Oral Testimony by Steven McKay on behalf of Residents Against Landsdale Expansion (RALE) In Opposition to the Proposed Rezoning of Monrovia Town Center, before the Board of County Commissioners for Frederick County, on or about April 8, 2014

My name is Steve McKay, I live on Shakespeare Way in Monrovia, and I am the president of RALE. The proposal is smaller than before but will still leave a huge imprint on this community. And yes, despite Mr. Weinberg's charts – Monrovia is a community. We have proven that through our attendance at all of these hearings and we will not tolerate the Applicant's attempts to minimize our voices or our concerns.

You know – 55 year olds still drive a heck of a lot. Sadly, I'll be 55 in a few short years, and I know that I will be driving just as much then as I do now. The change to the development proposal limiting half the development to age-restricted residences will NOT resolve the acute safety and traffic concerns that have been voiced so clearly and so sincerely in this hearing room again, and again, and again! If you approve this rezoning request, I am afraid that there is simply no good resolution to the problems on MD 75. On the one hand, if nothing is done, you will be individually responsible for greatly increasing the risk of accidents on that road. On the other hand, if by some miracle, the County is able to secure the hundreds of millions of OUR TAX DOLLARS to realign and widen the road, then each and every one of the 200 homeowners will see their property rights diminished, their land taken, and their lives impacted.

Weller Road is still an issue. Even without the direct access, the development will still generate unmitigated traffic issues on that marginal strip of asphalt. Plus, Staff continues to insist on direct access to Weller in one form or another! Ed McLain Road is also still an issue. You won't be able to stop people from either Landsdale or this development from going north on Ed McLain, and there has been NOTHING proposed to inhibit traffic coming south on that road to enter either development. Ed McLain is no better a road than Weller – and neither have been addressed yet.

At the Planning Commission hearings a few weeks ago, Commissioner Young again bent the truth a bit. He described asking me how many homes I would accept and then went on to say that I didn't answer him. The truth is – I did answer him, he just didn't like my answer. About a hundred people on the cc: list of that email knows I answered him. My response is submitted for the record – just to jog his memory. But that's ok – here's an answer – zero.

Until the BoCC can document when all of the school capacity required by this development will be available … zero.

Until the BoCC can explain how this development is in any way consistent with the surrounding community … zero.

Until the BoCC can document how this development will NOT lead toward higher taxes for everyone in Frederick County … zero.

Until the BoCC can assure the 200 residents on Green Valley Road, as well as every other community member in this area, that this development will NOT make that road more dangerous and more congested … zero.

Until the BoCC can document when the changes will actually be made to Green Valley Road, changes that will be desparately needed because of this development … zero.

Until the BoCC can explain why you have decided that it is more important to satisfy the property rights of these developers over the property rights of the 200 homeowners along Green Valley Road who's lives and property will be impacted … ZERO.

Now I'm very confident that the only word that you're hearing me say is "zero" but what you should be hearing, what you should have heard from so many members of the community, are the real issues with this development and the impact it will have on the health, safety, and welfare of our community. Each of you are individually responsible for ensuring that health, safety and welfare. Until you really address those issues – and you haven't – then you have no business approving this development.

<u>Written Testimony</u> by Steven McKay on behalf of Residents Against Landsdale Expansion (RALE) In Opposition to the Proposed Rezoning of Monrovia Town Center, before the Board of County Commissioners for Frederick County, on or about April 8, 2014

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. We have argued before you the numerous reasons for you to deny this rezoning request. The changes that you approved last January address some of these concerns, but also ignore many core issues concerning the health, safety and welfare of residents in this area. Before addressing those concerns, I will discuss several regulatory requirements that the rezoning request still fails to meet.

Application STILL 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. Specifically, under section 110.2(A), the code requires that "each individual zoning map amendment <u>or</u> floating zone reclassification application <u>must</u> 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. Further, despite the removal of the parcels east of the power line right of way, a reduction that was done expressly because of the contiguity argument that we raised, the PUD is STILL not a contiguous area. Rather, the property is bisected by MD 75. The property lines of the parcels adjoining MD 75 do not extend to the center line of the road – as was argued at the recent Community Meeting. Property ownership ends at the side of the road and because of that, MD 75 divides this PUD, making the portions on the east and west of the roadway non-contiguous.

We argued this issue at each of the Planning Commission hearings, and at your hearings in January. We were ignored. We were told it wasn't an issue. We were told by the Applicant that it had been "dealt with" in years prior. Over a year and a half ago, the Staff accepted the prior zoning application as valid, and yet hear it is before you with the land east of the power lines removed, and Mr. Gugel state on March 12th before the Planning Commission that it was done out of concern for the contiguity issue. So now Staff has validated our point about contiguity.

Through all of these hearings, none of the Commissioners in either body questioned the validity of the issue, or the applications conformity on this point. Now here it is before you again, with the land removed. Will you question why Staff accepted the proposal in the first place if this contiguity issue is valid? Will you question Staff why they didn't acknowledge any concerns with the issue once presented to them? Will you question Staff why the PUD proposal STILL fails the requirement in the ordinance due to it being bisected by MD 75? Failure to ask these questions represents a failure on your part to exercise your responsibilities.

Lack of Consistency with Comprehensive Plan

Zoning ordinance 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? Both Staff and the Applicant insist that only the land use map from the 2012 Comprehensive Plan Revision is relevant to your zoning decision. They would have you ignore over 300 pages of goals, policies, and action items – all of which contributed to the down-zoning of the subject property. The text of the 2010 Comprehensive Plan has not been revised – it is still in force. The ordinance implementing the 2010 Comprehensive Plan has not been rescinded – it is still in force. The 2010 Comprehensive Plan resulted in the down-zoning of the subject property – and it is still in force.

To wit, I submit to you Resolution No. 10-06, which is the enabling ordinance for the 2010 Comprehensive Plan. This language has been neither revoked nor amended since that time, and it clearly demonstrates – in no uncertain terms – that the proposed rezoning is NOT consistent with the Comprehensive Plan:

> RESOLUTION NO. 10-06
> Re: Adoption of the 2010 Countywide Comprehensive Plan for Frederick County, Maryland
>
> […]
>
> WHEREAS, the BoCC adopted Ordinance 06-30-426 effective September 28, 2006 granting the PUD Floating Zone Classification for 402.04 acres of land (more or less) identified as the "Application of 75-80 Properties LLC and H.F. Payne Construction Co., Inc." (This property is hereinafter referred to as the "75-80 Property."); and
>
> WHEREAS, a substantial portion of the 75-80 Property is in agricultural use; and
>
> WHEREAS, a Comprehensive Plan designation of Agricultural/Rural for the 75-80 Property implements the Visions in the Md. Annotated Code Article 66B 1.01 and a Low Density Residential designation does not implement the Visions; and
>
> WHEREAS, the water resources and other infrastructure are not adequate to accommodate the extent of residential growth previously anticipated on the 75-80 Property; and
>
> WHEREAS, a well-maintained, multimodal transportation system for a residential project on the 75-80 Property is not available or planned and, in particular, Md. Rt. 75 is not adequate to serve a residential project on the 75-80 Property because, among other things, since the Low Density Residential Comprehensive Plan designation was placed on the 75-80 Property, the State Highway Administration (SHA) has made no significant progress on Md. Rt. 75 improvements between I-70 and I-270; and
>
> WHEREAS, improvements to Md. Rt. 75 between I-70 and I-270 by SHA are not reasonably probable of fruition in the foreseeable future; and
>
> WHEREAS, the Agricultural/Rural Comprehensive Plan designation for the 75-80 Property best provides environmental protection such that land and water resources, including the Chesapeake and coastal bays, are carefully managed to restore and maintain healthy air and water natural systems and living resources; and
>
> WHEREAS, the Agricultural/Rural Comprehensive Plan designation for the 75-80 Property conserves resources, agricultural areas, open space, natural systems and scenic areas; and

WHEREAS, the Agricultural/Rural Comprehensive Plan designation for the 75-80 Property promotes the Goals and Policies of the Countywide Comprehensive Plan.

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.

MD 75. You have heard scores of citizens comment on their concerns about MD 75. In Staff's own documentation, they have cited the increased traffic volumes resulting from this development as cause to spend hundreds of millions of dollars to enhance the roadway. In their 2014 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 8, 2013 in the Frederick Newspost 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."

Most recently, the County listed MD 75 as its top roads priority for State funding – higher even than Rt 15. As much as I believe that this roadway will need to be upgraded with the onset of construction of this project, I also believe that this announcement was the worst form of political pandering. Every person in Frederick County knows that right now, Rt 15 is a higher priority than MD 75 and the State Highway Administration knows it, too! This politically-motivated pronouncement will not increase the chances of the hundreds of millions needed to address MD 75, and the County's $1,000,000 planned in the current CIP is only a drop in the bucket.

For their part, County Staff have offered an amazingly ambiguous and twisted turn of phrase to ratify their support that the zoning proposal will satisfy this criteria. In their report, County Staff states that

> *"the infrastructure to serve future development is reasonably probable of fruition in the foreseeable future."*

What does this even mean? It sounds like two "ifs" wrapped in a "maybe." Vague statements such as this do not satisfy the decision criteria that the transportation system "will be" made adequate – far from it!

At the conclusion of the November Planning Commission hearing on this zoning proposal, Commissioner Young counseled to trust Mr. Burns' judgment about the roads. And

I'm certain that Mr. Burns believes that the developer has satisfied their requirements under what currently passes for the APFO. However, Mr. Burns has also said he is concerned about the safety of MD 75. In the 7 March 2013 issue of the Gazette, Mr. Burns was quoted the following:

"My biggest concern is the safety on 75," he said. "It is not a good road."

MD 75 is also my biggest concern. Regardless of the changes made to the proposal, this development will still make it much, much worse and there is no budgeted, scheduled solution to fix it. There is nothing in this proposal and there is nothing in the County or State plans that will satisfy the criteria such that the transportation system "will be" made adequate.

2) **Weller Road**. At the last hearing, many in the community also spoke of their concerns for traffic on Weller Road. It's a small, cramped road that connects across MD 75, Lynn Burke, and Bartholows. In response to those concerns, the developer will no longer be able to connect the collector road directly to Weller Rd. That is a good thing – but it still falls short. First, County Staff is still advocating for new road connections to Weller Rd – this time, from the public use facilities. More importantly, there is nothing that will prevent large numbers of the future residents of this development from using Weller Rd. as the most direct path to go toward Mt. Airy. Because the impact to Weller Rd. has still not been studied or mitigated, then this expected traffic will create big problems for that little road.

3) **Ed McLain Road**. Another small, poor quality road adjoining this proposed development is Ed McLain Road. It divides this development from Landsdale. The road will be upgraded from its mid-point and south to MD 80. However, the portion going north to MD 75 has been neither studied nor mitigated in any traffic impact analysis. We are told that measures will be taken to inhibit vehicles from leaving either this development or Landsdale and traveling north on Ed McLain. However, there will be every expectation that future residents will ignore and subvert those measures to take the more direct path toward I-70. Moreover, none of the proposed measures will address the other half of the problem – people coming back to the development from the north. There is absolutely nothing proposed to mitigate this traffic flow. The resulting increased volume on the northern portion of Ed McLain is going to create safety issues for both every resident of that road, and for the drivers themselves.

4) **Property Rights.** A common theme for supporters of this development is that "who are we to deny the owners of the land the commercial exercise of their property rights." I understand and sympathize with that argument, but let's take it a little further. Let's say that if this development is approved, and build out occurs, this will be the reason for the State to finally agree to fund the MD 75 Corridor Improvement Project. In that time period, 10, 15, maybe 20 years from now, there will be a clamor to deal with the congestion and safety issues on the road after the addition of so many more cars from this area. At that time, the State will need to widen portions (perhaps all) of the road, areas like the sharp turn at the Green Valley Animal Hospital may need to be straightened, grave sites at two cemeteries may need to be relocated. All along that roadway, the State will try to acquire additional easements – either by purchase or eminent domain. They'll buy the land or, if you don't want to sell, they'll take you to court and take it anyway. All along that roadway, about 200 homeowners will be impacted. All of this will be a direct impact of the decision to approve this development. Those homeowners along MD 75

have property rights, too. If you approve this development, you will be saying that the rights of all those homeowners are somehow not as important as Mr Stanley, Mr Payne, and Mr Wilcom's property rights. And you will be wrong.

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 Newspost, 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 the revised Monrovia Town Center will add to Green Valley Elementary, on top of those projected from Landsdale, an entirely new elementary school will still be needed in Monrovia – and that's accounting for the reduction in the development and for the age-restricted portion of the community. 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 in the CIP. 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, scheduled, or planned schools to fulfill the remaining elementary school need in this part of the County.

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 budgeted or scheduled plans 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 100 projected new middle school students from the proposed development.

Proffered High School Site Poses an Unacceptable Risk to Our Children

You have heard testimony about our concerns over the potential risk from electromagnetic fields posed by the siting of the proposed high school alongside the 500kV power lines running through the property. Adoption of common sense setback requirements, first pioneered in California, and since adopted by Connecticut, Iowa and various jurisdictions across the country, will make this site unusable for a high school – and we will make that argument and fight the siting of a school on that land for as long as it takes.

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 7 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 16 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, last September, the Applicant chose to demolish the primary buildings that the staff report was referring to. So much for that mitigation option.

In Sections V and VII of the Staff Report, where Staff had the opportunity to assess the "compatibility with existing and proposed development," ***they provided no argument about the compatibility with the existing development***. The existing development is the current community of Monrovia. I imagine the reason that Staff provided no argument on this criteria is because there is no rational argument to be made that the proposed development is or can be made to be compatible with Monrovia.

I recognize that the removal of the "2 over 2s" in the current proposal is an attempt at making the development more compatible. However, this is a marginal difference given the overall incompatibility between the development and the surrounding neighborhoods. I found it interesting, however, that in discussion before this very Commission concerning the Rayburn PUD, Commissioner Young argued to remove the townhomes from the proposed development based on the same arguments that the community has made – that they were not compatible with the existing community. Why was this consideration granted to that community and not to Monrovia?

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 Staff 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***." [emphasis added] 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

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."

I will address this point later in my testimony. Suffice it to say that the evidence presented both at the Planning Commission and BoCC hearings are conflicting and ambiguous. It has lead me

to question the veracity of some of the testimony that has been provided. One thing is clear, however, the requirement in the zoning ordinance has not been met.

Conflicts of Interest

It has been well-documented that Mr. Stanley, his wife, and businesses that they either own or possess controlling interests in, have given campaign contributions to Commissioner Young. These contributions were provided right up to only a few days prior to the formal submission of their rezoning application. As such, we recognize that they are narrowly within what is legally allowed under the Maryland State Ethics Ordinance as it applies to Frederick County. However, given that these contributions were made DURING what Mr Weinberg described as "intense negotiations" (see Applicant's opening testimony before the Planning Commission on October 23, 2013), we find that a reasonable person would see these contributions and conclude that there is a significant risk of bias on the part of Commissioner Young. ***Commissioner Young should recuse himself from these proceedings***.

Further, both Commissioners Young and Shreve have sent out mass-mailed campaign literature requesting contributions. That literature will likely have been received by Mr Payne, Mr Wilcom, and their family members – all applicants in this case. ***Both Commissioners Young and Shreve should recuse themselves from these proceedings***.

Lastly, the Applicant's attorney – Mr Weinberg – has previously represented Commission Delauter before the Ethics Commission. ***As such, Commissioner Delauter should recuse himself from these proceedings***.

Trust

In closing, I'd like to talk about trust. You are supposed to be able to trust that Staff is acting responsibly and professionally. You are supposed to be able to trust that the Applicant's proposal, particularly after a year and a half of vetting by County Staff, is an accurate & legal representation. So let's review a few areas and think about trust.

Contiguity. At both the Planning Commission hearings and those before this body in January, we argued that the Applicant's proposal was in violation of the requirement in the ordinance that it consist of a contiguous area. The Zoning Administrator had accepted the proposal as valid, despite this requirement. Staff raised no objection. Staff sat there – under oath – and told you that everything was proper with the Applicant's proposal and recommended your concurrence. When asked about this issue, the Zoning Administrator wouldn't even answer my question. Apparently, a regular citizen didn't have the right to question these issues. Last October, the Applicant's attorney dismissed our concern, vaguely stating that it had been "dealt with" years ago during an earlier approval. Then in December, the Applicant went further, presenting pages of legal argument to you about why the contiguity issue was not valid. In January, we took our concern to the Zoning Board of Appeals. Neither Staff nor the Applicant offered a shred of evidence that the issue was either valid or had even been evaluated. Rather, we were simply told that the County didn't have to answer our question – effectively, I didn't count.

And now here we are. Surprisingly, the area east of the power lines is no longer part of the PUD request. This was part of the area – but only part – that we pointed to as being non-contiguous. That was the same argument that both Staff and Applicant assured you was invalid. So why is that land no longer part of the PUD proposal? At the developer's very belated

community meeting on March 10th, I asked that question and the answer was quite a surprise. They told me it was because of concern about the contiguity issue! So much for our trust on that point.

Water & Sewer Classification. Then there was the water & sewer amendment review. In January, we argued several deficiencies in the Fall 2013 Water & Sewer amendments concerning the Monrovia Town Center properties. Most importantly, we argued that Parcel 53 in Tax Map 88 had never been granted "Planned Service" status and, therefore, not only was not eligible for the proposed water & sewer status upgrade, but was also not eligible to be part of the PUD request. Both the County Staff and the Applicant completely dismissed our concerns. The County attorney told the Planning Commission to ignore the 2012 Water & Sewer Plan because it wasn't relevant to their determination of consistency with the Comprehensive Plan. Unfortunately, this guidance was both wrong and prejudicial to that hearing. The Staff's own documents show this:

1. On page 3 of the Staff report for the Fall 2013 Water & Sewer amendments, under the heading "PS - Planned Service", the document describes that assignment as: "A classification assigned during the Comprehensive Planning Process ..."
2. On pages 22, 25, 28, 31, and 34, under the heading "Water & Sewerage Plan Status", the document states: "As part of the revisions to the County Comprehensive Plan, the accompanying water and sewer classification on the subject properties was changed from No Planned Service (NPS) to Planned Service (PS) ..." This same language was used for each of the five reclassification cases.
3. In the Staff Report for the Water & Sewer Plan Amendments accomplished during the 2012 Comprehensive Plan Revision. That document, dated 27 July 2012 states the following in the very first paragraph:

   "One of the three components of the Comprehensive Plan/Zoning Review includes amendment to the Frederick County Water and Sewer Plan. With few exceptions the application of Planned Service (PS) and the "5" (mid range plan) classifications can only be applied as part of the comprehensive plan update process."

Thus, either the guidance provided in the Staff report - which clearly connects the water/sewer planned service status with the Comprehensive Plan - is in error, or the verbal guidance provided by Staff and County Attorney during the hearing was in error. They can't both be correct, and to the extent that one of these sets of guidance was in error, then the entire process was irrevocably flawed.

Unfortunately, it gets worse. During that same hearing, Mr. Gugel acknowledged that Staff made a unilateral change to the water & sewer map. He stated that there was a "mapping error" that left Parcel 53 as No Planned Service, rather than Planned Service. There may have been an error, but it was not a mapping error. There was simply no request to change the level of service to Planned Service. None. The only mapping error occurred when Staff unilaterally changed the service designation, independent of either BoCC or State approvals. Thus, the application itself was in error. Specifically, on page 24 of the Staff Report for the 8 January 2014 hearing before the Planning Commission, under "Water & Sewerage Plan Status" for Case WS-13-25, the document states the following:

"As part of the 2012 revisions to the County Comprehensive Plan, the accompanying water and sewer classification on the subject properties was changed from No Planned Service (NPS) to Planned Service (PS) to reflect the application of the LDR land use plan designation."

This is factually incorrect. There is no record of a water/sewer reclassification request during the 2012 Comprehensive Plan for Tax Map 88, Parcel 53. Further, it was not included in the final Water & Sewer maps that were approved by the Board of County Commissioners and the State of Maryland. Further, there has been no subsequent request for water/sewer reclassification during any of the County's reviews since that time, regarding this parcel.

Despite all of the Staff and Applicant's assurances that all was right with the request, these errors were there and we pointed them out. You ignored us. And now here we are, the Monrovia Town Center revised zoning request is before you but this time, Parcel 53 in Tax Map 88 is no longer part of the PUD, along with a small adjoining parcel. The reason is the exact same one that we argued about and that Staff and the Applicant told you to ignore. Will you ask why the PUD application was accepted despite this error? Will you ask why Staff didn't discover this error before presenting it before you? Do you not need to ask because you were aware of it all along?

Building Density. Now let's discuss the notion that the State of Maryland had made it "illegal" to build developments less dense than proposed here. In his opening remarks on 23 October, the Applicant's attorney stated flatly that the State of Maryland made it illegal to build 1-2 acre lots. Commissioner Young has made repeated references to the same point. To his later chagrin, Commissioner Hopwood told the people in attendance at your October hearing that the State made them develop this densely. I empathize with Mr. Hopwood on this point because I imagine he was speaking based on guidance received from Staff and/or the Applicant. At this point, we all are aware of the correspondence that followed between the Maryland Department of Planning, Commissioner Young, and others – including myself. What was clear from this correspondence is that when Mr. Weinberg and others made blanket statements about lower density developments being "illegal," he was wrong – he was disingenuous – and he was misleading. It is a vastly different point to state that higher density is required to qualify for state funding, than to simply say that lower density is illegal. On that point, we were misled.

Community Meeting. Lastly, let's look at another issue that we were told to trust all of you about – the original community meeting. The ordinance stipulates that the Applicant must hold a community meeting BEFORE the development application. Scores of people testified before you that they were never notified of such a meeting, including those adjoining the property. During four nights of hearings before you, the Applicant never offered more than vague assurances about the meeting. When given the opportunity to rebut, they instead spent their time talking about the mean letter that Pam and Amy sent to big ol' Mr Stanley.

You see the problem here is that although this meeting is required, the County Staff have neither defined what that meeting should be nor do they verify whether it happens. We trust them to do their jobs but on this issue they didn't. That's why the hearings last January were so surprising to us all. After those four nights before the Planning Commission without a shred of detail about the community meeting, suddenly before the BoCC, the Applicant's team took their

memory pills and recalled this supposed meeting in startling detail. Suddenly, we heard about a meeting with 20-30 people in attendance! Of course, they couldn't name a name, or produce a single person that was there. But they seemed quite persuasive, nonetheless. There's only one problem with that story, though. You see, back in October at another meeting at Urbana Library, Roy Stanley himself told us that at his supposed meeting he – I quote – "had a couple people there because that's all he needed." So which was it – a couple people or 20-30 people?? Who should we trust? Of course, there is one more problem with the story that the Applicant's team spun at that BoCC hearing. When asked where the meeting occurred, they pointed to a tool shed. … That's right, that supposed meeting with 20-30 people, that nobody in the community was informed about, that supposedly took place on a cold, windy night … we're supposed to believe that it took place not just at a tool shed – but <u>in</u> the tool shed. That doesn't inspire much trust in me.

So here we are again. You have a modified proposal before you. I ask you to consider these simple questions. What other errors have they made? What other problems have we not found, and they don't want us to find? How else have we been misled?