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## **The “Highlands” Case – A Decision from the Maryland Court of Appeals**

### **PRESS RELEASE**

**August 26, 2009**

Grasslands Plantation, Inc., Dr. Henry F. Sears, Hoon & Associates, LLC and Philip W. Hoon, Esq. are pleased to report that the Court of Appeals, Maryland’s highest court, has issued its Opinion in the Highlands case. It is a significant, and perhaps landmark, decision.<sup>1</sup>

By its unanimous 7-0 vote and a 46 page Opinion<sup>2</sup> issued on August 25, 2009, the Court of Appeals reversed the prior decisions of the Maryland Court of Special Appeals, the Circuit Court for Queen Anne’s County and the Queen Anne’s County Board of Appeals which were issued over the past 3+ years.

The Highlands case involves the 51 lot Phase 1 proposed residential subdivision of a 270± farm in a rural area of northern Queen Anne’s County outside of Chestertown<sup>3</sup>. Grasslands Plantation, Inc. is an adjacent property owner.

The Court of Appeals reversed the three preceding adjudications and ordered that the matter be remanded to Queen Anne’s County Board of Appeals. On remand, the Board of Appeals will be obligated to review all of the issues raised by Grasslands Plantation, Inc.

Those issues include but are not limited to whether the proposed subdivision complies with the Queen Anne’s County Comprehensive Plan, as well as other county legislation which requires that it be reviewed for assurances that there are adequate emergency services to service the proposed new residential lots.

The Board of Appeals will also be obligated to determine whether the increased density development of the property with the unique Queen Anne’s County “NCD” (Non-Contiguous Development) technique was properly utilized and implemented to enable The Highlands property to have a greater density of homes than it would otherwise have been permitted to have under applicable law.

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, and is not shifted to the protestant on appeal.

Once again, the Court of Appeals has ratified for rule of law and the requirement for due process with respect to the fair and proper resolution of land use matters in Maryland.

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<sup>1</sup> *Grasslands Plantation, Inc. v. Frizz-King Enterprises, LLC* - In the Maryland Court of Appeals, No. 117, Sept. Term, 2008.

<sup>2</sup> A copy of the entire Opinion can be accessed on line at [www.courts.state.md.us](http://www.courts.state.md.us)

<sup>3</sup> The future Phase 2 of The Highlands Subdivision is proposed to include an additional 62 lots.