

From: Thompson, Lennie

Sent: Tuesday, December 11, 2007 12:05 PM

Subject: JLT's Cochise Option for a Comprehensive Rezoning of the Unincorporated Areas in the Vicinity of the Confluence of I-70, U.S. 340, Md. Rts. 180 & 351, Solarex Ct., Himes Ave. & Butterfly Lane

Fellow Commissioners:

Yesterday (Monday, December 10) I distributed paper copies of my "Cochise" Option for a comprehensive rezoning of the unincorporated areas in the vicinity of the confluence of Interstate 70 (Dwight Eisenhower Highway), U.S. 340 (Jefferson National Highway) Maryland Routes 180 (Jefferson Pike) & 351 (Ballenger Creek Pike), Solarex Court, Himes Avenue & Butterfly Lane. The tax map boundaries delineated on the paper version of the proposal are the intellectual property of the Maryland Department of Assessments & Taxation. As I understand it, the paper versions cannot be given away to the public but are available from the Planning & Zoning Office for the same fee we would charge for other regional zoning maps.

The area under study for the Cochise Option lies within the following boundaries: Beginning at the location where Maryland Route 355 (Urbana Pike) intersects the City of Frederick corporate limits; thence

- southeasterly along Maryland Route 355 (Urbana Pike) to the Monocacy River; thence
- southwesterly along the Monocacy River to the area where the confluence of the tributaries known as Clagett Run, Horsehead Run, Rocky Fountain Run, Kiln Run, etc. empty into the Monocacy; thence
- southwesterly to Maryland State Route 880 (Michaels Mill Road); thence
- westerly along Maryland State Route 880 (Michaels Mill Road) to its intersection with Maryland State Route 355 (Buckeystown Pike) and Manor Woods Road; thence
- northwesterly along Manor Woods Road to its terminus at Cap Stine Road; thence
- northerly along Cap Stine Road to Hawker Road; thence
- westerly along Hawker Road to its terminus; thence
- westerly from the terminus of Hawker Road to U.S. 15 (Catoctin Mountain Highway); thence
- northerly along U.S. 15 (Catoctin Mountain Highway) to the point where it intersects with U.S. 340 (Jefferson National Pike); thence
- northerly to Maryland Route 180 (Jefferson Pike); thence
- northeasterly along Maryland Route 180 (Jefferson Pike) to Teen Barnes Road; thence
- northwesterly along Teen Barnes Road to Jefferson Boulevard: thence

- northerly along Jefferson Boulevard to Maryland Avenue; thence
- northerly along Maryland Avenue to U.S. 40 Alternate (Old National Pike); thence
- easterly along U.S. 40 Alternate (Old National Pike) to its intersection with Mount Phillip Road; thence
- along the City of Frederick Corporate limits, southwesterly thence easterly to the place of beginning.

The area under study also includes the nearly enclaved unincorporated area in the vicinity of Grove Hill Road.

The area under study consists of 16,829.1 acres, more or less (\pm).

While the Planning, DPDR & GIS folks provided valuable assistance, the legislative policy recommendations set forth in the map are mine and mine alone.

Set forth below are the following attachments:




- the proposed comprehensive rezoning map;
- a summary of the net changes in acreage within zoning districts;
- a staff report;
- a proposed resolution to initiate the comprehensive rezoning proceeding; and
- a proposed ordinance that would, if enacted, implement the comprehensive rezoning

Your opinions & commentary are welcome,

Lennie

Zoning

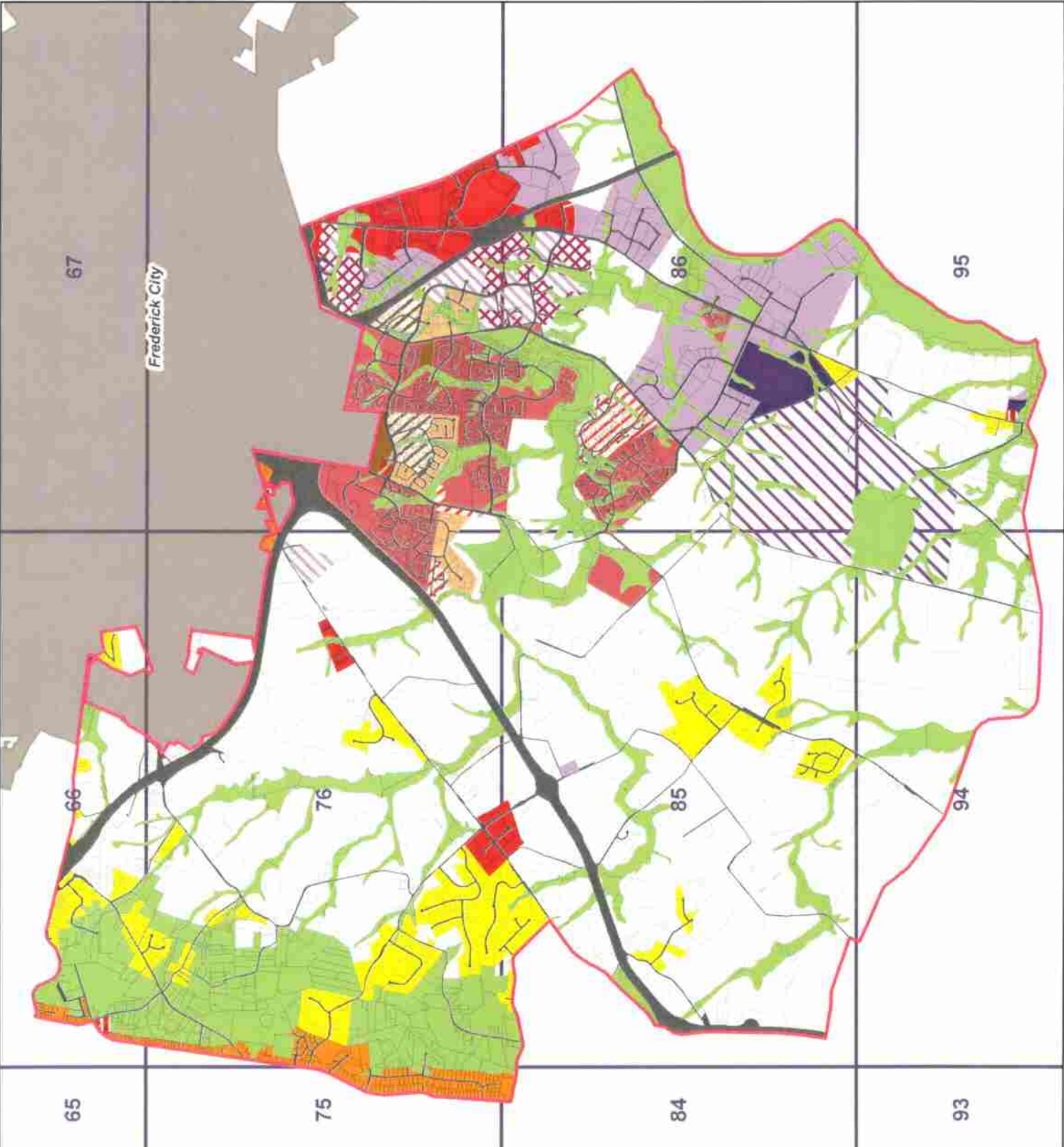
- RC - Resource Conservation
- A - Agricultural
- R1 - Residential
- R3 - Residential
- R5 - Residential
- R8 - Residential
- R12 - Residential
- R16 - Residential
- PUD - Planned Unit Development
- VC - Village Center
- HS - Highway Service
- GC - General Commercial
- MM - Mineral Mining
- LI - Limited Industrial
- GI - General Industrial
- ORI - Office Research Industrial
- MXD - Mixed Use Development
- Municipality
- Cochise Boundary

Cochise Project Current Zoning December 2007

Efforts have been made to ensure the accuracy of this map. Frederick County accepts no responsibility for errors or omissions, or positional inaccuracies in the content of this map. Reliance on this map is at the risk of the user. The parcels are a draft product that may not be current and may contain positional inaccuracies.

Prepared by Frederick County Division of Planning
December 2007



Zoning Acreage of Current and Cochise Zoning

	Current Zoning	Cochise Alternative	Change Alternative - Curent
A	7,447.9	7,624.6	176.7
GC	377.4	347.4	-30.0
GI	377.5	111.0	-266.5
LI	906.7	740.5	-166.2
MM	857.9	663.7	-194.2
ROW	1,220.8	1,220.8	0.0
MXD	737.8	164.7	-573.1
ORI	168.5	143.0	-25.5
PUD	1,252.6	667.4	-585.2
R1	2,041.1	853.8	-1,187.3
R3	323.1	215.0	-108.1
R5	135.9	95.3	-40.6
R8	152.6	112.1	-40.5
R12	85.0	72.7	-12.3
R16	28.1	26.7	-1.4
RC	702.9	3,762.6	3,059.7
VC	13.3	7.8	-5.5
	<hr/> <hr/> 16,829.1	<hr/> <hr/> 16,829.1	<hr/> <hr/> 0.0



TO: Board of County Commissioners (“BOCC”)

FROM: Commissioner Lennie Thompson

RE: Proposed “Cochise” Plan for a Comprehensive Rezoning of the Unincorporated Areas in the vicinity of the confluence of Interstate 70, U.S. 340, Maryland State Routes 180 (Jefferson Pike) & 351 (Ballenger Creek Pike), Himes Avenue, Butterfly Lane & Solarex Court

ISSUE: Should the BOCC adopt the proposed Resolution that would, if adopted, initiate a comprehensive rezoning of the unincorporated areas in the vicinity of the confluence Interstate 70, U.S. 340, Maryland State Routes 180 (Jefferson Pike) & 351 (Ballenger Creek Pike), Himes Avenue, Butterfly Lane & Solarex Court?

BACKGROUND:

My “Cochise Option” proposal for a comprehensive rezoning of the unincorporated area around the confluence of Interstate 70, U.S. 340, Maryland State Routes 180 (Jefferson Pike) & 351 (Ballenger Creek Pike), Himes Avenue, Butterfly Land & Solarex Court accompanies this memorandum. The paper version of Cochise includes tax map boundaries, which are the intellectual property of the Maryland Department of Assessments & Taxation. As I understand it, the paper copies cannot be given away to the public but are available from the Planning & Zoning Office for the same fee we would charge for other region zoning maps.

While our Planning & GIS folks helped me in the preparation of Cochise, the recommended policy choices set forth in the map are mine and mine alone.

The purposes of my Cochise Plan include:

- to control and direct the use of land and buildings according to present and planned future conditions, to accomplish as far as possible the most appropriate uses of land consistent with the public interest and the safeguarding of the interests of the individual property owners; and
- to make sure that further development in the area:

- is supported by adequate infrastructure (particularly transportation infrastructure) that is already in place or planned and funded to be in place prior to further development; or
- does not occur.

Traffic Congestion

The recent presentation by the State Highway Administration (“SHA”) concerning the network of interstate, federal & state highways around the confluence of Interstate 70, U.S. 340, Maryland 180, Maryland 351, Solarex Court, Himes Avenue & Butterfly Lane is incorporated herein. The network will not support the amount of traffic that will be generated under the existing zoning classifications in the area. The SHA estimates that if present trends continue, it will take upwards of \$250 billion dollars to alleviate traffic congestion at that location. No funding is in place. The amount of money needed to alleviate projected traffic congestion “would place a burden on the taxpayers that the County legislative body thinks is unwarranted and beyond its present reasonable capabilities.”¹

I believe the following to be true with respect to the network of interstate, federal and state highways in the vicinity of the confluence Interstate 70, U.S. 340, Maryland State Routes 180 (Jefferson Pike) & 351 (Ballenger Creek Pike), Himes Avenue, Butterfly Lane & Solarex Court:

- Most were designed and built in the decades of the 1940s, 1950s & 1960s;
- Most were never designed to handle the congestion created current levels of traffic;
- The federal and Maryland gas taxes are barely enough to maintain existing roadways and, even if they are raised, gas taxes are not a realistic source of revenue to expand our local road network;
- The cost to make improvements to the County's road network to solve traffic congestion problems will be in the billions of dollars and would constitute a considerable portion of the County's assessable tax base;
- Our elected officials at the national and state level have been unable to obtain the funding necessary to make major improvements to the network needed to solve the traffic congestion problem; and
- Solving traffic congestion problems does not appear to be a priority for our national and state elected officials.

¹ *Norbeck Village Joint Venture v. Montgomery County Council*, 254 Md. 59, 68, 254 A.2d 700, 706 (1969).

Using the past as a predictor of the future, It is unlikely that the network of network of interstate, federal and state highways in the vicinity of the confluence Interstate 70, U.S. 340, Maryland State Routes 180 (Jefferson Pike) & 351 (Ballenger Creek Pike), Himes Avenue, Butterfly Lane & Solarex Court will be improved anytime soon.

The Maryland Transportation Trust Fund helps finance not just roads but also the Washington & Baltimore area subways & rail lines. The dynamics of state politics results in a disproportionately high amount of gas tax revenue supporting transportation modes other than highways. Legislators outside of these areas, where transportation is dominated by private vehicles, are not inclined to vote for gas tax hikes when their constituents will not derive any perceived benefit.

Using the Story of the Little Red Hen as an analogy, just as those who do not help to bake the bread are in a poor position to demand to have a slice of it, those who vote against increases in the gas tax are in a poor position to turn around and request that a substantial portion of the monies generated by the higher taxes be spent of roads in their district. Our state officials have far more to lose politically by supporting increases in the gas tax than by not dealing with traffic congestion issues. While a generation ago our two State Senators, Ed Thomas & Charlie Smelser, had sufficient clout in Annapolis to vote against increases in the gas tax AND bring home some of those revenues to dualize U.S. 15 from Lewistown to the Mason-Dixon Line, that is no longer the case.

While federal gas taxes pretty much built the interstate highway system, they are now barely enough to maintain it. The federal government's attention these days is focused on the Middle East, not solving local traffic congestion problems. It will likely remain that way for the foreseeable future, regardless of who controls the White House or Congress.

Political realities make it unlikely the federal or state governments are going to come to the rescue on local traffic congestion issues, for the following reasons:

- "You broke it, you bought it." Land use decisions in Maryland are pretty much made at the County & municipal levels. Other than traffic emanating from out of County or out of state, the increase in traffic on our interstate, federal & state highways is the result of the land use decisions by prior County governments and municipalities. State & federal officials will naturally be reluctant to walk the plank and vote for higher or new taxes to clean up messes created by local governments.

- For better or worse, the voters have chosen to hold the County Commissioners, and not our state & federal folks, accountable for the congestion on interstate, federal and state highways, even though the County has little jurisdiction over those roads. Our state and federal elected officials are not inclined to argue with the voters over their choice of whom to blame for traffic congestion problems.

A purpose of zoning is to “Control congestion in the streets.”²

“Traffic conditions may be material factors in zoning.”³

“Traffic conditions may be material factors in the rezoning of an area.”⁴

“[I]n changing zoning regulations, traffic plans should have material consideration.”⁵

“Zoning regulations must be designed to lessen congestion in the streets. In making or changing such regulations traffic problems may be material considerations.”⁶

“[T]raffic impact is a sufficient basis to deny a zoning application . . .”⁷

“[T]he rezoning here would materially increase the traffic hazard on Liberty Road . . . This road now handles capacity traffic. It is indefinite also whether Liberty Road will be improved and, if so, when. To grant the rezoning would undoubtedly increase the traffic hazard on this narrow road. As in changing zoning regulations, traffic conditions should be given material consideration, and as this was not done by the Board, its rezoning was arbitrary and an abuse of discretion . . .”⁸

Floodplain District

On September 4, 2007 the BOCC adopted Ordinance #07-29-469 which amended and revised the County’s Floodplain District regulations⁹. The provisions of the County’s Floodplain District regulations are codified as §§1-19-326 through 333 of the Zoning Ordinance. “The Floodplain District is an overlay to the underlying zoning districts as shown on the zoning map. The provisions of the Floodplain District are supplementary to the regulations of the underlying zoning district. Where there is any conflict between the provisions or requirements of the Floodplain District and those of any underlying district, the more restrictive provisions pertaining to the Floodplain District will apply.”¹⁰

² Art. 66B, §4.03(b)(1).

³ *Quinn v. County Commissioners of Kent County*, 20 Md. App. 413, 424, 316 A.2d 535, 541 (1974).

⁴ *Bigenho v. Montgomery County Council*, 248 Md. 386, 394, 237 A.2d 53, 58 (1968).

⁵ *Price v. Cohen*, 213 Md. 457, 464, 132 A.2d 125, 129 (1957).

⁶ *Northwest Merchants Terminal, Inc. v. O’Rourke*, 191 Md. 171, 60 A.2d 743 (1948); *Hardesty v. Board of Zoning Appeals of Baltimore County*, 211 Md. 172, 180, 126 A.2d 621, 624 (1956) (internal quotations and citations omitted).

⁷ *Gowl v. Atlantic Richfield Company*, 27 Md. App. 410, 417, 341 A.2d 832, 836 (1975); *Exxon, Inc. v. City of Frederick*, 36 Md. App. 703, 706, 375 A.2d 34, 36 (1977).

⁸ *Price v. Cohen*, 213 Md. 457, 465, 132 A.2d 125, 129 (1957).

⁹ Ordinance #07-29-469 is on the web at: <http://www.co.frederick.md.us/DocumentView.asp?DID=4342> and at: <http://www.co.frederick.md.us/documents/Ordinances/07-29-469.pdf>

¹⁰ §1-19-326(B).

The Cochise Option applies Resource Conservation zoning to most of the areas that are located within the Floodplain District. This is consistent with the 1998 Frederick County Comprehensive Plan, Volume I: Countywide Plan:¹¹ “Structural development and the altering of land forms will be prohibited in the annual, 100-year floodplain, wetlands, and severely restricted in the historic floodplain areas.”¹²

“The State has a legitimate interest in seeing that floodplains are not unduly restricted. . . The General Assembly expressed that concern in its enactment. It is obvious that certain types of use of floodplains may either raise flood levels in other portions of a watershed so that it will be necessary to take action, at public expense, calculated to protect against flooding or construction in the floodplain itself may at a later time bring a hue and cry for protection of the buildings erected in the floodplain from the hazard of flooding. Of course, this protection also would be envisioned as being at public expense. These statutes and this regulation only provide for intelligent planning of land use. They are facially constitutional.”¹³

“Protection of the environment and of natural resources has long been recognized as a valid purpose of local zoning and land use regulations.”¹⁴

“The various purposes of zoning regulations . . . are . . . to promote the conservation of natural resources; to prevent environmental pollution. . .”¹⁵

“Protection of a natural resource has been held a valid and proper objective of a legislative exercise of the police power.”¹⁶

“[S]tormwater management is a traditional concern of the zoning process.”¹⁷

At present, most lands subject to the Floodplain District Regulations have underlying Euclidean or floating zone classifications that suggest that much more intensive uses are permitted on the lands than is actually the case. The better policy is to have the zoning map provide a more accurate indication of what is actually permitted. By placing lands that are subject to the Floodplain District Regulations into Resource Conservation zoning, observers of the zoning map will get much more accurate information as to what uses are likely to be permitted on the lands.

¹¹ On the web at: <http://md-frederickcounty.civicplus.com/index.asp?NID=1352>

¹² 1998 Frederick County Comprehensive Plan, Volume I: Countywide Plan, page 3-28.

¹³ *A. H. Smith Sand & Gravel Co. v. Department of Water Resources*, 270 Md. 652, 660-661, 313 A.2d 820, 825 (1974) (citations omitted), addressing statutory predecessor to EN §8-101.

¹⁴ *Holiday Point Marina Partners v. Anne Arundel County*, 349 A.2d 190, 208, 707 A.2d 829, 838 (1998).

¹⁵ *Schultz v. Pritts*, 291 Md. 1, 20, 432 A.2d 1319, 1329 (1981); *Holiday Point Marina Partners v. Anne Arundel County*, 349 A.2d 190, 208, 707 A.2d 829, 838 (1998).

¹⁶ *Mears v. Town of Oxford*, 52 Md. App. 407, 423, 449 A.2d 1165, 1175, *cert. denied*, 294 Md. 652 (1982).

¹⁷ *Days Cove Reclamation Co. v. Queen Anne's County*, 146 Md. App. 469, 503, 807 A.2d 156, 175, *cert. denied*, 372 Md. 431, 813 A.2d 258 (2002).

Q & A on Comprehensive Rezoning

What is a Comprehensive Rezoning?

"Comprehensive rezoning is a vital legislative function, and in making zoning decisions during the comprehensive rezoning process, a County Council is exercising what has been described as its 'plenary' legislative power. The power is broad and is limited only by the constitutional restriction that the Council's actions bears a substantial relationship to the public health, comfort, order, safety, convenience, morals and general welfare..."¹⁸

"The indicia of 'comprehensiveness' in zoning are well established. A comprehensive zoning or rezoning must be well thought out, the product of careful consideration and extensive study, and based upon considerations concerning the common needs of the particular area. It must be designed to control and direct the use of land and buildings according to present and planned future conditions, to accomplish as far as possible the most appropriate uses of land consistent with the public interest and the safeguarding of the interests of the individual property owners. Other characteristics of comprehensiveness may be found in the fact that the zoning or rezoning applies to or covers a substantial or wide geographical area, that it regulates all uses, and that it covers all of the usual factors of land utilization: height, area and use."¹⁹

Isn't downzoning a per se violation of property rights?

No:

"The appellants argue that for the County to decrease the permissible density of their land and that of other similarly zoned land and to refuse to furnish sewerage to their land in order to control the growth of population and to continue the present open space in the Olney region was to use zoning and planning impermissibly as a substitute for eminent domain and to reduce so substantially the value of their land as to amount to confiscation.

¹⁸ *Stump v. Grand Lodge of Masons*, 45 Md. App. 263, 269, 412 A.2d 1305, 1308 (1980); *Montgomery County v. Horman*, 46 Md. App. 491, 495-496, 418 A.2d 1249, 1252 (1980); *JMC Construction Corporation v. Montgomery County*, 54 Md. App. 1, 17, 456 A.2d 931, 939 (1983); *Security Management Corporation v. Baltimore County*, 104 Md. App. 234, 249, 655 A.2d 1326, 1333, *cert. denied*, 339 Md. 643, 664 A.2d 886 (1995), *cert. denied* 516 U.S. 1115 (1996).

¹⁹ *Mraz v. County Commissioners of Cecil County*, 291 Md. 81, 88-89, 433 A.2d 771, 776 (1981); *Cardon Investments v. Town of New Market*, 302 Md. 77, 88, 485 A.2d 678, 684 (1984).

If these contentions are sound, no zoning would ever have been allowed or sustained and all comprehensive rezoning would have to continue or increase permissible density, not reduce it. All original zoning decreases the right to use property as the owner pleases. Zoning places restrictions on property that was free of any restriction and the value of some if not most of that property necessarily is going to be lessened. None of this as such invalidates comprehensive zoning, original or subsequent."²⁰

Is a comprehensive rezoning entitled to a presumption of validity & correctness?

Yes:

"A long line of decisions of this Court has recognized that comprehensive zoning or rezoning carries a strong presumption of correctness, and those who attack the same bear a heavy burden in overcoming that presumption."²¹

"Zoning decisions which are made during a comprehensive rezoning process are strongly presumed to be correct."²²

"Comprehensive rezoning is entitled to the same presumption of correctness as is original zoning."²³

"[T]here is a strong presumption of the correctness of the comprehensive rezoning..."²⁴

"While, in recent years, we have had occasion to enunciate a number of important principles applicable to the law of zoning, perhaps none is more rudimentary than the strong presumption of the correctness of original zoning and of comprehensive rezoning."²⁵

²⁰ *Norbeck Village Joint Venture v. Montgomery County Council*, 254 Md. 59, 65, 254 A.2d 700, 704-705 (1969); *County Council for Montgomery County v. District Land Corp.*, 274 Md. 691, 699-700, 337 A.2d 712, 717 (1975).

²¹ *Bonnie View Country Club, Inc. v. Glass*, 242 Md. 46, 52, 217 A.2d 647, 651 (1966).

²² *Stump v. The Grand Lodge of Ancient, Free and Accepted Masons of Maryland*, 45 Md. App. 263, 269, 412 A.2d 1305, 1308 (1980); *Montgomery County v. Horman*, 46 Md. App. 491, 495, 418 A.2d 1249, 1252 (1980).

²³ *Somerset v. County Council for Montgomery County*, 229 Md. 42, 48, 181 A.2d 671, 674 (1962); *Mandel v. Board of County Commissioners of Howard County*, 238 Md. 208, 219, 208 A.2d 710, 717 (1965); *Jay v. Smith*, 34 Md. App. 538, 544, 368 A.2d 487, 491 (1977).

²⁴ *Mothershead v. Board of County Commissioners of Prince George's County*, 240 Md. 365, 374, 214 A.2d 326, 330 (1965); e.g. *Miller v. Abrahams*, 257 Md. 126, 131, 262 A.2d 524, 527 (1970); *Hoy v. Boyd*, 42 Md. App. 527, 533, 401 A.2d 1047, 1051 (1979).

²⁵ *Stratakis v. Beauchamp*, 268 Md. 643, 652-653, 304 A.2d 244, 249 (1973); *Trainer v. Lipchin*, 269 Md. 667, 672, 309 A.2d 471, 474 (1973); *Quinn v. County Commissioners of Kent County*; 20 Md. App. 413,

"The broad test of the validity of a comprehensive rezoning is whether it bears a substantial relationship to the public health, comfort, order, safety, convenience, morals and general welfare, and such zoning enjoys a strong presumption of validity and correctness."²⁶

"[T]here is a strong presumption of the correctness of original zoning and of comprehensive rezoning..."²⁷

"It is well established in this State that comprehensive zoning or rezoning is presumed to be correct, and the one who attacks it carries the heavy burden of overcoming the presumption of correctness."²⁸

418-419, 316 A.2d 535, 538 (1974); *Coppolino v. County Board of Appeals of Baltimore County*, 23 Md. App. 358, 367, 328 A.2d 55, 60 (1974); *Boyce v. Sembly*, 25 Md. App. 43, 49, 334 A.2d 137, 142 (1975); *Howard County v. Dorsey*, 292 Md. 351, 355, 438 A.2d 1339, 1342 (1982); *People's Counsel for Baltimore County v. Beachwood I Limited Partnership*, 107 Md. App. 627, 640, 670 A.2d 484, 490 (1995), *cert. denied*, 342 Md. 472, 677 A.2d 565 (1996).

²⁶ *Norbeck Village Joint Venture v. Montgomery County Council*, 254 Md. 59, 66, 254 A.2d 700, 705 (1969); *Roberts v. Grant*, 20 Md. App. 247, 251-252, 315 A.2d 103, 106, *cert. denied*, 271 Md. 743 (1974); *County Council for Montgomery County v. District Land Corp.*, 274 Md. 691, 700, 337 A.2d 712, 717 (1975); *Levinson v. Montgomery County*, 95 Md. App. 307, 320, 620 A.2d 961, 967, *cert. denied*, 331 Md. 197, 627 A.2d 539 (1993); *People's Counsel for Baltimore County v. Beachwood I Limited Partnership*, 107 Md. App. 627, 648, 670 A.2d 484, 495 (1995), *cert. denied*, 342 Md. 472, 677 A.2d 565 (1996).

²⁷ *Shadynook Improvement Association, Inc. v. Molloy*, 232 Md. 265, 269-270, 192 A.2d 502, 504 (1963); *Greenblatt v. Toney Schloss Properties Corporation*; 235 Md. 9, 13, 200 A.2d 70, 72 (1964); *Pahl v. County Board of Appeals of Baltimore County*, 237 Md. 294, 297, 206 A.2d 245, 247 (1965); *Agneslane, Inc. v. Lucas*, 247 Md. 612, 618, 233 A.2d 757, 760 (1967); *France v. Shapiro*, 248 Md. 335, 342, 236 A.2d 726, 730 (1968); *Minor v. Shifflett*, 252 Md. 158, 164, 249 A.2d 159, 163 (1969); *Smith v. Board of County Commissioners of Howard County*, 252 Md. 280, 283, 249 A.2d 708, 710 (1969); *Chatham Corporation v. Beltram*, 252 Md. 578, 584, 251 A.2d 1, 4 (1969); *Wells v. Pierpont*, 253 Md. 554, 557, 253 A.2d 749, 751 (1969); *County Commissioners of Cecil County v. Phillips*, 255 Md. 229, 233, 257 A.2d 158, 160 (1969); *Westview Park Improvement and Civic Association v. Hayes*, 256 Md. 575, 581, 261 A.2d 164, 167 (1970); *Germenko v. County Board of Appeals of Baltimore County*, 257 Md. 706, 708, 264 A.2d 825, 829 (1970); *Chevy Chase Village v. Montgomery County Council*, 258 Md. 27, 41, 264 A.2d 861, 868 (1970); *Surkovich v. Doub*, 258 Md. 263, 270, 265 A.2d 447, 450 (1970); *Cabin John Ltd. v. Montgomery County*, 259 Md. 661, 669, 271 A.2d 174, 179 (1970); *Heller v. Prince Georges County*, 264 Md. 410, 412, 286 A.2d 772, 773 (1972); *Clayman v. Prince George's County*, 266 Md. 409, 417, 292 A.2d 689, 693-694 (1972); *Montgomery County v. National Capital Realty Corporation*, 267 Md. 364, 377, 297 A.2d 675, 682 (1972); *Mayor & Council of Rockville v. Henley*, 268 Md. 469, 472, 302 A.2d 45, 46 (1973); *Valenzia v. Zoning Board of Howard County*, 270 Md. 478, 483, 312 A.2d 277, 280 (1973); *Anne Arundel County v. Maryland National Bank*, 32 Md. App. 437, 440, 361 A.2d 134, 136 (1976); *Howard County v. Dorsey*, 292 Md. 351, 355, 438 A.2d 1339, 1342 (1982); *Buckel v. County Commissioners of Frederick County*, 80 Md. App. 305, 312, 562 A.2d 1297, 1300, *cert. denied*, 318 Md. 96, 566 A.2d 1112 (1989); *People's Counsel for Baltimore County v. Beachwood I Limited Partnership*, 107 Md. App. 627, 641, 670 A.2d 484, 491 (1995), *cert. denied*, 342 Md. 472, 677 A.2d 565 (1996); *People's Counsel for Baltimore County v. Surina*, 400 Md. 662, 717, 899, 932 A.2d 899 (2007).

²⁸ *Iverson v. Zoning Board of Howard County*, 22 Md. App. 265, 267-268, 322 A.2d 569, 571 (1974).

"For an individual property owner to escape the binding impact of a comprehensive rezoning he must show that the plan lacks the necessary relationship to the general public interest and welfare that is presumed or that the effect of the plan is to deprive him of any reasonable use of his property."²⁹

"In order for an individual property owner to remove himself from a comprehensive rezoning, he must show that the plan will deprive him of any reasonable use of his property or that it is not in the general public interest or welfare."³⁰

The map itself is entitled to a presumption of validity:

"When a comprehensive map designed to cover a substantial area is adopted, it is entitled to the same presumption of correctness as an original zoning. Thus, persons attacking the correctness of the map's classifications have a heavy burden of overcoming the presumption of their validity."³¹

"[W]e start off with a strong presumption of the validity of the classifications made when the comprehensive map was adopted, and those who attack the classifications bear a heavy burden of overcoming the presumption of their validity."³²

"There is a strong presumption favoring the validity of a comprehensive zoning map adopted by the proper authority."³³

"This Court has repeatedly stated that classifications contained in a comprehensive zoning map adopted by the proper authority carry a strong presumption of validity."³⁴

"Of course, the comprehensive zoning map . . . was entitled to a presumption of correctness . . ."³⁵

"As a policy decision made by the legislative branch of a charter county, that comprehensive zoning requires no further justification to support it. It is presumptively correct."³⁶

"Until the presumed validity of the comprehensive zoning map has been overcome, evidence supporting its correctness is immaterial."³⁷

²⁹ *Norbeck Village Joint Venture v. Montgomery County Council*, 254 Md. 59, 67, 254 A.2d 700, 705 (1969); *County Council of Prince George's County v. Offend*, 334 Md. 499, 507, 639 A.2d 1070, 1074 (1994).

³⁰ *Roberts v. Grant*, 20 Md. App. 247, 252, 315 A.2d 103, 106, *cert. denied*, 271 Md. 743 (1974).

³¹ *Town of Somerset v. County Council for Montgomery County*, 229 Md. 42, 47-48, 181 A.2d 671, 674 (1962); *Mandel v. Board of County Commissioners of Howard County*, 238 Md. 208, 219, 208 A.2d 710, 717 (1965); *Jay v. Smith*, 24 Md. App. 538, 544, 368 A.2d 487, 491 (1977).

³² *Reese v. Mandel*, 224 Md. 121, 128, 167 A.2d 111, 115 (1961); *Minor v. Shifflett*, 252 Md. 158, 164-165, 249 A.2d 159, 163 (1969).

³³ *Lambert v. Seabold*, 246 Md. 562, 566, 229 A.2d 116, 118 (1967).

³⁴ *Miller v. Abrams*, 239 Md. 263, 272, 211 A.2d 309, 314 (1965).

³⁵ *Jobar Corporation v. Rodgers Forge Community Association, Inc.*, 236 Md. 106, 112, 202 A.2d 612, 615 (1964).

³⁶ *People's Counsel for Baltimore County v. Beachwood I Limited Partnership*, 107 Md. App. 627, 634, 670 A.2d 484, 488 (1995), *cert. denied*, 342 Md. 472, 677 A.2d 565 (1996).

Don't I have a right to my existing zoning?

No:

"A property owner has no vested right to the continuance of the zoning status of his or neighboring property. . ." ³⁸

"[P]roperty owners whose land is affected by the zoning ordinance have no vested right to have the zoning classification continue."³⁹

"[A] property owner has no vested right in an existing zoning classification..."⁴⁰

"[T]here is no constitutional right to a particular zoning classification..."⁴¹

To what degree can a comprehensive rezoning be influenced by the views of the general citizenry?

"In comprehensive rezoning it is proper for the zoning authority to consider the opinions of the citizens. So long as there is any rational basis for legislative action, that action will be upheld by the courts." *Montgomery County v. Horman*, 46 Md. App. 491, 497, 418 A.2d 1249, 12523(1980); *JMC Construction Corporation v. Montgomery County*, 54 Md. App. 1, 15, 456 A.2d 931, 937(1983).

"Obviously, an exercise of the police power cannot be made to depend upon a count of noses, but, on the other hand, the very fact that a public hearing is required before the adoption or reconsideration of a master plan indicates that public sentiment on the proposal is not wholly irrelevant. The zoning authorities are by no means bound to regard the wishes of property owners, but their decision is not to be condemned simply because it adopts the views advocated by a majority of the persons primarily affected."⁴²

³⁷ *Boyce v. Sembly*, 25 Md. App. 43, 50, 334 A.2d 137, 142 (1975).

³⁸ *Norbeck Village Joint Venture v. Montgomery County Council*, 254 Md. 59, 66, 254 A.2d 700, 705 (1969); *Roberts v. Grant*, 20 Md. App. 247, 252, 315 A.2d 103, 106, *cert. denied*, 271 Md. 743 (1974); *County Council for Montgomery County v. District Land Corporation*, 274 Md. 691, 700, 337 A.2d 712, 717 (1975); *People's Counsel for Baltimore County v. Beachwood I Limited Partnership*, 107 Md. App. 627, 648, 670 A.2d 484, 495 (1995), *cert. denied*, 342 Md. 472, 677 A.2d 565 (1996).

³⁹ *Marathon Builders, Inc. v. Polinger*, 263 Md. 410, 422, 283 A.2d 617, 624 (1971).

⁴⁰ *Steuart Petroleum Company v. Board of County Commissioners of St. Mary's County*, 276 Md. 435, 443, 347 A.2d 854, 859 (1975); *Prince George's County v. Equitable Trust Company*, 44 Md. App. 272, 279, 408 A.2d 737, 742 (1979), *cert. denied*, 287 Md. 751 (1980).

⁴¹ *Prince George's County v. Equitable Trust Company*, 44 Md. App. 272, 279, 408 A.2d 737, 742 (1979), *cert. denied*, 287 Md. 751 (1980).

⁴² *Mettee v. County Commissioners of Howard County*, 212 Md. 357, 364-365, 129 A.2d 136, 140 (1957); *Mothershead v. Board of County Commissioners of Prince George's County*, 240 Md. 365, 376, 214 A.2d 326, 332 (1965).

Doesn't the area encompassed in a comprehensive rezoning have to coincide with a particular planning region?

No:

"There is no requirement that the area covered by a sectional map amendment coincide with the area of the relevant Master Plan. . . ."43

"Because there is no requirement that a comprehensive zoning plan must conform to the recommendations of an applicable master plan, the needs of the particular area considered need not necessarily be a neighborhood delineated in an applicable master plan."⁴⁴

My neighbor's land has a more favorable zoning classification. Doesn't my land have to be zoned the same?

No:

"The fact that adjacent property may have been rezoned does not require the rezoning of the property under consideration"45

"Lines between use districts must be drawn somewhere."⁴⁶

"It hardly needs to be said again that in zoning the line of demarcation must be drawn somewhere."⁴⁷

"We have held in the past and repeat that in zoning a line of demarcation must be drawn somewhere."⁴⁸

"[T]he drawing of lines between different zones is peculiarly the function of the legislative body that establishes the zones."⁴⁹

⁴³ *Woodward & Lothrop, Inc.*, 280 Md. 686, 703-704, 376 A.2d 483, 493 (1977), *cert. denied sub nom., Fungler v. Montgomery County*, 434 U.S. 1067 (1978); *JMC Construction Corporation v. Montgomery County*, 54 Md. App. 1, 12, 456 A.2d 931, 936 (1983).

⁴⁴ *Howard County v. Dorsey*, 292 Md. 351, 363, 438 A.2d 1339, 1346 (1982).

⁴⁵ *Montgomery County v. Pleasants*, 266 Md. 462, 466, 295 A.2d 216, 218 (1972).

⁴⁶ *Northwestern Merchants Terminal, Inc. v. O'Rourke*, 191 Md. 171, 187, 60 A.2d 743, 751 (1948); *Hoffman v. Mayor & City Council of Baltimore*, 197 Md. 294, 301, 79 A.2d 367, 370 (1951); *Spaid v. Board of County Commissioners for Prince George's County*, 259 Md. 369, 383, 269 A.2d 797, 804 (1970); e.g. *Bauserman v. Barnett*, 257 Md. 258, 262, 262 A.2d 521, 523 (1970).

⁴⁷ *Shadynook Improvement Association, Inc. v. Molloy*, 232 Md. 265, 272, 192 A.2d 502, 506 (1963); *Greenblatt v. Toney Schloss Properties Corp.*, 235 Md. 9, 14, 200 A.2d 70, 73 (1964).

⁴⁸ *Pahl v. County Board of Appeals of Baltimore County*, 237 Md. 294, 297, 206 A.2d 245, 247 (1965).

⁴⁹ *Goucher College v. DeWolfe*, 251 Md. 638, 642, 248 A.2d 379, 382 (1968).

“The very nature of the zoning process requires that parcels of land - even neighboring land - be considered individually. Although neighboring parcels may share some characteristics, each parcel is unique and may not share all of the relevant characteristics possessed by adjacent or nearby parcels. If we were to adopt appellant's argument that its rights to equal protection have been violated simply because neighboring land has been zoned differently from its land, we would be doing away with the zoning process altogether.”⁵⁰

“The drawing of the line between zones is a function of the legislative body and the fact that the legislative body has rezoned an adjoining or nearby property does not *require it to rezone* the property under consideration.”⁵¹

“Zoning and rezoning do require the drawing of lines, and the legislative body may draw them subject to the same limitations as are applicable to other phases of the zoning process.”⁵²

“A zone boundary which was a property line has been upheld.”⁵³

Can the zoning assigned to a property be different than the property's designation on the Comprehensive Plan?

Yes.

“There is no requirement that the comprehensive [rezoning] adopted by the legislative body must conform to the recommendations of the Master Plan . . .”⁵⁴

“[T]here is no requirement that a comprehensive zoning plan must conform to the recommendations of an applicable master plan . . .”⁵⁵

“Nor is there any requirement, absent a statute, that the map amendment must adhere to the recommendations of the General or Master Plan.”⁵⁶

⁵⁰ *Security Management Corporation v. Baltimore County*, 104 Md. App. 234, 245, 655 A.2d 1326, 1331, cert. denied, 339 Md. 643, 664 A.2d 886 (1995), cert. denied 516 U.S. 1115 (1996).

⁵¹ *Messenger v. Board of County Commissioners for Prince George's County*, 259 Md. 693, 703, 271 A.2d 166, 171 (1970); *Plant v. Board of County Commissioners for Prince George's County*, 262 Md. 120, 125, 277 A.2d 77, 79 (1971).

⁵² *County Council for Montgomery County v. Gendleman*, 227 Md. 491, 498, 177 A.2d 687, 690 (1962); *Board of County Commissioners for Prince George's County v. Farr*, 242 Md. 315, 321, 213 A.2d 923, 926 (1966); *County Commissioners of Queen Anne's County v. Miles*, 246 Md. 355, 378, 228 A.2d 450, 463 (1967); *Messenger v. Board of County Commissioners for Prince George's County*, 259 Md. 693, 703, 271 A.2d 166, 171-172 (1970).

⁵³ *County Commissioners of Queen Anne's County v. Miles*, 246 Md. 355, 379, 228 A.2d 450, 463 (1967).

⁵⁴ *Nottingham Village, Inc. v. Baltimore County*, 266 Md. 339, 354, 292 A.2d 680, 687 (1972).

⁵⁵ *Howard County v. Dorsey*, 292 Md. 351, 363, 438 A.2d 1339, 1346 (1982).

⁵⁶ *Woodward & Lothrop, Inc.*, 280 Md. 686, 704, 376 A.2d 483, 493 (1977), cert. denied sub nom., *Funger v. Montgomery County*, 434 U.S. 1067 (1978); *JMC Construction Corporation v. Montgomery County*, 54 Md. App. 1, 12, 456 A.2d 931, 936 (1983); *People's Counsel for Baltimore County v. Beachwood Limited*

"We repeatedly have noted that plans, which are the result of work done by planning commissions and adopted by ultimate zoning bodies, are advisory only in nature and have no force of law absent statutes or local ordinances linking planning and zoning."⁵⁷

In order the change my zoning a comprehensive rezoning, doesn't the county have to show a substantial change in the character of the neighborhood or a mistake in my existing zoning?

No:

"[T]he absence of a showing of either change or mistake prior to a comprehensive rezoning does not constitute error."⁵⁸

"The change-mistake rule does not apply . . . to changes in zoning made in a comprehensive rezoning. . . ."⁵⁹

"The Court of Appeals and this Court have consistently held that the 'change or mistake' rule is not controlling in cases involving comprehensive rezoning."⁶⁰

"A so-called 'change' in the neighborhood is not necessary in order to adopt a comprehensive rezoning plan."⁶¹

"A subsequent comprehensive zoning is not, therefore, to be charged with mistake or error because of its failure to have found a mistake or error in earlier comprehensive zoning which it changed. It has no such burden."⁶²

"Comprehensive rezoning is not bound by either the change or mistake rule or the procedural restrictions applicable to piecemeal rezoning."⁶³

Partnership, 107 Md. App. 627, 644, 670 A.2d 484, 492 (1995), *cert. denied*, 342 Md. 472, 677 A.2d 565 (1996).

⁵⁷ *Mayor & Council of Rockville v. Rylyns Enterprises, Inc.*, 372 Md. 514, 530, 814 A.2d 469, 478 (2002).

⁵⁸ *Coppolino v. County Board of Appeals of Baltimore County*, 23 Md. App. 358, 370, 328 A.2d 55, 61 (1974); *Montgomery County v. Horman*, 46 Md. App. 491, 497, 418 A.2d 1249, 1253 (1980); *People's Counsel for Baltimore County v. Beachwood I Limited Partnership*, 107 Md. App. 627, 644, 670 A.2d 484, 492 (1995), *cert. denied*, 342 Md. 472, 677 A.2d 565 (1996).

⁵⁹ *Mayor & Council of Rockville v. Rylyns Enterprises, Inc.*, 371 Md. 512, 539, 814 A.2d 469, 483-484 (2002).

⁶⁰ *Coppolino v. County Board of Appeals of Baltimore County*, 23 Md. App. 358, 369, 328 A.2d 55, 61 (1974); *People's Counsel for Baltimore County v. Beachwood I Limited Partnership*, 107 Md. App. 627, 644, 670 A.2d 484, 492 (1995), *cert. denied*, 342 Md. 472, 677 A.2d 565 (1996).

⁶¹ *Roberts v. Grant*, 20 Md. App. 247, 315 A.2d 103, *cert. denied*, 271 Md. 743 (1974).

⁶² *People's Counsel for Baltimore County v. Beachwood I Limited Partnership*, 107 Md. App. 627, 644, 670 A.2d 484, 492 (1995), *cert. denied*, 342 Md. 472, 677 A.2d 565 (1996).

⁶³ *Potomac Valley League v. County Council for Montgomery County*, 43 Md. App. 56, 61, 403 A.2d 388, 392 (1979).

“The so-called ‘change or mistake’ rule applicable to piecemeal zoning cases is not controlling in comprehensive zoning cases. . .”⁶⁴

“[T]he ‘change or mistake’ rule applicable to piecemeal rezoning does not apply to comprehensive zoning.”⁶⁵

“The so-called ‘change or mistake’ rule applicable to piecemeal rezoning cases . . . is not controlling here, because the new legislation is itself a comprehensive plan designed to cover a substantial area and to supersede the old zoning throughout that area.”⁶⁶

Don't the County Commissioners have to follow the Planning Staff/Planning Commission Recommendations?

No:

“The Court of Appeals and this Court have recognized that the recommendations of a planning body with respect to a comprehensive rezoning are not binding upon the legislative body.”⁶⁷

Do Substantial Changes to Proposed Zoning Map After Public Hearing Require Another Hearing?

No.

We have also indicated that a substantial change may be validly made in a proposed comprehensive zoning map after the public hearing has been held on the originally proposed comprehensive zoning map and no additional notice or hearing was required. . . Indeed, in *Ark Readi-Mix Concrete Corp. v. Smith*, 251 Md. 1, 246 A. 2d 220 (1968), we sustained a change made by the County Council in that case on a proposed comprehensive zoning map *requested on the same day the ordinance was passed*, where there had been no prior discussion, proposal or a request for the change made at the hearing on the proposed comprehensive zoning map and, of course, no notice or prior hearing in regard to the requested change.”⁶⁸

⁶⁴ *Scull v. Coleman*, 251 Md. 6, 12, 246 A.2d 223, 226, (1968); *Board of County Commissioners for Calvert County v. Prichard*, 312 Md. 522, 537, 540 A.2d 1139, 1146, *appeal dismissed*, 488 U.S. 881 (1988).

⁶⁵ *Levitt & Sons, Inc. v. Board of County Commissioners for Prince George's County*, 233 Md. 186, 190, 195 A.2d 723, 725 (1963).

⁶⁶ *McBee v. Baltimore County*, 221 Md. 312, 317, 157 A.2d 258, 260 (1960).

⁶⁷ *Coppolino v. County Board of Appeals of Baltimore County*, 23 Md. App. 358, 374, 328 A.2d 55, 63 (1974).

⁶⁸ *The Swarthmore Company v. Kaestner*, 258 Md. 517, 532, 266 A.2d 341, 348 (1970); *Nottingham Village, Inc. v. Baltimore County*, 266 Md. 339, 346-347, 292 A.2d 680, 684 (1972); *Rasnake v. Board of County Commissioners for Cecil County*, 268 Md. 295, 302, 300 A.2d 651, 654 (1973).

Is a rezoning considered “comprehensive” even though few zoning changes were actually made?

Yes.

“That few changes may have been made in a comprehensive rezoning plan does not change its character or alter its nature.”⁶⁹

“The fact that few changes were made does not affect the comprehensive nature of the plan. . .”⁷⁰

“The fact that few changes in zoning are made does not affect the comprehensive nature of the zoning or rezoning.”⁷¹

The proposed Comprehensive Rezoning of my property makes it less likely that I will be able to develop my land on public water & sewer. Doesn't the government have to provide these services?

No.

‘[A] municipality has no duty to provide sewer service. [W]hen a municipality decides whether to provide such service, it is performing a governmental function, and is not liable for failing to provide sewer service.’ *Snyder v. State Department of Health & Mental Hygiene*, 40 Md. App. 364, 391 A.2d 863, (1978), *cert. denied*, 284 Md. 748 (1979).

“As a general rule, in the absence of legislative direction, a municipality is the sole judge of the desirability of sewerage services. The necessity, character, and extent of public improvements is usually committed to the discretion of municipal authorities.”⁷²

“Appellants' takings claim fails also because they have not demonstrated that access to sewer service is an interest that qualifies for protection as “property” under the United States or Maryland Constitution. [F]ailure to confer the benefit of sewer service is not a taking because there is no constitutional right to government provided sewer service . . .”⁷³

⁶⁹ *Woodward & Lothrop, Inc.*, 280 Md. 686, 707, 376 A.2d 483, 495 (1977), *cert. denied sub nom., Fungler v. Montgomery County*, 434 U.S. 1067 (1978).

⁷⁰ *Scull v. Coleman*, 251 Md. 6, 11, 246 A.2d 223, 225, (1968); *County Council for Montgomery County v. District Land Corp.*, 274 Md. 691, 701, 337 A.2d 712, 718 (1975).

⁷¹ *Mraz v. County Commissioners of Cecil County*, 291 Md. 81, 89, 433 A.2d 771, 776 (1981); *Cardon Investments v. Town of New Market*, 302 Md. 77, 88, 485 A.2d 678, 684 (1984).

⁷² *Wincamp Partnership v. Anne Arundel County*, 458 F.Supp.1009, 1026 (D. Md. 1978).

⁷³ *Neifert v. Department of the Environment*, 395 Md. 486, 522, 910 A.2d 1100, 1121 (2006) (citations and internal quotations omitted).

“In general, appellees possess no right to a particular type of sewer service simply by virtue of their ownership of sewerable land.”⁷⁴

“[T]here is no constitutional right to sewer service . . .”⁷⁵

What kind of notice is required to be given in a comprehensive rezoning proceeding?

Since a comprehensive rezoning is a legislative act, neither the federal or state constitutions require notice:

“The Constitution does not grant to members of the public generally a right to be heard by public bodies making decisions of policy.”⁷⁶

“When a legislature passes a law which affects a general class of persons, the political process provides all the process that is due.”⁷⁷

“[T]he constitutional requirement of due process of law is not violated by the absence of notice, a hearing, or even any evidence when a legislative body adopts a legislative act.”⁷⁸

“[W]e have suggested that the failure to provide any hearing in a legislative zoning determination may not constitute a deprivation of federal procedural due process.”⁷⁹

“The giving of notice and the opportunity to attend a hearing are not necessary as a matter of due process of law in an action taken by a clearly legislative body. . .”⁸⁰

“[W]hen the proceeding is legislative and the governing statute does not provide for a hearing, a hearing is not a legal requisite. . .”⁸¹

“[P]rocedural due process has not been held to require that the affected individuals or groups be granted a hearing before government acts in a legislative, or broadly rule-making or policy-forming, capacity.”⁸²

⁷⁴ *Anne Arundel County v. Whitehall Venture*, 39 Md. App. 197, 203, 384 A.2d 780, 785 (1978).

⁷⁵ *Front Royal & Warren County Industrial Park Corporation v. Town of Front Royal*, 135 F.3rd 275, 287 (4th Cir. 1998) (citations and internal quotations omitted).

⁷⁶ *Minnesota State Board for Community Colleges v. Knight*, 465 U.S. 271, 283 (1984).

⁷⁷ *Barefoot v. City of Wilmington*, 306 F.3rd 113, 124 (4th Cir.), *cert. denied*, 537 U.S. 1019 (2002).

⁷⁸ *Swarthmore v. Kaestner*, 258 Md. 517, 532-533, 266 A.2d 341, 349 (1970).

⁷⁹ *West Montgomery County Citizens Association v. Maryland-National Capital Park & Planning Commission*, 309 Md. 183, 197, 522 A.2d 1328, 1335 (1987).

⁸⁰ *Albert v. Public Service Commission*, 209 Md. 27, 37, 120 A.2d 346, 351 (1956).

⁸¹ *Union Investors v. Montgomery County*, 244 Md. 585, 588, 224 A.2d 453, 454 (1966).

⁸² L. TRIBE, *AMERICAN CONSTITUTIONAL LAW*, §10-8, p. 685 (2nd ed. 1988).

“When the legislature passes a law which affects a general class of persons, those persons have all received procedural due process – the legislative process.”⁸³

“[T]he procedural due process right is not infringed by absence of notice, a hearing, or even any evidence when a legislative body adopts a legislative act. Whether there are requirements of notice or a hearing is determined by reference to the applicable charter provision . . . or the applicable code.”⁸⁴

State law⁸⁵ and the County’s Zoning Ordinance⁸⁶ require that a comprehensive rezoning be preceded by a public hearing before the BOCC. Notice of the date, time and place of the BOCC public hearing must be published in at least one (1) newspaper of general circulation in the county once each week for two (2) successive weeks, with the first (1st) publication to be at least fourteen (14) days before the hearing.

The County’s Zoning Ordinance⁸⁷ requires that a comprehensive rezoning be preceded by a public hearing before the Planning Commission. Notice of the date, time and place of the Planning Commission public hearing must be published in at least one (1) newspaper of general circulation in the county once each week for two (2) successive weeks, with the first (1st) publication to be at least fourteen (14) days before the hearing.

No other forms of notice & opportunity to be heard regarding a comprehensive rezoning proceeding are required by either the Federal or Maryland Constitutions, Maryland statutes, or the County’s Zoning Ordinance. However, nothing prevents the BOCC from providing additional forms of notice.

Does the fact that a vacant parcel of land has had a particular zoning classification for some time protect it from a downzoning?

No. The Maryland Court of Appeals has rejected the notion that lapse of time insulates a property from downzoning: “[T]he appellees might have emerged unscathed had they called to mind the advice of Horace, i.e., ‘Seize the day, put no trust in the morrow.’ They could have built a covey of shopping centers between November 1966, when they were given the C-1 Zoning, and June 1971 when it was taken away.”⁸⁸

⁸³ J. NOWAK & R. ROTUNDA, CONSTITUTIONAL LAW, §13.8, p. 526 (4th ed. 1991).

⁸⁴ *Boitnott v. Mayor & City Council of Baltimore*, 356 Md. 226, 244, 738 A.2d 881, 891 (1999).

⁸⁵ Article 66B, §4.04(b).

⁸⁶ §§1-19-78(B) & -71(C).

⁸⁷ §§1-19-78(A) & -71(C).

⁸⁸ *Montgomery County Council v. Leizman*, 268 Md. 621, 633-634, 303 A.2d 374, 380 (1973) (quoting Quintus Horatius Flaccus, *Odes*, bk I, ode xi, last line)

Doesn't a comprehensive rezoning need to be accompanied by an update of the comprehensive plan?

No. There is no requirement that a comprehensive rezoning and comprehensive plan update accompany one another.

What type of hearing is required for a comprehensive rezoning?

The Maryland Court of Appeals has upheld the following format involving a comprehensive rezoning that included substantial downzoning:

“The appellee property owners were accorded the most time to present evidence at the hearing, *i.e.*, eight minutes each, or almost five hours collectively for the 37 individual property owners involved. Pooling of time was permitted in order to make joint presentations, if desired, and each property owner was afforded the right to submit written material and exhibits without restriction. Each property owner was permitted to rebut any evidence offered into the record without regard to the eight-minute time limit. The Council advised all property owners a week in advance of the hearing as to the time limits that would be imposed. Two days were consumed by the Council in conducting the hearings and massive amounts of evidence previously submitted during the sector plan hearings were incorporated into the record, much of which presented the views espoused by and on behalf of the appellee property owners.

We think the appellee property owners were not deprived of any constitutional or other right . . . by reason of the imposition of the challenged time constraint. What the Council did in the circumstances of this case, everything considered, was both reasonable and fair and in substantial compliance with the legislative mandate. Particularly when considered in conjunction with the opportunity afforded the property owners to submit evidence into the record to supplement their oral presentations, the eight-minute limitation did not compromise their right effectively to make their views known to the Council.”⁸⁹

⁸⁹ *Montgomery County v. Woodward & Lothrop, Inc.*, 280 Md. 686, 715-716, 376 A.2d 483, 499 (1977), *cert. denied sub nom., Fungler v. Montgomery County*, 434 U.S. 1067 (1978).

WHAT IS A REGULATORY TAKING?

United States Supreme Court cases:

"[A] regulation which denies all economically beneficial or productive use of land will require compensation under the Takings Clause."⁹⁰

"[R]egulation goes to far and results in a taking at least in the extraordinary circumstances when no productive or economically beneficial use of land is permitted."⁹¹

"The application of a general zoning law to particular property effects a taking if the ordinance does not substantially advance legitimate state interests, or denies an owner economically viable use of his land...The determination that governmental action constitutes a taking is, in essence, a determination that the public at large, rather than a single owner, must bear the burden of an exercise of state power in the public interest."⁹²

Maryland Appellate cases:

"The governing rule is that he who claims confiscatory action must show that the protested zoning precludes use of his property for any purpose for which it is reasonably adapted."⁹³

"A property owner who is denied all economically beneficial or productive use of his or her land in the name of the public at large has likely suffered a taking, unless the regulation prohibits a common law nuisance."⁹⁴

"An unconstitutional taking of property generally is proved when a regulation denies all economically beneficial or productive use of land."⁹⁵

"[T]he Supreme Court and Maryland's appellate courts have consistently required that all of the value of property be deprived by government action pursuant to its police power in order for a taking to have been effected. [G]overnment regulation that deprives an owner of all value associated with real property is a compensable taking."⁹⁶

⁹⁰ *Palazzolo v. Rhode Island*, 533 U.S. 606, 607 (2001).

⁹¹ *Suitum v. Tahoe Regional Planning Agency*, 520 U.S. 725, 734 (1997).

⁹² *Agins v. Tiburon*, 447 U.S. 255, 260 (1980).

⁹³ *Norbeck Village Joint Venture v. Montgomery County Council*, 254 Md. 59, 68, 254 A.2d 700, 706 (1969).

⁹⁴ *Neifert v. Department of the Environment*, 395 Md. 486, 517, 910 A.2d 1100, 1119 (2006).

⁹⁵ *Belvoir Farms Homeowners Association, Inc. v. North*, 355 Md. 259, 281-282, 734 A.2d 227, 240 (1999), quoting *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1015 (1992); *Lewis v. Department of Natural Resources*, 377 Md. 382, 418, 833 A.2d 563, 585 (2003).

⁹⁶ *Raynor v. Maryland Department of Health and Mental Hygiene*, 110 Md. App. 165, 186, 676 A.2d 978, 988, *cert. denied*, 343 Md. 679, 684 A.2d 454 (1996); *cert. denied*, 520 U.S. 1166 (1997).