

**Testimony by Steven McKay on behalf of Residents Against Landsdale Expansion (RALE) In Opposition to the Proposed Rezoning of Monrovia Town Center, before the Frederick County Planning Commission, on October 23<sup>rd</sup>, 2013**

Good evening, my name is Steve McKay, I live on Shakespeare Way in Monrovia, and I am the President of a community action group called RALE. I am here before you tonight in opposition to case # R-12-02, the proposed rezoning for the Monrovia Town Center PUD. There has been much said about this development in the newspapers and from here at Winchester Hall over the preceding months. We community members that have been vocal opponents to this development have been ridiculed by a member of this very Commission, not once, but on many occasions. We have been labeled “NIMBYs”, “whiners”, and worse. We have had our property stolen and vandalized and we have experienced attempts at intimidation by those associated with the applicant. But throughout these many months leading to this evening’s hearing, we have also been continually buoyed by the outpouring of support from the Community embodying their opposition to this development. Members of that Community are here before you tonight. They sit behind me, some perhaps waiting outside this room for their chance to speak, and others hurrying here from work or home. Tonight, we get to finally set aside the rhetoric and the rancor and argue objective facts about this proposal and its impact on this Community.

I recognize that this is not the first time that the concept of Monrovia Town Center has been proposed. Certainly, we have been admonished that the Monrovia Town Center has “been on the books for years” and that we should just be quiet and accept. I contend that the fact that the development was previously proposed does not change the fact that it was also previously opposed. Simply stating that a development was previously planned is only half the argument, and a superficial one at that. There have been and remain concerns, and outright opposition, from the Community about this development.

But let’s review a little further the prior concepts for Monrovia Town Center. The Applicant provided a narrative on aspects of this prior history when he applied for the change in land use classification under the County’s abbreviated 2011/2012 Comprehensive Plan review. The Applicant depicted quite a story dating from 1959 all the way through 2010, including the prior approvals by this very Commission in 2006 and 2008. But the Applicant left out one pesky little detail in that narrative. When this concept was previously approved, it was for something entirely different from the one before you now. In 2006, Monrovia Town Center was approved as an age-restricted community – NOT the all-age community proposed today. That distinction poses numerous significant, material differences such that any prior consideration, community meetings, or discussions from that time frame are effectively moot in terms of tonight’s deliberation.

That said, the approval was certainly NOT without opposition and community concern. While there was support for the concept of a seniors-only community, there was also much concern about traffic impacts, water issues, and what could happen if despite the age restriction, school age children eventually moved into the Community. That is the real backdrop to tonight’s decision. Not the one that the County would have us believe – that Monrovia Town Center has long been planned and newcomers to Frederick

County should have done better research before speaking out against it now. No. The former concepts for Monrovia Town Center differ substantially from what you are reviewing tonight, and the opposition and concern from this Community is real, is valid, and must be considered when you make your decision.

### **Application Fails Requirement as a Contiguous Area**

Now, as you evaluate your decision on whether to approve or disapprove this zoning request, you do so under the criteria delineated in Section 1-19-10.500.3 of the Zoning Ordinance for Planned Development Districts, of which, a PUD is an example. In the first paragraph of that section of the ordinance, you are also instructed to adhere to section 1-19-3.110.4 for Zoning Map Amendments. After reading this second section, I'm a bit confused about why you are even here entertaining this proposal.

Specifically, under section 110.2(A), the code requires that "each individual zoning map amendment or floating zone reclassification application must cover a contiguous area." There is no ambiguity here. This is a straightforward reading of the ordinance and that language establishes a specific requirement that is NOT met by this application. As we know from the Applicant's presentation and previously submitted concept diagrams, the proposed PUD very clearly does NOT consist of a contiguous area. Rather, the property is bisected by MD 75 and the public utility right-of-way into three distinct sections. In our letter to the Zoning Administrator, we discussed the semantics of the word contiguous and how it is used in the ordinance. The conclusion is very clear to me, however, that absent any qualifying language in this section – and there is none – you must deny the application in its current form as being inconsistent with this requirement under the ordinance.

Frankly, that ought to be enough for us to call it a night. These are your regulations, not mine, and the application fails the requirement under the regulations – end of story. But, I suspect that I'll need to keep talking a bit to convince you further, so let's press onward. As we read further in sections 500.3 and 110.4, we find a variety of criteria that must be met in order for you to approve this zoning application. Let's walk through some of those.

### **Lack of Consistency with Comprehensive Plan**

Sections 500.3(A) and 110.4(A)(1) state that you will review the proposal to determine whether it is consistent with the Comprehensive Plan. Now the question is – what does it mean to be consistent with the Comp Plan? Some would say that it should only mean that the proposal is consistent with the approved land use classification – in other words, the map. However, when I look at a Comp Plan of several hundred pages, derived over two years of study and consideration, representing a thorough and active engagement with the public, and approved by the prior Board of County Commissioners in 2010, I view things differently.

Consistency with the Comprehensive Plan should mean more than simply a map check. If not, then what is the point of a study that laid out growth plans and policies which previously led to the down-zoning of the proposed property. That down-zoning was done for a reason – the proposed growth would get ahead of the infrastructure required to support it, and that hasn't changed now.

We're told that developments have to be this dense in order to be consistent with Plan Maryland and the State's vision of smart growth that has been incorporated into the Comp Plan. The fallacy there is that the State's smart growth policies are predicated on putting development where there is adequate infrastructure. This development is being proposed at a site that very clearly does NOT have adequate infrastructure, and I need only point to what the County itself has stated about how much it will cost to fix MD 75 BECAUSE of this development. I'll talk more about that issue shortly.

### **Inadequacy of Existing Infrastructure**

Sections 500.3(E) and 110.4(A)(3) address the adequacy of existing and future infrastructure systems. I want to point specifically to the PUD criterion since it elaborates this point more fully. That criterion states:

“The transportation system is or WILL BE made adequate to serve the proposed development in addition to existing uses in the area.”

That phrase “will be” is very definitive. It doesn't say “we hope” or “we'll try” or “if we collect enough money we can” or “we'll ask the state” ... it says “will be” and that implies a very definitive plan with respect to the proposed zoning decision. Hold on to that idea for a moment.

1) **MD 75.** So, what is the transportation system? I would argue that for a development straddling MD 75, that roadway must be a primary – if not the primary – component of the transportation system. I know that the Applicant will build many roads interior to the development and he will make improvements under the APFO LOU to many exterior roads and intersections, and provide funds to various road improvement accounts, including for MD 75. But putting money in a bank account – particularly when it is only a fraction of the need – is not the same as providing for a definitive, budgeted solution to the problems that will be created on MD 75 with this development.

I wrote to you about my many grave concerns about the ability of MD 75 to accommodate the growth in traffic from this development, particularly when coupled with the already approved Landsdale development. The road will NOT be safe. I asked you each to drive the road from Hyattstown to New Market and then to really reflect on what it will mean to add these many new drivers to the road. Did any of you accept my challenge? Did you notice the winding hilly nature of the road with its blind curves and hidden entrances. Did you imagine how hard it will be for people to pull out of their driveways with all the new traffic? Did you go north from MD 80 and drive down the long hill. That hill ices over in the winter, and at the bottom you'll see the cross where two men were killed less than a year ago by an out of control truck? Did you envision those high school kids trying to rush to school at 6am while navigating not one, but three sharp curves getting past the railroad bridge ... if they can get past it, that is, considering how often trucks get stuck there! Frankly, if you didn't do these things, given the magnitude of the change proposed before you tonight, then you failed in your responsibilities regardless of your decision. When you're voting on something that will forever alter the fabric of a community, you better darn well come visit and see what kind of a mess you'll create!

You don't have to take my word for it that MD 75 will need to be fixed to support this development. The County thinks so too! In their 2013 Annual Transportation Priorities Review, the Staff report states the need to advance the "priority of MD75, resulting from the increase in zoning density and development plans in that corridor." In their 2013 Recommended Revisions to the State Highway Needs Inventory, regarding MD 75, it states that "Frederick County's traffic forecasts show need for a 4 lane reconstruct to accommodate increased traffic volume." Ron Burns, the County's senior traffic engineer, was quoted on March 9, 2013 in the Frederick Newpost stating – "I think it's time that we communicated to the SHA that 75 needs to start now so that we can get it built in the next 10 years or so, concurrent with the development." That's a great sentiment – I just wish it were happening, because it isn't, and there is nothing in this application that will make it happen. The Applicant will put some money in the kitty, but the MD 75 realignment and reconstruction is estimated to cost \$262 million, and that doesn't include the 4-lane expansion. The State has repeatedly told Frederick County that the funds aren't there for this project. That's why it was down-zoned in 2010!

If you approve this development, you'll be more than doubling the traffic on that road, and you'll be doing so without any concrete plan to fix the glaring safety issues that you will be creating. Accidents will happen. People will be hurt and some will die.

Now recall the ordinance, the requirement is that the transportation system is or WILL BE made adequate. If you approve this rezoning, you will be ignoring this requirement. Despite hand-waving and promises of a "public-private partnership" to fund MD 75, there is no concrete, budgeted, time-lined plan to make it happen. If you approve this application, you must do so accepting that all these new people will drive the road "as is" with respect to the major safety issues north and south of the development. That will be the height of irresponsibility and an abject failure of responsible planning – and that will be on you.

2) **Weller Road.** Now let's look at another road issue – Weller Road. You probably don't even know where it is – a lot of people don't. It's a small, cramped road that connects across MD 75, Lynn Burke, and Bartholows. It's a great little short cut. One of those hidden little roads all around the County, usually well off the beaten track. It's unlined most of the way because it isn't too wide, barely enough for two cars to get by each other. This proposal includes an access to Weller Rd on the northeast side of the development. 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. There is not one mitigation measure planned for Weller Road - it wasn't even considered in the Traffic Impact Analysis! To me, and to every resident of Weller Road, this is a glaring and material omission in this application. The Applicant and the County need to go back to the drawing board on this issue.

To close on this aspect of my testimony, I'd like to quote a few people:

- 1) In a May 24, 2013 article in the Frederick Newpost, Commissioner Paul Smith was quoted that “the roads need to lead the way in whatever planning you do...”
- 2) In that same article, Mr. Jim Gugel said “You want to have your development be in line with the infrastructure to support it.”
- 3) Back during the abbreviated Comp Plan review in a January 19, 2012 FNP article, “[Commissioner] Young said it is important to note that before any development is approved in the future, the county will ensure the proper infrastructure – including schools and roads – is in place.” Let’s reiterate that one – BEFORE any development is approved, the schools and roads will be “IN PLACE.”
- 4) Similarly, in an April 18, 2012 article, “[Commissioner Young] said the commissioners are committed to making sure the proper infrastructure is in place BEFORE any new construction begins.”

Now, it’s really easy to say things that sound like good planning. It’s really easy to say things that people want to hear – particularly during a public hearing when you’re trying to convince them. But right here tonight, is where the rubber meets the road. This is where the County either lives up to those laudable thoughts – those promises to the people – or ignores them as simple rhetoric. If you approve this application, in the face of these real issues on these roads, despite the definitive requirement in the ordinance, then you will be telling the citizens of Frederick County that those were just nice words meant to appease some people at the time. No matter how cynical we are as a society, that is just as wrong now as it ever has been.

### **Overwhelming our School System**

Sections 500.3 (J) and 110.4 (A)(2) address the availability and adequacy of public facilities, including schools. Specifically, Section 500.3 (J) states that

“Planned developments shall be served adequately by public facilities.... Additionally, increased demand for public facilities ... created by the proposed development ... shall be evaluated as adequate or to be made adequate within established county standards.”

I’ll focus my discussion on schools for the time being and we’ll see whether the schools will be made adequate to support this development.

For that, I’ll focus on Green Valley Elementary School. It’s right across the street from the proposed development. Even worse, it’s right across the street from the proposed mythical high school – won’t that be a mess! It’s an old school using an open design that was in favor decades ago. I can tell you that each of my children that attended the school have had issues concentrating and hearing when noise from the adjoining teaching spaces becomes too loud. During afternoon pickup, cars currently line the entire parking lot, and loop out almost completely to the bus lanes under the new pickup policy. Only a few more cars added to that line will over-flow into the bus lane and create a grid-locked situation. And that’s for a school at 82% of supposed state rated capacity.

When we look at the number of elementary school students that Monrovia Town Center will add to Green Valley Elementary, on top of those projected from Landsdale, an entirely new elementary school will be needed in Monrovia. Both the Applicant and the Landsdale developer are quick to cite the piece of land provided by Landsdale to serve as a new elementary school site. However, there is just one problem with that view. In their presentation to the BOE on May 22, 2013 for the Educational Facilities Master Plan, the County projected a need for four new elementary schools in the Linganore, New Market, and Monrovia region. However, only one new elementary school is currently planned and budgeted. To make matters worse, that new elementary school – the East County Elementary School – will not seat a single student until at least eight years from now. There are no budgeted, time-lined, or planned schools to fulfill the remaining need.

Further, when that new elementary school finally comes along, we don't know where it will be located – it may be at Landsdale or it may be in the Linganore area. With all of the projected concurrent development, the needs are simply too great to predict where that new school will be. We don't know, the County doesn't know, the BOE doesn't know – so certainly, the developers don't, either.

So what of Green Valley Elementary, the children of Monrovia, and all of the students that will begin to populate Landsdale and the proposed new development? Where will they go to school? How many times will they be redistricted? How many unsafe & unsecure portables will they be crammed into? There are no answers to these questions in this zoning application, and there are no answers from either the County or the BOE.

The problem is no better at the middle school level. Windsor Knolls Middle School is at its designed capacity. The BOE has stated that there are no plans to make it larger. There are also no plans, either budgeted or envisioned to add another middle school in this part of the county. Even after Urbana Middle is expanded, this part of the County is projected to be 108% of state rated capacity. There are no options put forth by either the county or the BOE to adequately deal with the 220 projected new middle school students from the proposed development.

The developer will pay some of the school costs but they won't pay for all of the need generated by this development. Further, the County is currently advocating changes to the Impact Fees that will dramatically impact how – and whether – the majority of these funds will be collected. I'll discuss that in the next portion of this hearing. What we need to review now is whether there are any plans to make adequate the public facilities required to support this development. As I've shown above, the answer to that question is no and, as such, you cannot approve the rezoning request based on these requirements in the ordinance.

### **Lack of Compatibility With Existing and Proposed Development**

Sections 500.3 (C) and 100.4 (A)(4) dictate that the development be compatible with the existing community, or that “mitigation of the differences” are implemented. Frankly, I have a very difficult time seriously trying to address these approval criteria given the magnitude of change that the proposed development will have on the surrounding community. Monrovia is a town of primarily 1-acre lots with modest homes on well & septic. The proposed development will destroy our agricultural surroundings,

and expand our community 150%, with dwelling densities as high as 9 homes per acre. Simply put, there are no measures that will mitigate the drastic changes that this development will impose on our community. A tree line and a setback is a joke. Homeowners that currently look out over scenic fields and valleys will instead look out over townhomes, fences, and houses stacked like cordwood.

On page 12 of their staff report on the zoning amendment, the County suggests that “the applicant has the opportunity in this project to incorporate some of the existing historic farmstead or building groups located on the site of the proposed PUD and this way could ease the transition from largely vacant acreage to vital neighborhoods.” That was really the only suggested measure to help mitigate the dramatic differences between the proposed development and the surrounding community. Sadly, in September, the Applicant chose to demolish the primary buildings that the staff report was referring to. So much for that mitigation option.

### **Lack of Information on Required Natural Features Documentation**

Section 500.3 (H) dictates requirements for incorporating the existing natural features into the development. On page 12 of their staff report on the zoning amendment, the County states that “a previously approved Forest Stand Delineation associated with the prior PUD rezoning effort on this site has expired and must be updated and submitted prior to approval of this application.” We have seen no evidence of the Applicant meeting this requirement and, therefore, the zoning amendment should not be approved.

### **Failure to Hold the Required Neighborhood Meeting**

Last, but certainly not least, I will now look at another requirement under the zoning ordinance. Specifically, Section 500.4(B) stipulates the following requirement:

*“Neighborhood Meeting.* Prior to submitting a Phase I application the applicant shall hold a neighborhood meeting. The meeting will provide an opportunity to identify impacts that the project may have on the neighborhood surrounding the proposed project.”

That required neighborhood meeting did NOT happen. The Applicant has described the difficult time that he had notifying members of the community since we have no homeowners associations. When it was all said and done, he described a meeting that he held at his bar – Wilcom’s Inn – with a couple people. That is NOT a neighborhood meeting – that is a Tuesday night at Wilcom’s Inn!

The ordinance does not say that the Applicant shall “try to have a meeting” and it does not provide excuses for a failure to hold such meeting. It states clearly and unambiguously that the Applicant shall hold a neighborhood meeting. Moreover, it shall be held prior to submitting the application.

Throughout RALE’s efforts to educate the community on this development, time and time again we encountered people who had no idea what was happening. Of the few people that were aware of Monrovia Town Center, most had no idea that it had changed to an all-age development proposal. The state of awareness within our neighborhood about this development and its impacts was effectively non-existent. That is directly

correlated to the Applicant's failure to make even the most minimal effort at holding the neighborhood meeting required under the ordinance.

Over the last few months, well after submitting his application and well after our own efforts to educate the community, the Applicant has demonstrated ample ability to spread his message. His billboard trucks and his recent postcard mailing are prime examples. Given this recent ability to reach the community, his failure to meet this requirement under the ordinance is even more glaring. He elected not to take many of the simple measures that were available to him to fulfill his requirement under the ordinance – there was no note through the school system, no signs, no postcards ... nothing but silence and a thoroughly surprised community. The Applicant should not be rewarded for his failure to abide by the zoning ordinance on this matter.

### **Closing Remarks**

In closing, I want to recount something written by a local farmer a few years ago that really captures the way that many people in the Community feel. The matter that the farmer was speaking to was somewhat different than tonight, but bear with me. I quote – “in summary, I have a strong desire and so do my children, to continue farming in Montgomery County. We are in the process of sub-dividing several of our properties in order to pay for them and would much rather have the opportunity to preserve them for an agricultural use. We really want to preserve our ground rather than having to sub-divide anymore. I ask that you consider some type of funding from the County to help support our vision of keeping agriculture strong in Montgomery County.” – end quote. That farmer was the Applicant, Mr. Roy Stanley, speaking in 2010. It was a very good statement. I just wish he felt the same about agriculture in Monrovia as he did in Montgomery County. Thank you.