BOARD OF APPEALS CASE NO. 060 & 062	*	**BEFORE THE**
APPLICANT: Rachuba Enterprises and Bel Air Realty Associates Ltd. Partnership	*	**ZONING HEARING EXAMINER**
REQUEST: Rezone 46.62 acres from ORI/R3 to R3, and 24.74 acres from ORI to R3; U.S. Route 1 at MD Route 23 Bypass, Bel Air	*	**OF HARFORD COUNTY**
	*	Hearing Advertised
	*	Aegis: 1/18/95 & 1/25/95
HEARING DATE: March 1, 1995		Record: 1/20/95 & 1/27/95
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ZONING HEARING EXAMINER'S DECISION

The Applicant in Case No. 060 is Rachuba Enterprises, Inc., and the Applicant in Case No. 062 is Bel Air Realty Associates Limited Partnership. The parcels which are the subject of this hearing are adjoining and both Applicants request the reclassification from ORI to R3. Therefore, at the request of the Applicants, the cases were heard together.

Rachuba Enterprises, Inc. is the owner of 83.84 acres of unimproved land located on U.S. Route 1, in the Third Election District. The parcel is also identified as Parcel No. 60 on Tax Map 41. The parcel currently has split-zoning, with 46.62 acres being zoned ORI, which the Applicant is requesting reclassification to R3.

Bel Air Realty Associates Limited Partnership is the owner of 24.74 acres of unimproved land located on U.S. Route 1, identified as Parcel No. 488 on Tax Map 41. The Applicant is requesting reclassification of the entire 24.74 acres from ORI to R3.

Ms. Arden Holdredge, Director of the Harford County Department of Planning and Zoning, testified that she had reviewed the 1989 Comprehensive Rezoning process and believed that the Harford County Council should not have zoned the subject properties ORI. She said that the appropriate zoning for the property, in her opinion, is R3 and that she consulted with the Harford County Department of Economic Development, which supports the request. Ms. Holdredge said that there are problems with the ORI zone in general, which were not understood by the Council at the time of its creation in 1982. She said this zone was intended to be used for high tech research-type uses but, in practice, it turned out to be substantially restrictive in the type of uses which can be developed in the zone.

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Ms. Holdredge testified that she was involved in the 1989 comprehensive zoning process and that she was familiar with the process which was employed in 1982. She said that both procedures were similar in that after public hearings and work sessions, recommendations were made by the Planning Department and the Planning Advisory Board to the County Council. She said the County Council made the ultimate decision on individual rezonings. She noted that the decision of the Harford County Council in 1989 was to maintain the existing ORI zoning.

Ms. Holdredge's review of the Planning Department records indicate that a request was filed in 1982 for rezoning of the Rachuba property by its former owners, Mr. and Mrs. Samuel Pistorio and she said that no request was filed in 1982 regarding the Bel Air Realty property. She said both properties were originally zoned Agricultural in 1957 and in 1966 the Rachuba property was rezoned from Agricultural to R3 and B2 (Exhibit No. 21). In 1982, the Pistorios requested that the B2 portion of the property be rezoned to a proposed light industrial classification. Ms. Holdredge said that during the 1982 comprehensive process, the Council decided not to enact a light industrial zoned and, instead, created and placed the subject property in the ORI classification (Exhibit No. 24).

Ms. Holdredge testified that in 1989, both the Pistorios and Bel Air Realty filed rezoning requests during the comprehensive process (Exhibit No. 25-a and 26). Ms. Holdredge said that the Council's policy in 1989 was to maintain existing zoning unless a change request had been made by the property owner and that the Council had a policy against split-zoning properties. She said the application filed by the Pistorios in 1989 requested an equal mix of B3 and CI zoning on the portion of the property currently zoned ORI (Exhibit No. 25a). The Department of Planning and Zoning recommended that the ORI portion of the property be rezoned to R3 (Exhibit Nos. 31 and 32), and the Planning Advisory Board recommended that the property be rezoned to R2 (Exhibit No. 30. The prior owners of the Rachuba property amended their request to reduce the B3 portion of the property to the 10 acres of property near the Bel Air Roller Rink property, with the balance of the property to be zoned R3 (Exhibit No. 25b). Ms. Holdredge said the Issue Log (Exhibit No. 30) was not changed, and it still listed the requested zoning as B3 and CI.

The County Council voted to maintain the existing ORI zoning on the property, but the final Issue Log (Exhibit No. 30), prepared by the Department of Planning and Zoning, indicates that the Rachuba property was rezoned to R3.

Ms. Holdredge went on to testify with respect to the Bel Air Realty property that an application was filed in 1989 for rezoning from ORI to B3 (Exhibit No. 26). She said the Planning Department recommended R3 zoning and the Planning Advisory Board recommended R2 zoning (Exhibit No. 30). She said the County Council's vote was to maintain the existing ORI zoning (Exhibit No. 30).

Ms. Holdredge testified that the Land Use Plan designation on the property is medium intensity and is consistent with the proposed R3 zoning. She further testified that public water and sewer can be extended to the subject properties.

Mr. Louis DiBitonto appeared and testified that he is a general partner in Bel Air Realty and that he has over 30 years experience as a developer and architect in both residential and commercial development. The witness testified that Bel Air Realty obtained their portion of the property which is the subject of this hearing in 1987 (Exhibit No. 10). Mr. DiBitonto said that Bel Air Realty was not connected with Rachuba Enterprises and that at the time of the 1989 comprehensive rezoning, but that they kept in touch regarding each other's plans to develop the adjoining property. He said that at the time of the 1989 comprehensive rezoning, there were no plans to jointly develop the subject property.

Mr. DiBitonto said the original plan for the Bel Air Realty property was to develop the property with B3 uses. For that reason, the Applicant applied for rezoning of the subject property to B3 in 1989. Mr. DiBitonto testified that had Bel Air Realty known that the County Council would reject the B3 zoning, they would have accepted R3 zoning in 1989. The witness testified that the current zoning on the property makes the property unmarketable. He said that the primary users of ORI type property would be the defense industry and that such uses are currently in the Washington and Philadelphia areas.

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Mr. Craig Ward, a principal of Frederick Ward Associates, Inc., appeared and qualified as an expert in the field of civil engineering. Mr. Ward said that he had been involved with the Bel Air Realty property since 1987 and described the topography of the property (Exhibit No. 15) as falling gently from northwest to southeast, with a swale approximating the property line between the Bel Air Realty property and the Rachuba property. Mr. Ward testified that the eastern edge of the property runs along the Wysong Branch, which he said is a relatively significant stream. He went on to say that the proposed Bel Air Bypass Hickory extension right-of-way is located to the north and west of the subject property and the Bypass, if constructed, would be a denied access highway. He said, as a result, there would be no access to the Bel Air Realty property from the Bypass extension. Mr. Ward said that it has been his experience that there is no interest in developing properties in Harford County under the ORI zone and that the subject property is an appropriate location for R3 zoning. The witness also said that a pumping station has been designed for the subject property which will pump sewage to the existing line which follows Conowingo Road.

Mr. Lawrence Rachuba appeared and testified that he has been involved with real estate development for approximately 34 years and he purchased the Rachuba property from Samuel Pistorio in 1992 (Exhibit No. 9). Mr. Rachuba testified that the property was owned by the Pistorios in 1989 and that they filed an application at the request of Rachuba to rezone the ORI portion of the property to a commercial use. Mr. Rachuba testified that B3 zoning was requested on the ORI portion of the parcel fronting on U.S. Route 1, with the remainder of the ORI portion to be rezoned Commercial Industrial.

The witness testified that he became aware that the Planning Department would support residential zoning and, as a result of this, an amended request was filed to reduce the B3 request to 10 acres surrounding the Bel Air Roller Rink, with the remainder of the property zoned R3. Mr. Rachuba said he became aware of the County Council's concern with respect to the B3 zoning, but was never informed that the Council would grant R3 to the entire property without any B3 zoning. The witness said, had he known that he could receive R3 zoning on the property, he would have revised his request for R3 zoning rather than maintaining the request for B3 zoning.

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Mr. Rachuba testified that he does not believe he can develop the property under the ORI zoning and he stated that there is no market for the ORI zoning classification at this particular location.

Mr. Thomas O'Laughlin, senior vice-president in charge of land development for Morris & Ritchie Associates, appeared and was accepted as an expert in land development and site plan design. Mr. O'Laughlin described the Rachuba property as currently being a cultivated field which slopes gently from Route 1 to the east towards the Wysong Branch. Mr. O'Laughlin noted that the slopes increase significantly near the Wysong Branch and that there is an area of non-tidal wetland on the eastern portion of the Rachuba property. Mr. O'Laughlin said there is preliminary approval (Exhibit No. 14c) for the existing R3 portion of the property to construct single-family homes, as shown on Exhibit No. 14b. He said there are two proposed access points from U.S. Route 1, the first of which is located close to the boundary of the Bel Air Realty property approximately 650 feet south of the light at the Bel Air Bypass. The second entrance is 650 feet further south of the first proposed exit. The witness testified that the State Highway Administration has given verbal approval for the access points and noted that all improvements would be within the existing right-of-way (Exhibit No. 14d). Mr. O'Laughlin said that the State Highway Administration is requiring widening improvements to U.S. Route 1 along the parcel to the Bel Air Bypass (Exhibit Nos. 33 and 34). He noted that the internal roadways on the current R3 would interconnect with any development of the existing ORI property. Mr. O'Laughlin said that the development on the present R3 portion is in the final stages of approval and that the water and sewer plan have been approved and the Health Department permits have been obtained. He also confirmed that the pumping station designed on the Rachuba property would serve both the Rachuba and the Bel Air Realty properties.

Mr. O'Laughlin went on to testify that the Wysong property is located east of the subject properties and totals approximately 315 acres. A portion of the Wysong property is zoned ORI. He said within the past two years a portion of the Wysong property which is zoned ORI has been placed on the National Register of Historic Places (Exhibit No. 18).

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Mr. O'Laughlin said he believed that the R3 zoning proposed for the Rachuba and Bel Air Realty properties would be more consistent with the historic property than the ORI development, and he noted that the Wysong property is currently surrounded by residential development. He said the residential development of the Rachuba property would not result in a visual problem for the Wysong property as it is over 1,000 feet away from the buildings on the Wysong property and is concealed by a wide stream area and approximately 200-300 feet of trees.

Mr. O'Laughlin testified that water pressure and service to the area of the subject property was not good in 1989. He said that an elevated tower was constructed directly across the street from the subject properties after the 1989 comprehensive rezoning and that at the time of the comprehensive rezoning, the properties could not have met the Adequate Public Facility water pressure standard for ORI development. Furthermore, he believes that the property will not meet the ORI requirements for fire flow, but believes that the property will meet fire flow requirements under the Adequate Public Facilities law for R3 development. Mr. O'Laughlin said that the County Council could not have been aware of these constraints when zoning the subject property in 1989.

Mr. O'Laughlin believes that the proposed residential development will have no environmental impact or adverse effect on adjoining properties greater than that associated with ORI development. Mr. O'Laughlin stated that the State of Maryland requires a 25 foot buffer from non-tidal wetlands and that Harford County imposes a 75 foot buffer from non-tidal wetlands, with only roadways, utilities and storm water management facilities located within the buffer. Mr. O'Laughlin noted that the impact of the proposed development on water quality would be less than that of current cultivated agricultural fields as there is no control or treatment of run-off from agricultural uses.

Mr. Lee Cunningham was the final witness to testify on behalf of the Applicants. Mr. Cunningham was accepted as an expert in the areas of planning, zoning, land use, traffic engineering, and transportation matters. Mr. Cunningham described the zoning history of the properties and said that the Planning Department recommended R3 zoning for the subject properties in 1989 and that the Planning Advisory Board recommended R2 zoning.

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Mr. Cunningham testified it was his opinion that a mistake had occurred in the zoning of the subject properties as ORI during the 1989 comprehensive rezoning. Mr. Cunningham explained that the mistake may be based on incorrect assumptions or factors that the County Council was not aware of at the time of the comprehensive rezoning. The witness noted that the Council had a policy against split-zoning properties and that there was uncertainty with respect to the water and sewer project in the area during the 1989 comprehensive rezoning. Furthermore, he said the plans for the Bel Air Bypass were not definitive at the time of the 1989 comprehensive rezoning and the County Council may have feared that a mall-type development was proposed for the subject property (Exhibit No. 19). He also said a portion of the Wysong property was added to the National Register within the past two years (Exhibit No. 18), a circumstance that was not known in 1989. Mr. Cunningham felt that the ORI zone is a mistake in and of itself. He testified that the practical history of the ORI zone shows that it is not an economically viable zone (Exhibit No. 20). Furthermore, ORI zoning is particularly undesirable at the subject properties location as it is too far from the I-95 corridor.

Mr. Cunningham's opinion was that the appropriate action to correct the error which occurred in 1989 is to rezone both properties R3. He noted that the R3 zoning is in accordance with the Master Land Use Plan designated for the subject property and both properties were located within the development envelope. It was further noted that rezoning to R3 would be consistent with the recommendation of the Department of Planning and Zoning in 1989 and would be compatible with adjoining properties along U.S. Route 1. He, also, said he did not believe that the proposed zoning would have a detrimental effect on neighboring properties and felt that residential development would be more compatible than ORI development and that he did not envision adverse environmental impact from the proposed development.

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Mr. Cunningham testified that there would be no dangerous traffic conditions resulting from the proposed development and that he had conducted a traffic analysis which was modeled after the Adequate Public Facility requirements in the Harford County Code. Mr. Cunningham explained that the Adequate Public Facility law requires that certain critical intersections be studies prior to a development receiving preliminary approval. Mr. Cunningham noted that there is one signal located at Route 1 and the Bel Air Bypass and that U.S. Route 1 is a principal arterial road on the Harford County Major Road Plan. Mr. Cunningham's conclusions were that the proposed residential development would not affect the level of service in the surrounding area. Mr. Cunningham testified that the proposed residential development would result in approximately 300 trips during peak hours. Conversely, Mr. Cunningham testified that ORI development of the subject property would result in as many as 800 peak trips through the property. He further testified that he had considered the "Limitations, Guides and Standards" contained in the Harford County Zoning Code and that none of the considerations warranted denial of the requested rezoning.

On cross-examination, Mr. Cunningham confirmed that his estimate of 500 homes on the subject property was not specific and that the exact development could be less, depending on the types of housing units and the development constraints of the property. He also testified that there would be an acceleration/deceleration lane provided for the access points on the Rachuba property and that a left turn lane from U.S. Route 1 would also be provided and constructed within the existing right-of-way. Mr. Cunningham confirmed that additional traffic would not significantly reduce the level of service at the intersections and that since the entrance to the development was proposed to be located south of the light at the Bel Air Bypass, the additional traffic would have even a lesser impact on the operation of the intersection.

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Two neighbors testified in opposition to the requested rezoning. The first witness was Ms. Patti Sauers, who resides at 1234 Conowingo Road. Ms. Sauers testified that she was concerned with the type of homes to be developed and that she would rather see single-family homes versus condos or townhouses. She also said she was concerned with the type of residents who purchase multi-family homes and said that she believed it would look strange to see condominiums and rowhouses in a historic area.

Mr. David Jones, 1222 Conowingo Road, testified that he had lived at that location for 39 years and that he also did not want to see townhouses or condominiums constructed on the subject property. Mr. Jones testified he believed that the construction would result in an unbearable traffic conditions.

CONCLUSION:

In Maryland a parcel of land cannot be rezoned simply because the property owner wants the property rezoned. Before any property can be rezoned, there must be strong showing of mistake in the zoning classification or a change in the character of the neighborhood since the last comprehensive rezoning. These principles and their corollaries were summarized in the case of Boyce v. Sembly, 25 Md. App. 43, 344 A.2d 137 (1975). A summary of the change-mistake rule is as follows:

1. The zoning classification assigned to a parcel of land as part of the last comprehensive rezoning is presumed to be correct.

2. A piecemeal zoning reclassification of a parcel of land cannot be granted unless and until the presumption of correctness is overcome.

3. The presumption of correctness can only be overcome by strong evidence that there was a mistake in the comprehensive rezoning or that there has been a change in the character of the neighborhood since the last comprehensive rezoning which justifies the piecemeal zoning classification.

4. Error can be established by showing that, at the time of the comprehensive zoning, the County Council failed to take into account then existing facts or projects or trends which were reasonably foreseeable of fruition in the future, so that the Council's action was premised initially on a misapprehension. In the alternative, error or mistake may be established by showing that the events occurring subsequent to the comprehensive zoning have proven that the Council's initial premises were incorrect.

5. In order to establish error based upon a failure to take existing facts or events reasonably foreseeable of fruition into account, the proponent of the rezoning must show the facts that existed at the time of comprehensive zoning and which, if any, of those facts were not actually considered by the Council. This evidentiary burden can be accomplished by showing that specific physical facts were not readily visible or discernable at the time of the comprehensive zoning or by adducing testimony on the part of those preparing the plan that then existing facts were not taken into account.

6. Once a change in the character of the neighborhood or a mistake in the last comprehensive zoning is established, rezoning is permissible but not mandated.

7. However, once an applicant establishes the requisite change in the character of the neighborhood or a mistake in the comprehensive zoning, the denial of the requested reclassification must be sufficiently related to the public health, safety or welfare to be upheld as a valid exercise of the police power. Aspen Hill Venture v. Montgomery County Council, 265 Md. 303, 289 A.2d. 303 (1972). In the case of a denial where the applicant has met his burden of establishing a change in the character of the neighborhood or a mistake in the comprehensive zoning, the zoning authority must find facts, upon the evidence, which would support a denial. Messenger v. Board of County Commissioners for Prince George's County, 259 Md. 693, 271 A.2d 166 (1970). The factual determination of the zoning authority must be supported by substantial, competent and material evidence contained in the record. Not every potential problem will serve to validate a decision to deny a requested rezoning; the problems must be real and immediate, not future and imaginary. Furnace Branch Land Company v. Board of County Commissioners, 232 Md. 536, 194 A.2d 640 (1963).

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In determining whether Petitioner's have met the burden of proof to establish that a mistake was made in the most recent comprehensive zoning, the courts will look to two generally accepted approaches. The first is to prove that the initial premise which the zoning authority used in zoning the property was incorrect. A second approach is to prove that assumptions which the zoning authority used in zoning the property later proved to be invalid. Boyce v. Sembly, supra. Thus, where an assumption made during the last comprehensive zoning is proven to have been incorrect, the zoning authority must consider this evidence in determining whether there was a mistake in the comprehensive zoning. Anne Arundel County v. A-PAC, Ltd., 67 Md. App. 122, 506, A.2d 671 (1986), Boyce v. Sembly, supra. Additionally, if existing facts were not taken into account at the time of the comprehensive zoning, such facts can form the basis of a mistake argument. Boyce v. Sembly, supra.

The Applicants have not presented evidence to justify a finding that there has been a substantial change in the character of the neighborhood since the last comprehensive rezoning. However, the Applicant contends that several mistakes were made by the Harford County Council in zoning the subject properties ORI in 1989. The Applicants now contend that rezoning the properties to R3 is the proper remedy to correct the mistakes.

All of the witness who testified on behalf of the Applicants, including Arden Holdredge, Director of the Harford County Department of Planning and Zoning, testified that the ORI zone is a failed zoning classification. Although it was intended to provide for high-tech type research and development uses, the history of the ORI zone shows that it is too restrictive and that little or no potential users are available in Harford County for these types of uses. Testimony was also offered that despite the poor performance of the ORI zone in general, the ORI zoning on the specific parcels in question is inappropriate because of the parcels' significant distance from the I-95 corridor.

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Both Ms. Holdredge and Mr. Cunningham testified that the County Council had a policy in 1989 again split-zoning properties. The Rachuba property is a split-zoned almost evenly between R3 and ORI. The evidence indicates the property owners at the time submitted rezoning requests in 1989 for commercial zoning on the parcels and the Planning Department recommended R3. Knowing this recommendation, Rachuba had the owners at the time modify their zoning request to include a larger portion of the proposed R3 zoning. Despite the amendment, the County Council voted to maintain the existing ORI zoning. Both Mr. Lawrence Rachuba and Mr. Louis DiBitonto testified that had they known that the Council would not support their requested rezoning, they would have amended their applications and accepted R3 on both parcels. There is no evidence the County Council would not have been aware that R3 was an acceptable alternative to the Applicants.

Testimony was also offered that the County Council had a policy of attempting to insure that properties zoned in the 1989 comprehensive zoning were consistent with the Master Land Use Plan designation. Both Ms. Holdredge and Mr. Cunningham testified that the ORI zoning classification is not consistent with the Master Land Use Plan designation of medium intensity. However, the testimony was that the R3 zone would be consistent with the Master Land Use Plan. There was also evidence that three public works projects also bear heavily on the zoning of the subject properties, both in 1989 and at the present time. The Hickory extension of the Bel Air Bypass, although in the planning stages during the 1989 comprehensive zoning, was not as far along as it is in 1995. Furthermore, Thomas O'Laughlin testified that the design of the Hickory extension had been modified since 1989. This road construction project is now a priority project at the State Highway Administration.

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Mr. O'Laughlin and Mr. Craig Ward testified that there were plans for extending sewer to the subject properties in 1989. However, these plans involved the construction of the Wysong Branch interceptor. The proposed sewer line would have traversed the area of the Wysong Branch bordering on the eastern edge of the subject property. Since that time, a sewer pumping station has been proposed and agreed upon to allow sewage to be pumped to a sewer line that will follow U.S. Route 1, thereby avoiding an environmental impact along the Wysong Branch. These factors were not known to the County Council in 1989. Thomas O'Laughlin testified that the subject property suffered from water pressure deficiencies in 1989. At that time, the property would not have met the fire flow requirements for ORI development. Since that time, a water tank has been erected across Route 1 from the subject property substantially increasing the water pressure in the area. Mr. O'Laughlin testified that even under current conditions, the subject properties may not have adequate water volume to satisfy the fire flow requirements for ORI development. However, adequate volume would exist to satisfy the Adequate Public Facilities requirement for R3 development in 1995. It was also noted that the Adequate Public Facilities legislation was not passed until 1994, significantly after the 1989 comprehensive zoning. It is impossible that the County Council would have considered the potential Adequate Public Facilities legislation in determining the proper zoning classification for the subject properties in 1989.

Thomas O'Laughlin testified with regard to the Wysong property located to the east of the subject properties. The Wysong property contains over 300 acres, part of which was placed onto the National Register of Historic Places within the last two years. Such a designation of the Wysong property was not known during the 1989 comprehensive. Mr. O'Laughlin testified that the proposed R3 development would be more compatible with the historic property than the ORI development.

Mr. Cunningham testified that the Harford County Council was concerned with respect to the nature of development which may occur on the subject property if commercial zoning were granted in 1989. Because of interests pertaining to the subject property and to other properties within Harford County, the County Council was concerned about possible mall development on this and other sites. He testified that he believed that this may have been a significant factor in the Council's decision to maintain the existing ORI zoning on the subject properties.

Petitioners contend that all of the above factors considered individually and taken as a whole support the conclusion that a mistake occurred in zoning the subject property ORI in 1989. Mr. Cunningham testified that the proposed R3 zoning was consistent and compatible with the surrounding developments and noted that he had reviewed the "Limitations, Guides and Standards" contained in the Harford County Zoning Code and had found nothing contained in the standards which would indicate that the proposed zoning was inappropriate. Specifically, Mr. Cunningham testified that the proposed use would not have an adverse environmental impact.

Mr. O'Laughlin testified as to the lack of impact to the non-tidal wetlands and confirmed that the proposed rezoning and development would not result in construction within the non-tidal wetland area or its buffer. Mr. O'Laughlin was of the opinion that the R3 development, coupled with proper storm water management, would control the quantity and quality of the run-off from the site and would be safer from an environmental standpoint than the current agricultural uses on the site. Mr. O'Laughlin testified that agricultural uses do not in any way treat water run-off.

The testimony on behalf of the Applicants regarding traffic was that the proposed R3 development would not have an adverse effect on the level of service on U.S. Route 1. Mr. Cunningham compared the traffic impact of the R3 development to that of a typical ORI development and testified that the typical R3 development would result in 300 trips during peak hours to the site and that an ORI development could result in as many as 800 new trips per day during peak hours, including many trips by commercial vehicles.

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Thomas O'Laughlin testified that road improvements would be made at the developer's expense before construction could begin. Both Mr. Cunningham and Mr. O'Laughlin testified that the proposed improvements, including an acceleration and deceleration land and a left turn lane on U.S. Route 1 would adequately protect the traffic and citizens in the area. Mr. Cunningham further noted that the proposed development would have less impact on the intersection of U.S. Route 1 and the existing Bel Air Bypass as both access points to the proposed development are located south of the intersection of U.S. Route 1 and the Bel Air Bypass. Mr. Cunningham went on to testify that the proposed Hickory extension of the Bel Air Bypass would serve to lessen traffic impact on U.S. Route 1.

The two witnesses who testified in opposition to the request expressed concerns about the type of housing which would be constructed and they also expressed concern about the creation of possible traffic problems. It is the finding of the Hearing Examiner that the Applicants' request complies with the requirements set forth in the Master Land Use Plan and that the expert witnesses who testified on behalf of the Applicants have indicated that certain road improvements would be made under the direction of the State Highway Administration and that the level of service in the area would not change as a result of the development.

It is the finding of the Hearing Examiner that a mistake in the legal sense was made by the Harford County Council in zoning the subject properties ORI in the 1989 comprehensive rezoning for the reasons stated by the Applicants' witnesses in their testimony. Therefore, it is the recommendation of the Hearing Examiner that the requested rezonings of both the Rachuba property and the Bel Air Realty property be approved based upon a finding of mistake in the last comprehensive rezoning.

Date APRIL 18, 1995

L. A. Hinderhofer
L. A. Hinderhofer
Zoning Hearing Examiner