

# Conservationists win round in battle against developer

## Original suit filed to overturn 2006 QA board decision

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CHESTERTOWN – Score one for the conservationists – maybe.

In a 7-0 decision Aug. 25, the Maryland Court of Appeals told Queen Anne's County to reconsider a subdivision that would place a 49-home development, the Highlands, on farmland near Chestertown. The county planning commission approved the subdivision in April 2006. The Queen Anne's zoning board of appeals, and Circuit Court and the Court of Special Appeals all confirmed the decision before the Court of Appeals ruling.

The decision instructed the Queen Anne's board of appeals to review all issues raised by Grasslands Plantation Inc. in opposition to the development of a 270-acre farm adjacent to Chester Harbor. Dr. Henry Sears, who owns Grasslands, brought the suit, which was argued in court by attorney Phillip Hoon of Chestertown. The Chester River Association and the Queen Anne's Conservation Association filed *amicus* briefs to the appeal.

At issue was whether the Highlands subdivision complies with the Queen Anne's comprehensive plan. In the initial phase, the development would place 49 residences on the property; a second phase

could add 67 more. The tract, which is between Round Top Road and Route 544 near Chester Harbor, is zoned Agricultural. Also, the CRA and the conservation association argued, the proposed development is not within an established growth area.

The development proposal was originally submitted by Home Farm Limited Partnership of Church Hill. A month after receiving planning commission approval, Home Farm sold the property to Frizz-King Enterprises of Marriotsville for \$2,097,500. The principals of Frizz-King are Mark Frizzera and Karl King.

The next step in the process, according to Richard DeTar, the Easton-based attorney for Frizz-King, will be for the Queen Anne's planning commission to rehear the application. It will be 60 to 90 days before any hearing, he estimated.

"We respect the decision of the court of appeals, which is a fair decision," DeTar said on Wednesday. He added, "Unfortunately, this means that the King family will have to go through the entire process a second time when there really are no new issues to be decided. The planning commission merely has to state in writing that which was clearly implied in its prior approval."

The case had been charac-

terized as a chance for the state's highest court to define the status of comprehensive plans. That question arose after the court's 2008 decision that Allegheny County zoning officials were not required to follow their comprehensive plan in approving a development called Terrapin Run. The Terrapin Run decision resulted in enactment of a number of state and local ordinances designed to give teeth to comprehensive plans.

Also at issue in the case are "smart growth" principles, which have guided comprehensive plans throughout the state. A press release by Hoon's office noted that the decision will obligate the Queen Anne's County board of appeals to determine whether the county's noncontiguous development technique was used to give the Highlands "a greater density of homes than it would otherwise have been permitted to have under applicable law."

The press release added, "An important procedural ruling included in the Court of Appeals decision is that the burden of proof to establish that a proposed development complies with applicable law remains with the developer," not with the parties opposing the development.

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## APPEAL

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Conservationists saw the Highlands suit as about environmental issues as much as zoning. They portrayed the development as a threat to the 5,400-acre Grasslands preserve, which is protected by a perpetual conservation easement. Opponents stated that the entire Highlands development would be on well and septic, posing a long-term threat to Grasslands.

Grasslands has numerous lakes and ponds in addition to almost four miles of Chester River waterfront. More than 200

species of birds have been identified on the Grasslands, including nesting populations of bald eagles. It is also home to Delmarva fox squirrels, which have been on the federal endangered species list since 1967.

Tuesday, Michael Moore, president of the board of Chester River Association, described the decision as "a victory for those that think the county should follow their comprehensive plans." He added that credit for the victory should go to Sears, who began fighting the Highlands development in 2004.

However, Jim Gatto, chairman of the Chestertown planning commission, said

sion was made on technical grounds, not planning grounds. [...] Don't get fooled into thinking it's a victory." He said that the Queen Anne's board of appeals could rectify the procedural errors cited by the court and decide again in favor of the developers.

"I can't say if it's a good or bad subdivision," Gatto said; "I haven't looked at it." He added that in his opinion, planning commissions in rural areas should not be encouraging development, but "reinforcing viable farming communities." He noted that northern Queen Anne's was one of the fastest growing areas of the county, resulting in significant loss of farmland.