

Oral Testimony by Steven McKay on behalf of Residents Against Landsdale Expansion (RALE) In Opposition to the Casey Property DRRA and APFO LOU, before the Board of County Commissioners for Frederick County, on or about July 15, 2014

My name is Steve McKay, I live on Shakespeare Way in Monrovia, I'm the president of RALE and I am speaking before you in opposition to the Casey Property DRRA and APFO LOU. I have documented my arguments against the 20 year duration of this contract in my written remarks. I have made these arguments before and I fully expect they will fall on deaf ears again. You have repeatedly demonstrated your hubris in believing that your decisions should handcuff all of those future elected officials, and all of the future citizenry. So let's move on.

Reading this DRRA and LOU, it dawned on me that I really don't know what this applicant will be responsible to pay for the infrastructure their development requires. Page after page include water & sewer fee credits, impact fee credits, surplus capacity reimbursements, and repayments from other developers. It really is a sweet deal for the developer – they get to claim the expenses up front, both to the public and probably to the IRS, they get to pass the costs on to the new homeowners, and then they get to claw it back from the County by way of these credits. I don't know how much this will be but I know that every dollar will come from the taxpayers. Heck, if I were a developer, I would have given you a half million also, just to get in on such a sweet deal!

Now let's review some dates for a moment. The DRRA is good from 2014 to 2034. The LOU is valid from 2014 to 2027. No housing permits will be issued before 2020. The LOU – and all of the payment requirements that are geared toward plat recordation and house permitting – will expire only half-way into the building period of this development. You guys have left a huge hole. In fact it's more like a vacuum, and what will be sucked into that vacuum are my tax dollars making up for the shortfall left behind by the developer. You may argue that the LOU will be extended – but if I'm the developer, why would I?? I would still have my DRRA to freeze all of the development conditions. Again, I understand now why all those developers gave you so much money.

Here's another problem. Your LOU lays out a phasing schedule for road improvements starting on page 9 that makes absolutely no sense given the moratorium until 2020. Another problem – go to page 3 of the LOU, and read the first sentence of section B. Does it make any sense to you – it didn't for me? Here we all are at a public hearing on what are supposed to be final documents and we find these errors. You're wasting our time – get it right.

You've got a single elementary school in the CIP that not one but five major new developments point toward as their anticipated mitigation for the school over-crowding they will create. You have no budgeted plan – in these documents or elsewhere – to correct that deficiency.

Your major contributions to MD 75 are a half mile of 4-lane roadway and a “divergent diamond” interchange at I-70 that will probably just confuse people. Your traffic study turns a blind eye to the impacts that this development will have down the length of the roadway to Hyattstown – the problems haven't been studied and they won't be mitigated. You've lied to us with a letter from FACT that was a sham. Through 13 nights of Monrovia Town Center hearings, we never heard one word about the anticipated cost of the project being twice what was documented. We were told that there was a reasonable probability of fruition that the MD75 Corridor project would happen and that was also a lie. During the FACT candidates forum, the

representatives from the MDOT and SHA went to great lengths to reduce expectations that the project would be funded or acted upon.

Of course the applicant will pay some money into the escrow account, and to you and me, \$1.6M is certainly real money. However, when you look at that total price tag of nearly \$500M, it seems a bit paltry. It doesn't move the needle and it doesn't get us any closer to fixing MD 75. Plus, the applicant will probably be able to get it back from the County somehow through one of these fee credit options. Through all of the uncertainty and ambiguity in these documents, there is one thing that we know – it sure does pay to be a developer in Frederick County under your BoCC.

Written Testimony by Steven McKay on behalf of Residents Against Landsdale Expansion (RALE) In Opposition to the Casey Property DRRA and APFO LOU, before the Board of County Commissioners for Frederick County, on or about July 15, 2014

My name is Steve McKay, I live on Shakespeare Way in Monrovia, I'm the president of RALE and I am speaking before you in opposition to the Casey Property DRRA and APFO LOU. We have a number of arguments to make and I'll start with the duration of the DRRA.

20 Year DRRA is Bad Public Policy

Land use policy is one of the key responsibilities of the Frederick County government. As Frederick County enters into the charter government, it is more important than ever to ensure that future government leaders – executive and council, alike – have all of the tools at their disposal to govern effectively. With this 20 year DRRA, you are handcuffing those leaders. You are telling them – and the citizens of Frederick County – that their voices, their opinions, their future votes, don't matter. You are telling them that you'll make the decisions for the next 20 years and they'll just have to live with it. The economy may change, residential housing needs may change, the developer eventually hired by the applicant may go belly up – none of that will matter because you are deciding for everyone.

What hubris to imagine that you have all the answers to justify this long term contract. Certainly the enabling legislation didn't intend such long terms. It is clear that the original intent was for 5-10 years, at most. You've made the argument before that Urbana took 35 years to develop. Urbana didn't need a DRRA. Why does Casey need one now? Why do any of these new developments need one now, other than to satisfy the desires of your campaign contributors.

Who is Really Paying these Fees?

As I reviewed the DRRA and LOU, I encountered this growing realization that I don't really understand what the applicant is actually responsible to pay. That shouldn't be the case. That's the entire point of the DRRA, isn't it? That's what you guys trumpet constantly about this contract – it provides certainty on both sides of the equation, and we're supposed to know what the developer is responsible for.

But then you read the document more closely, and you see water & sewer fee credits, impact fee credits, surplus capacity reimbursements, and repayments from other developers. So how much does the applicant or its developer really have to pay for the infrastructure that they are creating the need for? It really is a sweet deal for the developer – they get to claim the expenses up front, both to the public and probably to the IRS, they get to pass the costs on to the new homeowners, and then they get to claw it back from the County by way of these credits. I don't know if this amounts to most of the fees or only a portion. All I know is this – every dollar that you give the developer back for the infrastructure that this development required – comes from the pockets of all of us – the taxpayers. So really, who is paying for this infrastructure? Heck, if I were a developer, I would have given you a half million also, just to get in on such a sweet deal!

Basic Problems with the LOU

Let's review some dates for a moment. The DRRA is good from 2014 to 2034. The LOU is valid from 2014 to 2027. No housing permits will be issued before 2020. There is a major disconnect there. The LOU – and all of the payment requirements that are geared toward

plat recordation and house permitting – will expire only half-way into the building period of this development. What will happen to all of the school construction fee payments, school impact fee payments, and MPDU payments, just to name a few, after the LOU expires? This is a huge question and an even bigger concern. For a set of documents that purport to provide this high degree of certainty for both the developer and the County, it strikes me that you guys have left a huge hole. In fact it's more like a vacuum, and what will be sucked into that vacuum are my tax dollars making up for the shortfall left behind by the developer. You may argue that the LOU will be extended – but if I'm the developer, why would I?? I would still have my DRRA – that wouldn't change because you've ensured that the LOU is a separate document from the DRRA. The LOU expires, the developer is off the hook for any unpaid fees, and they still have the DRRA to freeze all of the development conditions. Again, I understand now why all those developers gave you so much money.

Here's another problem. Your LOU lays out a phasing schedule for road improvements starting on page 9 that makes absolutely no sense given the moratorium until 2020. I'm sure it won't be too complicated to revise that schedule, but the fact is – you haven't. There it is in the document. Here we all are for the public hearing to decide upon the document – and it's wrong.

Another problem – go to page 3 of the LOU, and read the first sentence of section B. Can you even figure out where the sentence ends? Does it make any sense to you? I know it's a simple typo – actually, it's a major typo because I think a chunk of text ending one sentence and starting another – somewhere in the middle of that mess – is just gone. But again, here we all are at a public hearing on what are supposed to be final documents and we find these errors. You're wasting our time – get it right.

Water & Sewer Issues

On page 2 of the LOU, we are told that the water & sewer requirements are based on studies from 2004 and 2005. Has there really been no study since then? Are the conditions reflected in those studies from a decade ago still relevant today? Are these valid guidelines for today's development decision, or was this just an expedience?

Further, on page 4-5, items 5-11 lay out a variety of projects to improve water & sewer infrastructure in the area of the proposed development. We are told that they will benefit Lake Linganore, Blentlinger, and the Casey property. But who is responsible for constructing or paying for it – that is a lot less clear. In fact, it appears from my read, that the primary responsibility falls on which ever development needs it first. If I'm a developer, it seems like I would be incentivized to not be that first development in need. This really doesn't seem like a good way to plan.

The Magic Elementary School

I discussed this during my zoning testimony and I'll discuss it again here. The development fails at the elementary and high school levels. This applicant – just like each of the major new developments in the area, including Linganore, Landsdale, Smith/Cline, and Monrovia Town Center – all seem to depend on the same, lone new elementary school planned for the area. That new elementary school – the East County Area Elementary School – is the only new elementary school in the CIP for this region and won't seat a new student until 2022 or 2023. Yet it appears to be the primary mitigation plan for each and every one of these developments contributing so many new students to the area. That's gotta be one heck of a school design! Where are the other schools in the budget? When will they be built? What will

happen until that point as all of these new students join classes? There are no answers in the LOU or the DRRA. All the documents offer are promises to write checks, and the applicant won't even have to do that after 2027 – less than half way into the build.

Road Improvements – or What Won't be Improved on MD 75

As we all know – although I'm not really sure you guys know it – MD 75 is a critical issue for each of the development applications in this part of the county. The Casey property borders on MD 75. The Casey property relies on the roadway for its principal entry & exit. You would think that MD 75 would factor heavily into the mitigation plan – and you would be partly right, with some major limitations.

Let's start with the Traffic Impact Analysis. As we've learned, the key to the TIA is the scoping agreement that sets the terms for what the applicant will study. For the Casey property, the TIA stopped at MD 75 and Baldwin Road. Traffic going south doesn't exist as far as this TIA is concerned. Why is that an issue? Prior traffic studies for Monrovia Town Center and Landsdale were completely ignorant of traffic to be generated by Casey. That was by design. Each new TIA is supposed to add to prior ones. Rather than taking a systematic look at all of the anticipated development, you restrict the studies to only approved projects in the pipeline – NOT projects that are anticipated but unapproved. That would be fine with one exception – when the next development limits the scope of the study, like for Casey. So how many hundreds of additional car trips will go down MD 75 to Hyattstown? What will the impact of that traffic be on the intersection with Ed McLain Rd, Weller Rd? How more difficult will it be for families to pull into or out of their driveways down the length of the road? How many more cars will pile up down at the chokepoint at 355? Will the programmed intersection improvements be sufficient to handle the additional traffic? You have no idea, because nobody studied it. If nobody studied it, then it hasn't been mitigated.

4-Lane Expansion on MD 75

Now let's talk about the 4-lane expansion on MD 75. Here is a refreshing piece of honesty from page 23 of the PUD staff report - "MD75 as a two lane road would not be able to handle such a traffic load." That sentence is actually an accurate assessment for the entire length of MD 75 south of I 70, but I know it was only intended to characterize that portion of the road near the site entrance. The zoning staff report provided capacity information for that piece of road, and stated how many vehicle trips will be generated by the Casey development. The report made it clear that the road needed to be upgraded to 4 lanes. So what exactly will be built? A meager half mile extension to the four lanes north of MD 144 – that's it. How on earth will the remainder of the road handle the traffic load? We don't know, they didn't study it – because you told them not to.

That said, when does that work need to be done? Based on the information in the PUD staff report, it was a matter of simple math to determine that by the time the development is 2/3s complete, that stretch of MD 75 would be at the failure point. In the TIS, I think they acknowledged that issue by recommending that the 4-lane expansion be accomplished in Phase 2. However, in the LOU, it won't happen until Phase 3. Specifically, the work won't be guaranteed until the 800th home and doesn't need to be completed until the 1000th home – basically when the project is done. That means that during the last third of the build out, the portion of MD 75 will be operating in failure mode, all because you are letting the applicant put off making the improvement recommended in the TIS.

The Myth of the MD 75 Corridor Improvement Project

Last but not least, we have the vaunted MD 75 Corridor Improvement Project, otherwise known as Escrow Account 3891. Clearly, despite the blinders imposed on the traffic study, the Casey property will generate significant traffic down the entire length of MD 75. In the hearings for Monrovia Town Center, we were told that the County's leading transportation experts deemed that development as a boon for the County and would be a major reason for ensuring that funds are had to complete the project. That story turned out to be a lie. Through 13 nights of hearings, we repeatedly cited the County's documentation that the MD75 project would cost \$262M – a seemingly insurmountable cost. As we learned from the candidates forum hosted by that same group of transportation experts – the Frederick Area Committee on Transportation – that cost estimate also turned out to be a lie. Now we learn that the County believes the cost will be closer to \$500M – nearly double the insurmountable cost! During the Monrovia hearings, we were told that there was a reasonable probability of fruition that the MD75 Corridor project would happen. That also turns out to have been a lie. During that same FACT candidates forum, the representatives from the Maryland Department of Transportation and State Highway Administration went to great lengths to reduce expectations that the project would be funded or acted upon.

Of course the applicant will pay some money into the escrow account, and to you and me, \$1.6M is certainly real money. However, when you look at that total price tag of nearly \$500M, it seems a bit paltry. It doesn't seem to move the needle, and it doesn't seem to get us any closer to fixing the problem on MD 75 that all of this development is creating. Of course, at the end of the day, the applicant will probably be able to get it back from the County somehow through one of these fee credit options.

Through all of the uncertainty and ambiguity in these documents, there is one thing that we know – it sure does pay to be a developer in Frederick County under your BoCC.