

Comments by Steve McKay (President, RALE) on the Matter Before the County Council on June 9, 2015 Concerning the Monrovia Town Center

Good evening Council members. I'm Steve McKay, President of RALE and I live on Shakespeare Way in Monrovia. Thank you for your service and thank you for this opportunity to speak. Although I have appreciated how this Council has governed, in this case I have to be frank and say that you are making a mistake in how you are handling the remanded Monrovia Town Center case.

You are here tonight to determine whether the FACT letter had a major impact on the decision by the former BoCC to approve the Monrovia Town Center. That is the question that you have posed for yourselves. It's also the wrong question because it is impossible to answer. I don't know what the Commissioners were thinking. Nobody knows. You don't know now, and you won't know at the end of this evening. It's objectively impossible to prove one way or another.

Now I'm sure in their affidavits, two former Commissioners will solemnly state that the letter had no impact on their decisions. I'm also sure that Mr Shreve and Delauter will opine similar thoughts. But what value can you place on their self-serving statements? How can those four commissioners say anything but that the letter meant nothing to them. To say otherwise would invalidate the false process that they worked so hard to construct in the first place. These affidavits actually carry no more value than the FACT letter itself. If you include them in the MTC case record, you will not only fail to cure the record but instead, you will actually make it worse.

I imagine that you are taking this approach to set up a "no harm, no foul" decision. It goes something like this:

Commissioner Smith commits an ethics violation? Ehh, the BoCC didn't rely on the letter, so no harm no foul. Unanswered questions about which other Commissioners were involved? Again, no harm no foul. More questions about the developer team's role in the creation of the fraudulent letter? No matter ... once more, no harm no foul.

I understand the legal basis behind this approach. There's only one problem. The issues you will be ignoring are the very ones that the Court directed you to investigate. In fact, you're addressing the one issue the Court stayed away from. Judge Nicklas didn't try to get into the heads of the Commissioners. Sure, he said it was "suggestive" that they relied on the letter, but that's as far as he went. More importantly, he focused on the way the letter was presented. He focused on how the letter was concocted. Lastly, he focused on the possibility of an ethics violation by Mr. Smith. When you put all of this together, we see that Judge Nicklas focused on a conspiracy of individuals to defraud the public hearings. There are a host of unanswered questions that go along with this assertion. Those are the issues that need investigation. That's where the harm was done. That's where the foul really lies.

This is an extraordinary process and there isn't much Maryland case law for you to rely upon. I know that you also have limits in your ability to find the truth. You lack the power of subpoena. I'm not criticizing you on this point. However, I will criticize you for not realizing that fact for yourselves. Once you recognize your limits in digging to the truth in this matter, then you should also realize that your only true recourse is to start the process over. If you can't honestly remove the taint from the BoCC's record on the MTC case, then you need to create your own new case record.

Earlier, I said you can't know whether the letter truly influenced their decision. But let's ask a different question. Why did they do it? Why did those people seemingly conspire to create that fraudulent letter? Why did Commissioner Smith possibly risk his law license to concoct this deceit? I think the answer is MD Route 75. That road has always been the Achilles' heel in the MTC approval. The very clear and unambiguous safety and congestion issues that will be created by this development never really had a solution during the hearings. Oh they tried. They made it their number one priority but they knew the State wouldn't provide any funds. The State had been saying that for years and they said it again last year.

So they probably figured why not pad the record a bit. Why not have this group of supposedly neutral transportation experts sing the praises of MTC and then make a nice showy presentation of it at the end of the hearings. Why not indeed ...

If you are bound and determined to find whether the FACT letter mattered – there's your answer. By trying to fortify the record, and by trying to give themselves a nice showy and public rationalization for their approval, that's how the FACT letter influenced those proceedings. We don't have to read minds. We can focus on motive and intent. On those points, the FACT letter clearly mattered.

Whether because you acknowledge your limits in finding the truth, or because you recognize the self-serving way that the letter was used to buttress the BoCC's approval, there is really only one fair & logical path for you. You should rehear the case. **You'll never know how deeply tainted the BoCC's case record really is, and you don't have the tools to find out.** Your only choice is to rehear the case with a fair process and with unbiased decision making. That's an outcome I can live with.

Thank you.