QUEEN ANNE'S CONSERVATION ASSOCIATION, INC., et al.	*	IN THE CIRCUIT COURT
	*	FOR QUEEN ANNE'S COUNTY
Plaintiffs,	*	STATE OF MARYLAND
v.	*	
QUEEN ANNE'S COUNTY BOARD OF COUNTY COMMISSIONERS, et al.	*	CASE NO. C-17-CV-24-000200
Defendants.	*	

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PLAINTIFFS' OPPOSITION TO CHESTERHAVEN BEACH PARTNERSHIP, LLP'S MOTION TO ALTER OR AMEND CERTAIN ASPECTS OF DECEMBER 5, 2025, MEMORANDUM OPINION

Plaintiffs Queen Anne's Conservation Association, Inc., the Chesapeake Bay Foundation, Inc., Chesapeake Wildlife Heritage, Inc., Linda Zetterstrom, Scott Zetterstrom, Robert Solomon, Kimberly Solomon, Constance Loureiro, and Robert C. Wickesser, Sr., (collectively the "Plaintiffs"), by and through their undersigned counsel, pursuant to Maryland Rules 2-534, hereby oppose Chesterhaven Beach Partnership, LLP's ("Chesterhaven") Motion to Alter or Amend Certain Aspects of December 5, 2025, Memorandum Opinion (the "Motion to Alter or Amend"), and, in support hereof, state as follows:[1]

ARGUMENT

Defendants' Motion to Alter or Amend unnecessarily nitpicks this Court's clear and decisive ruling in Plaintiffs' favor and implies that the Court is required to explain why it found the Defendants' "baked in" argument "flawed" – as if the Defendants' failure to provide legal authority for the argument was not enough. As with many of Defendants' prior arguments, as

[1] Contemporaneous with the filing of this Opposition, Plaintiffs also file a request that this Court enter a "Declaratory Judgment" adopting the Court's December 5, 2025, Memorandum Opinion (the "Opinion") as a declaration of the rights of the parties, as required by the Maryland Declaratory Judgment Act. *See Converge Servs. Grp., LLC v. Curran*, 383 Md. 462, 477 (2004) (When a party requests a declaratory judgment and a court decides the case on its merits, the court "must enter a declaratory judgment.")

briefly explained below, Defendants' contentions in their Motion to Alter or Amend are contrary to fact and law, should be rejected, and the Defendants' motion should be denied.

I. **The Court's Reference to the Outcome of the 1992 Litigation is not *Dicta*.**

The Defendants' first, hyper-sensitive, argument takes issue with this Court's reference to the conclusion reached in the 1992 Queen Anne's County Board of Appeals' decision rejecting Chesterhaven's grandfathering argument. *See* Motion to Alter or Amend at pg. 2. Defendants argue that this Court inaccurately, or unnecessarily, stated that that the Queen Anne's County "Board [of Zoning Appeals] unanimously rejected Chesterhaven's grandfathering argument." *Id.*; *see also*, Order at pg. 2. However, as the record in this case makes clear, that's exactly what the Board did. *See* Board's Decision, Ex. 1 to Plaintiffs' Motion for Summary Judgment ("MSJ") at pg. 19 (emphasis added).[2]

The Board's written opinion clearly states that its "decision represent[ed] the **unanimous** finding of the Board" and that Chesterhaven's alleged "**rights were not preserved in the form of grandfathered lots**." *Id.* (emphasis added). This Court's reference to the Board's unanimous decision rejecting Chesterhaven's 1992 grandfathering argument – its first, and only, "bite at the apple"[3] on this issue – is supported by Judge Wise's March 21, 1994, affirmance. *See* Plaintiffs' MSJ at Ex. 2 ("The Board did find that no development of the property occurred pursuant to the [allegedly recorded] plats" which was a prerequisite for grandfathering). Judge Wise also made clear that because Chesterhaven failed to meet its burden, "the concept of vesting [*i.e.*,

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[2] Accordingly, this Court's statement that the property's development density remains at one unit per twenty (20) acres is consistent with the properties RCA critical area zoning status.

[3] *See Diamond Point Plaza Ltd. P'ship v. Wells Fargo Bank, N.A.*, 400 Md. 718, 760 (2017) ("[T]he party does not get two bites at the apple. It would be unfair, after ... all of the evidence that has been presented [to the Board and this Court (*i.e.*, Judge Wise)] for the court to say, 'well, you haven't convinced me, but see if you can get me some better evidence....'").

grandfathering] has no currency" when it comes to Chesterhaven's property. *Id.* at pg. 9.[4] Stated differently, in the words of Judge Wise: Chesterhaven's "failure to come within [the] grandfathering provisions is fatal." *Id.* at pg. 11; *see also*, Plaintiffs' MSJ, Ex. 3 at pg. 9 (Court of Special Appeals stating that Judge Wise's "decision was correct").[5]

The Defendants' argument that reference to the Board's 1992 decision is unnecessary since "the grandfathered status of the lots was not properly before the Court in this action" is likewise belied by the record. *Compare* Motion to Alter or Amend at pg. 5, *with* Plaintiffs MSJ at pgs. 1 and 20, and Exs. 1-3 (arguing that the Commissioners' decision is contrary to the Board's 1992 decision). As argued throughout this litigation, the Commissioners' 2024 decision to allow development of 90 lots without growth allocation is directly contrary to the Board's 1992 decision rejecting Chesterhaven's allegation of grandfathered rights. *See* Plaintiffs MSJ at Exs. 1-3. As this Court is well aware "facts or issues actually litigated in the previous action are conclusive in the subsequent proceeding." *Colandrea v. Wilde Lake Cmty. Ass'n, Inc.*, 361 Md.

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[4] The page numbers used herein are the type-written page numbers at the top of Judge Wise's 1994 decision, as opposed to the hand-written page numbers at the bottom.

[5] Defendants' argument that the Board did not make factual findings to support its unanimous rejection of the grandfathering argument is also incorrect. *See* Motion at pg. 2. The Board found, as a matter of fact, that Chesterhaven's property is located in the RCA, which, as a matter of law and as noted by this Court, limits "density [to] one dwelling unit per 20 acres." Plaintiffs' MSJ at Ex. 1, pgs. 13-14; *see also*, Opinion at 2. The Board made equally clear that Chesterhaven's property would not "satisfy any of the exceptions or 'grandfathering' provisions" related to the County's Critical Area Ordinance, based on factual findings, including that: (1) "aerial photographs" in the record "indicate that there had not been any development activity on the site" (*id.*); (2) that "the subdivision did not receive approval during the interim finding period"; (3) the clear "testimony ... that the lots were not legally buildable, inasmuch as they did not have valid percolation tests" (*id.* at 14-15); and (4) because "this subdivision did not receive any 'final approval.'" *Id.* at 15.

Chesterhaven's argument also misrepresents the exchange between counsel and this Court during oral argument. Beginning at page 5 of the Defendants' Motion, the Defendants selectively recount the back and forth between the parties and the Court regarding the grandfathering issue. *Id.* The transcript attached to Chesterhaven's Motion, however, makes clear that Plaintiffs' counsel agreed with this Court that the grandfathering issue was resolved in the 1992 litigation. *See* Defendants' Ex. 1 at pg. 11, lines 16-26 ("So the underlying decision that the Board of Appeals made [in 1992] and then the Circuit Court made and the appellate court approved is that there was insufficient evidence of grandfather[ed] lots. There are no grandfathered lots. That's res judicata. That has been dealt with.") *Id.*

371, 388 (2000). In short, the Plaintiffs' and this Court's reference to the Board's 1992 rejection of the Defendants' grandfathering argument is not only proper, but also ***compelled*** by the Commissioners' illegal, *ultra vires*, and now void decision to allow development of 90 lots on 100 acres of RCA land without growth allocation.

II. **This Court's Bases for its Decision Need no Clarification.**

Throughout this case, and at oral argument, Plaintiffs argued that the Commissioners' 2024 decision is illegal, *ultra vires*, and void for at least **six (6) equally dispositive reasons**.[6] On the other hand, the Defendants argued, without citing legal authority, that when enacting the 2022 Comprehensive Plan, the Commissioners "baked in" an ***unspoken and implied*** right to "reconsider" Chesterhaven's request, which allegedly allowed the Commissioners to amend the Comprehensive Plan at some undetermined point in the future. This Court recognized that the Defendants' "baked in" argument is "flawed" because, *inter alia*, the 2022 Comprehensive Plan is completely silent regarding Chesterhaven's previously denied Comprehensive Rezoning Request and the LAND USE ARTICLE contains no right to "reconsider" a decision related to the Comprehensive Plan more than two (2) years after it was adopted which is also a clear violation of LU § 3-204(c)(4)'s one hundred and fifty (150) day requirement. *See* Order at pgs. 7-9.

This Court clearly agreed with the Plaintiffs' analysis of the Defendants half-baked "baked in" argument, stating at least twice in its Opinion that Plaintiffs "argued six equally

[6] As argued on November 10, 2025, the Commissioners decision is invalid because: (1) only the Planning Commission can amend a comprehensive plan pursuant to LU § 3-301(a) ("planning commission shall review the comprehensive plan and, if necessary, revise or amend"); the Commissioners' authority is limited by LU § 3-204(c) to "adopt[in], modify[ing], remand[ing], or disapprove[ing]" the recommendation of the Planning Commission; (3) the Commissioners may only act within 150 days of the Planning Commission's recommendation pursuant to LU § 3-204(c)(4) (90 days, plus 60 for "exigent circumstances"); (4) the Commissioners failed to provided notice to the Critical Area Commission as required by NR §8-1812; (5) the Commissioners 2024 decision permitting 90 lots violates the RCA density limits of one lot per twenty acres pursuant to NR §8-1801.1; and (6) the Commissioners' 2024 decision violated the growth allocation requirements of, *inter alia*, COMAR 27.01.02.05.

dispositive statutory violations that warrant summary judgment in favor of the Plaintiffs." Op. at pgs. 1, 5, 7-9.[7] Of the "six equally dispositive statutory violations that warrant summary judgment in favor of the Plaintiffs", this court chose to "highlight[] two in particular" for review and analysis. *Id.* at pg. 5. It is solely within the Court's discretion to focus its analysis on two (2) of the six (6) equally dispositive bases on which this Court granted summary judgment in Plaintiffs' favor.

It should also be noted that the Defendants' professed uncertainty and request for clarification would appear to be a "Trojan horse" that the Defendants are using to sneak into the record an unpreserved argument. In their Motion to Alter or Amend, the Defendants ***now argue***, for the first time, that the Commissioners' 2024 decision to permit development of ninety lots without growth allocation is not ripe "until the **County has approved** the development." *See* Motion to Alter or Amend at pg. 7, ¶II (emphasis added). As this Court will no doubt recall, the Defendants ***previously argued*** that the Commissioners' decision to permit ninety lots without growth allocation could not be disputed "unless and until approval for a site plan **is requested**." *See* Defendants' Response to Plaintiffs' MSJ at pg. 15 (emphasis added). The Defendants' attempt to "move the goalposts" ***after*** this Court's ruling is too little, too late.

It is also noteworthy that the Defendants' desire to alter their argument results from the fact that, on the same day the Defendants filed their Opposition to Plaintiffs' MSJ arguing that the Commissioners' Decision is not ripe for review until site plan approval "is **requested**", the Defendants filed an application with Queen Anne's County **requesting** site plan approval – a fact that the Defendants failed to disclose to the Court at the time of their filing. *See* Plaintiffs'

[7] The Defendants argument that the Court must explain why the Defendants' "baked in" argument is flawed, misconstrues the role of this Court and the Defendants on summary judgment. *See* Motion to Alter or Amend at pg. 8-9. It is the Defendants' obligation to establish the legal validity of the Plaintiffs' "baked in" argument – a burden the Defendants have never met. It is not this Court's or the Plaintiffs' obligation to explain why the Defendants' "baked in" argument is invalid.

MSJ Reply Memo. at pg. 18 and Ex. 3. The Defendants' argument also ignores that the Commissioners made a final determination, reviewable by this Court, that Chesterhaven can develop ninety (90) lots without growth allocation.

III. **This Court Need Not Re-Write its Decision to the Defendants' Liking.**

Finally, and as with so many of Defendants' creative arguments, Defendants cite no legal authority for their request that the Court re-write its Opinion to their liking. *See* Motion to Alter or Amend at §§ II and III. As a matter of fact, the Defendants ignore that this Court made very clear that it agreed with all six of Plaintiffs' equally dispositive arguments (*see* Order at pgs. 1 and 5) and found unpersuasive the Defendants' amorphous "baked in" argument. *See* Order at pg. 9.

Maryland law is clear that even without the clarification that the Defendants (erroneously) contend is required, the appellate court "must assume that the circuit court carefully considered all of the asserted grounds and determined that all or at least enough of them merit the grant of summary judgment." *Bond v. Nibco, Inc.*, 96 Md. App. 127, 133 (1993). In short, Maryland's appellate courts have repeatedly made clear that an appellate court may affirm a grant of summary judgment on any ground supported by the record, even if the trial court gave no reasons at all, and review of such rulings is *de novo*. *Id.*; *see also, Dashiell v. Meeks*, 396 Md. 149, 163 (2006); *Messing v. Bank of America, N.A.*, 373 Md. 672, 689 (2003); and, *Sadler v. Dimensions Healthcare Corp.*, 378 Md. 509, 523 (2003).

Here, this Court made abundantly clear on multiple occasions that all six of Plaintiffs' arguments were equally dispositive, entitling the Plaintiffs to judgment as a matter of law on each. Other than entering a Declaratory Judgment Order to this effect, there is nothing left for this Court to do, and the Plaintiffs thank the Court for its time and attention to this matter.

WHEREFORE, the Plaintiffs respectfully request that this Honorable Court:

A. Deny the Defendants' Motion to Alter or Amend;

B. Issue a Declaratory Judgment Order that adopts the Court's Opinion as a statement of the Parties' rights pursuant to the Maryland Declaratory Judgment Act; and

C. Grant any other and further relief as the nature of Plaintiffs' cause demands.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of December, 2025, a copy of the foregoing was served via MDEC on:

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