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**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

COURT OF CHANCERY COURTHOUSE
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GEORGETOWN, DELAWARE 19947

Submitted: May 15, 2007
Decided: May 25, 2007

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Re: *Farmers for Fairness v. Kent County, et al.*
Civil Action No. 2122-CC

Dear Counsel:

Having considered carefully all arguments presented by both parties, I deny defendants' Motion for Reargument and/or to Alter or Amend Judgment. Defendants assert that the Court committed three errors in its May 1, 2007 Memorandum Opinion. First, defendants suggest that the Court overlooked the statutory impact of Title 7, Chapters 60 and 75 of the Delaware Code.[1] Second, defendants maintain that the Court did not sufficiently address existing precedents from other jurisdictions in interpreting the uniformity requirement of 9 *Del. C.* § 4902(b). Finally, defendants insist that the elements of the Coastal Zone Protection Overlay Ordinance are severable, and that the Court was required

[1] Although the Court determines, for the reasons given below, that the provisions now cited by defendants are irrelevant to the matter at hand, any "oversight" by the Court might be explained by defendants' utter failure to raise these issues in their brief or at oral argument. *See* Defs.' Mot. for Reargument at ¶ 3.

to preserve portions of the ordinance not explicitly mentioned in the Memorandum Opinion.

For the most part, defendants inappropriately seek to raise issues or contentions available to them before this Court's decision, despite having had every opportunity to be heard at the appropriate time. More importantly, defendants' new arguments, although more skillful than those originally made before this Court, remain without merit. Although defendants raise an issue with regard to severability that may require some clarification of the Memorandum Opinion, no further argument is necessary.

I. CONSIDERATION OF 7 *DEL. C.* CH. 60 AND CH. 75

In the Memorandum Opinion, this Court rejected defendants' theory that 9 *Del. C.* § 4903 provides an independent grant of regulatory authority, and instead held that the General Assembly delegated regulatory authority to the County through § 4901, to be employed consistently with the requirements of § 4902 (and the rest of Chapter 49), for the purposes proscribed in § 4903.[2] The Court then explicitly confirmed Kent County's general authority to employ overlay districts:

> Reading the statutes as an integrated whole, no reason appears why the Court should conclude that Kent County cannot (a) divide its territory into both zones *and* districts, and (b) overlay a zone atop a district. Nothing in the legislative structure suggests that Kent County is forced to choose between the two schemes. A given parcel of land may, consistent with the statutory scheme, be assigned to a given district for purposes of regulating the erection of buildings, and yet also be assigned to a zone that sets forth soil conservation requirements, a separate zone for water supply regulation, and another for regulation of population density. In short, nothing forbids Kent County from using "overlay zones" or "overlay districts," so long as the latter meets any of the substantive or procedural requirements placed upon districts.[3]

This, however, is only the first step in the required analysis. The General Assembly has granted broad authority to Kent County, but requires the County to

[2] See Mem. Op. at 12-17.
[3] *Id*. at 15.

exercise that authority in a manner consistent with statutory limitations, including the uniformity requirement. Kent County might have, for instance, created a series of districts that regulated *only* land use, but provided for no other utilization restrictions, and imposed additional regulations through overlay zones. It did not do so.[4]

Defendants maintain that this straightforward reading of Title 9, Chapter 49 does not take into account more recent enactments of the General Assembly that specifically provide for, and indeed mandate, overlay districts that do not prejudice underlying zoning or constitute a zoning change. Defendants point specifically to 7 *Del. C.* § 7508(a), which grants the Counties authority to employ overlay zones to protect state resource areas, and 7 *Del. C.* § 6082, which mandates the promulgation of regulations governing the use of land within areas designated by the state as "critical areas."

Yet defendants do not now suggest, nor have they ever suggested in any argument, that Kent County enacted the Coastal Zone Protection Overlay Ordinance under the authority granted in 7 *Del. C.* § 7508 or § 6082. Defendants presumably recognize that the Ordinance does not meet the requirements specifically put forward in those sections. Section 6082(c), for instance, requires that:

> [C]ounties and municipalities with populations of 2,000 persons or more, with the assistance of the Department, *shall adopt* as part of the update and implementation of the 2007 Comprehensive Land Use Plans, the *overlay maps* delineating, as critical areas, source water assessment, wellhead protection and excellent ground-water recharge potential areas. Furthermore, the counties and municipalities *shall adopt*, by December 31, 2007, regulations governing *the use of land* within those critical areas designed to protect those critical areas from

[4] Throughout defendants' brief and at oral argument, defendants maintained that the Court should draw a distinction between regulations on land use (so-called "Euclidian" zoning) and regulatory limits on such matters as density. Such a distinction is constitutionally permissible and could be implemented pursuant to the authority granted the County by Title 9, Chapter 49. What defendants failed to address, however, was the simple fact that when the County actually implemented its zoning districts, it chose *not* to make this distinction, instead combining use and utilization within the same districting scheme.

> activities and substances that may harm water quality and subtract from overall water quality.[5]

Defendants nowhere suggest that the Coastal Zone Protection Overlay District, a massive swath of land defined mostly by a highway, coincidentally matches the overlay maps mentioned in § 6082(c). Nor do Defendants even hint that the Ordinance was enacted under the authority of 7 *Del. C.* § 7508, or that it complies with that section's accompanying procedural requirements. The overlay districts contemplated by 7 *Del. C.* § 7508 bear not even a passing resemblance to the Ordinance:

> The powers granted counties under Title 9 as they pertain to the protection of any natural feature or resource governed by this title, shall be exercised through the adoption of ordinances and land use requirements . . . . Such natural resource protection requirements shall restrict land use activity by means of performance standards, design criteria and mitigation requirements consistent with state law and regulations. Minimum lot sizes, density limitations, and prescribed percentages of impervious surface and use limitations and prohibitions *shall not* constitute performance standards as required herein, however, such limitations and restrictions shall be adopted where appropriate, *to establish an alternative means of complying with the purpose and requirements of the overlay zones*.[6]

Density limitations such as those contained in the ordinance are meant to be an alternative means of "complying with the purposes and requirements of . . . overlay zones."[7] The regulations promulgated by the Ordinance are not an alternative to specific performance standards elsewhere set forth by the County, but the sole means of compliance given to landowners.

Moreover, the Ordinance has much greater scope than that allowed by 7 *Del. C.* § 7508. The overlay zones contemplated therein apply only to "state

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[5] 7 *Del. C.* § 6082(b) (emphasis added). Given that defendants placed so much emphasis upon the difference between regulating the utilization of land, as opposed to use, and vigorously insisted in their briefing that the Coastal Zone Protection Overlay District regulated only the former, it is worth noting that § 6082(b) allows only for the regulation of land *use*. Thus, were the Court to accept defendants' arguments and their previous characterization of the Ordinance, 7 *Del. C.* § 6082 would remain wholly irrelevant to plaintiffs' Motion for Summary Judgment.

[6] 7 *Del. C.* § 7508(b) (emphasis added).

[7] *Id*.

resource areas," to be defined by the Department of Natural Resources and Environmental Council and the Delaware Open Space Council.[8] Once again, defendants do not suggest that the entirety of the land covered by the Ordinance is a state resource area. Nor would this be sufficient: overlay zones enacted under § 7508 apply only to "significant ecological functions and identified historic and archeological sites on these lands."[9] That these zones are more limited in scope than the challenged Ordinance may be inferred from the statutory requirement that "the guidelines shall designate the boundaries to which they apply and *provide a procedure for the appeal of such boundary designations*."[10] The Ordinance makes no mention of such a procedure.

Defendants' argument seems to be: (a) the General Assembly has authorized overlay zoning for two specific purposes; (b) in one instance, overlay zones are arguably exempted from the requirements of 9 *Del. C.* § 4902(b) and § 4926;[11] and thus (c) the General Assembly has granted Kent County the authority to ignore the requirements of Title 9, Chapter 49 any time it chooses, simply by labeling the exercise of its regulatory power an "overlay" to existing regulations. Neither the canons of statutory construction nor common sense support this result. It is absurd to think that the General Assembly abrogated the general uniformity requirement of 9 *Del. C.* § 4902 through two grants of *exceptional* authority promulgated in an entirely different title. The County possesses *only* those powers delegated to it by the General Assembly, and may not create new regulatory authority by cobbling together selected portions of disconnected statutes, particularly when defendants willfully ignore the restrictions on their authority imposed by those statutes.

No reargument is necessary on this issue. The statutes belatedly cited by defendants are irrelevant to the Court's Memorandum Opinion.

II. CONSIDERATION OF NON-DELAWARE PRECEDENT

Defendants next suggest that the Court failed to sufficiently consider the relevance of a long string citation, in which defendants purport to show that the

[8] *See* 7 *Del. C.* § 7504(11).
[9] 7 *Del. C.* § 7508(b).
[10] *Id*.
[11] 7 *Del. C.* § 7508(a) provides that "[t]he zones created hereunder shall overlie and not replace the existing zoning or preclude or prejudice any change thereto."

permissibility of overlay districting has been accepted in over forty jurisdictions.[12] The Memorandum Opinion did, indeed, dismiss defendants' arguments in this regard, instead preferring to focus upon the application of Delaware law to the issues at hand. Defendants' desire to reargue the issue stems from a misunderstanding of the reasons that the Court rejected this argument in the first place.

As the Memorandum Opinion made clear, the United States Supreme Court's decision in *Village of Euclid v. Ambler Realty Co.*[13] is of little relevance to the issues presented by plaintiffs in their motion for summary judgment. *Euclid* focuses on whether a series of overlapping districts is constitutionally permissible. There is no doubt regarding this issue. Further, the Memorandum Opinion affirmatively concludes that Kent County may adopt overlay zones regulating use and utilization, so long as it does so in compliance with the uniformity requirement of 9 *Del. C.* § 4902(b). The question presented by plaintiffs, however, is whether or not the scheme actually devised by defendants passes statutory muster.

The point can be seen most clearly if one compares the zoning system considered in *Euclid* with Kent County's own ordinances. The village of Euclid adopted three types of districts: use districts; height districts; and area districts.[14] Although the districts overlapped, within each district the regulations were uniform, largely because each type of district regulated different matters. Nothing in the Memorandum Opinion would render this scheme impermissible.[15]

Kent County has *not* adopted this style of zoning, however, instead defining zoning as "[t]he reservation of certain specified areas within a community, County or city for buildings and structures, or use of land, for certain purposes *with* other limitations such as height, lot coverage *and other stipulated requirements*."[16] Zoning regulations thus include not only land use regulations, but also other accompanying stipulated requirements. Kent County defines a "district" as "[a]ny section of Kent County in which the zoning regulations are uniform."[17] Unlike the functionally distinct and overlapping districts considered in *Euclid*, Kent County

[12] Answering Br. in Opp'n to Pls.' Mot. for Summ. J. at 20 n.2.
[13] 272 U.S. 365 (1926).
[14] *Id*. at 380-382.
[15] The language of § 4902(b) suggests that some of these "districts" should be called zones. *See* Mem. Op. at 14.
[16] Kent County Code § 205-6 (emphasis added).
[17] *Id*.

has chosen to employ hybrid districts that regulate more than merely land use. Any analysis of uniformity must take into account the nature of the districting scheme employed by the County.

Proper application of precedent from sister states requires more than defendants' bare assertion that dozens of jurisdictions allow for some activity called "overlay zoning," or that the United States Supreme Court has sanctioned its use. Rather, it would require a detailed examination of a specific jurisdiction's entire zoning process, a comparison of this process to that of Kent County, and an analysis of relevant precedent in that jurisdiction. Any comparison would likewise need to account for the fact that the meaning of the term "overlay" differs between jurisdictions.

Defendants now assert that "[T]o the extent that Ohio has considered the interpretation and applicability of a zoning "uniformity" requirement to an overlay zoning in a circumstance bearing any relation to this Court's initial consideration of those issues, fairness requires the Levy Court be given the opportunity to explore those issues in the interest in [sic] maintaining jurisprudential consistency and predictability, and the source from which many—if not most—of Delaware and its sister states derived their zoning statutes."[18] The Levy Court had every opportunity to make precisely this argument in its brief, at oral argument, and in post-hearing submissions. Indeed, plaintiffs responded in their reply brief with precisely the focused analysis suggested above.[19] Any demands fairness might make have been amply satisfied. Defendants' argument now is too little and too late.

Though there might exist some hypothetical opinion of a sister-state Court that would somewhat bolster defendants' position, the motion before me contains not a single citation to even a tangentially relevant example. Failure to consider possibly non-existent precedent is not, contrary to defendants' assertion, a "misapplication of law," and comes nowhere close to a justification for further argument before this Court.

III. SEVERABILITY

Finally, defendants argue that the Memorandum Opinion fails to explain how the Ordinance violates the uniformity requirement of 9 *Del. C.* § 4902(b) with

[18] Defs.' Mot. for Reargument at ¶ 40 (citations omitted, emphasis added).
[19] *See* Reply Br. in Supp. of Pls.' Mot. for Summ. J. at 13-14.

regard to any regulation other than density restrictions. Specifically, defendants maintain that "nothing within the analysis suggests any limitation or uniformity violation which would occur through overlay regulations affecting buffer zones, the planting of indigenous species of flora, signs, lights or wastewater treatment facilities."[20] Although the Court is required to "preserve [an Ordinance's] valid portions if the offending language can lawfully be severed,"[21] no portion of the Ordinance is salvageable.

Defendants did not show much vigor for pursuing a severability argument in their briefing, and the Court's consideration of the issue was correspondingly brief. The Court did, however, devote much of the Memorandum Opinion to highlighting the difference under 9 *Del. C.* § 4902(b) between *districts* (which may regulate only limited activities and are subject to a uniformity requirement) and *zones* (which may regulate a broader range of activities and are not subject to a uniformity requirement). The uniformity requirement is implicated where an overlay zone, such as the Ordinance, imposes regulations such that land within underlying districts will be subject to inconsistent regulation.[22]

As an initial matter, application of the buffer requirements imposed by Coastal Zone Protection Overlay District would result in a lack of uniformity in either the use of land or the "erection, construction, reconstruction, alterations, and uses of buildings" between AC- or AR-zoned lands within the district, and similar lands located outside.[23] Consider, for instance, two landowners who wish to build homes on lakefront property, the first within the Overlay District, and the second outside of it. The first owner must build his home 100 feet from the mean high-water line;[24] the second may build within 50 feet.[25] The first may not build in a 100 foot buffer from a state-maintained road, while the second may be limited to as little as 75 feet.[26] The buffer requirement is, thus, just as invalid an exercise of power as the density requirements. Similarly, the Court finds that the flora

[20] Defs.' Mot. for Reargument at ¶ 49.
[21] *Newark Landlord Ass'n v. City of Newark*, 2003 Del. Ch. LEXIS 124, at *4 (Del. Ch. Nov. 17, 2003).
[22] Mem. Op. at 12-15.
[23] *See* 9 *Del. C.* § 4902(b).
[24] Kent County Code § 205-397.3(D)(1). (The Coastal Zone Protection Overlay Ordinance is codified at Kent County Code § 205-397.3.)
[25] Kent County Code § 205-52(A)(2).
[26] *See* Kent County Code §§ 205-52(B); 205-397.3(D)(2).

requirements for buffers are "mutually dependent and complimentary" to the buffers themselves, and cannot be severed.[27]

Defendants insist, however, that other requirements within the Ordinance, such as regulation of wastewater, signs, or lights, do not offend the requirement of uniformity, particularly those that do not touch upon the erection or uses of buildings, and urge the Court to pick up the judicial blue pencil and strike very precisely at the regulations in order to bring the rest of the Ordinance into compliance. As a practical matter, such an effort is inadvisable: much of the Ordinance would need to be selectively deleted, perhaps resulting in significant unintended consequences.

Even assuming, *arguendo*, that a given regulation does not violate the uniformity requirement, those regulations that might arguably remain would need to be stricken because they were not adopted according to the proper notice procedures. On July 13, 2000, the Governor signed into law what would become 9 *Del. C.* § 4926, a statute providing that:

> "[w]ith respect to any proposed zoning change, unless the owner applies for the change or consents to the change, the county government shall notify the owner of the property and all adjacent property owners *to the extent and in the manner the county by ordinance so provides as of June 28, 2000*, mailed at least 7 days prior to the initial hearing upon such zoning change."[28]

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[27] *See Newark Landlord Ass'n* at *2 (citing *Matter of Oberly*, 524 A.2d 1176, 1182 (Del.1987)).

[28] 9 *Del. C.* § 4926 (emphasis added). This language implicates two sections of the Kent County Zoning Code. First, § 205-406 provides that:

> The Levy Court may, from time to time, amend, supplement, change or modify, by ordinance, the *number, shape, area or boundaries of the districts* or the *regulations* herein established. Such an amendment may be initiated by resolution of the Levy Court, by motion of the Planning Commission or by petition of any property owner addressed to the Levy Court.

(emphasis added) The Levy Court has independent authority to modify districts, on the one hand, and regulations, on the other. Kent County Code § 205-410 then requires:

> A. The Planning Commission shall hold a public hearing [upon any application for an amendment pursuant to § 205-406], before submitting its report to the Levy Court. At least 30 days before the hearing, the Planning Commission shall send written notice of the hearing to owners of properties adjacent to the proposed

This supplemented already existing notice requirements that obligated the Planning Commission to provide notice, through publication in a newspaper of general circulation, of any proposed "amendments, supplements, changes or modifications . . . with respect to the *number, shape, boundary or area of any district or districts,* or *any regulation of, or within, such district or districts,* or any other provision of *any zoning regulation or regulations . . . .*"[29]

Nothing in the text suggests that these two requirements are mutually exclusive, or that alterations to the "number, shape, boundary or area of . . . districts" might not constitute a "zoning change." Unfortunately, the statute itself provides little guidance as to what regulatory alterations constitute a zoning change. Read broadly, *any* change in the regulation of an existing district might trigger § 4926's burdensome notice requirements. Defendants maintained in their brief that, in the absence of some change to the underlying "Euclidian" zoning of a parcel, a regulatory change implicates only § 4911. That Euclidian/non-Euclidian distinction, however, is nowhere supported in statute or case law.

More importantly, the Kent County Code itself suggests that the Ordinance institutes a zoning change. The Zoning Code defines "zoning" as "[t]he reservation of certain specified areas within a community, County or city for building and structures, or use of land, for certain purposes *with other limitations* such as height, lot coverage and *other stipulated requirements*."[30] A "district" (such as the AC or AR district) is defined as "Any section of Kent County in which the zoning regulations are uniform."[31] The Coastal Zone Overlay Protection District imposed "additional standards and requirements to all properties and areas

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> change and to any neighborhood associations serving the affected area. Notice to the general public of the public hearing before the Commission shall be given by publishing the date, time, place and nature of the hearing at least 15 days before the date, time place and nature of the hearing to be posted conspicuously on the property in accordance with the rules of the Commission.
>
> B. Before approving any proposed change or amendment, the Levy Court shall hold a public hearing thereon, notice of said hearing to be accomplished by publication in a newspaper . . . .

The parties do not dispute that the Planning Commission did not notify affected landowners or their neighbors in the manner proscribed by Kent County Code § 205-410.

[29] 9 *Del. C.* § 4911(b) (emphasis added).

[30] Kent County Code § 205-6 (emphasis added).

[31] *Id.*

located within the overlay district."[32] By imposing these new "stipulated requirements," the County created differences in zoning regulations between AC- and AR-zoned parcels inside and outside of the Overlay and, thus (according to Kent County's own definition) created new districts. As the Coastal Zone Protection Overlay District implemented zoning changes, the County was required to provide landowners with the notice required under 9 *Del. C.* § 4926.

As a last effort, defendants maintain that even if the notice provided by the County was utterly defective, plaintiffs may not object because they had actual notice of the hearing, and all but one of the named plaintiffs actually appeared. Defendants can find little support for their argument in Delaware law. First, defendants analogize to the inquiry notice standard by which a plaintiff will lose the benefit of a toll to the statute of limitations if she was actually aware of the harm she has suffered.[33] But the notice requirements of § 4926 bear greater similarity to those required of administrative agencies involved in notice and comment rulemaking. In the administrative context, a legislative or executive agency must give notice in order to make those subject to regulation aware of what the agency seeks to do, so that action may be taken before a rule is implemented. Inquiry notice, on the other hand, deals with harms that have already occurred. Common sense suggests that these doctrines exist for different reasons, and defendants, having seemingly surveyed every possible jurisdiction for support on other matters, find no authority suggesting that the doctrines share a common heritage.

Second, defendants rely upon "black letter hornbook law" to suggest that a person who receives actual notice of a hearing, or who attends a meeting, lacks standing to challenge a zoning amendment.[34] Once again, however, defendants chose to rely upon the law of New York and Pennsylvania to make this assertion,[35]

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[32] Kent County Code § 205-397.3(B)(2).

[33] *See In re Tyson Foods Consol. S'holders Litig.*, 2007 WL 416132, at *12 (Del. Ch. Feb. 6, 2007).

[34] Answering Br. in Opp'n to Pls.' Mot. for Summ. J. at 17.

[35] Defendants point to 83 Am. Jur. 2d., *Zoning and Planning* § 511, which in turn cites *Sutton v. Bd. of Trustees of Vill. of Endicott*, 122 A.D.2d 506, (N.Y. App. Div. 1986); *Woodside Estates Civic Ass'n, Inc. v. Town of Brookhaven*, 105 A.D.2d 744, (N.Y. App. Div. 1984); *Pittsford Gravel Corp. v. Zoning Bd. of Town of Perinton*, 43 A.D.2d 811, (N.Y. App. Div. 1973); *Fassman v. Skrocki*, 390 A.2d 336 (Pa. Commw. Ct. 1978). Plaintiffs gamely counter with W. C. Crais, III, *Validity and construction of statutory notice requirements prerequisite to adoption or amendment of zoning ordinance or regulation*, 96 A.L.R.2d 449 § 11 (1964) to provide a few cases to the contrary. Neither source is truly a hornbook, and at best they are sources of

while utterly failing to address relevant Delaware precedent. Delaware law provides that zoning ordinances, as derogations of common law property rights, are to be enacted in strict compliance with regulated procedures.[36] Even substantial compliance is simply insufficient.[37] Kent County has no authority to disregard the requirements propounded by the Legislature, particularly an enactment that endows landowners in Kent County with a clear right to receive notice in the manner specified, however inconvenient this may be.[38]

Finally, I note that even were the Court to agree with defendants as to their analogy to inquiry notice or interpretation of "black letter hornbook law," neither party suggests that Helen Lebkuecher was present at the meeting where the

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persuasive authority as to holdings in disparate jurisdictions, not statements of black letter law. Delaware statutory notice requirements should not be reduced to a battle of dueling encyclopedias.

[36] *Carl M. Freeman Assocs., Inc. v. Green*, 447 A.2d 1179 (Del. 1982). *See also Fields v. Kent County,* 2006 WL 245014 (Del. Ch. Feb. 2, 2006); *Comm'rs of the Town of Slaughter Beach v. County Council of Sussex County,* 1983 WL 142509 (Del. Ch. Nov. 16, 1983).

[37] *Carl M. Freeman Assocs., Inc.*, 447 A.2d at 1181.

[38] In the context of legislative or administrative action, notice requirements exist to make certain that a decision-making process is conducted in a fair and informed manner. Where the Legislature has required that notice be given to landowners before a regulatory enactment, it has presumably done so in order to require regulators to face those who shall be burdened (or favored) by a measure. Those who promulgate regulation often may not wish to provide such notice, as it is generally these same constituents who will, in the fullness of time, be asked whether or not the regulators should be returned to a position of power. Notice requirements force those who exercise power to do so only after affirmatively inviting the views of parties deemed by the Legislature to be critical to a decision-making process.

Defendants may find no solace in the fact that all but one of the plaintiffs attended the meeting at which the challenged Ordinance was enacted. It is not enough that each plaintiff had the opportunity to speak. The notice requirements placed a burden upon the County to notify other landholders (who might well have been expected to appear as plaintiffs' allies) of the restrictions that would be placed upon their land, so that they too could express their displeasure, or their support, before the body empowered to decide their fate.

The democracy-forcing function of § 4926 becomes even more evident when considered in conjunction with the uniformity requirement of § 4902. Assuming *arguendo* that all AC-zoned land in Kent County constitutes a single district, then Kent County is free to adopt new regulations to all such land with only the minimal notice requirements of § 4911. But if the County seeks to divide the existing polity by, as here, burdening some AC-zoned landholders to the benefit of others and, thus, depriving the former of the potential political support of the latter, it must execute a rezoning, and in the process notify all those who will belong to the new, and smaller, faction of their proposed position.

Ordinance was approved, or in any other way waived her right to notice. Even if the majority of plaintiffs waived their notice rights, a finding of summary judgment would still be sustained in favor of Helen Lebkuecher.

IV. CONCLUSION

For the reasons explained above, the Memorandum Opinion neither misapplied the law nor failed to consider any relevant argument. Defendants' motion is DENIED.

IT IS SO ORDERED.

Very truly yours,

William B. Chandler III

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