

QC2122-99 TC Shopping Center
Rezoning 04-99-01

USA-S-1829-484

3/25/99 AMZ

file 7/9

Steve Cochran

Will
Hotel
(d added
info
Joe Stevens
attn Murphy Doc.

Judge John C. North, II
Chairman



Ren Serey
Executive Director

**STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREA COMMISSION**

45 Calvert Street, 2nd Floor, Annapolis, Maryland 21401
(410) 260-7516 Fax: (410) 974-5338

March 25, 1999

Ms. Martha Herman
Department of Planning and Zoning
Queen Anne's County
107 N. Liberty Street
Centreville, Maryland 21617

**RE: TC Shopping Center Limited Partnership - Rezoning Petition
#CA 04-99-01**

Dear Ms. Herman:

Thank you for providing me with information on the above referenced rezoning petition. The applicant has proposed the redesignation of a 7.5004 acre portion of parcel 251 from Limited Development Area (LDA) to Intensely Developed Area (IDA). The petitioner requests the change in designation due to a mapping mistake. I understand that the parcel is currently improved as part of a regional shopping center know as Thompson Creek Shopping Center. It is not clear from the submittal what improvements are located in the LDA portion of the property and whether or not there were any improvements on the property at the time of Critical Area mapping.

In order for a property to be considered for a change in designation due to a mapping mistake, it must be demonstrated that the property met the criteria for IDA mapping and that a mistake was made at the time of the mapping. Please provide additional information on the characteristics of the property at the time of mapping and specific information concerning the mapping mistake that led to the error in the original classification, and we will provide further comments. If you have any questions concerning these comments, please call me at (410) 260-7019.

Sincerely,

A handwritten signature in cursive script that reads "Susan McConville".

Susan McConville
Natural Resources Planner

cc: QA 122-99

Branch Office: 31 Creamery Lane, Easton, MD 21601
(410) 822-9047 Fax: (410) 820-5093

TTY FOR DEAF ANNAPOLIS-974-2609 D.C. METRO-586-0450



IN THE MATTER OF THE PETITIONS* BEFORE THE COUNTY
 OF THOMPSON CREEK TOWN HOMES *
 JOINT VENTURE AND THOMPSON * COMMISSIONERS OF
 CREEK TOWN HOMES, INC. FOR *
 A CHANGE IN THE ZONING * QUEEN ANNE'S COUNTY
 CLASSIFICATIONS OF TWO PARCELS*
 OF LAND IN THE FOURTH ELECTION* ZONING CASE NOS. 89-002 and
 DISTRICT, QUEEN ANNE'S COUNTY * 89-003
 MARYLAND

DECISION

A hearing was held on Tuesday, April 25, 1989 at 11:00 a.m. on Consolidated Petitions of Thompson Creek Town Homes Joint Venture and Thompson Creek Town Homes, Inc. for a change in zoning classification of lands of the Petitioners situate in the Fourth Election District, Queen Anne's County, Maryland from Suburban Residential (SR) District to Urban Residential (UR) District. The subject properties consist of 8.8 acres, more or less, and 5.3 acres, more or less and more designated as Parcels 313 and 312 on Queen Anne's County Sectional Zoning Map No. 56.

*Two Prop
-
South*

The hearing was held in the offices of The County Commissioners of Queen Anne's County, County Office Building, 208 N. Commerce Street, Centreville, Maryland.

The Petitions, certificates of publication, certifications as to posting of the subject properties and the recommendations of the Queen Anne's County Planning Commission were entered into evidence as part of the record without objection. There was no objection to the form or sufficiency of the procedure followed in processing the Petition nor to the jurisdiction of

WICK E. THOMPSON
 ATTORNEY AT LAW
 SUITE 2, BOX 522 B
 CENTREVILLE, MD 21638

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 CENTRAL AREA COMMISSION
 Petition Exhibit No. 2

the County Commissioners of Queen Anne's County to hear and decide the matter.

Richard Rice, Esquire, appeared on behalf of the Petitioner and presented evidence, testimony and numerous exhibits. Mr. Bruce Butterworth and Mr. Michael Whitehill were called to testify on behalf of the proposed rezonings. It was the Petitioners' contention that the subject property was mistakenly zoned SR at the time of the adoption of the Queen Anne's County Zoning Ordinance.

Testimony and written documents in opposition to the proposed rezonings were received and considered by the Commissioners.

Mr. Joseph Stevens testified on behalf of the Queen Anne's County Planning Commission and the planning staff.

Upon consideration of the Petitions, the recommendations of the Queen Anne's County Planning Commission (the matter having been referred to the Planning Commission for reconsideration and further recommendations pursuant to Section 9930 of the Queen Anne's County Zoning Ordinance) and the testimony and evidence presented, the following findings of fact are made:

A. There is evidence of substantial population change in the area. Property in the immediate neighborhood of this property although zoned SR has been permitted under prior zoning to develop at extremely high density in fact, at densities higher ever than those allowed under UR zoning.

B. There are public water and sewer facilities serving the subject property.

C. Although concern was expressed over possible traffic impacts there is no evidence that the proposed rezonings would have an unduly adverse impact on traffic patterns or flows.

D. The existing neighborhood has developed at high densities which would seem most compatible with UR zoning.

E. The proposed rezoning is consistent with the purposes set forth in Article 66B of the Annotated Code of Maryland, the Comprehensive Plan and the Queen Anne's County Zoning Ordinance.

F. The proposed rezoning will be in the general public interest and will promote the health, safety and welfare of the community.

G. The County Commissioners find no merit whatsoever in the Petitioners' contention that they should somehow be "vested" in either a legal or an equitable sense with the right to develop this property under previous zoning regulations.

H. The densities and impervious cover on adjoining properties and the HC zoning designation of the property to the North would indicate that a mistake was made in the designation of the subject properties as SR.

Based upon the foregoing matters and after careful consideration of the evidence and testimony presented, the County Commissioners of Queen Anne's County do hereby determine that there was a mistake in the original zoning of the subject properties.

Petitioners are cautioned and reminded that this Decision should in no way be construed or considered as a guarantee that public facilities, specifically including sewerage capacity, will be made available to serve the proposed development.

Likewise, development of these properties is contingent on

approval by the Critical Areas Commission. Should the determination be made that development of these properties would require an allocation from the County's critical area growth allotment the Commissioners will consider such request when made and this Decision should not be construed as an indication whatsoever of the County's future decision on such request. The County's decision herein is simply that a mistake was made in designating the subject properties as SR. Issues regarding sewerage, critical areas or critical areas growth allocation will be addressed as and if they arise and based solely on their relative merits.

Upon motion by Mr. Baker, seconded by Mr. Riggs it was unanimously RESOLVED that the Queen Anne's County Zoning Ordinance be amended as follows:

BE IT ORDAINED that the area described in these proceedings be reclassified to UR (Urban Residential) District.

Dated:

WITNESS:

THE COUNTY COMMISSIONERS OF
QUEEN ANNE'S COUNTY

Suzanne G. Leake

Frances A. Ashley
Frances A. Ashley

Suzanne G. Leake

Wheeler R. Baker
Wheeler R. Baker

Suzanne G. Leake

William V. Riggs III
William V. Riggs III

07/13/89-36/kjr

IN THE MATTER OF THE	*	BEFORE THE
PETITIONS OF THOMPSON CREEK	*	COUNTY COMMISSIONERS
TOWN HOMES JOINT VENTURE AND	*	OF QUEEN ANNE'S COUNTY
THOMPSON CREEK TOWN HOMES, INC.	*	
FOR A CHANGE IN DEVELOPMENT AREA	*	CASE NOS. DAC 89-001 and
CLASSIFICATION	*	DAC 89-002

DECISION

A consolidated hearing was held on Tuesday, May 1, 1990 at 1:30 p.m. upon the Petitions of Thompson Creek Town Homes Joint Venture (DAC #89-001) and Thompson Creek Town Homes, Inc. (DAC #89-002) requesting amendments to the Queen Anne's County Critical Area Map to change the development area classification of two parcels of land from Limited Development Area ("LDA") to Intense Development Area ("IDA"). The properties in question are located near Thompson Creek Road, Fifth Election District, Queen Anne's County and are designated as Parcels 313 and 312 on Queen Anne's County Sectional Zoning Map No. 56.

The hearing was held in the County Commissioner's Hearing Room, 208 North Commerce Street, Centreville, Maryland. Certificates of Publication, the recommendation of the Chesapeake Bay Critical Areas Commission, the recommendations of the Queen Anne's County Planning Commission, the original Petitions and certificates of posting of the properties were entered into evidence without objection.

There was no objection to the form or sufficiency of the procedure followed in processing the Petitions nor to the jurisdiction of the County Commissioners of Queen Anne's County to hear and decide the matter.

Richard Rice, Esquire appeared and testified on behalf of the Petitioners. Mr. Rice contended that there was a mistake in

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Petition Exhibit No. 4

PLANNING & ZONING

PATRICK E. THOMPSON
ATTORNEY AT LAW
ROUTE 2, BOX 522B
BRASOINVILLE, MD 21638

the original designation of the subject properties as LDA.

After careful consideration of the testimony and evidence presented, the recommendations of the Queen Anne's County Planning Commission and Chesapeake Bay Critical Areas Commission, the purposes set forth in Section 8-1800, et seq. of the Natural Resources Article of the Annotated Code of Maryland, the Queen Anne's County Critical Area Program, Ordinance and the Comprehensive Plan, the following specific findings of fact are made:

1. The procedures outlines in Section 7012 of the Queen Anne's County Chesapeake Bay Critical Area Ordinance have been fully complied with.

2. The proposed Amendment is consistent with the purposes contained in Section 8-1800, et seq. of the Natural Resources Article of the Annotated Code of Maryland, in the Queen Anne's County Critical Area Program, the Comprehensive Plan and in the Chesapeake Bay Critical Area Ordinance of Queen Anne's County.

3. There was a mistake in the original classification of the subject properties based on the application of the Method for Delineating Land Use Management Classifications contained in the Queen Anne's County Critical Area Program.

4. The proposed Amendments have been approved by the Chesapeake Bay Critical Area Commission and the Queen Anne's County Planning Commission.

Based on the foregoing matters the County Commissioners do hereby determine that there was a mistake in the original designation of the subject properties as LDA.

Upon motion by Mr. Riggs, seconded by Mrs. Ashley (Mr. Baker being absent from the deliberations) it was unanimously RESOLVED as follows:

BE IT ORDAINED by the County Commissioners of Queen Anne's County that the properties described in these proceedings be designated as Intense Development Areas (IDA) on the Queen Anne's County Critical Area Map.

Dated: May 29, 1990

ATTEST:

THE COUNTY COMMISSIONERS OF
QUEEN ANNE'S COUNTY

Wm. V. Riggs III
William V. Riggs III

Syda H. Palmatary

Frances A. Ashley
Frances A. Ashley

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UN
JOSEPH A. STEVENS
Attorney at Law
QUEEN ANNE'S
COUNTY ADMINISTRATOR

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QUEEN ANNE'S
COUNTY ADMINISTRATOR
P.O. Box 146
114 West Water Street
Centreville, Maryland 21617
410.758.4600
410.758.3555 (fax)

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County Commissioners for
Queen Anne's County
107 North Liberty Street
Centreville, Maryland 21617

Re: Petition for Rezoning

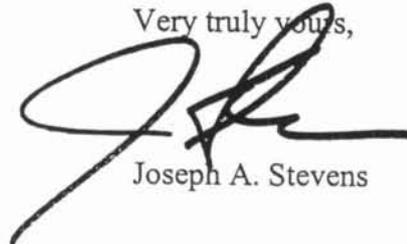
Dear Commissioners:

Attached please find an original and ten (10) copies of a Petition for Rezoning of part of the lands of TC Shopping Center Limited Partnership. TC Shopping Center Limited Partnership is requesting that part of its property known as parcel 251, located on tax map 56 consisting of 7.5004 acres of land more or less in Stevensville, Maryland (hereinafter referred to as the "Property") be redesignated from the Chesapeake Bay Critical Area ("Critical Area") land use classification of Limited Development Area (LDA) to an Intense Development Area (IDA) classification. In accordance with the Code of Public Local Laws for Queen Anne's County, *Environmental Protection*, Title 14, Subpart 3 (hereinafter referred to as the "County Code") I respectfully request that you forward this Petition to the Queen Anne's County Planning Commission for review, public hearing and recommendation.

I have also enclosed the filing fee of \$500.00.

Thank you for your attention to this matter. Should you have any questions, please do not hesitate to contact me.

Very truly yours,



Joseph A. Stevens

JAS/epw
Enclosure
cc: TC Shopping Center Limited Partnership

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~~File Copy~~

JOSEPH A. STEVENS

Attorney at Law

P.O. Box 146
114 West Water Street
Centreville, Maryland 21617
410.758.4600
410.758.3555 (fax)

IN THE MATTER OF PETITION FOR
CHANGE IN THE DEVELOPMENT AREA CLASSIFICATION FOR
THE LANDS OF T.C. SHOPPING CENTER LIMITED PARTNERSHIP
PART OF PARCEL 251, TAX MAP 56, CONSISTING OF 7.5004 ACRES
STEVENSVILLE, MARYLAND

PETITION NO. CA 04-99-01
THE COUNTY COMMISSIONERS
FOR QUEEN ANNE'S COUNTY, MARYLAND

MEMORANDUM OF LAW ON THE ISSUE OF
MISTAKE AS A BASIS FOR REZONING PROPERTY

Rezoning petitions ("Petitions") have been filed with the County Commissioners of Queen Anne's County requesting a rezoning of the Covington, Sheaffer, and T.C. Shopping Center Limited Partnership¹ properties ("Properties"). The legal basis for requesting the rezonings is that there was a mistake when the Properties received a zoning designation or, in the case of T.C. Shopping Center Limited Partnership, a Critical Area land use classification. The purpose of this memorandum is to outline the standards by which to "test" whether a "mistake" was made in the original or last comprehensive zoning of a property. The Planning Commission can then evaluate the evidence presented in each individual case and determine whether there was, in fact, a "mistake" made in the zoning of the Properties.

In order for a mistake to be a legally justifiable basis for rezoning, there must have been a basic and actual mistake by the legislative body at the time the property was originally zoned. *Chesapeake Ranch Club v. Fulcher*, 48 Md. App. 223 (1981) The term error as used in zoning law, does include the failure to take into account projects or trends reasonably foreseeable and of fruition in the future. *Coppolino v. County Board of Appeals of Baltimore County*, 23 Md. App. 358 (1974) In order to establish error the evidence must show that certain projects or trends were not taken into account by the legislature. The Maryland Court of Appeals has held that "when the assumption upon which a particular use is predicated proves, with the passage of time, to be erroneous, this is sufficient to authorize rezoning."

The burden of showing mistake or error is on the applicant to show both:

1. The then existing facts and conditions that allegedly made the comprehensive rezoning [of the subject property] incorrect; also,
2. The literal failure of the legislative body to consider those facts.

People's Counsel of Baltimore County v. Beachwood I Ltd. Partnership, 107 Md. App. 627 (1995). There must be probative evidence to show that the premise relied upon by the legislative body was invalid, or that the legislature failed to take into account then existing facts so that the action was premised on erroneous foundation. *White v. Spring*, 109 Md. App. 692 (1996) It is the adequacy and

¹ T.C. Shopping Center Limited Partnership petition is for a redesignation of part of that parcel 251, located on tax map 56 consisting of 7.5004 acres of land more or less in Stevensville, Maryland from the Chesapeake Bay Critical Area ("Critical Area") land use classification of Limited Development Area (LDA) to an Intense Development Area (IDA) classification. The same judicial standards for mistake for zoning is applied to mistake in Critical Area map classification.

accuracy that underline the conclusion drawn that there is a mistake in the zoning, which is different from simply drawing the wrong conclusion based on accurate and complete information.

It is important for the Planning Commission to recognize that finding that a mistake was made in the last comprehensive rezoning justifies a piecemeal rezoning of property, but does not mandate the rezoning. *Steel v. Cape Corp.*, 110 Md App. 106 (1996) After a mistake has been established and accepted, the legislative body has the same power to rezone that it had at the time of the comprehensive rezoning.

The basis for establishing mistake which will justify a redesignation of a Critical Area land use category was outlined in *Bellanca v. County Commissioners for Kent County*, 86 Md. App. 219 (1991). Essentially, the applicant must produce "strong evidence" that the original classification was a basic and actual mistake, made at the time the Property was originally designated. The Court in *Bellanca* applies the same legal tests to a Critical Area land use designation based on mistake as is applied to a rezoning.

An important case in establishing the authority of the counties versus the Chesapeake Bay Critical Area Commission ("Critical Area Commission") when deciding if a mistake was made in the original land use category comes from Queen Anne's County. *North v. Kent Island Limited Partnership*, 106 Md. App. 92 (1995) In *North* the Court decided that it is not the role of the Critical Area Commission to reexamine if there was an actual mistake in the original designation. To allow the Critical Area Commission "to revisit the question of mistake would render meaningless the hearings before the planning commission and the county commissioners." The role of the Critical Area Commission is to determine whether the program amendment (i.e., the map redesignation) meets the Critical Area Criteria. "The legislative charge of the Critical Area Commission does not include the quasi-judicial function of evaluating whether there was a mistake in the original mapping."

I request that the Planning Commission evaluate the Covington rezoning, Sheaffer rezoning and T.C. Shopping Center Limited Partnership Critical Area land use classification change in a manner consistent with the Maryland case law concerning mistake in zoning.

Respectfully submitted,



Joseph A. Stevens
114 W. Water Street
Centreville, Maryland 21617
(410) 758-4600
Attorney for Petitioners Covington, Sheaffer,
and Thompson Creek L.P.

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CHESAPEAKE BAY CRITICAL AREA COMMISSION

THE CIRCUIT COURT FOR QUEEN ANNE'S COUNTY

DNR-LEGAL DIVISION

IN RE: :
 PIER ONE MARINA, INC. :
 PETITION FOR CRITICAL AREA : Civil # 3001
 REDESIGNATION :
 DAC #90-001 :
 :
 :

: : : : :

MEMORANDUM

Appellant Pier One Marina, Inc. ("Pier One") is the owner of a tract of land on Kent Island. Under the provisions of the Queen Anne's County Critical Area Ordinance¹ ("the Ordinance"), 28.84 acres of that land are designated as Intense Development Area (IDA), with the remaining 21.3 classified as Limited Development Area (LDA)

In September 1990, believing that the latter classification was the result of a "mistake" made at the time when the Ordinance was adopted, Pier One filed a petition asking that the critical area maps be amended to reflect an IDA classification for the 21.3 acres of its lands then shown as LDA. After a hearing, the Queen Anne's County Planning Commission agreed with this contention. At a meeting on June 5, 1991, the Chesapeake Bay Critical Area Commission ("the Commission") disagreed.² The County Commissioners of Queen Anne's County ("the County Commissioners"), considering themselves bound by the disapproval of the Commission, denied the redesignation on July 2, 1991.

On July 5, 1991, appellant filed this appeal from the adverse determinations of both the Commission and the

¹ Approved and adopted in accordance with Title 8, Subtitle 18, of the Natural Resources Article.

² The Commission was created and operates under Article, Title 8, Subtitle 18, of the Natural Resources Article of the Code (hereafter "NR"). Generally, the duties of the Commission involve approval and supervision of "programs", and amendments to programs, adopted by the local subdivisions of the State for the protection of critical areas (defined in NR §8-1807).

THE CIRCUIT COURT FOR QUEEN ANNE'S COUNTY

IN RE:
PIER ONE MARINA, INC.
PETITION FOR CRITICAL AREA
REDESIGNATION
DAC #90-001

Civil # 3001

O R D E R

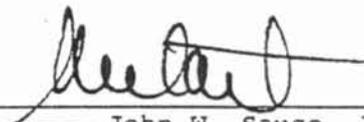
For the reasons set forth in the foregoing Memorandum, it is ORDERED that:

1. The motion to strike the portions of the paper filed by appellant, Pier One, Inc., on February 28, 1992, which relate to constitutionality of the Critical Area law is granted; and those provisions are stricken from the record.

2. The motion to dismiss filed on behalf of the Commission on February 12, 1992, is denied.

3. The decision of the Critical Area Commission on June 5, 1991, is reversed; and the matter is remanded to the Commission for proceedings in accordance with the provisions of §10-216 (a)(2) of the Maryland Administrative Procedure Act.

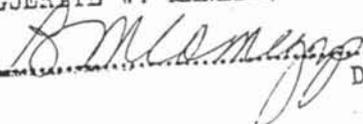
4. The decision of the County Commissioners of Queen Anne's County on July 2, 1991, being based upon the action taken by the Critical Area Commission; is reversed.



John W. Sause, Jr.
JUDGE

May 31, 1994

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QUEEN ANNE'S COUNTY

TRUE COPY, TESTED
MARGUERITE W. MANKIN, CLERK
BY:  DEPUTY CLERK