Testimony by Steven McKay on behalf of Residents Against Landsdale Expansion (RALE) In Opposition to the Proposed Development Rights & Responsibilities Agreement (DRRA), before the Frederick County Planning Commission, on October 23rd, 2013.

Good evening, my name is Steve McKay, I live on Shakespeare Way in Monrovia and I am the president of RALE (Residents Against Landsdale Expansion). I am here before you to oppose the draft Development Rights & Responsibilities Agreement between the County and the developers of the Monrovia Town Center. We have several arguments to present, starting with the duration of this binding contract that will have such a lasting & negative impact on my community.

25 Year DRRA is Bad Public Policy AND Unsupported by Applicant's Proposal

Land use policy is one of the key responsibilities of the Frederick County government. A DRRA that binds the County to the terms of this agreement for 25 years will tie the hands of future County governments for the next quarter century. That is 5 or 6 future County Executives and County Councils, each elected by the public, facing different policy priorities and economic realities. All will be bound by a decision made today. In my view, that is the height of hubris in thinking that your decisions should have such lasting impact, and simply put, it is bad public policy.

But you've heard that argument. You've also heard the argument that DRRAs for 25 years are well beyond the intent of the enabling legislation, a point on which we strongly concur. I could also point to the lack of foundation and evidence for the need for 25 years by simply looking at Urbana. That development has moved forward successfully for 35 years without benefit of a DRRA, let alone one for 25 years. Why do we need it now, what's changed?

I don't expect you to accept those arguments because of your past decisions. So instead, I will point out that the Applicant's own documentation fails to support such a lengthy time period for the DRRA. Before I go there, however, I can't help but point out that Mr. Weinberg in his presentation at the start of these hearings made a statement that "the development will probably take 25 years." (See time mark 1:29 on the FCG TV recording). Now I know that he needs to say that in order to try and justify the proposed DRRA length, but I wonder if he was either a little confused, or if he doesn't agree with his client, or if he simply didn't read the documents as closely as I did.

On page 9 of the Zoning Map Amendment, we read "the Applicant states that the anticipated build out will occur over a fourteen year period beginning in 2014." Further, on page 4 of the APFO LOU, we are told that the TIA represents vehicle trips "by the time of full build-out of the Project and the Off-Site Commercial Properties." Those estimates in the TIA are not projected at 25 years. No, they are projected at the year 2030, a mere 17 years away. Lastly, the APFO LOU was first proposed for a 14 year duration and currently only 18 years. Despite Mr. Weinberg's assertion, we have heard NOT ONE valid reason for a 25 year DRRA. But, even if there is a valid reason for 25 years then the supporting documents should study a consistent time period. If Mr. Weinberg's vague assumption is right, then the TIA results will not be valid, the mitigation measures in the APFO LOU will be insufficient, and, therefore, the terms of the DRRA no longer valid. In other words, either the DRRA needs to be much shorter, or

the documents that support the application need to cover the full 25 years. Right now, with these inconsistencies, you cannot find the DRRA consistent with the Comp Plan because it does not demonstrate the adequacy of the infrastructure demands it creates.

Ambiguity and Inconsistency Regarding "Off-Site Commercial Properties"

When we examined the five key documents associated with the Applicant's zoning and DRRA approvals, we found some glaring inaccuracies and inconsistencies in how the "Off-Site Commercial Properties" are described. More importantly, we find that the description of which of these properties was included in the Traffic Impact Analysis leads to conclusions about the intensity of the development and the adequacy of traffic mitigation measures that are unfounded and unsupported.

To summarize the table in our testimony, I'll first note that page 1 of the TIA specifically states that only the proposed shopping center on the west side of MD 75 was included in the study. Across the documents, the over-riding ambiguity is whether the "Off-Site Commercial Properties" includes only that site, known as the 75-80 parcel (i.e., the drag strip and Wilcom's Inn), or do they also include the Wilcom parcel east of the electric transmission line. The Zoning Map Amendment and the DRRA definitions section seem to agree that only the 75-80 parcel is included, but they reference two different separately-proposed Site Plans – 13-01 and 13-03 – so we're not sure what those documents are talking about. The DRRA Staff Report guiding tonight's deliberations, defines the "Off-Site Commercial Properties" as both sites, and then inaccurately describes them as "adjoining." They are not adjoining – they are separated by MD 75, another plot of land, and the electric transmission line. The APFO LOU can't decide which properties to include: on page 1, it references the properties with a total of 280,000 square feet, which would seem to indicate both parcels; on page 3, it describes the parcel east of MD 75 (which correlates to the Wilcom parcel) as being a "portion" of the "Off-Site Commercial Properties," again indicative of both sties; and then on page 4, the LOU acknowledges that only SP #13-03 was studied in the TIA, whatever Site Plan that is.

Why do we care? Your finding tonight on the consistency of the DRRA with the Comprehensive Plan includes review of the "densities and intensities." As referenced across the documents, including the APFO LOU (page 1), "intensity" is a reference to generated traffic from the development. Because the TIA did not study the Wilcom parcel, all associated conclusions and mitigation measures for the "Off-Site Commercial Properties" that would purport to cover both sites are unfounded and invalid. Thus, the APFO LOU (which purports to include the Wilcom parcel) and, by extension, the DRRA are in error and do not accurately reflect the intensity of development. As such, <u>you should not offer a finding of consistency until these issues are clarified and corrected</u>. The Applicant cannot have his cake and eat it too. If this DRRA is to cover both commercial properties, then the impacts from both properties must be studied, and the mitigation measures for both properties included in the LOU.

Source Document	***Citation***	***Description***	***Described Location***	***Described Size***	***Comment***
Traffic Impact Analysis	p. 1	Shopping center	Only on the west side of MD 75	162,000 sq. ft.	This is the only portion of the Off-Site Commercial Properties

					studied in the TIA
Zoning Map Amendment	p. 2	Neighborhood shopping center	Site of the drag strip	n/a	Reference to proposed Site Plan SP #13-01
DRRA Staff Report	p. 2	"Off-Site Commercial Properties" described as two "adjoining" properties	"75-80 parcel" – northwest corner of 75/80; "Wilcom parcel" – east side of the electric transmission line	"75-80 parcel" – 15.4 acres w/ 143,500 sq. ft commercial ; "Wilcom parcel" – 16.9 acres	The two properties are clearly NOT adjoining, as they are separated by MD 75, an intervening parcel, and the electric transmission line. Referenced active site plan for 75-80 parcel as SP #13-03, NOT SP #13-01.
Draft DRRA	p. 3	Definition of "Off-Site Commercial Properties"	Northwest quadrant of 75/80 intersection	n/a	Identified in SP #13-03.
APFO LOU	p. 1	"Off-Site Commercial Properties"	n/a	280,000 sq. ft.	Discussion of commercial properties reportedly included in the TIA
APFO LOU	p. 3	Reference to "portion of the 'Off-Site Commercial Properties'"	East side of MD 75	143,500 sq. ft.	Discussion of sewerage capacity extended to east side of PUD, to include "portion" of the Off-Site Commercial Properties, correlates to "Wilcom parcel"
APFO LOU	p. 4	Off-Site Commercial Properties associated with Site Plan #13-03	n/a	n/a	Reference to TIA addressed vehicle trips associated with SP #13-03

Additional Issues with the Traffic Impact Analysis

1. **Failure to Include the Proposed High School**. The traffic impact of the proposed high school site was not factored into the TIA. I imagine the reason is that the Applicant views that analysis as the County's or the Board of Education's responsibility. Unfortunately, after we spoke on this matter with several people connected with the Board of Education, it became apparent that such an analysis is very unlikely to happen. The BOE expects the developer causing the need for the school site to assess the traffic impact. With both sides pointing at the other, our expectation is that NO traffic analysis will be performed, NO effective mitigation measures will be taken, and the residents of Monrovia will be left with the mess. With the prospect of two schools – Green Valley Elementary and the mythical high school – on opposite sides of the same intersection, the traffic impact on the Community will be severe, to say the least. One only needs to look at the long grid-locked traffic on MD 80 through Urbana in the morning and afternoon, to understand what MD 80 in Monrovia will look like from these school sites to MD 75 to the west, and to the Green Valley shopping center to the east. The time to assess and mitigate these issues is now.

2. **Failure to Assess the Impact on Weller Road**. As discussed in our earlier testimony, the TIA failed to include any analysis for Weller Road. The Site Concept Plan clearly shows the East-West Connector exiting onto Weller Road, and yet the TIA was conspicuously silent in describing that feature. As we noted previously, Weller Road is a small, cramped road that connects across MD 75, Lynn Burke, and Bartholows. It's unlined most of the way because it isn't too wide, barely enough for two cars to get by each other. What new residents to that community will quickly learn is that when you want to get from Monrovia Town Center to Mt. Airy, taking Weller Rd to Lynn Burke is going to be the fastest & most direct path. And that's a big problem. The road isn't suited for a major development to use it for any purpose whatsoever. It wasn't included in the TIA, and there is not one mitigation measure planned. To us, and to every resident of Weller Road, this is a glaring and material omission in this application. The Applicant needs to go back to the drawing board on this issue.

3. **Failure to Include the Hindu SBA Temple.** In the TIA, three churches are identified as approved background traffic source – Evangelical Lutheran Church, Hebron Christian Church, and Pleasant Grove Church. On October 10, 2012, the Planning Commission approved the Hindu SBA Temple, to be located south of the intersection of MD 80 and Ed McClain Rd. Clearly, this development will have a significant traffic impact on the roads surrounding the proposed development and yet it was missing from the TIA. The church is envisioned to serve the entire Hindu community across the Maryland, Virginia, and DC region – and yet, the TIA did not factor it in. I imagine the answer is that the Planning Commission allowed the Hindu SBA Temple to be approved using a previously produced TIA for the previously-proposed Evangelical Lutheran Church. That was an error then, and it is an error now. The two site concepts are significantly different and warrant independent traffic impact studies. The failure to do so then, is now being compounded as those unjustified traffic estimates are now being used in successive traffic studies by newer developments, including the proposed one. When data has not been collected to support the actual approved site use, then the measures specified to mitigate the deficiencies identified by the invalid data, are equally invalid. This error should not continue to be propagated forward with each new development proposal. The TIA should be redone to reflect an accurate picture of the approved developments surrounding the Applicant's proposal.

4. **Background Traffic Growth is Under-Estimated**. On page 41 of the TIA, the County directed the applicant to assume a 3% background traffic growth rate for MD 75 and 2% for MD 80. This is consistent with the State's recommendation to use 2-3% growth rates. On page 2 of the TIA, however, the Applicant's contractor stated that they used only a 1% growth rate. This contravenes the County's reported guidance, as well as the State's recommended guidance. As such, it under represents traffic volumes, leading to smaller than required mitigation measures, and an inadequate APFO LOU.

The APFO LOU Represents Inadequate Public Facilities – and as such is not consistent with the Comprehensive Plan or current zoning ordinance

1. **Failure to Provide Real Plans & Contribution Toward MD 75 Project.** Mister Chairman, back on January 16th, you said "…until we can fix the situation on Route 75 going north it's going to exasperate an already pretty bad problem." I couldn't agree with you more. As I discussed in our earlier testimony the capacity of MD 75 to handle the large increase in traffic that will be generated by this development raises serious safety concerns. We cannot be clearer on this point – the road will not be safe. Between the long, hilly, winding portion south of MD 80 with its many blind curves and hidden driveways, to the tortuous path before the railroad overpass north toward I 70, the road is not designed for such a large influx of vehicle traffic.

   The County agrees with this assessment. We need only examine their pronouncements in the Annual Transportation Priorities Review and the Highway Needs Inventory. The County has specifically correlated the need to improve the roadway because of the developments being built here. The County needs $262,000,000 to reconstruct and realign the road with unknown more millions to expand it into a 4-lane highway. Clearly, the roadway is not adequate to support this development.

   After decades of being unable to obtain State funding to fix the roadway, the County now appears to be embarking on the risky strategy of (1) promoting development, (2) having developers contribute toward a "public-private" fund, and (3) seeing what happens next. Personally, we view this public-private partnership as a big game of chicken. The County will allow the development, collect a fraction of the needed funds, create a far more treacherous situation on the road – and then dare the State not to fix it.

   All you have to do is look at how much is being collected in the MD 75 fund. This Applicant will contribute $7,400,801 toward the MD 75 fund. Landsdale contributed a little over $3,000,000 toward unspecified regional road improvements, a portion of which we can assume will go toward MD 75. The Oakdale-Linganore PUD – the largest development in this part of the County is only contributing about $1,000,000. So that's no more than $11,400,000 or 4% of the funds needed just for the realignment/reconstruction project. Where will the remaining funds come from? How much more development will be needed to make a more meaningful contribution to the fund? How much more dramatically unsafe will the road become before those goals are met? We don't know. The County isn't saying. There is no identifiable plan with a real budgeted timeline to address these issues on MD 75.

   That is the backdrop to addressing the criterion in the zoning ordinance – that "the transportation system is or will be made adequate …." This DRRA and the accompanying APFO LOU are supposed to be the means by which the transportation deficiencies are made whole. For MD 75, there is meaningful contribution toward the end goal of mitigating the safety issues on this road. Further, the County has no demonstrated, budgeted, and planned timeline for

fixing the road. All the hand-waving about commercial development near I-70 doesn't change that. In short, there is no evidence supporting a claim that the transportation system "will be" made adequate, therefore, you should find NOT in favor of this DRRA.

2. **Insufficient School Contributions.** As we have argued tonight, your finding of consistency of this DRRA with the Comp Plan must include an assessment that deficiencies in the infrastructure required to support the development will be made adequate. In the case of the required school capacity, this is far from true. The following summarizes the costs of school capacity associated with the students generated by the proposed development. We shall use the estimated capacities for currently planned schools of each type, along with estimated costs of $30M for an elementary school, $50M for a middle school, and $80M for a high school.

    - Elementary School: 362 students = ~50% of a new ES = ~$15,000,000
    - Middle School: 216 students = ~25% of a new MS = ~$12,500,000
    - High School: 260 students = ~16% of a new HS = ~$12,800,000

    Thus, we can see that the projected students from the development represent an approximate cost in new school capacity of $40,300,000. We recognize that there are simplifications in this approach, but we would also stipulate that this is a relatively low bar for the Applicant since it ignores the operating costs of the new school capacity needed to support the development.

    Against that requirement to facilitate the provision of new school capacity to service the increased demands from the development, the Applicant is supposed to pay $20,600,000 in School Impact Fees and $14,300,000 in School Mitigation Fees, for a total of $34,900,000. The Applicant's payments will be short $5,400,000 against the cost of the required capacity. There is nothing in this documentation that specifies how ALL of the needed school capacity will be funded. Thus, in addition to having no plan to actually build the required additional school capacity, we find that the Developer's payments will come up short of the need.

3. **Threatened Elimination of the Impact Fee Erodes the Adequacy of Future School Capacity and Invalidates the Terms and Intent of the DRRA.** Not only is the amount of school funding insufficient for the need, but the quality of the funding has become highly suspect given recent plans presented by the BoCC. In their 2014 Legislative Priorities package, the BoCC has stipulated their intent to abolish the Impact Fees – including the School Impact Fee – and to change it to a Transfer Tax. Such a change would eliminate 60% of the Developer's required school funding as stipulated under the APFO LOU. Instead, the costs will be borne by County residents as new fees on the purchase and sale of their homes. Doing so will further exaggerate the disconnect between the build out of the development and the provision of new school capacity. In fact, there will be no

relationship whatsoever. The homes will come, the transfer taxes will be paid, and there will be no correlation between the two.

The promise of funds provided to mitigate and offset infrastructure needs factor very highly in both the Applicant and the County's presentation of this DRRA. The Applicant's supposed contribution of $20.6M in Impact Fees is the very first line in their list of fees depicted on the postcard sent out to the community and attached herein. For the County to facilitate the proposal of this DRRA and APFO LOU on the one hand, while at the same time actively pursuing legislation that will eliminate a prominently advertised Applicant contribution on the other, represents a bad faith negotiation with this Commission, and bad faith with the public. The County is effectively misrepresenting the Applicant's future contributions by their actions to eliminate the Impact Fee. The Planning Commission should take into account this intent when determining whether this DRRA is consistent with the provisions of the Comp Plan, and will really support the general welfare of the community over the next 25 years.

4. **Inconsistent Documentation on Party Responsible for Acquiring Right of Way for Relocated MD 75.** The relocation of MD 75 south of MD 80, across the farmland to a point ½ mile along the current MD 75, is the critical mitigation measure for dealing with the traffic failures at the two MD 75/80 intersections. All aspects of this requirement should be clearly stipulated, planned, and funded. The DRRA and APFO LOU need to get this right. This is why it is very disconcerting that a basic issue – the party responsible for acquiring the right of way – is written ambiguously in the document. Specifically, on page 5 of the LOU, it states very clearly that "the County is responsible for right-of-way acquisition and its associated costs…" On the very next page, however, in Section B.1., we find the following:

> "In the event that some of the public infrastructure improvements, including items A.1 [MD 75 Relocated] …, required by this LOU to be made by Developer will require acquisition of public right-of-way from third party property owners, Developer shall exercise commercially reasonable efforts to secure such right-of-way without the assistance of the County."

There can be no ambiguity on this point, and currently, the LOU is not only ambiguous but the text is in direct conflict with itself on two adjoining pages.

5. **Failure to Identify Alternative Mitigation if MD 75 Relocation Right-of-Way Not Acquired.** As noted above, the relocation of MD 75 south of MD 80 is a critical mitigation measure. In its letter of September 18, 2013, the SHA acknowledged that this is the acceptable mitigation for the east and west intersections of MD 80 and MD 75. The APFO LOU, however, allows for the scenario in which the Applicant fails to acquire the right-of-way. In that scenario, the Applicant will then pay a fee in-lieu of actually constructing the MD 75 relocation. What then? In that scenario, there will be no acceptable mitigation

defined for the traffic study failures at the two intersections of MD 75 and MD 80. There is no defined plan for alternative mitigation measures. Considering that this LOU is proposed to span 18 years, in association with a DRRA spanning a proposed 25 years, these scenarios should be defined, studied, and properly mitigated – and then codified in these documents. Failure to do so represents a material deficiency in the documents and you should not conclude with a positive finding until this issue is resolved.

6. **Inconsistency Between the DRRA Duration and the Mitigation Measures in the APFO LOU.** The APFO LOU defines certain mitigation measures to be implemented late in the build-out of the proposed development. Specifically, two important mitigation measures – (1) MD 80 & Ed McClain lane construct and (2) MD 80 and Ijamsville Rd/Big Woods Rd new through lane – are stipulated as being "guaranteed (SHA permitted) prior to recordation of the 1400th residential lot and shall be open to traffic prior to issuance of the 1450th building permit for the Project." There's only one catch – the APFO LOU that documents these requirements is proposed to expire in 18 years, while the DRRA is proposed to last 25 years. We are told that the justification for this excessive duration is because it may take that long to build out the development (despite the Applicant's assertions to the contrary). So what happens if the County is right and it takes that long? The LOU – along with the requirement for these important mitigation measures – may well expire prior to the recordation of the 1400th residential lot. It may expire before the recordation of the 1450th building permit. There is no alternative fee in-lieu scenario specified for this eventuality. There is nothing in this document that provides for this mitigation if the County is right and the build out does take the full 25 years. While we do not concur with that scenario, we allow it as possible and, therefore, stipulate that the DRRA and LOU are inadequate in providing effective mitigation through the entire requested duration of the DRRA.

7. **Failure to Justify Extension of APFO LOU from 14 to 18 Years.** Section 1-20-8(D)(1) of the ordinance limits the duration of APFO approval for a development of this size to 14 years. In fact, in their earlier draft of the APFO LOU submitted in August, the Applicant held to this limit. In the current proposed LOU, however, the Applicant has requested a duration of 18 years. Section 1-20-8(D)(4) allows for such a longer duration, however it stipulates a requirement for the Developer to justify the extended duration. We see no justification for extending the duration of the APFO LOU in any of the documents made available tonight. Before this LOU is approved, the Developer should provide such justification for public review.

Closing Remarks

In closing, I would point out that the Applicant and the County are embarking on an excessively long contractual relationship. This quarter century contract will effectively tie the hands of future voters and County governments for decades to come. We strongly disagree with this development approach. We strongly disagree with

binding agreements lasting this long for these development applications. However, if the County is bound and determined to do business this way, the least they can do is get it right. We have documented numerous material issues and inadequacies with the TIA, APFO LOU, and the DRRA. In the areas of transportation and schools, these documents fail to demonstrate how these elements of the infrastructure will be made adequate to support the needs generated by the proposed development. Paying a check does NOT equal building a road. Paying a check does NOT equal building a school. Unless and until the County provides supporting documentation on when, how, and who will be responsible for mitigating all of the infrastructure made inadequate by the proposed development, then this DRRA CANNOT be found consistent with the Comprehensive Plan. That finding of consistency MUST be more than a map check. You must assess the adequacy of the infrastructure to support the proposed development, and these documents before you must present a clear mitigation plan – not just a payment schedule – for correcting these inadequacies. The documentation does not do so. The County presents no budgeted, time-lined plan for doing so, therefore, you should NOT come to a finding of consistency for this DRRA.