

IN THE CIRCUIT COURT FOR CHARLES COUNTY, MARYLAND

JOINT PETITION OF Larry Bowie, et al	:	
	:	
Petitioners	:	
	:	
v.	:	Case No. C-09-1912
	:	
COUNTY COMMISSIONERS OF	:	
CHARLES COUNTY, MARYLAND, et al	:	
	:	
Respondents	:	
	:	
IN RE: THE DECISION OF THE BOARD	:	
OF APPEALS FOR CHARLES COUNTY	:	
MARYLAND, DOCKET #1232	:	
	:	
	:	

MEMORANDUM OF LAW
ON BEHALF OF THE COUNTY

After a number of hearings, the receipt and review of exhibits and consideration of the testimony of witnesses, the Board of Appeals (the Board) granted by a vote of 3-2 a request for a Special Exception filed by WSG Holdings, LLC (WSG).

The petitioners have raised a myriad of issues in a lengthy Memorandum with scant supporting case law claiming that, in substance, petitioners were denied their right to due process under the constitution of the United States and Maryland. This Memorandum by the County will deal with those allegations which are generated, according to petitioners, as a result of the improper notice of the hearing and how it was conducted and the County will defer to the Memorandum to be filed on behalf of WSG as to the law of the merits, after noting that for twenty-seven (27) years the seminal case in the state on the test for determination of a special exception legality was Schultz v. Pritts, 291 Md.1 432 A2d 1319. On September 9, 2008, our highest court filed Peoples Counsel v. Loyola College, 406 Md. 54, 956 A.2d 166. After a comprehensive review of Schultz and its

progeny Judge Harrell set forth the test to be utilized by a board of appeals holding that unless the evidence presented shows that the proposed use would be actually incompatible, the requested special exception must be granted. Here there was no showing that the proposed use of the property by WSG was incompatible with the surrounding property.

CONSTITUTIONAL ISSUES

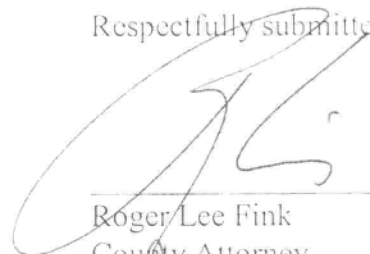
A due process analysis is basically one of fundamental fairness in the conduct of the proceeding before the Board and to be successful the petitioners would need to show that based on a violation of their due process rights the outcome would have been different. That they can not do. In a shotgun approach petitioners claim due process denials based on evidence being excluded and that the three minute time limit was unfair. In Washington Co. Taxpayer v. Bd. of Commissioners, 269 Md 454, 306 A.2d 539, a challenge was made to a three minute time limit imposed by the Washington County Planning and Zoning Commission. The Court of Appeals held that the three minute limit was not invalid especially where, as in the instant case, the record remained open until formally closed after the last witness was heard. The challenge by petitioners here on due process grounds is unfounded legally and factually.

A major thrust of petitioners argument is that the Board violated their rights by refusing to accept as evidence numerous e-mails opposing the requested special exception which were objected to by WSG on the basis that they were hearsay, not subject to verification or cross examination. Upon advice of counsel the Board sustained the objection. However, a petition of some 300 signatures was received, over objection, of citizens opposed to the request. Any error was not only harmless to petitioners, it was harmful to WSG as no cross examination of the petitioners was possible. While e-mail evidence is appropriate in a legislative context it is not in a quasi judicial proceeding. See Rathkopf's The Law of Zoning and Planning, Vol 3, Sec 57.37 "Burden of

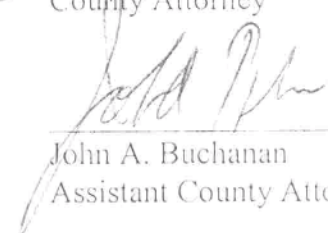
supporting application by affirmative credible evidence - Distinction between facts and opinion.

Petitioners also object to the site visit by the Board which the members of the Board thought was advisable and so stated on the record. When the Board announced its intention of visiting the property the citizens present were asked to agree on a representative. They selected Dr. Chad Stoltz, a Ph.D. in Chemistry. The Board did visit the property with WSG representatives, its attorney, Kurt Wolfgang, Esquire, Dr. Stoltz and counsel for the Board. There is no case cited by petitioners holding such a visit improper, nor is there any. If a jury in a condemnation case needs to view the property being taken, Rule 12-207, it seems advisable for a Board of Appeals to do the same.

Respectfully submitted,



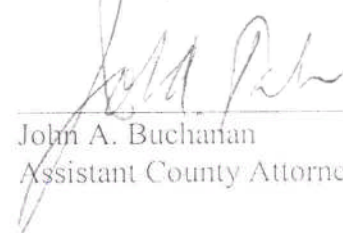
Roger Lee Fink
County Attorney



John A. Buchanan
Assistant County Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of November, 2009, a copy of the foregoing Memorandum of Law on Behalf of the County was mailed, first class, postage prepaid, to Kurt W. Wolfgang, Esquire, 9375 Chesapeake Street, Suite 113, La Plata, Maryland, 20646, and Mark Mudd, Esquire, Mudd, Mudd & Fitzgerald, P.A., P. O. Box 310, La Plata, Maryland 20646.



John A. Buchanan
Assistant County Attorney