ 3 lots) or single-lots approved through the DRC process. For nonresidential (commercial, industrial, institutional, office, and mixed) projects, 86% of the projects went through DRC and six (14%) of the projects went through the CIM-HOH process. But in terms of nonresidential floor space, 71% of the 2,694,593 square-feet of floor space was approved through the CIM-HOH process.

PERIOD BETWEEN EVENTS

The Hearing Officer's orders provide a brief history of each development project including the dates when the following events occurred: the Concept Plan Conference, the Community Input Meeting, the Development Plan Conference, the Hearing Officer's Hearing, and the date the order was issued. The average, minimum, and maximum number of months between these events is given in Table 2.

Table 2: Number of Months Between Events in the Baltimore County Development Review Process

EVENT	MONTHS		
	Average	Minimum	Maximum
Concept Plan Conference to Community Input Meeting	1.3	0.0	5.6
Community Input Meeting to Development Plan Conference	7.2	1.2	24.7
Development Plan Conference to Hearing Officer's Hearing	0.8	0.1	2.6
Hearing Officer's Hearing to Issuance of the Hearing Officer's Decision	2.2	0.0	30.4
Community Input Meeting to Hearing Officer's Hearing	7.9	1.8	23.2

I am familiar with the development review process administered by many counties and municipalities around the United States. In most localities, citizens get a week or two of notice prior to the "big" hearing on a proposed development project. Table 2, shows that there is at least two months and an average of nearly eight months between the time citizens receive notice of a project and the "big" hearing - the Hearing Officer's Hearing. This is a large amount of time between the date citizens first learn of a project and the "big" hearing. A community association would also get an average of 1.3 months of additional time to resolve their concerns if they were tracking Concept Plan Conferences for projects in their service area.

I also took a look at how often each event lasts more than one day. These statistics are:

- 3% of Concept Plan Conferences take place on more than one day;
- 8% of Community Input Meeting are held on more than one night;
- 5% of Development Plan Conferences take place on more than one day; and
- 22% of all Hearing Officer’s Hearings last more than one day.

CITIZEN PARTICIPATION AT HEARING OFFICER HEARINGS

At least 648 citizens attended the 149 hearings. At least 259 citizens testified at the hearings. I use the phrase “at least” because a number of the orders were vague regarding citizen attendance and testimony. With respect to percentages, citizens attended 81% of the 149 hearings and testified at two-thirds (66%). The Hearing Officer’s order frequently contained a summary of citizen concerns and questions. Table 3, presents my attempt to group these concerns and questions into categories. In Phase II of this study the citizens who testified at these hearings will be asked to describe their questions and concerns.

Table 3: Percentage of 100 Hearing Officer Hearings in Which Citizens Raised Specific Categories of Concerns or Questions

Address Change	3%	Parking Inadequacy	6%
Adequacy of Emergency Services	1%	Property Value	3%
Compatibility with Existing Homes	55%	Property Damage	1%
Endangered Species Impact	12%	School Overcrowding	27%
Environment Impact in General	11%	Sidewalks	6%
Forest Conservation & Forest Buffers	28%	Signage	3%
Harm to Wildlife in General	9%	Stormwater Management	58%
Historic Preservation	4%	Traffic	78%
Inadequate Notice of Hearing	7%	Visual Buffering	43%
Lighting (Potential Glare)	6%	Water & Sewer	28%
Noise	6%	Well & Septic Systems	21%
Open Space Loss	18%	Wetland Impacts	4%

The top six citizen concerns-questions were related to: traffic, stormwater management, compatibility of the proposed development with nearby existing homes or the area, loss of privacy or view, forest conservation or stream buffers, and issues related to water and sewer services. A description of these concerns and others will be presented later in this report.

At first glance some of the concerns listed in Table 3, might seem minor or even trivial. Take the concern about the impact of a proposed development project on someone’s mailing address. What’s the big deal you might say? But think about all the effort involved in a change of mailing address:

- you need to notify all your friends, relatives, and others who might mail you a letter;

- you need to change the address on your drivers license and vehicle registration; and
- you must notify utility companies, insurance providers, credit card companies, banks, etc.

Given all the trouble an address changes causes, it's easy to see why a citizen would take off a day from work to sit in a boring hearing room in the hope of preventing this impact.

ATTORNEYS

Citizens were represented by an attorney at 22% of the hearings. Eleven different attorneys represented citizens with one present at half the hearings. Applicant's were represented by an attorney at 95% of the hearings.

HEARING OFFICER DECISIONS

There have been four Hearing Officers since Baltimore County instituted this process in 1992. Three of these individuals sat as the Hearing Officer for a portion of the 149 development plan cases which are the focus of this study. The 149 orders show that the three Hearing Officers made one of four development plan decisions: approve, approve with conditions, deny approval, or dismissal of a motion related to a development plan.

Section 32-4-229(b)(1), of the Baltimore County Development Regulations, sets forth the following conditions under which the Hearing Officer is obligated to approve a development plan:

The Hearing Officer shall grant approval of a Development Plan that complies with these development regulations and applicable policies, rules and regulations adopted in accordance with Article 3, Title 7 of the Code, provided that the final approval of a plan shall be subject to all appropriate standards, rules, regulations, conditions, and safeguards set forth therein.

Additionally, §32-4-229(d) allows the Hearing Officer to impose conditions on an approved development plans within the following framework:

- (1) *This subsection does not apply to a Development Plan for a Planned Unit Development.*
- (2) *In approving a Development Plan, the Hearing Officer may impose any conditions if a condition:*
 - (i) *Protects the surrounding and neighboring properties;*
 - (ii) *Is based upon a comment that was raised or a condition that was proposed or requested by a participant;*
 - (iii) *Is necessary to alleviate an adverse impact on the health, safety, or welfare of the community that would be present without the condition; and*
 - (iv) *Does not reduce by more than 20 %:*
 1. *The number of dwelling units proposed by a residential Development Plan in a DR 5.5., DR 10.5, or DR 16 zone; or*
 2. *The square footage proposed by a non-residential Development Plan.*

(3) *The Hearing Officer shall base the decision to impose a condition on factual findings that are supported by evidence.*

Table 4, summarizes the decisions rendered by these three Hearing Officers. An earlier version of Table 4, showed that Mr. Wiseman had approved substantially fewer plans with conditions. The conditions appear in two formats in the orders: as numbered lists or embedded in the text. In the earlier table I only counted the conditions presented in numbered lists, hence the difference between the two versions of Table 4.

Table 4: Summary of Hearing Officer Decisions

HEARING OFFICER	Approved	Approved with Conditions	Not Approved	No Decision	Dismissed	TOTAL
John V. Murphy						
Number of Decisions	31	41	4	0	1	77
Percent of Decisions	40%	53%	5%	0%	1%	52%
Lawrence E. Schmidt						
Number of Decisions	14	4	0	0	0	18
Percent of Decisions	78%	22%	0%	0%	0%	12%
William J. Wiseman						
Number of Decisions	29	24	0	1	0	54
Percent of Decisions	54%	44%	0%	2%	0%	36%
TOTAL	74	69	4	1	1	149
Percent	50%	46%	3%	1%	1%	100%

Additionally, the Hearing Officer considered a number of other approvals along with the development plan. At 31 hearings applicants asked the Hearing Officer to approve 55 actions as special hearing items, 89% of which were approved. In two cases special exceptions were considered, both of which were approved. A total of 125 variances were requested at 38 hearings and 90% were granted. Of 20 waivers requested at 14 hearings, 95% were approved. Finally, at 9 hearings 16 modifications of standards were considered and 94% were approved.

Two striking differences are apparent in Table 4. First, Mr. Murphy is the only Hearing Officer who denied approval for a development plan; an action he took as a result of four hearings. However, the order in one case ((Woodholme Reserve, PUD-1) did reference an earlier proposal for the same property where Mr. Schmidt denied approval. So, while Mr. Murphy is the only Hearing Officer to have denied approval of a project with respect to the 149 most recent decisions, at least one other Hearing Officer has also denied plan approval.

The second striking difference shown in Table 4, is that Hearing Officers Murphy and Wiseman added conditions to project approvals twice as often as Mr. Schmidt. However, only 18 of Mr. Schmidt’s decisions were available for this study. Mr. Schmidt served as Zoning Commissioner/Hearing Officer for over ten years. It is possible that a larger sampling of Mr. Schmidt’s decisions might show a different frequency of conditioned approvals. A total of 160 conditions were added to development plan approved in this manner. Table 5, on the next page, presents a summary of these conditions.

Does this mean that citizen concerns were more likely to be resolved in a hearing before Mr. Murphy or Mr. Wiseman when compared with Mr. Schmidt?

Not necessarily.

In the next two sections of this report I will take a close look at how the conditions relate to citizen concerns and the factors which prompted Mr. Murphy to deny approval in four cases.

Table 5: Percentage of 70 Development Plans Approved With Various Categories of Conditions

Advisory	14%	Settlement Agreement	14%
Compatibility	30%	Sidewalks	4%
Forest Conservation	11%	Stormwater Management	26%
Historic Preservation	7%	Traffic	33%
Lighting	1%	Use Restriction	9%
Lot Reduction	3%	Visual Buffering	27%
Noise	6%	Water & Sewer	21%
Open Space	10%	Well & Septic Systems	4%
Parking	3%	Zoning Plan	3%

HOW DO DEVELOPMENT PLAN CONDITIONS RELATE TO CITIZEN CONCERNS

The 70 development plans approved with conditions contained 160 of these specific requirements. I made an attempt to compare each condition with the concerns expressed by the citizens who testified at each hearing.

Of the 99 hearings at which citizens testified regarding some concern, the Hearing Officer added conditions to half (49) of the decisions. In 47% of the 49 decisions I believe at least one condition directly related to a concern expressed by citizens. Another 27% of the conditions *possibly* related to citizen concerns. One condition addressed the concerns of some of the citizens attending the hearing, but not all. I use the phrases “*appears to*” and “*possibly relate*” because the decisions simply do not contain sufficient information to determine if citizens perceived the conditions as being responsive to their concerns. In Phase II of this study I will ask the citizens who testified at these hearings to judge how effective they thought the conditions were in addressing their concerns.

Following is a description of each of the categories of concerns, questions, and conditions presented in Table 3 and Table 5, above.

Address Change

This issue was raised by citizens concerned that a proposed development project would change their address with all the attendant headaches described earlier in this report.

Adequacy of Emergency Services

This concern related to the impact of a project on the adequacy of police, fire, or ambulance services. The decisions did not contain any conditions directly related to this concern.

Advisory

The Hearing Officer added the following advisory condition to nine plan approvals:

The Developer/Petitioner is permitted to proceed; however, the Developer/Petitioner is hereby made aware that doing so shall be at its own risk until the thirty (30) day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein could be rescinded.

Compatibility

This issue was the third most often voiced by citizens and appeared in 37 of the orders. Examples of incompatibility include developing a site at a significantly higher density compared to existing, nearby neighborhoods or placing duplexes, townhouses, or apartments next to single-family detached homes. In 19 cases the Hearing Officer added conditions to development plan approvals related to compatibility. In two cases the conditions required the placement of single-family detached houses in locations to achieve compatibility with nearby existing homes. Most of the other conditions related to achieving compatibility with rural settings or reducing visual impact.

Endangered Species Impact

In two cases citizens testified regarding concerns about how a development project would impact endangered species. In both cases the decision indicates that citizens either did not provide sufficient evidence to prove that the species were present or likely to be harmed by the project.

Environment Impact in General

In eight cases citizens testified about their concerns regarding environmental impacts in general. Details on these general concerns were lacking in the order for these cases.

Forest Conservation & Forested Stream Buffers

In 19 cases citizens testified about forest-related concerns ranging from the loss of a single, large tree they valued to portions of a forest or stream buffer. In eight cases the Hearing Officer added conditions related to the preservation of a single, highly-valued tree or preserving portions of a forest or stream buffer.

Historic Preservation

In three cases citizens testified about how a project might impact a historic structure or a historic district. In five cases the Hearing Officer added conditions which would increase the likelihood that historic resources would be preserved.

Inadequate Notice of Hearing

At five hearings citizens voiced concerns about the lack of notice they received. It is unclear from the decisions whether these citizens were required to receive notice. This will be one of the questions posed to the citizen participants in Phase II of this study.

In several cases the Hearing Officer either continued the hearing or extended the comment period because of inadequate notice. For example, in one case citizens claimed not to have received required notice of the Hearing Officer's Hearing. The decision in this case contained the following:

While not claiming any prejudice, he informed those in attendance that at least six (6) neighbors who are adjacent property owners never received notice of the community input meeting or any further follow-up mailings from the Developer. At the conclusion of the informal process, counsel and the engineer met to discuss the perceived notice deficiencies with Colleen Kelly and did, indeed, identify four (4) individuals who were inadvertently left off of the mailing list and corrections were made.

Lighting

In four cases citizens testified about street lights. In two cases the concern was about incompatibility of street lights with the rural setting of a project. In another citizens were concerned that lighting along a path wouldn't be maintained. In the fourth case a nearby resident was concerned about how the glare from project lights might intrude into her home. In one of these four case the Hearing Officer added a condition requiring the applicant to submit a lighting plan.

Lot Reduction

In one case the Hearing Officer added a condition eliminating four lots to prevent future residents from purchasing a home where noise impacts would be excessive. In another case ten lots of a twenty-lot project were eliminated through a condition of the development plan approval. This condition was prompted by a combination of traffic safety, compatibility, and stormwater management concerns. Both projects will be described in detail in the *Lot Reduction* section of this report.

Noise

At nine hearings citizens testified about the noise they feared a project might generate. In one case the concern was about noise during construction. In another, a farm owner wanted future residents of a proposed lot informed that they may experience noise from his farming operations. In a third case citizens were concerned that the loss of intervening trees would increase the level of beltway noise at their homes. They requested that the trees be saved along with the

installation of a noise barrier. The Hearing Officer imposed conditions regarding noise in four decisions.

Open Space

Concerns about loss of open space were voiced by citizens in 12 cases. The Hearing Officer added open space-related conditions to five development plan approvals.

Parking Inadequacy

Citizens testified about their concern that a project would have insufficient parking in four cases. Generally, the concern was that the inadequacy would result in those visiting the project to use offsite parking which was already in short supply. The Hearing Officer required the placement of *No Parking* signs on offsite streets as a condition in two cases.

Property Damage

One citizen testified about concerns that placing a stormwater pond close to their property line would damage their property. The decision from this hearing did not contain a condition addressing this concern.

Property Value

In one case citizens expressed concern about how the connection of a dead-end road would increase traffic volume, noise, and reduce property value. In another case citizens feared that developing an adjoining site at much higher density would lower the value of their homes. In one case the Hearing Officer directly addressed the question of property value with the following:

Moreover, the houses to be constructed are consistent with the style and character of existing homes in the area and will not lower property values.

School Overcrowding

In 18 cases citizens testified about concerns that a project would cause or add to school overcrowding. In most cases the Hearing Officer's decision cited data introduced by staff or the applicant's expert showing that the project met the school impact test required by County Adequate Public Facilities regulations³. The Hearing Officer would then state that given compliance with this regulatory requirement he was obligated to approve the development plan with respect to this issue.

Settlement Agreement

Twenty decisions (14%) contained a reference to a settlement agreement between the applicant and citizens. In eleven decisions development plan approval was conditioned upon compliance with a settlement agreement. These agreements will be examined in greater detail later in this report.

³ See the following website for further detail on the Adequate Public Facilities requirements for schools: http://www.baltimorecountyonline.info/Agencies/planning/public_facilities_planning/adequate_school_facilities.html

Sidewalks

In four cases citizens voiced concerns about sidewalks. In one case a citizen was concerned that if a developer was required to build a sidewalk her fence would be removed. This issue appears to have been resolved through a waiver to the sidewalk required normally at such a location. In another case citizens asked a question about sidewalks as a point of information. In a third case a citizen asked to have public sidewalks along both sides of a street. Three decisions contained conditions regarding sidewalks.

Signage

In two cases citizens raised questions or concerns regarding signs. The decision in both cases lacked detail but it appears that the citizens were worried about the unsightly appearance of signs.

Stormwater Management

Citizens expressed concerns about various issues related to stormwater management in 39 cases; the second most often voiced issue. Specific concerns include flooding of property by a development project proposed upstream, runoff pollution, erosion, and placing an unsightly stormwater facility too close to a home. Eight decisions contained 18 conditions regarding stormwater management, one of which involved eliminating ten lots in part because of stormwater impacts. Stormwater was also one of the issues which prompted denial of development plan approval in one case.

Traffic

No other issue was raised as often as traffic. In fact, citizens expressed concerns about increased cut-through traffic, increased traffic congestion, pedestrian safety, noise, property value impacts, and other traffic-related issues at 53 of the hearings. Similarly, traffic was the subject of an unusually large number of conditions - 23 in fact. It was also part of the basis for eliminating ten lots on one project.

Use Restriction

In three cases the Hearing Officer added six conditions to restrict the uses that could be made of a development site. For example, the approval for the Ramsey Boys project contained the condition: *Campsites must not be used as temporary living quarters*. The approval of the Burnbrae Homestead project included the condition: *There shall be no occupancy or commercial use of a proposed garage*.

Visual Buffering

In 29 hearings citizens expressed concern about how a project might impact the privacy of their home, eliminate natural settings they enjoyed seeing from their home, or would place undesirable uses within sight. A total of 18 projects were approved with conditions which would provide some degree of visual buffering, usually through plantings.

Water & Sewer

Citizens asked questions or expressed concerns about issues related to water and sewers in 19 cases. These issues included inadequate water pressure, concerns about use of grinder pumps, need for a water and sewer plan amendment, and using the development project as an opportunity to extend water and sewer services to a citizen's property. The decisions for ten projects contained 15 conditions related to water and sewer, many of which required notification of future owners that a grinder pump was part of the sewage collection system serving their home.

Well & Septic Systems

Citizens raised questions or concerns about well or septic system issues at 14 hearings. Specific issues included well contamination or impacts to existing septic systems. Concerns about mound systems were also raised. Three development plan approvals contained conditions related to wells and septic systems.

Wetland Impacts

Citizens expressed concerns about wetland impacts in three cases. None of the decisions contained conditions directly related to wetlands.

Wildlife

In six cases citizens raised the issue of impacts to wildlife presently residing on the development site. As with wetlands, none of the decisions contained conditions directly related to wildlife.

Zoning Plan

Two of the development plan approvals contained a condition requiring submission of a revised zoning plan.

DEVELOPMENT PLANS NOT APPROVED

As stated earlier in this report, Section 32-4-229(b)(1), of the Baltimore County Development Regulations, sets forth the following conditions under which the Hearing Officer is obligated to approve a development plan:

The Hearing Officer shall grant approval of a Development Plan that complies with these development regulations and applicable policies, rules and regulations adopted in accordance with Article 3, Title 7 of the Code, provided that the final approval of a plan shall be subject to all appropriate standards, rules, regulations, conditions, and safeguards set forth therein.

Table 4, above, shows that the Hearing Officer concluded that this regulation was not met in the case of four (3%) of the 149 development plans. Mr. Murphy served as the Hearing Officer in all four cases, which were: Bender-Vogel, Honeygo Springs, Kaufman-Holdridge, and the Wever Property. Of these four projects, one (Wever Property) was revised to address the issue prompting disapproval, then resubmitted and approved with 17 of 19 of the lots originally

proposed. The plan for a second project (Honeygo Springs) was also revised in a way that resolved the issues prompting the original denial and was subsequently approved. Denial of approval for the third project (Bender-Vogel) was appealed and both the Board of Appeals and Circuit Court upheld the denial. The fourth (Kaufman-Holdridge) appears inactive.

Following is additional detail on the factors which prompted the disapproval of the four plans. I offer this detail so citizens can glimpse the way the Hearing Officer views issues, the facts and other evidence regarding each issue, and his view of the criteria he must follow in rendering a decision regarding each issue.

Bender-Vogel, LLC (Case No. XI-990)

This project was proposed for a site in Parkville as an 18-lot single family detached residential development. The Community Input Meeting was held April 7, 2005, and the Hearing Officer's Hearing began on August 5th then concluded on September 2, 2005. The Hearing Officer issued his order of "NOT APPROVED" on September 15, 2005. The Hearing Officer's order provided the following basis for this ruling:

that it must be revised to provide local open space pursuant to the LOS Manual⁴ and incorporate any changes indicated by a dam breach analysis for the storm water management facility;

The applicant had also requested approval for a density anomaly involving two proposed lots, but this request was withdrawn by the applicant then dismissed by the Hearing Officer.

The order states that the Hearing Officer explained at the outset of the proceeding that he was obligated to approve the development plan if it met all applicable County regulations. At the hearing the applicant was represented by an attorney, but the 26 citizens who signed in at the hearing did not have an attorney. The order states that the citizens were part of two groups: the Carney Improvement Association and the Greater Parkville Coordinating Council. The order presented the concerns voiced by these citizens under four headings: stormwater management, traffic, schools, and sewer capacity. In addition to these concerns, the order notes that one citizen also testified about landscaping, performance standards, and environmental concerns. Unfortunately, the order provides no details on these concerns.

Stormwater: Citizen testimony on the stormwater issue focused on the flooding they had observed where Summit Avenue crosses Jennifer Branch. They noted substantial increases in the frequency and severity of flooding and stream channel erosion in recent years. These concerns were supported with photographs they had taken and a letter from the Department of Environmental Protection & Resource Management (DEPRM).

Runoff naturally flowed in three directions but the applicant proposed concentrating all runoff into one point of discharge. Additionally, several citizens testified that a proposed stormwater

⁴ LOS Manual is the Baltimore County Local Open Space Manual.

pond would sit twenty feet or more above their properties. These citizens were deeply concerned by the damage to their properties should the proposed pond fail at some point in the future. The citizens introduced photographs illustrating the conditions at the proposed pond location. They also introduced facts regarding the number of ponds in the County and the number of employees assigned to inspect these ponds for safety. Citizens recommended that the pond be relocated to a safer area along Harford Road. Other stormwater-related concerns raised by citizens included impacts to wetlands along Jennifer Branch and to the flora-fauna in the area.

The only expert testimony noted in the order on stormwater was provided by the applicant's engineer and County staff. The engineer said the proposed pond location was the only feasible area on the site where runoff could be managed safely from all lots. The Hearing Officer asked if the County had required the applicant to conduct a dam-breach analysis to determine if the pond posed a threat to the downstream property owners. County staff said they had not and justified this decision by explaining that the pond would be excavated which they believed greatly reduced the downstream hazard. Apparently the Hearing Officer was not convinced by this explanation since he denied plan approval in part because of the lack of a dam-breach analysis.

In the *Findings of Fact & Conclusions of Law* section of the order the Hearing Officer cited the following factors regarding the stream channel erosion and pond safety issues. He found that the citizens presented strong testimony on the erosion issue which was supported by the DEPRM letter and the County's plans to carry out a restoration project along the stream. But, he states in the order:

It may seem completely logical to the community that any further development, such as proposed here, will increase the problem and, therefore, the development should not be approved. However, the question I must answer is whether this property owner should be penalized for the fact that other property owners have developed their properties in the past. As the Director of DEPRM acknowledges, past development has not been subject to present storm water regulations.

The Hearing Officer went on to say:

I regret that there apparently is no opportunity to over design the storm water management system for this development so as to capture and slow water from the general drainage area and thus actually improve the erosion problem. This is so because the storm water management facilities proposed are physically above the stream. As we have said to each other many times in these hearings, water does not flow uphill. I also believe that the County's present regulations will be rigorously applied by DEPRM in this case, so as not to make a bad situation worse. The regulations are intended and, from all I know, actually mimic the storm water run off from the property as it now sits in a partially developed state. I have no regulatory basis to deny approval of the plan on the issue of stream erosion.

With respect to the pond safety issue, the Hearing Officer presented the following thought process in his order:

The Protestants presented extensive information on dam safety and expressed their concerns that the pond, which looms uphill from their homes, may fail. I accept DEPRM's explanation that they did not require a "dam breach analysis" because the walls of the pond are excavated earth and not constructed fill. Yet the Protestants' photographs vividly illustrate that the pond will be high above the Protestants' homes on Finney Road, and should it fail the impact on the Finney Road homes could be devastating. I also realize that in most cases where an analysis is required it occurs in Phase II of the development process.

However, in this case I will require a dam breach analysis before the Development Plan is approved. My concern is that because of the steep slopes leading from the pond to the neighborhood below, the analysis may well show that the pond needs to be reinforced, moved or widened. Should this occur, the whole Development Plan may shift to the extent that it will require major revision. Consequently, I find it prudent to do the analysis before approval of the plan so that impacts, if any, can be addressed.

Traffic: With respect to traffic, the citizens testified about high accident rates on Harford Road near the site and that the intersection of Harford Road-Joppa Road was failing. A traffic accident reconstruction expert testified on behalf of the citizens regarding the high number of accidents (supported by County police data) and the severity of congestion. The applicant's engineer testified that the intersection does not meet the County's definition of "failing." The order does not indicate whether the citizen's expert offered any testimony on compliance with County standards.

In the *Findings of Fact & Conclusions of Law* section of the order the Hearing Officer commended the citizens for the very strong case they presented with regard to traffic safety and congestion. The Hearing Officer noted that according to the rating system used by the State Highway Administration (SHA), the intersection of Harford and Joppa Road is failing. However, using a different system the County rates the intersection as not failing. Furthermore, SHA rated the proposed entrance into the site, off Harford Road, as "safe." The Hearing Officer concluded that since he is obligated to base his decision on County regulations he had no basis to deny approval due the traffic safety issue.

Schools: Citizens expressed concerns that area schools were overcrowded and the project would make this situation worse. Again, the only expert testimony on this issue was from the applicant's engineer who said all area schools were not overcrowded according to the County's definition. The Hearing Officer did not address the question of schools in the *Findings of Fact & Conclusions of Law* section of the Bender-Vogel order.

Sewers: Finally, the order described citizen concerns about area sewers lacking adequate capacity. A Department of Public Works representative testified at the hearing that their analysis showed that sewer capacity was adequate.

In the *Findings of Fact & Conclusions of Law* section of the order the Hearing Officer stated that since the only facts before him were those provided by the Department of Public Works showing that sewer capacity was adequate, he had no basis in law to deny development plan approval based on this issue.

Open Space: According to the order two citizens testified regarding open space concerns. These citizens described the paucity of open space in the area and the importance of not allowing the applicant to pay a fee in lieu of providing the required 18,000 square-feet of open space on the development site. The applicant had requested a waiver of onsite open space from the Department of Recreation & Parks. Initially the Department had decided to grant the waiver but reversed this decision after community representatives voiced their objections. As of the Hearing Officer's hearing the Department was still recommending denial of the waiver.

In the *Findings of Fact & Conclusions of Law* section of the order the Hearing Officer cited the following factors for denying plan approval based upon the local open space issue:

The Developer raised the issue that the local open space should be waived and a fee be paid in lieu thereof. Mr. Bronstein [applicant's attorney] argues passionately that below 20 dwelling units, waiver of local open space is automatic by the County and that the Department has merely caved into public pressure to deny the waiver. I must admit that in the several years I have reviewed development plans, I do not recall any case in which the Recreation and Parks Department has not granted such a waiver for developments less than 20 dwelling units. The Recreation and Parks representatives usually explain that 20 dwelling units require 20,000 sq. ft. for local open space, which is less than ½ acre. These small plots are difficult for the newly formed Homeowners Association (HOA) to maintain. In addition, Code Section 32-6-108 (c) (2) requires active open space in no less than 20,000 sq. ft. parcels. This development only requires 18,000 sq. ft. total. Consequently, the Developer argues that the County regulations do not envision requiring such a small parcel and a waiver should be granted.

In this instance, however, the Department was requested to deny the waiver by the community who is still smarting after the County removed play equipment from nearby Missing Pines Park. The Department recognized the substantial shortfall in open space generally for the Parkville area and saw an opportunity to relocate the play equipment to a parcel in this subdivision. They intend to manage the area themselves rather than turn this over to an HOA. Likewise, the community has made a strong case that Parkville lacks open and recreational space.

As we have said to each other many times during the course of the hearing, development plan approvals are based on regulations. The regulations of Section 32-4-411 (a) specify that the Developer shall provide local open space. One of the purposes of local open space regulations is to "offer recreational opportunities close to home". This does not say providing open space is intended for the exclusive benefit of the new residents as the Developer contends. I find no

reason to believe the regulations exclude benefit to the larger community immediately around the development as well as benefit the new residents.

While I was initially not sure of the reason for the Code to specify that active open space must be not less than 20, 000 sq. ft. parcels, after some review, it occurred to me that the legislation was trying to forbid creating multiple tiny local open space parcels spread over the entire subdivision. Presumably, a plan could meet the regulations of 1,000 sq. ft. per dwelling if enough tiny parcels were created. However, active open space is intended for interactive play, which requires contiguous land and not disjointed hunks of land to accomplish its goal. Consequently, I find the Council did not intend to make waiver automatic by specifying 20,000 sq. ft. parcels, but rather directed parcels be created which are large enough for active play. Ideally, this would be 20,000 sq. ft. However, I see no reason to believe a slightly smaller contiguous parcel such as requested by the Department would not meet the regulations. Consequently, I will not grant the requested waiver.

The Developer has not presented an alternative development plan, which provides for the required local open space and, therefore, a plan that I can approve. County Exhibits 1A and 1B indicate that if LOS is required several lots will be lost and the plan likely will be reconfigured substantially. Consequently, I will not approve the Redline Development Plan presented by the Developer, but I will require the Developer to locate the local open space parcel in conjunction with the County agencies and to submit a modified plan to the Development Plan Conference for final County review. Thereafter, a Hearing Officer's Hearing will be scheduled on the final plan.

Appeals: The applicant appealed the Hearing Officer's decision to the Baltimore County Board of Appeals. The citizens were not represented by an attorney at the Hearing Officer's hearing or before the Board. The Board affirmed the Hearing Officer's decision to withhold plan approval due to the open space issue but reversed the Hearing Officer on the dam-breech analysis issue. The opinion issued by the Board contains the following with respect to the dam-breech analysis:

The Board finds that the requirement that a dam breech analysis be performed before the Development Plan can be approved was not supported by any evidence before the Hearing Officer and was arbitrary. While the Board can understand the concern of the neighbors in this situation, the Department of Environmental Protection and Resource Management (DEPRM) did not feel that a dam breech analysis of the walls of the stormwater management pond was necessary at this phase since the pond was being excavated and was not constructed with fill. The Hearing Officer had no other evidence before him other than photographs of the stormwater pond as it would be situated with respect to the property of the neighbors below. He admitted that such an analysis, if it was required, normally occurs in Phase II of the development process. For this reason, the Board feels that the requirement for the stormwater dam breech analysis was arbitrary and therefore reverses the Hearing Officer with respect to that requirement.

The citizens appealed the Board of Appeals decision to Circuit Court and are now represented by counsel. Circuit Court just affirmed the Board's decision, which upheld the Hearing Officer's denial of development plan approval. The applicant did not appeal the Circuit Court decision.

Honeygo Springs (Case No. XI-960)

This project was proposed for a site in the White Marsh area of eastern Baltimore County. The project consisted of 14 single-family detached homes. In addition to development plan approval, the applicant requested special variances to exceed the threshold limits for additional development in the Honeygo subarea and for a sewer connection. The applicant also petitioned for a special hearing regarding a density anomaly for four proposed lots because each was located in two zoning districts. Finally, the applicant requested a variance to allow a building to be placed 28 feet from an arterial road right-of-way instead of the required 40-foot minimum setback.

The Concept Plan Conference for this project was held on March 29, 2004. The Community Input Meeting then took place on April 28, 2004. The Development Plan Conference followed on March 23, 2005 and the Hearing Officer's Hearing was held on April 14, 2005. The applicant was represented by two attorneys while the ten citizens who attended the hearing were not represented.

The Hearing Officer's order characterized the issues citizens testified about as follows.

...the Development Plan did not meet the intent of the Honeygo regulations because: all homes do not face the street; the size of the buildings are excessive in proportion to the size of the lots; the Honeygo requirement that the front of lots be 85 feet wide are not met; garages dominate the street; the tract proposes twice the number of homes that should be allowed; grinder pumps should not be allowed; and the variance requests should be denied. [A citizen] ...indicated her opposition to the plan, which she contends does not meet Honeygo regulations and raised the issue of traffic on Holter Road.

Following is a review of each of the citizen issues described above. In the order the Hearing Officer separated the citizen issues into the following categories. The facts considered by the Hearing Officer and his decision regarding each issue follows.

Deviation from Standards Issue: The order characterized this issue as:

There is no dispute that the Development plan does not conform to the Residential Performance Standards of Section 260 [Baltimore County Zoning Regulations]. Homes face homes and not streets, there is no inter-subdivision road connection to the south, cul-de-sacs have no landscaped islands, etc.

In the order the Hearing Officer stated that the critical test with respect to this issue was whether the deviations were necessary to achieve the:

"best possible development design, considering other goals in the Comprehensive Manual of Development Policies"⁵

as required by Residential Performance Standards provision that allows deviations pursuant to Section 260.1.B.4 of the Baltimore County Zoning Regulations. He cited testimony by the applicant's experts contending that the deviations did constitute the best possible design for the project. He then pointed to testimony by County planning staff who took the opposite position: that the property could be developed without these deviations. The Hearing Officer felt that he should refer this issue to the County's Design Review Panel⁶ since it turned not only on a strict legal interpretation of the law but *criteria* [having] ...*a very high content of expertise in architecture and land planning* and he lacked the expertise to determine if this criteria had been met.

Through Road/Traffic Issues: Both the applicant and citizens were opposed to the recommendation of County planning staff that a proposed street connect to other roads in the area creating a through-road. The citizens were concerned this would encourage cut-through traffic and increase traffic volume on their residential streets. The Hearing Officer framed his position on this issue as follows:

I am aware that the Developer and Protestants [citizens] jointly and earnestly request no through connection to the properties to the south. From the Developer's standpoint, the whole community is at the end of the road which likely commands higher prices for each lot. For adjacent communities, it means less traffic especially the dreaded cut through traffic. I also observe that this alliance between Developer and community occurs on nearly every development plan review. So what's not to like? The problem is this pattern of development, although beneficial in the short term for directly affected communities, is very harmful for the larger community and the County.

The order then presents the Hearing Officer's interpretation of two sections of the zoning regulations, §259.7 and §260.4, which reflected the County Council's general intent that road connections occur whenever possible. The Hearing Officer justified this intent as follows:

In this larger picture, if every community is at the end of the road, emergency access is severely limited and traffic circulation nonexistent. Everyone is forced to navigate the same streets and choke points. Backups and accidents follow. So whether or not a subdivision is connected to properties adjacent to it affects not only the subject subdivision itself but all those present and future developments in the area and the County as a whole. Therefore, I consider this requirement quite separate from the internal standards

⁵ The *Comprehensive Manual of Development Policies* can be viewed at the Office of Planning webpage: http://www.baltimorecountyonline.info/Agencies/planning/publications_and_maps/cmdp_06.html

⁶ For detail on the Design Review Panel visit: www.baltimorecountyonline.info/Agencies/planning/DRP/index.html

applicable to subdivisions such as homes facing streets, front loaded garages, cul-de-sac design, etc.

The County planning staff had recommended that the proposed connecting road run straight. The Hearing Officer ordered that the road be redesigned to include a 90 degree bend in hopes of reducing cut-through-traffic. The Hearing Officer also ordered that four of the 14 lots be built on a cul-de-sac (court).

Front Loaded Garage Issue: The order noted an apparent conflict in the Honeygo Development Standards contained in §259.9 C.3 of the zoning regulations. One part requires that garage openings be on the side or rear of a house and another allows them on the front. The Hearing Officer stated he knew of no appellate court rulings on this apparent conflict so he opted to treat this project the same as was done in other similar cases, where front-loaded garages were allowed.

Cul-De-Sac Island Issue: With respect to this issue, the Hearing Officer ruled:

I find that the issue of whether or not there should be a landscaped island in the center of each cul-de-sac is one to be considered by the Design Review Panel in their review of the development plan in regard to the Developer's request for deviation to achieve the "best possible design". This issue should be considered along with the layout and architectural features of the Developer's plan.

Special Variance (Grinder Pump) Issue: The citizens testified that the intent of the Honeygo Area regulations was to serve all new development with sewers in which wastewater would flow by gravity. The applicant requested a special variance to allow some proposed houses to built on portions of the sites where wastewater would not flow to the sewer by gravity. Instead, grinder pumps would be needed to push wastewater to a gravity sewer. The Hearing Officer ruled that the applicant's request qualified for a special variance under the criteria set forth in §259.8 of the zoning regulations and approved the use of grinder pumps. However, the Hearing Officer wrote the following regarding his considerable discomfort with regulations which obligated him to approve the variance:

That said, I agree with Mr. Libercci [the citizen who testified about this issue] that use of grinder pumps in this new subdivision is outrageous. It is one thing to allow grinders to relieve failing septic systems in the eastern side of the County but to apply them in this situation is quite another. These devices have different characteristics than merely connecting the home to a public sewer. This issue, however, has been reviewed previously and given Public Works granting use of grinders in this case, there is no evidence on the record that the County regulations are not met which would then result in denial of the plan.

Basis for Decision to Deny Development Plan Approval: The order cited the deviation from standards issue as prompting the Hearing Officer to withhold approval of the Honeygo Springs

development plan along with the fact that the plan did not show a connection to the proposed road. The Hearing Officer also denied the Special Variance regarding grinder pumps until the applicant resolved the deviation from standards issue. The applicant did not appeal the Hearing Officer's decision. Instead, the development plan was revised to address the noncompliance issue and was approved by the Hearing Officer in October, 2005, for the 14 lots originally proposed.

Kaufman/Holdridge Property

The Kaufman-Holdridge project was proposed for a site at the southwest corner of Park Heights Avenue and Caves Road in the Owings Mills area. The applicant proposed 14 single-family detached homes on a site that was mostly covered by forest with an abundance of steep slopes.

The Concept Plan Conference for this project was held on February 17, 2004. The Community Input Meeting then took place on March 11th. The Development Plan Conference followed on May 12th and the Hearing Officer's Hearing was held on seven dates between June 3rd and August 5, 2004. The Hearing Officer issued his order on October 1, 2004. The applicant was represented by two attorneys while the three citizens who attended the hearing were represented by one attorney.

The order summarized the issues presented by the citizens' attorney as: priority one forest, forest buffer access road, steep slopes, forest conservation area to be in one lot, impact on Caves Valley Historic District, storm water management, lots 4, and 6 to be moved, RC 6 zoning and street lights. The following additional detail on citizen concerns was provided later in the order: loss of the rural character of the area, loss of mature trees, adverse impact to a trout stream, and changes to scenic roads in the area. The citizens' attorney presented testimony on stormwater impacts and planning issues through two expert witnesses and citizen testimony.

In the *Findings of Facts and Conclusions of Law* portion of the order the Hearing Officer found that the development plan met the applicable regulations except with respect to the stormwater and historic preservation issues.

Stormwater: Section 32-4-224A(13), of the Baltimore County development regulations, require that the development plan show that a suitable outfall exists at each point where stormwater will be discharged from a site. The citizens' expert testified that the structure proposed to prevent erosion at one outfall would not work because state guidance documents only permit the structure to be used where the slope below the outfall is less than 10%⁷ and he determined the slope to be greater than 10% below the outfall. The applicant's expert measured the slope in a different way and found it to be less than 10%. The Hearing Officer determined that the citizens' expert measured the slope correctly and found a suitable outfall was not present.

Additionally, the citizens' stormwater expert determined that a portion of a proposed stormwater facility was located within 50 feet of a proposed septic reserve area. State guidance calls for a

⁷ A 10% slope rises or falls 10 feet for every 100 feet of horizontal distance.

minimum separation distance of 50 feet between the two features⁸. The applicant's expert testified that the 50-foot separation does not apply to the portion of a stormwater facility which actually lies this close to a septic reserve area. The Hearing Officer agreed with the citizens' expert and found that this portion of the development plan violated applicable regulations.

State regulations also call for a 25-foot separation between swales and septic reserve areas⁹. The citizens' stormwater expert testified that six of the proposed swales failed to comply with these regulations. The Hearing Officer agreed and cited this as part of the basis for denying development plan approval.

Preserving the Historic District: The Hearing Officer addressed two issues in this portion of the order: 1) impact to a historic structure known as the Stemmers House and 2) impacts to the Caves Valley Historic District. He cited the Planning Board's review of project impacts to the Stemmers House based on an earlier plan. Apparently the Planning Board found cause for concern, the applicant moved proposed homes further away and provided additional visual buffering, which resolved the Board's concerns. Because of this the Hearing Officer felt he had to conclude that the plan adequately preserved the Stemmers House. With respect to the Caves Valley Historic District, the Hearing Officer wrote that the Planning Board report on this project focused on the Stemmers House and appeared to give impacts to the District relatively little consideration. He wrote that one could not assume that the integrity of the District would be preserved just because the project would not impact the nearest historic structure. The Hearing Officer cited citizen testimony - not that of an expert witness - as demonstrating that three proposed houses would intrude upon the rural, agricultural character of the valley.

Cumulative Impacts: The Hearing Officer wrote that when the historic district impact was combined with that resulting from the stormwater facilities, placing swales too close to septic reserve areas, plus proposing to build houses on slopes steeper than 25%, it was clear to the Hearing Officer that the applicant was simply trying to put too much development on the site. He concluded that he would not approve the homes within the historic district as this would serve two functions: preserving the District and reducing the environmental impact. The Hearing Officer concluded the order by deciding that the development plan was Not Approved. The applicant did not appeal this decision. Of course the citizens did not appeal either.

Wever Property

The Wever Property project was proposed for a site on Overton Avenue, east of Belair Road, and next to the Beltway in the Overlea area of eastern Baltimore County. The applicant originally proposed 19 single-family dwellings for the property.

⁸ This guidance document is the *2000 Maryland Stormwater Design Manual* available online at: http://www.mde.state.md.us/Programs/WaterPrograms/SedimentandStormwater/stormwater_design/index.asp

⁹ The 25-foot swale (drainageway) separation appears in the Code of Maryland Regulations (COMAR) at 26.04.02.04J(3): <http://www.dsd.state.md.us/comar/26/26.04.02.04.htm>

The Concept Plan Conference for this project was held on February 17, 2004. The Community Input Meeting then took place on March 15th. The Development Plan Conference followed on December 1st and the first of three Hearing Officer's Hearings was held on three dates from December 23, 2004 to February 11, 2005. The Hearing Officer issued his first of three orders on February 22, 2005.

According to the order citizens testified regarding the following concerns:

- *The proposed extension of Overton Avenue would be coming too close to a home. The County and Developer agreed and moved the roadbed north away from the home by way of redline change to the Development Plan. The citizen further requested that the Developer conduct a survey of the location of the roadbed and her home.*
- *In regard to the sound [noise] barrier, it was requested that the Developer reconfigure the proposed development to erect the barrier and save the trees in the forest buffer area. The citizen noted that the site is almost fully wooded and that the development, to which they are opposed, would result in losing trees from the lot and indicated that this clearing would have an adverse impact on Linover Park, which is located downstream from the site.*
- *Other noted issues were traffic safety, the need for the noise barrier, that the State Highway Administration will be widening the Beltway in the area, that they are opposed to using the Shelter/Fullerton property for the storm water management facilities of this development, and concerns regarding construction on Overton Avenue.*
- *The proposed use of a portion of the adjacent Shelter/Fullerton property for the storm water management facility for this development would violate the restrictive covenants between the Linover Community and the owner of the Shelter/Fullerton property. Mr. Holman, one of the attorneys representing the Developer, disagreed with this contention noting that his review of the covenants revealed that they only prohibit use of density from and rezoning of the Shelter/Fullerton property. Concerns about traffic safety at Belair Road and the Beltway were also noted along with the need for the noise barrier, and environmental concerns involving the Stemmers Run stream.*
- *Another citizen indicated opposition to allowing the storm water management facility for the subject property on the adjacent Shelter/Fullerton property. They also expressed concern for traffic on Overton Avenue, loss of trees on the subject property and overcrowded schools in the area.*
- *Another citizen expressed concern that the public water and sewer facilities would be inadequate as work is being done on these facilities along Overton Avenue.*
- *Another citizen whose home is nearby the proposed development, indicated that they had lived in the home for many years without any problem due to the noise coming from the Beltway and generally opposed the erection of the sound barrier on the subject property.*

- *Another nearby resident indicated they thought the noise barrier should be erected to protect the new residents from the noise.*

The order also noted that extensive correspondence was received from State Senator Kathy Klausmeier, State Delegates John Cluster Jr, and Joseph C. Boteler, III, regarding the proposed project.

In the *Findings of Fact and Conclusion of Law* portion of the order the Hearing Officer addressed three issues: Waiver of Policy X (Noise Mitigation), Traffic, and Restrictive Covenants on the Shelter/Fullerton Property.

Waiver of Policy X (Noise Barrier): Policy X requires an investigation of traffic noise impacts for any project within 500 feet of the Beltway. Of course, the Wever Property was within 500 feet of the Beltway. If noise levels are found to exceed acceptable levels (>66 db) then Policy X requires the applicant to consider alternatives to resolve the issue. In this case the applicant presented two plans: Plans A (with a sound barrier) and Plan B (without the barrier). The Hearing Officer then used data presented by the applicant's noise expert to create a Plan C which showed that eight proposed lots were within the area of unacceptable noise (>66 db) and 11 were outside. The Hearing Officer then wrote that if the applicant went forward with a plan that only showed the 11 lots in the "acceptable" noise area no sound barrier would be needed. The Hearing Officer also wrote that if only eleven lots were developed there would likely be ample room for the required stormwater facilities on the site, eliminating the need to purchase land on an adjoining property for these runoff control measures. Next the Hearing Officer set forth the following criteria that must be met to grant the applicant's request to waive the sound barrier requirement:

- that reducing the noise level to 66 db or lower is physically impossible, which no one contended; or
- compliance with this standard presents an exceptional hardship other than economic.

The Hearing Officer found that the only hardship was economic and, therefore, the project did not qualify for a waiver.

Traffic: While the Hearing Officer wrote that he understood that the location of Overton Avenue so close to the Beltway on-ramp was problematic and accepted that a repeat of a previous emergency could block Overton Avenue, he felt that he lacked the authority to require the applicant to conduct a traffic impact study. He also wrote that he could only deny plan approval, based on traffic, if someone presented evidence showing that the project was in the *traffic shed* of a failed intersection. No such evidence was presented so the Hearing Officer concluded that he had no choice but to approve the project with respect to traffic.

Restrictive Covenants on the Shelter/Fullerton Property: The applicant proposed meeting stormwater requirements by building the necessary runoff control measures on a 1.2-acre portion of the Shelter/Fullerton property adjoining the site. Citizens argued that restrictive covenants on

the property prohibited such a use. The Hearing Officer wrote that the covenants were private and he felt he lacked the authority to consider this question. The citizens also pointed to litigation pending in Circuit Court pertinent to this question and argued that development plan approval should be withheld until Circuit Court rules. The order indicates that no proof of this pending litigation was introduced and, even if it had been, the Hearing Officer wrote that he lacked the authority to delay final action on the plan until the Court ruled.

Basis for Denying Development Plan Approval: The Hearing Officer wrote the following with respect to his decision not to approve the development plan:

I find that the Development Plan which includes the noise barrier, shown on Developer's Exhibit 6A can not be approved because this plan has not been reviewed by the various County agencies. The noise barrier will impact the forest buffers, wetlands and stream on the property. The barrier will cross the greenway area. None of these impacts have been evaluated and this plan is simply not ready for approval. As requested by the Developer, I will remand this plan to the Development Review Committee for further evaluation.

Thus ended the first hearing on the Wever Property. The applicant did not appeal the Hearing Officer's decision nor did the citizens.

Second Wever Property Hearing

A second Development Plan Conference was held on April 20, 2005 regarding a revised submission by the applicant. In this second development plan the applicant sought to address the issues which prompted the Hearing Officer to deny approval of the first development plan. The second Hearing Officer's hearing was held May 12, 2005. The applicant was represented by the same two attorneys present at the first hearing. Three of the nine citizens who attended the first hearing were present at the second. A fourth citizen was present also. The citizens were not represented by an attorney.

The applicant's revised development plan showed 17 single-family dwellings whereas the first showed 19. The revised submittal did showed a plywood sound barrier.

The order characterized concerns expressed by the citizens at the second hearing as: *...expressing concern for the safety of the new residents of the subdivision if the sound barrier is not erected.* Later in the order further detail was provided.

- One citizen expressed concern about the value of their property if the plan is approved and opined that if there is any place on the property where noise levels of 66 db are predicted, then the whole property needs mitigation. They noted that the noise control could be provided but that the Developer has chosen to ask for a waiver of Policy X. The citizen contended that a noise barrier could be placed outside the greenway.
- Another citizen noted that Policy X refers to residential building lots and not buildings and that in her opinion the Policy should be read to require mitigation when the noise level on building lots exceed 66 db. The citizen further opined that predicting the noise levels "between the building

line and highway" makes no sense at all. Reason dictates predicting noise levels at the proposed lots. In addition, they pointed out that the prediction methods must take increases in noise into account. They expressed concern for future neighbors who have to live with the traffic noise.

- A third citizen testified that the number of lots is excessive and that 11 lots is a more reasonable figure. The Protestants presented Protestant's Exhibit XI, a letter from the SHA dated April 18, 2005 to PDM indicating that the Developer should submit a revised noise study and disclaimed responsibility for erecting a noise barrier for this site.

In the *Findings of Fact and Conclusions of Law* portion of the order the Hearing Officer focused on the applicant's renewed request for a waiver to the noise mitigation policy - PDM Policy X.

First, the Hearing Officer addressed the contention of the applicant's consultant that noise levels must meet the acceptable (≤ 66 db) level at the building. The citizens asserted that the standard must be met at the boundary of the lot on which a proposed house would be located. The Hearing Officer agreed with the citizens.

Second, the Hearing Officer felt the applicant's study was flawed in considering only noise generating by the existing six lanes of the Beltway and should have factored in the two additional lanes proposed, with another two lanes possible after that.

Third, the Hearing Officer was troubled that the windows of four proposed homes must remain closed to meet the noise standards. He did not think it reasonable that future occupants of these homes would have to chose between peace and quiet and fresh air.

Fourth, the Hearing Officer was concerned that the noise level at some homes would be acceptable on the first floor, but not on the second where people would sleep.

The Hearing Officer then concluded that the exceptional hardship test to receive a waiver was (again) not met since the hardship was still economic. The Hearing Officer approved the development plan with the following conditions:

1. Lots 15, 16, 17, and 7 shall be eliminated; and
2. The Developer shall install and make operational storm water inlets behind lots 1, 2 and 3 before grading to catch grading and construction sediment prior to conversion of the SWM facilities from sediment catchments to holding facilities; and
3. The Developer shall temporarily widen the north side of Overton Avenue during the construction phase across from 4239 and 4241 Overton Avenue to give construction equipment room to pass parked or moving vehicles at that location.
4. The Developer shall amend the Shelter/Fullerton Development Plan to indicate use as this project's storm water management facilities.

5. Unless the Developer shall chose to satisfy its forest conservation requirements for reforestation on site, the Developer shall pay into the Baltimore County Forest Conservation Fund, pursuant to Section 33-6-1 14 of the BCC¹⁰, the sum of \$6,969.60 in satisfaction of its reforestation requirements.
6. The barrier protecting lots 4, 5 and 6 shall be constructed of maintenance free, permanent materials and shall meet all building codes.

Neither the citizens nor the applicant appealed this second Hearing Officer's decision on the Wever Property.

Third Wever Property Hearing

A third Development Plan Conference was held on November 19, 2005 regarding a second revised submission by the applicant. In this submission the applicant proposed 17 lots, still down from the original 19, and sought to address the issues which prompted the Hearing Officer to reduce the number of lots on the second development plan to 13 and to impose other conditions. The third hearing was held December 2, 2005. At this third hearing the applicant was represented by one of the two attorneys present at the first and second hearing. Four citizens attended the third hearing. As at the first and second hearings, the citizens were not represented by an attorney nor did they present any expert witness testimony.

According to the order, citizens testified at the third hearing on the following points:

- Restrictive covenants between Laudenklos Farms Limited Partnership and the Linover Improvement Association, dated May 11, 1994. These covenants limit development of the Shelter Property where the applicant had proposed to meeting their stormwater management requirements;
- Section 32-4-222(a)10 requires any development plan to have information on "restrictive covenants recorded with individuals or groups that would limit proposed development on the site". As such, the citizens request this Commission to interpret the covenant to determine if the storm water facilities on the Shelter property violate the covenant, and consequently not approve the first Amended plan; and
- Will sidewalks be built on both sides of proposed public roads?

The applicant's attorney argued that the Hearing Officer could not enforce the restrictive covenants. Nevertheless, the applicant's engineer stated that the covenants had been printed on the development plan.

¹⁰ BCC is the Baltimore County Code.

In the *Findings of Fact and Conclusions of Law* portion of the opinion and order the Hearing Officer addressed three issues: Covenant Issue, Policy X (Noise Mitigation), and a 1965 Zoning Case.

Covenant Issue: The Hearing Officer again took the position that he had no authority to enforce a private agreement. Furthermore, the parties to the agreement were not present at the hearing. He understood citizens point about why do County regulations require citing the covenants on the development plan but give the Hearing Officer no authority to enforce the covenants. The Hearing Officer wrote that the regulation requires the citation as background information for prospective buyers, not as an enforceable condition.

Policy X (Noise Mitigation): The plan at issue in the second hearing showed a sound barrier made of plywood that protected two homes. In that case the Hearing Officer wrote of his strong skepticism that this barrier would be maintained in perpetuity as required by Policy X. In this third hearing the development plans showed a longer, higher, and more substantial sound barrier along the side of the site adjoining the Beltway. The applicant did not present any details as to the design and construction of the barrier. Nevertheless, the Hearing Officer concluded that the applicant had met the requirements of the noise mitigation policy.

1965 Zoning Case: Testimony was provided at the hearing regarding a gas station which was the subject of a 1965 zoning case. The Hearing Officer wrote that since the gas station was proposed for a site on Overton Avenue at Belair Road he did not see how it was relevant to the Wever Property located at the opposite end of Overton Avenue.

Plan Approved With Conditions: The Hearing Officer approved the 17-lot development plan with the following conditions:

1. The Developer shall clarify note 25 that the barrier now extends beyond the four lots mentioned and that Baltimore County will not be responsible for the repair and maintenance of structures, landscaping and any method of mitigation employed by the Developer to achieve the results required by these regulations.
2. That the Developer shall submit a design for the sound barrier which shall meet all Baltimore County Building Codes and applicable State and County regulations.
3. The Developer shall install and make operational storm water inlets behind Lots 1, 2 and 3 before grading to catch grading and construction sediment prior to conversion of the SWM facilities from sediment catchments to holding facilities; and
4. The Developer shall temporarily widen the north side of Overton Avenue during the construction phase across from 4239 and 4241 Overton Avenue to give construction equipment room to pass parked or moving vehicles at that location.

5. The Developer shall amend the Shelter/Fullerton Development Plan to indicate use as this project's storm water management facilities and amend the minor subdivision on the Laudenklos Farms property (or its successor) to indicate road widening of Overton Avenue.
6. Unless the Developer shall chose to satisfy its forest conservation requirements for reforestation on site, the Developer shall pay into the Baltimore County Forest Conservation Fund, pursuant to Section 33-6-1 14 of the BCC, the sum of \$6,969.60 in satisfaction of its reforestation requirements.

Neither the applicant nor the citizens appealed the Hearing Officer's decision.

LOT REDUCTIONS

Section 32-4-229(d)(iv), of the Baltimore County Development Regulations, allows the Hearing Officer to reduce the number of lots (or the square-footage of non-residential projects) if facts presented at the hearing show that this condition:

- (i) *Protects the surrounding and neighboring properties;*
- (ii) *Is based upon a comment that was raised or a condition that was proposed or requested by a participant;*
- (iii) *Is necessary to alleviate an adverse impact on the health, safety, or welfare of the community that would be present without the condition; and*
- (iv) *Does not reduce by more than 20 %:*
 1. *The number of dwelling units proposed by a residential Development Plan in a DR 5.5., DR 10.5, or DR 16 zone; or*
 2. *The square footage proposed by a non-residential Development Plan.*

The Hearing Officer exercised this authority in two of the 149 cases included in this study. Of course, one of these cases was reviewed above - the Wever Property. The other was the Becker Property. Neither property was zoned DR 5.5., DR 10.5, or DR 16 so the 20% limit on dwelling unit-square footage reduction did not apply. In this section of this report I will focus on the factors which prompted the Hearing Officer to reduce the number of lots.

Wever Property

The Wever Property was the subject of three separate hearings. The issue prompting the lot reduction was noise from the Beltway, which adjoined the site.

The project started off as 19 lots with single-family homes. The Hearing Officer denied approval for this plan because the applicant failed to comply with the noise mitigation requirements of Department of Permits & Development Management Policy X. In his order the Hearing Officer urged the applicant to either place homes only on those portions of the site where noise levels were acceptable (which would have reduced the number of lots to eleven) or show a sound barrier on the plan which fully complied with County and State requirements. The

applicant did not appeal this decision. Instead, they revised the development plan and resubmitted it for the County review conducted through the Development Plan Conference process.

The second development plan submission showed 17 lots and a plywood sound barrier. The Hearing Officer approved this plan but added a number of conditions, one of which eliminated the four lots most affected by noise and required a much more substantial and durable sound barrier. Again, the applicant did not appeal this decision and, instead, revised-resubmitted their plan.

The third development plan submission showed 17 lots and indicated that a sound barrier meeting County and State standards would be installed in a manner protecting the homes exposed to excessive noise. The Hearing Officer approved this plan with a number of conditions, one of which was that the applicant must submit detailed plans showing that the sound barrier fully complies with County and State requirements.

Becker Property

This project was proposed for a site on Falls Road opposite Hickory Hill Court in the western part of Cockeysville. Originally the applicant proposed 20 lots with single-family detached homes. The Hearing Officer reduced the number of lots to ten at the first hearing and added a condition regarding intersection design and sight-distance. The applicant submitted a revised development plan showing ten lots and an improved intersection. The Hearing Officer approved this second plan. Following is additional background on this project and the basis for the lot reduction.

The Concept Plan Conference for this project was held on March 17, 2003. The Community Input Meeting then took place on April 10, 2003. Two Development Plan Conferences were held: the first on January 7, 2004 and the second on October 18, 2006. The first Hearing Officer's Hearing was held on January 29, 2004 and the second on November 9, 2006.

Eleven citizens were present at the first hearing and one at the second. At the first hearing citizens were represented by two attorneys and by one during the second hearing. The applicant was also represented by an attorney at both hearings, though a different attorney represented the applicant at the second hearing. The Hearing Officer issued his first opinion-order in March, 2004. The second was issued on December 12, 2006.

The original development plan depicted two clusters or pods of lots - a Northern Pod and a Southern Pod. The Northern Pod originally contained ten proposed lots and eight in the Southern Pod. The other two lots were situated elsewhere on the site.

The Hearing Officer approved the eight lots in the Southern Pod and the two other lots with conditions. He withheld approval for the ten lots in the Northern Pod. The order contains the following conclusions the Hearing Officer reached regarding the Northern Pod:

Having found the proposed intersection unsafe, I cannot provide some exact criteria under which I will approve the northern pod. However, I can provide some general concepts. First, Rose Court should not be a public road, which may mislead travelers at the intersection with Falls Road. The number of lots should be reduced to that number allowed to be developed using a private driveway. Not having a public road and having fewer lots, the storm water management system requirement will be reduced perhaps enough to allow new design (whether serpentine swale or not) to satisfy Mrs. Keller's concern about the sand filters close to her property.

Following is additional background on the two issues cited above: intersection safety and stormwater management.

Intersection Safety: Both the applicant and the citizens retained traffic experts to assess the safety of the proposed road serving the Northern Pod. The key question was: Would future residents be able to see approaching vehicles sufficiently far away so they could safely turn onto Falls Road. The applicant's expert said yes. The citizens' expert said no. The Hearing Officer found the citizens' expert more convincing.

Stormwater: Because of the way the ten lots were packed into the Northern Pod, very little room was left for stormwater management. The proposed facility - a sand filter - was placed very close to an existing home. The homeowner felt the facility would be unsightly and would detract from the enjoyment she derived from her home and lower resale value. The citizens' stormwater expert testified that an alternative measure was available for meeting stormwater management requirements which should resolve the homeowner's concerns.

Between the first and second hearing the applicant's attorney worked with those representing the citizens to resolve their differences. The result was a development plan showing just ten lots, not the original proposal of 20 lots. No development was proposed for the Northern Pod. The citizens and the applicant did not reach a firm agreement because the door was left open for the possibility of the applicant submitting a development plan in the future for the Northern Pod.

In his approval of the revised development plan, the Hearing Officer added a condition stating that should a plan be submitted in the future for the Northern Pod (aka Lot 10) that it would be subject to the findings and order from the first hearing regarding intersection safety/sight-distance and stormwater management.

CITIZEN-APPLICANT SETTLEMENT AGREEMENTS

Of the 149 orders issued by Hearing Officers between March 2004 and April 2007, twenty (13%) reference settlement agreements between the applicant and citizens. Generally, the agreements called for citizens to withdraw their opposition to a project in exchange for various concessions on the applicants part, such as:

- additional plantings to serve as a visual buffer to screen proposed development from the viewshed of existing homes;

- redirect stormwater runoff from a path that would have taken it near an existing home;
- shift the location of a single proposed house away from an existing home;
- an applicant agreed not to propose extending a dead-end street to connect with another road, which citizens feared would cause their street to be used by cut-through traffic;
- an applicant agreed not to develop a site in a residential area as a large child-care center in exchange for the community supporting development of the site for higher density residential;
- reducing the number of lots from 56 to 36; and
- a 90-acre site which had been proposed for development as 18 lots was preserved in exchange for citizens dropping their opposition to developing 56 lots on an adjoining 182-acre site (Briar Knoll/Umerley Property).

Compliance with these agreement was added as a condition or otherwise incorporated into 11 orders. Citizens were represented by an attorney in 13 (65%) of the cases where an agreement is cited in the order. The applicant was represented by at least one attorney at all 20 hearings. The agreements are pretty much evenly distributed among the three Hearing Officers who heard these cases.

In Phase II of this study I will ask the citizens who participated in the hearing(s) just how effectively their concerns were addressed by these agreements. I will also ask if the terms of the agreements have been complied with for those projects which have broken ground. Following is a summary of the agreements.

Briar Knoll-Umerley Property

These were actually two separate projects located on adjoining sites in the Phoenix area of Baltimore County. The Umerley Property was a 90-acre site proposed for development with 18 single-family detached homes. The applicant proposed 52 single-family detached homes on the adjoining 182-acre Briar Knoll site. A total of 34 citizens attended the hearing on the Umerley Property which spanned three dates in March and April 2004. Nine citizens attended the two hearing dates for Briar Knoll: October 29 and November 4, 2004. The citizens were represented by the same attorney at the hearings on both projects.

The agreement between the applicants and citizens resulted in preservation of the entirety of the 90-acre Umerley Property. In exchange, the attorney representing the citizens expressed his support for the Briar Knoll project as proposed. The Hearing Officer approved the Briar Knoll development plan with the condition that the Umerley Property be placed into a permanent conservancy.

Country Club of Maryland

This project involved the development of forest located next to a golf course known as the Country Club of Maryland. The development area was located on Sherwood Road in the Towson area. The applicant originally proposed 56 single-family attached units. The hearing spanned three dates from July to September 2006. Three citizens attended the hearing and were represented by an attorney. Another attorney was also present to represent a local community association. An agreement between the citizens and the applicant reduced the number of units from 56 to 36. The agreement also addressed buffers to preserve views from nearby homes.

Cromwell Pasture/Tarrant-Hubble Property

The applicant proposed subdividing an existing, two-acre lot to build two new homes on Bellona Avenue in Towson. Five citizens attended the January 5, 2007 hearing. One of the five citizens was represented by an attorney. Citizen concerns noted in the order included stormwater runoff and viewshed impacts. The attorney stated that his client had reached an agreement with the applicant on the following points:

move the proposed house on lot 3 away from his client's house, redirect the flow of storm water on lot 4 toward lot 3, and provide additional landscaping along the boundaries with his client's property. He opined that these conditions were reflected on the redline development plan. However in addition the Parties have agreed that the size of holly trees along the boundary will be 1 foot larger and planted 1 year earlier than normal.

Goldman Property

The Goldman Property project was proposed for a site on Stevenson Road in the Towson area. The development plan showed five single-family detached homes on the 5.5-acre site. Two citizens attended the February 2, 2006 hearing, one of which was present only to observe and the other was concerned about improper notice of the hearing and how the project would affect the view from his home. Neither citizen was represented by an attorney.

The hearing officer kept the record open an additional nine days to compensate for the improper notice. The applicant's attorney subsequently produced a letter outlining his client's agreement to provide additional plantings and retain a fence to address the concerns of the citizen who testified about viewshed impacts.

Greenfields at White Marsh

This project was proposed for a site on Bird River Road in the White Marsh area of Baltimore County. The applicant proposed 97 single-family detached houses for the site. Six citizens attended the January 5, 2006 hearing in opposition to the project. Two of the citizens represented a local church. The citizens were not represented by counsel.

Citizens concerns included: stormwater runoff, inadequate access to the site, insufficient open space, and loss of the natural view residents presently enjoyed. The order cited an agreement between the applicant and the church in which a parcel of land would be transferred to the church, but details are not provided as to how the agreement addressed citizen concerns. The

order did contain several conditions which may have addressed citizens concerns regarding viewshed impacts.

Greenspring Quarry

This 593-dwelling unit project was proposed for a site on the west side of Greenspring Avenue, south of Old Court Road. Eleven citizens attended the Hearing Officer's Hearing, which was held on March 11, 2004. The citizens were not represented by an attorney. The order implies that the citizens were primarily concerned about the possible conversion of Lightfoot Drive from a cul-de-sac (dead-end) street into a through road. Both the citizens and the applicant were in agreement that Lightfoot Road should remain a cul-de-sac. The Department of Environmental Protection & Resource Management (DEPRM) also opposed the conversion because of environmental concerns. The Department of Public Works (DPW) recommended making it a through-road. However, the Hearing Officer decided not to require that Lightfoot Drive be extended.

Holly Neck Property

This project was proposed for a site on Holly Neck Road in Essex. The development plan showed 101 proposed residential units consisting of single-family detached houses and townhouse units. The hearing was held May 5, 2006 with nine citizens present along with an attorney representing a local community association.

The association's attorney presented an agreement which satisfied all citizen concerns. Apparently, the project was formerly proposed with more than 101 units because the agreement capped development of the site at that number. The agreement also required the applicant to install pedestrian pathways to integrate the site into the community and prohibited gated roads.

Lakeside Farms

This 27 home project was proposed for a site on Manor Road in the Glen Arm area. A total of 34 citizens attended the February 27, 2005 Hearing Officer's hearing. Both the applicant and the citizens were represented by an attorney. Citizen concerns included: stormwater impacts, school overcrowding, traffic, stream quality, pedestrian safety, emergency services, wells and septic systems, and compatibility. The citizens and applicant entered into an agreement. The order noted the following which were characterized as salient features of the agreement:

- Future use of certain lots, a second cell tower will not be allowed, a well agreement and Joint Exhibit No. 1 be incorporated into any Order from this Commission; and
- That the Community now supports the approval of the development plan.

The Hearing Officer made compliance with the agreement a condition of development plan approval.

Lauenstein Property 2

This 51-acre site on Cape May Road in the Essex area was originally proposed to be developed as 78 condominium units. The Hearing Officer approved this project in August, 2004. However, for reasons that are unclear in the order, the Hearing Officer issued a supplemental decision which reduced the number of units from 78 to 72 and added conditions. Citizens and the People's Counsel appealed this decision. The Board of Appeals upheld the Hearing Officer's decision but added their own conditions. The citizens and People's Counsel filed motions for reconsideration which were still pending when the most recent order was issued on March 8, 2007. But, the order notes that citizens and the applicant entered into negotiations which resulted in a Restrictive Covenant Agreement executed on December 18, 2006. This agreement:

- reduced the number of units from 72 to 62;
 - shifted units proposed for the south side of Cape May Road to the north side;
 - decreased and relocated units proposed for Katherine Avenue so a more effective form of stormwater management could be employed; and
 - imposed restrictions on future uses of undeveloped portions of the site.
- In return the citizens agreed to withdraw their opposition to the project.

Loyola College Spiritual Retreat Center

This project was described as being for religious worship, a school, and a camp consisting of a main building, five smaller buildings, and a parking lot. The project was proposed for a site on Stablersville Road in the Parkton area of northern Baltimore County. The hearing was held on three dates in April, 2004. Seven citizens attended the hearing in opposition to the project and were not represented by an attorney. Two citizens attended in support of the project and were represented by an attorney.

The citizens supporting the project represented two local community associations which had entered into an agreement with the applicant. The agreement contained a number of conditions and broad-based understandings intended to resolve the concerns of those association members who were consulted.

The seven citizens opposed to the project did not support the agreement. The primary concern of the citizens was that the project was not compatible with the area, which is dominated by working farms. The Hearing Officer approved the development plan and made compliance with the agreement a condition. The seven citizens who were not parties to the agreement appealed the Hearing Officer's decision. The Board of Appeals affirmed the Hearing Officer's decision. The citizens appealed to Circuit Court where the decision was remanded back to the Board of Appeals.

Mardella Ridge

This project was proposed for a site off of Marriottsville Road in the Woodstock area of southwest Baltimore County. The 47-acre site was proposed to be developed as 26 single-family

homes. Fifteen citizens attended the June 2, 2005 hearing in opposition to the project. The principle concern of the citizens was the proposed connection of two dead-end streets. Citizens were concerned that this would increase traffic volume and speeds due to cut-through traffic. Citizens were also concerned about a requirement that the future right-of-way of Marriottsville Road be cleared.

In 1991, then County Councilman Mintz brokered an agreement between the County and citizens that prevented the connection of the two dead-end streets. When the intervening Mardella Property was proposed for development the County Office of Planning insisted on a connection. The applicant submitted two development plans: Plan A which showed no connection and Plan B showed the connection. The Hearing Officer was persuaded by the citizens' arguments and approved Plan A which abided by the 1991 agreement.

Meadows at Honeygo

The Meadows at Honeygo was proposed for a site north of Joppa Road in the Perry Hall area. The development plan called for 63 single-family houses on the 28-acre site. The hearing was held on July 27, 2006 with 13 citizens in attendance. Also present was an attorney representing a local community association. Citizen concerns included provision of off-site improvements, such as sidewalks, utilities, and other infrastructure, before the project was finished. They were also concerned about interruption of services to their homes during construction. Other concerns were increased traffic on a residential street and the density of development proposed for the site. The attorney for the citizen association announced an agreement with the applicant. This agreement limited the number of proposed homes with direct access to a residential street and permanently blocked-off one street to prevent cut-through traffic. The agreement was incorporated as an enforceable condition of the development plan approval.

Paradise Village

This 18-lot project was proposed for a site on Paradise Avenue in Catonsville. Six citizens attended the hearing held on January 7, 2005. They were not represented by an attorney. The area residents were concerned about the effect widening of Paradise Avenue would have on the volume and speed of cut-through traffic. They were also concerned about stormwater management and the long term maintenance of fences and street lights. Widening of Paradise Avenue was not required. The order contained the following description of an agreement reached between the applicant and citizens:

The Redline Development Plan also contains the agreement between the Developer and the community to lessen the impact of the reverse frontage, Lots 11 through 18, by restricting the decks and accessory structures that the new homeowners could build. In addition, the architectural treatment of the rear of these homes will be such that when observed from Paradise Avenue the rear of these homes will appear as though they are the front of the homes. Additionally, Lots 8 and 9 are restricted so that no variances for decks will be allowed. Window restrictions and amenities will be provided on the sides of the homes on Lots 1 and 18, along Altamont Avenue, to improve the appearance of the new homes. Finally, the Developer noted that the use of the small park provided by the Developer

would be open to the surrounding community and not restricted to the new residents of the subdivision.

Spencers Crossing

The 2.3-acre site for this project was located on Timonium Road in the Timonium area. The applicant proposed developing the site as ten single-family, semi-attached housing units. The hearing was held July 6, 2006 with seven citizens in attendance, two of which were representing area community associations. One of the association representatives described a previous proposal to develop the site as a large child care center. Citizens efforts resulted in an agreement with the applicant prohibiting development of the site as a child care center in exchange for citizen support for higher-density residential use of the site.

The Residences at North Charles

The applicant proposed developing this four-acre site with 28 mixed residential units. The site was located on North Charles Street, just south of Bellona Avenue, in the Towson area. The hearing was held August 26, 2005 and seven citizens attended. They were not represented by an attorney.

One citizens wanted sidewalks installed and others were troubled by traffic safety issues. Of greatest concern was the additional left-turns occurring at the southernmost proposed access point into the project. While this issue does not appear to have been resolved to the satisfaction of those citizens present, the order does reference an agreement between the applicant and the community: the applicant agreed not to access the site via an adjoining street - LaGrange Lane.

Towson Promenade

The development plan showed 379 apartment units for this site on York Road in Towson. Two citizens attended the December 7, 2006, hearing along with an attorney representing their local association. The order referenced an agreement resolving citizen concerns, but did not contain any details as to how the agreement addressed these concerns.

Walsh Property (14601 Western Road)

This project was proposed for a site on Western Run Road in the Glencoe area of Baltimore County. The 160-acre site was proposed to be developed as 17 single-family lots. The hearing was held February 24, 2006 and ten citizens attended. All of the citizens who testified spoke of the same concern: increased traffic on narrow, rural roads. Three citizen groups were represented at the hearing by an attorney. The attorney presented an agreement with the applicant that resolved the concerns of the three groups he represented. The order did not contain any details as to how the agreement addressed citizen concerns.

Woodholme Reserve, PUD-1

This Planned Unit Development (PUD) was proposed for a site on Mount Wilson Lane in Pikesville. The applicant proposed 22 single-family detached houses. The hearing was held on July 29, 2004. One citizen attended, along with an attorney representing a citizen who did not attend the hearing.

In 1996, the Hearing Officer denied approval of a plan to develop the same site as a 150-bed nursing home and 12 single-family dwellings. The applicant revised the plan showing a 22-house project which the hearing officer approved. This approval was contested - presumably by citizens - before the Board of Appeals which approved the development plan, but not the variances critical to the project. The Board's decision was affirmed by Circuit Court. The applicant revised the plan so it could be submitted as a PUD, which eliminated the need for the variances.

The attorney representing the citizen not present at the July, 2004 hearing announced that his client had reached an agreement with the applicant that resolved his concerns. The attorney said terms of the agreement were confidential but that his client withdrew his opposition to the project.

Woodlands @ Perry Hall

This 13-lot project was proposed for a site on Perry Hall Road in Perry Hall. Four citizens attended the September 16, 2005 hearing and were represented by an attorney. The citizens' attorney stated that they had reached an agreement with the applicant to support the project provided eight conditions were met. The order did not provide any detail on the agreement. However, the project was approved with the following conditions, which surely reflect part of the agreement:

2. The Developer shall install evergreen trees five (5) feet in height every fifteen (15) feet along the rear property lines of the newly created lots that will abut the Perry Hall Manor subdivision lots. These trees will be interspersed with other trees and shrubs, all to be planted and established pursuant to the Baltimore County Landscape Manual;
3. The trees, shrubs, and plants, as aforesaid, shall be tended and maintained pursuant to the Baltimore County Landscape Manual. Furthermore, if any of said trees, plants, or shrubs shall not survive for the first two (2) year period after establishment, the Developer shall replace same in kind, or otherwise with the written approval of the Baltimore County Landscape engineer and the Bureau of Development Plans Review in the Department of Permits and Development Management;
4. The Developer shall solicit non-binding input from citizens, regarding any future community covenants or restrictions to be imposed on the Woodlands at Perry Hall subdivision. Woodlands shall provide copies of any such restrictions or covenants to citizens at least thirty (30) days prior to recordation;
5. Prior to commencement of construction, an escrow account will be established in the name of "The Citizens to Preserve the Community of Perry Hall Manor, Inc." to ensure removal of sediment, dirt and/or debris from Perry Hall Road during construction, in the amount of \$5,000.00. Such removal shall be performed by Woodlands pursuant to the requirements and specifications set forth in Article 33, Title 5, of the Baltimore County Code (2003);

6. No shed, building or other unattached structure shall be built within five (5) feet of the rear lot lines on the newly created lots that will abut the Perry Hall Manor subdivision. Such "nobuild areas" shall be delineated and described as such on, and a note providing for such restrictions shall be appended to, the Final Development Plan, and
7. Citizens assume no responsibility or liability for any actions as related to the development of The Woodlands at Perry Hall subdivision.

APPEALS OF HEARING OFFICER DECISIONS

In Baltimore County, all appeals of a development plan decision are first heard by the County's Board of Appeals. Those aggrieved by the Board's decision can file an appeal in Circuit Court, then the Maryland Court of Special Appeals, and finally the Maryland Court of Appeals. However, like the U.S. Supreme Court, the Maryland Court of Appeals only hears those cases it selects.

With respect to the Board of Appeals, Section 32-4-281, of the Development Regulations, sets forth the following requirements. The appeal must be filed within 30 days of the Hearing Officer's decision. Within ten days of the filing the appellant must submit a petition detailing the grounds for the appeal, the relief sought, and why the Board should reverse or remand the Hearing Officer's decision.

Development regulation §32-4-281(e) allows the Board to take the following action after hearing the appeal:

- (i) *Remand the case to the Hearing Officer;*
- (ii) *Affirm the decision of the Hearing Officer; or*
- (iii) *Reverse or modify the decision of the Hearing Officer if the decision:*
 1. *Exceeds the statutory authority or jurisdiction of the Hearing Officer;*
 2. *Results from an unlawful procedure;*
 3. *Is affected by any other error of law;*
 4. *Is unsupported by competent, material, and substantial evidence in light of the entire record as submitted; or*
 5. *Is arbitrary or capricious.*

I forwarded the case numbers for the 149 decisions addressed in this study to the staff of the Board of Appeals. The Board staff were extremely helpful in searching their records to determine which of these decisions had been appealed. Initially, 18 decisions were flagged as having been appealed. However, four of these appeals were of prior decisions in the same case and were not one of the 149 decisions included in this study. After making this correction, I determined that the Board was asked to consider 14 (9%) of the decisions.

Of these 14 appeals, twelve (86%) were filed by citizens, one (7%) by the applicant, and one (7%) by the Office of the People's Counsel¹¹. Of the 12 appeals filed by citizens, nine (75%) were represented by an attorney at the Hearing Officer's hearing and three (25%) were not. In two of the citizen appeals heard by the Board the citizens appeared without counsel (pro se).

Table 6, presents the number of appeals filed regarding decisions rendered by the three Hearing Officers. Note that one Hearing Officer accounted for a disproportionate share of the appeals. This Hearing Officer issued 14% of the 149 decisions yet accounted for 28% of the decisions appealed to the Board of Appeals. Table 6, also provides the ratio of the decisions appealed to decisions issued for the three Hearing Officer.

Table 6: Ratio of Decisions Appealed to Decisions Issued By Hearing Officer During the Period of March 2004 to April 2007

Hearing Officer	Decisions Appealed	Decisions Issued	Ratio (Appeals:Decisions)
John V. Murphy	4	77	1:19
Lawrence E. Schmidt	5	18	1:4
William J. Wiseman	5	54	1:11
Total/Average	14	149	1:11

As shown in Table 6, Mr. Schmidt's decisions were appealed nearly three times more often when compared to Mr. Wiseman's and were appealed at nearly five times the rate of Mr. Murphy's decisions. However, only 18 of Mr. Schmidt's decisions were available for this study. Mr. Schmidt served as Zoning Commissioner/Hearing Officer for over ten years. It is possible that a larger sampling of Mr. Schmidt's decisions might show a different rate of appeal.

Of these 14 appeals, one was withdrawn by the appellants before the Board heard the case. The Board affirmed all remaining 13 Hearing Officer's decisions including an appeal of one decision to deny development plan approval (Bender-Vogel). The Board did reverse the Hearing Officer on one condition: a dam-breach analysis he required in the Bender-Vogel case. The Board found that the record of the hearing contained insufficient facts to support the Hearing Officer's decision to impose the dam-breach analysis condition.

¹¹ The Office of the People's Counsel may appear before local, state and federal administrative agencies and courts "to represent the interests of the public in general" in any zoning matter. The Office has the responsibility under the Charter, "to defend any duly enacted Master Plan and/or Comprehensive zoning maps."

The decision of the Board was appealed to Circuit Court in nine (69%) cases. Circuit Court has not issued a decision for two of these appeals. A Circuit Court judge affirmed the Board of Appeals in three of the cases heard thus far and remanded the decision back to the Board in two other cases. The disposition of the other two cases is still being researched and will be determined prior to finalizing this report. Two of the Circuit Court decisions were appealed to the Maryland Court of Special Appeals. One decision was affirmed and another has not been heard.

Table 7: Period Between Appellate Body Decisions

DECISION TO DECISION	MONTHS		
	Average	Minimum	Maximum
Hearing Officer to Board of Appeals	5.6	3.2	9.4
Board of Appeals to Circuit Court	9.4	7.0	13.4
Circuit Court to Court of Special Appeals	14.5	14.5	14.5
Hearing Officer to Court of Special Appeals	29.5	24.7	37.3

Table 7, provides the amount of time between the steps in the appeals process. An average of 5.6 months elapses between the date the Hearing Officer's decision is issued and the date of the Board of Appeals decision. On average it will take another 9.6 months from the time the Board rules until a Circuit Court judge issues their ruling on an appeal. In the one Circuit Court decision heard thus far by the Court of Special Appeals, 14.5 months elapsed between decision dates.

DISCUSSION

The purpose of this study is two-fold. First, to determine how effective citizens feel the Baltimore County development review process is in addressing their concerns. Secondly, to identify opportunities for citizens to be more effective in preserving their quality of life through the process.

Citizen Perceptions of Process Fairness

The Hearing Officer decisions reviewed in this first phase of the study did not contain direct evidence regarding citizen perceptions of how effective the development review process is in resolving their concerns. However, indirect evidence was available in three forms:

- The number of citizens who attended Hearing Officer hearings;
- Conditions and settlement agreements; and
- Appeals of Hearing Officer decisions filed by citizens.

Hearing Officer Hearing Attendance: Citizens were present at 81% of the hearings and testified regarding concerns or questions at two-thirds (66%) of the hearings. I believe that a substantial portion of these questions and even concerns could have been resolved at the Community Input Meeting (CIM) or by the time of the Development Plan Conference (DPC). In fact the following development regulations make it clear that the purpose of the CIM is to answer citizen questions and to seek resolution of concerns:

§ 32-4-217. COMMUNITY INPUT MEETING.

- (a) *Purpose. The purpose of the community input meeting is to provide a forum for:*
- (1) *Discussion; and*
 - (2) *Resolution of community concerns and developer constraints within the context of this title and county regulations and policies.*

Development regulation §32-4-217(e)(2) allows the Department of Permits & Development Management (PDM) to hold a second CIM if citizen questions and concerns are not resolved at the first CIM. These regulations states

- (2) *If a comment or condition is unresolved, the Director of Permits and Development Management may require:*
- (i) *An additional meeting to be held; and*
 - (ii) *Representatives of any county reviewing agency to attend the meeting in order to address the comments or conditions.*

Of the 145 Community Input Meetings held prior to the 149 decisions, only twelve (8%) were continued to a second night. I suspect that substantially fewer citizens would have felt a need to take a day off work and attend the Hearing Officer's hearing had more of the CIMs been continued to a second night, particularly if PDM arranged to have the County officials present who could address the issues raised by citizens at the first CIM.

The following development regulation (§32-4-217(e)(3)) requires that County agencies address unresolved comments from the CIM as part of the Development Plan review:

- (3) *As part of the Development Plan review, the appropriate agency shall:*
- (i) *Address the comments or proposed or requested conditions that are not resolved through the community input meeting; and*
 - (ii) *Submit the comments or proposed or requested conditions to the Hearing Officer according to § 32-4-226 of this subtitle.*

I have probably reviewed development plan comments for a hundred or so projects since the CIM-HOH process was initiated in 1992. I can recall few agency comments which:

- specifically addressed the concerns raised by citizens at the CIM;
- evaluated the extent to which the applicant had addressed those concerns as the concept plan was converted into a development plan; and
- made recommendations that would more fully resolve each citizen concern.

I have also attended more than a dozen Development Plan Conferences (DPC) and only recall one where citizen concerns were specifically addressed.

If my observations are consistent with the reality of most Development Plan Comments and Conferences then I anticipate that Phase II of this study will show that a large percentage of citizens who testified at the Hearing Officer's hearing raised the same issues at the CIM. If this the case then clearly those issues remained unresolved through the portion of the process leading up to the Hearing Officer's Hearing. Phase II of this study will be designed to determine:

- If these concerns were resolved through conditions or development plan changes made at the hearing; and
- If these same conditions-development plan changes could have been made at the CIM or DPC?

If the answer to both questions is yes, then citizens will have been needlessly forced to lose one or more days of work to attend a Hearing Officer's hearing and in many cases forced to needlessly bear the expense of hiring a lawyer and an expert witness(es).

Conditions & Agreements: Of the 149 decisions, twenty (13%) referenced a settlement agreement between the applicant and citizens. I assume that in these cases citizens were generally satisfied that their concerns had been resolved, although in one case (Loyola Multiuse Retreat Center) citizens excluded from the agreement negotiations were quite dissatisfied.

In 47% of the hearings where citizens testified about concerns, the decision contained at least one condition that appeared to directly relate to an issue raised by citizens during their testimony. The decisions from 27% of the hearings contained conditions which *may* have been related to a citizen concern. In Phase II of this study, I hope to learn the extent to which conditions resolved citizen concerns.

Appeals: Citizens appealed fourteen (9%) of the 149 decisions reviewed in this first phase of the study.

Does this mean citizens were happy with the other 91% of decisions?

Of course, not.

In many cases citizens probably decided that the expense of an appeal was not justified by the likely benefits. Yet one statistic from the study does give reason to believe that the decisions of some Hearing Officers are less likely to be appealed than others. Specifically, Mr. Schmidt's decisions were appealed nearly three and five times as often as those of Mr. Wiseman and Mr. Murphy, respectively. Both Mr. Murphy and Mr. Wiseman were twice as likely as Mr. Schmidt to add conditions to development plan approvals. As stated above, a larger sampling of Mr. Schmidt's decisions might show a different rate of appeal and frequency of conditioned approvals.

Mr. Murphy, who has the lowest ratio of decisions appealed, was the only Hearing Officer to use all the options granted to him under County law to address citizen concerns. By this I mean that Mr. Murphy's decisions were the only ones to show that the option of lot reduction and denying plan approval was exercised.

The question might arise as to whether other Hearing Officers believe they lack the authority to resolve citizen concerns through the use of a reduction in the number of lots/square-footage of floor space or a denial of plan approval. If this authority was questionable then I would have expected more than one applicant to have appealed lot reduction or plan denial.

In the two cases where Mr. Murphy exercised his authority to reduce the number of lots, neither applicant appealed. Of the four cases where Mr. Murphy denied development plan approval, only one applicant took an appeal. The Board of Appeals upheld Mr. Murphy's denial of development plan approval. The applicant appealed the Board's decision to Circuit Court where it is yet to be heard. Given this record it would certainly seem that Mr. Murphy was operating within his authority when the options of lot reduction and denial of development plan approval was employed.

The three preceding indirect factors indicate that the development review process fails to resolve the concerns of a substantial number of the citizens who participate in the process. In Phase II of this study, I hope to determine how frequently citizens feel their concerns were resolved through the process. Among the specific issues to be researched is whether the approach used by one Hearing Officer tended to result in more citizens viewing the process as being fair.

The Critical Role of the Hearing Officer

For the most part, the Hearing Officer is the final decision-maker with respect to the Baltimore County development review process. I believe the willingness of both applicants and citizens to resolve their differences through negotiation is a reflection of their perceptions of how responsive the Hearing Officer(s) will be to their concerns.

From my relatively biased perspective as an advocate for citizens, I believe a Hearing Officer will generally be viewed as being fair and responsive to citizens concerns if they:

- Listen closely to the concerns expressed by citizens;
- Ask enough questions of citizens to ensure that the Hearing Officer fully understand each concern;
- Asks what solution(s) the citizen recommends;
- Turn to the applicant to see if they are open to modifying the development plan to implement the citizen's solution or if they care to propose some equally effective alternative;
 - If the applicant disputes the legitimacy of a concern and the applicant's position seems reasonable, then the Hearing Officer would ask citizens if they have additional evidence to support the concern; or
 - If citizens lack this evidence then the Hearing Officer would ask the appropriate County expert for their opinion regarding the concern and if they can provide the required supporting evidence;
- Once the Hearing Officer believes a citizen's issue is supported by the available evidence, the Hearing Officer then explores possible conditions which would resolve the concern, including a reduction in the number of lots or square-footage of non-residential projects; and
- If the Hearing Officer finds that conditions cannot resolve the concern **and** the project fails to comply with an applicable law, regulation, policy, or other requirement, then development plan approval is withheld.

I believe that the probability of resolving citizen concerns will be much higher during the early portions of the process (CIM-DPC) if all sitting Hearing Officers have demonstrated that they will use all of their powers to resolve legitimate issues. Such a demonstration increases the likelihood that the applicant will more thoroughly explore reasonable options for addressing citizen concerns at the Community Input Meeting and by the time of the Development Plan Conference.

By the same token, a clearer understanding of what the Hearing Officer can and cannot do will allow citizens to be more effective in resolving their concerns. I urge citizens not to start off with the nuclear option of simply trying to stop a project. While no solution so completely resolves citizen concerns, the Hearing Officer can only deny approval if the plan clearly fails to comply with some County law, regulation, policy or other requirement **and** the plan cannot be easily modified to achieve compliance.

Instead of beginning with a goal of stopping a project, citizens should take a hard look at each concern and ask the question:

How could the plan be modified to resolve this issue?

Decisions Database

As part of Phase I of this study I created a *Decisions Database* which will make it considerably easier for citizens to answer this question. Indeed, this database gives me and the attorneys I work with an insight into how to resolve citizen concerns that we've never had before.

The database includes all 149 decisions issued from March 2004 through April 2007 and will be expanded as new orders are posted on the PDM website. The database is structured so one can search for decisions where specific issues-concerns were raised. By reading the decision from these relevant cases citizens can determine:

- what evidence was needed to convince the Hearing Officer that a concern was valid;
- what solutions were considered; and
- the criteria the Hearing Officer relied upon in deciding whether to impose a particular solution as a condition or to deny plan approval.

After Phase II of this study is completed the *Decisions Database* will be expanded to show how effective citizens perceive various conditions to have been in resolving their concerns on those projects which have broken ground. Citizens can request information from the database by contacting CEDS at 410-654-3021 or info@ceds.org.

If a citizen determines that a viable solution is available then they should press for modifying the Concept Plan accordingly at the Community Input Meeting. If agreement cannot be reached at the first CIM then citizens should exercise their authority under development regulation §32-4-217(e)(2) to ask that PDM hold a second meeting and, if necessary, have the County staff present who are expert in the subject area of each concern. Citizens should also urge PDM to direct the applicant to bring a revised Concept Plan to the second CIM which addresses citizen concerns to the maximum extent possible.

If citizens make a concerted effort to find an effective solution to each concern yet nothing short of a reduction in the number of lots or square-footage of floor space will work, then they should certainly ask for this remedy. They will likely find the Hearing Officer more open to this remedy if citizens can demonstrate that they tried to work with County staff and the applicant to find another solution, but were unsuccessful despite their best efforts. If County staff support the citizen's position then the probability of success increases considerably.

Detailed advice on negotiating with the applicant, working with staff, researching strategy options, preparing to testify, and technical solutions for specific issues can be found in *How To*

Win Land Development Issues, a 280-page book available free for download on the CEDS website: www.ceds.org. Further information on the Baltimore County development review process is available at: www.ceds.org/bcmd and at the following County websites:

BALTIMORE COUNTY CODE

www.amlegal.com/baltimoreco_md/

DEPARTMENT OF PERMIT & DEVELOPMENT MANAGEMENT

www.baltimorecountyonline.info/Agencies/permits/

DEPARTMENT OF PERMIT & DEVELOPMENT MANAGEMENT

www.baltimorecountyonline.info/Agencies/permits/

Development Hearings & Meetings

www.baltimorecountyonline.info/MeetingsandEvents/pdm

Hearing Officer Decisions

www.baltimorecountyonline.info/Agencies/permits/commissionerdecisions/

Minor Subdivisions

www.baltimorecountyonline.info/Agencies/permits/pdm_devmanage/minorsubs/

DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

www.baltimorecountyonline.info/Agencies/environment/

Development & Regulations

www.baltimorecountyonline.info/Agencies/environment/regulations/

Environmental Variances

www.baltimorecountyonline.info/Agencies/environment/variances/

OFFICE OF PLANNING

www.baltimorecountyonline.info/Agencies/planning/

Comprehensive Zoning Map Process

www.baltimorecountyonline.info/Agencies/planning/zoning/2008czmp/

Design Review Panel

www.baltimorecountyonline.info/Agencies/planning/DRP/

Historic Preservation

www.baltimorecountyonline.info/Agencies/planning/historic_preservation/

Master Plan

www.baltimorecountyonline.info/Agencies/planning/masterplanning/

Planning Board

www.baltimorecountyonline.info/Agencies/planning/planning_board/

School Capacity

www.baltimorecountyonline.info/Agencies/planning/public_facilities_planning/adequate_school_facilities.html

PEOPLE'S COUNSEL

www.baltimorecountyonline.info/Agencies/planning/welcome/peoples_counsel.html