IN RE: **PETITIONS FOR SPECIAL HEARING AND VARIANCE**	*	BEFORE THE
(4202 Louisa Avenue) 11th Election District	*	OFFICE OF
5th Council District	*	ADMINISTRATIVE HEARINGS
TYKA Building Group, LLC *Legal Owner*	*	FOR BALTIMORE COUNTY
Petitioner	*	**Case Nos. 2018-0091-SPHA & 2018-0092-SPHA**

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OPINION AND ORDER ON MOTIONS FOR RECONSIDERATION

Now pending in the captioned matters are Motions for Reconsideration filed by the Office of People's Counsel and Baltimore County. The Motions will be granted as discussed below, although that does not mean (at least in my opinion) the County's rezoning process is fair or transparent. The Movants contend the Administrative Law Judge (ALJ) "reclassified" or "invalidated" the DR-1 zoning on the subject property. That is incorrect; instead, the special hearing relief was granted on the theory Baltimore County should be estopped from enforcing the DR-1 regulations against *this* owner. While applied sparingly, the doctrine of "zoning estoppel" will apply in special circumstances where it would be "highly inequitable" to enforce the regulations. *Maryland Reclamation Inc. v. Harford County*, 414 Md. 1, 54-59 (2010).

But Movants are correct that courts are loathe to interfere with enactments of the legislative branch, and this principle is applicable in the context of a comprehensive rezoning process. As such, Petitioner's property was rezoned to DR-1 in the 2016 Comprehensive Zoning Map Process (CZMP), and he must use and/or develop the property in accordance with that designation.

While Petitioner will not be able to construct a single-family dwelling on each of the lots, it would be entitled to "merge" the lots and seek approval for one single-family dwelling on the

combined parcel, whether under B.C.Z.R. §304 or otherwise. *Friends of the Ridge v. Baltimore Gas & Electric Co.,* 352 Md. 645 (1999) ("a landowner who clearly desires to combine or merge several parcels or lots of land into one larger parcel may do so"). If the lots are merged Petitioner would most likely be entitled to construct one single-family dwelling on the resultant parcel.

But I continue to believe the rezoning process, at least as exemplified in a case like this, is defective and does not comport with due process. Under familiar legal principles, due process requires that "a property owner must be notified when its rights are changed". *Bing Construction Co. v. County of Douglas,* 810 P. 2d 768, 770 (Nev. 1991). Many courts across the country have invalidated aspects of a city's comprehensive rezoning process when the owner was not advised his property may in fact be down-zoned. *Passalino v. City of Zion,* 928 N.E.2d 814, 818-19 (Ill. 2010) (citing cases).

The County Code in fact requires such notice in the context of the CZMP. Baltimore County Code (BCC) §32-3-215. That statute requires the "property being considered for a possible change in zoning classification" to be posted. B.C.C. §32-3-215(a). This was not done. The statute also requires a letter to the owner explaining "the request for change in zoning." B.C.C. § 32-3-215(d)(2). But the letter sent by the County did not explain to the owner that a zoning change was proposed for his property. In fact, the notice told the owner the zoning would stay the same, which I believe is arguably a basis for zoning estoppel.

I certainly understand the CZMP process is complex and burdensome for County staff. But when an individual's real property (most likely the largest investment they have) rights are at issue I believe more is required. If as the County contends there are many instances where the County Council is unclear what the ultimate zoning will be, a letter should not be sent advising it will stay the same. Instead, the notice should tell the owner the County Council has

included his/her property in the identified issue, and while it is not clear at the present time what change would be made, it is possible/probable the current zoning on the site will change. This would provide adequate notice to the owner and allow him/her to take appropriate action. The notice provided in this case did one of two things: (1) confused the owner; or (2) lulled him into a false sense of security the zoning on his property was not going to change.

THEREFORE, IT IS ORDERED this **20th** day of **December, 2017**, by this Administrative Law Judge, that the Motion for Reconsideration be and is hereby GRANTED.

IT IS FURTHER ORDERED that the special hearing relief granted in the Order dated November 8, 2017, be and is hereby RESCINDED.

IT IS FURTHER ORDERED Petitioner shall be entitled to merge the lots at the subject property and seek approval for one single-family dwelling on the combined parcels. Any subsequent petition or request in this regard shall not be barred by *res judicata* or collateral estoppel.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

_____Signed_____
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:sln