Written Testimony of Russell B. Stevenson, Jr.
On SB 1045
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The law of standing in land use cases in Maryland is almost entirely judicially-created. The Land Use Article says only that persons who are "aggrieved" by a land use decision may petition the Circuit Court for review. The courts have interpreted this to require "special aggrievement,", which has been held to mean essentially that property owners must show that they have suffered some injury to their property rights as a result of a land use decision. With few exceptions, this standard has also been adopted by boards of appeals in the counties. In practice, this means that to begin with a property owner challenging a land use decision must own property adjacent to, or nearby, the land in question. They then must show that they have or will suffer "special aggrievement," the meaning of which is at best vague and ill-defined. The courts have struggled with how to create an easily applied standard, and have so far failed. This leads to extensive litigation in such cases.

There are two principal policies underlying rules of standing. First, they are designed to prevent a waste of judicial and administrative resources resulting from frivolous lawsuits. Second, they are intended to assure that litigants have a legitimate interest in the lawsuit, and that they will therefore represent legitimately and adequately the position they are asserting in the controversy. The current law of standing in Maryland serves neither of those policies well.

As to the first policy, the absence of a clear and easily applied rule leads often numerous hearings before a court or administrative body to determine the standing of the petitioner before a court ever has an opportunity to consider the merits. In one case in Anne Arundel County, for example, the Board of Appeals heard testimony on standing during eight separate meetings. The same problem only repeats itself in the courts, thus wasting rather than conserving judicial resources

Moreover, deep-pocketed developers with large amounts of money at stake often use challenges to standing to wear down citizen complainants, who usually can ill afford the attorneys' fees required to support their case on standing—even though their position on the merits may be meritorious. As a result, citizens interested in assuring that the land use laws are followed are all too often denied their day in court.

As to the second policy, it is important to recognize that land use laws are designed to protect more than property values. They are also intended to protect environmental and aesthetic values. As the US Supreme Court said in *Sierra Club v. Morton,* "Aesthetic and environmental well-being, like economic well-being, are important ingredients of the quality of life in our society, and the fact that particular environmental interests are shared by the many rather than the few does not make them less deserving of legal protection through the judicial process." Unfortunately, however, the existing law of standing does not take these important values into account; instead allowing standing only when there is a demonstration of injury to individual property values. Environmental and aesthetic concerns have been ignored. As a consequence,

citizens who are concerned that a land use change will degrade the environment or the quality of life of the community are generally held to have no standing to challenge it. This bill would allow citizens to challenge land use decisions on the basis that they would have adverse effects on protected environmental and aesthetic values.

This bill would also reverse a decision of our highest court that created a new rule of standing for challenges to land changes made in comprehensive Zoning. In *Anne Arundel County v. Bell* the Court of Appeals, in a four to three decision, held that even a citizen who resided next door to a property whose zoning had been changed by comprehensive zoning legislation, had no standing as a property owner to raise questions about whether the rezoning of the neighboring property was consistent with the law. The only basis for standing, according to that decision was taxpayer standing—which would require a showing that the zoning change would raise property taxes for all taxpayers. As the dissent in that case pointed out, citizens seldom challenge zoning decisions unless they believe that their property values have been harmed in some way, and thus their taxes would not go up, but down. In effect, this decision essentially eliminated all future challenges to comprehensive rezoning decisions. This bill would rectify that error.

Finally, individual citizens usually lack the resource to have their concerns about land use decisions heard in the appropriate tribunal. They often rely on associations of which they are members to represent their interests. Unfortunately, the courts have generally held that associations do not have standing in land use cases, unless they own property that might be adversely affected by the decision, and are therefore not permitted to represent the interests of their members who would have standing. This bill would correct that by allowing associations to have standing to assert the rights of their members, and thus allow citizens to pool together their resources to get their concerns heard.

For these reasons, I respectfully urge you to support this bill.