## Attorney J. Carroll Holzer on Land Use Decisions and the Courts

George Kaplan and Rupert Rossetti

On the evening of November 28, 2007, attorney J. Carroll Holzer came to Cecil County and spoke to CLUA members at the North East library about how land use decisions are made and contested.

Mr. Holzer's career spans a broad range of experience, including service as the state's attorney for Baltimore County as well as the Baltimore County attorney. More recently, he has been involved in development cases throughout the state, including two in Cecil County (both involving CLUA members), and he regularly argues cases before the Maryland Court of Special Appeals in Annapolis. He was instrumental in helping establish citizens' groups in both Baltimore County and Harford County.

Mr. Holzer talked to us and answered questions for almost two hours, and left some written material for us to review, including several legal cases (both wins and losses) and a booklet on "Project 98", a community-driven assessment of the problems with the Baltimore County development processes as perceived by the county's citizens. We are grateful for his generosity. For those who could not attend (or those who were there but didn't take any notes!), here is a synopsis of the most important points that Mr. Holzer made:

1. When bad land use decisions are made by a county agency, administrative remedies must be exhausted before going to court. Besides, it is a lot cheaper and faster to seek administrative redress.

2. In arguing against a new development, zoning change, etc., at any level, it is always important to provide *facts*, such as measured sight distances, acreage of forest that is threatened, open space miscalculations, regulations that have been violated, etc., rather than citing vague concepts such as "rural character" or "quality of life". In general, traffic issues do not stop developments on their own, but may be useful in expanding the number of people who have standing (see 4 below).

3. Court cases are rarely won on the merits of the land use problem. If the court feels that a county agency had reasonable evidence to support its decision, it will generally not substitute its judgment for that of the agency. Most of the time, cases are won on technicalities and administrative mistakes. In land use cases, it is OK to include a variety of arguments, for different audiences, but it is the technicalities that win cases.

4. In court cases, it is essential to have *standing* to bring the case. An adjacent property owner is presumed to have standing; a nearby property owner will probably have standing if he is directly affected in some way (see, hear, smell, etc.). Other people may

have standing if they can show that they are affected more than the average citizen. Courts only require that there is at least one plaintiff party with standing, so citizens' groups that go to court are well advised to have a person with unquestioned standing named as part of the plaintiff group. One must own property to have standing, so a homeowners' association would qualify, but a citizens' group probably would not. Having a mix of associations and individuals is Mr. Holzer's preferred option. Note: Standards are relaxed for public hearings before an administrative agency, where anyone who shows up or even sends a letter is allowed to comment. These comments don't bear any weight in any ensuing court case unless the individuals have standing.

5. A county administrative body, when it renders a decision in a matter, must articulate factual reasons for its decision. The stated reasons have to be more than "boilerplate" language (e.g., the statement can't simply be that the statutes were met); they must be findings of fact.

6. Planning Commissions, in approving developments, are usually acting as administrative bodies. Therefore, they are normally required to state reasons for their actions, pro or con. There is a distinction between zoning and development cases, and zoning cases require more justification. However, the recent Elm Street case from Baltimore County, if widely applied (or misapplied), may adversely affect this requirement. The practice of the Cecil County Planning Commission is to state reasons in a development decision only if it is disapproved. Citizen testimony is considered merely a courtesy to the public.

7. The Planning Commission does have discretionary authority in certain matters, for example, in granting bonus density. The zoning ordinance says that the Planning Commission "may" grant bonus density. A development could qualify for bonus density by fulfilling certain requirements, but that is the minimum threshold to qualify for Planning Commission consideration. [Bonus density has largely, but not entirely, disappeared from county zoning due to the 2006 TDR plan.]

8. If we want the Planning Commission to consider citizen testimony and give reasons for its actions in all cases, or to have more discretionary authority, we will have to review the applicable statutes, determine what changes, if any, are needed, and work to ensure that any needed changes are made.

9. The Board of County Commissioners sometimes acts as an administrative body and sometimes as a legislative body. When the commissioners act as a legislative body, they do not have to give public reasons for their actions. For example, an amendment to the Master Water and Sewer Plan is a legislative issue.

10. The Comprehensive Plan is just a *plan*, and is not in itself binding in land use cases, unless it specifically states that it is binding for certain matters. Rather, what counts is the law (e.g., the zoning ordinance, subdivision regulations, road code).

11. The appeals process hierarchy in Maryland is as follows (progressing from bottom up):

Court of Appeals
Court of Special Appeals (first level for a fair analysis)
Circuit Court (usually hesitant to overrule local agencies)
Local Board of Appeals
Local Planning Board

12. The Maryland Court of Special Appeals does not give any weight to what the Circuit Courts decide; they review cases from the original administrative record.