

Testimony of Steven McKay Regarding the Proposed Urbana Rezoning (R-16-01)

Recognizing the Developer's Efforts to Amend his Original Proposal

I want to start by giving Mr. Natelli credit for making accommodations in response to resident and County concerns. That's how it's supposed to be done. That said, however, I still have concerns about the proposed development.

Will Age-Restricted Stay Age-Restricted?

My biggest concern is the lack of confidence that I have in the proposed 700-home age-restricted community remaining age-restricted. I'm not doubting Mr. Natelli's integrity. I believe that he will try to build an age-restricted community. However, he may not succeed. Or, he may not succeed quickly enough, leading him to come back to the County requesting the age-restriction be lifted. We've seen it before: Ballenger Run, Landsdale, and Monrovia Town Center were all age-restricted – until they weren't.

So why worry if this development is changed to all-age? The reason is clear. Urbana schools are already stretched to the breaking point. The middle and high schools are at capacity. Even after the herculean efforts to fund the needed elementary school construction, when all three are open by 2020 – all three will be full or nearly full. There is no foreseeable capacity to deal with the students from the 610 already approved homes in the Northern MXD, let alone what would be required if the 700 in the Southern MXD were changed to all-age.

So what can you as a Council do? If you choose to approve this part of Mr. Natelli's request, you must take every means possible to ensure that age-restricted stays age-restricted, including these two things:

- 1) As part of your legislative findings, you must include a statement that it is essential to the health, safety, and welfare of Frederick County's citizens that this development NOT be reconsidered as an all-age development. There is ample evidence to justify that finding;
- 2) Each and every one of you on the dais should make a promise to all of us, that as long as you hold your office, you will NOT approve a request to convert the development to all-age.

Last point, earlier I distributed copies of section 1-19-10.500.10 from the Zoning Ordinance. It provides specific criteria that you are supposed to weigh in your decision about this age-restricted community. I am very disappointed that there was no reference in the Staff report to these criteria. This is the law, you should adhere to it, and you need to press Staff to support you in that regard.

Northern MXD and the Contiguity Issue

You should have the letter from RALE's attorney about our objections to the contiguity argument before you. I've passed out copies tonight. I know that you have wrestled with this yourselves and for good reason – the three portions of the proposal are NOT contiguous. You've heard arguments equating the terms "contiguous" and "adjoining" – which are not the same. You've heard the argument that the applicant once owned all the land, so I guess you should give him a break now. You've even heard argument based on annexation law, which is entirely different than zoning law. At the end of the day, the word contiguous has a clear and unambiguous meaning in the Zoning Ordinance. It is required of all the parcels in this zoning application, and the three pieces of this proposal don't meet that requirement.

I didn't create that requirement, but I assume there's a good reason for it. I simply insist that you honor that requirement because that's the law.

So why are we all arguing contiguity in the first place? The answer is simple – money. It was cheaper and easier for the applicant to file one application instead of three. Also, residential development is profitable and this approach nets the applicant an additional 7 acres of residential in the Northern MXD. More importantly, however, it also allows him to come back for another 42 acres of residential. That's almost 50 acres of very profitable residential development based on contorting the meaning of contiguity.

This approach represents bad policy and bad precedent. And rest assured, it does set precedent. You can even see it in their own legal argument, using the flawed MTC contiguity argument as precedent for their own! You have our recommendation in Ms. Rosenfeld's letter. You already must approve each of the three parts of the development separately. We simply ask that you also demand that each part separately conform to the Zoning Ordinance. To that end, you should disavow the contiguity argument and specify a maximum of 70 acres residential in the Northern MXD.

I will close on that point. I appreciate your consideration of these comments.

Respectfully,

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