IN THE MATTER OF	*	**BEFORE THE WASHINGTON COUNTY**
MORRIS & RITCHIE	*	**BOARD OF COUNTY COMMISSIONERS**
ASSOCIATES, INC.	*	
Applicant	*	
	*	**Case No. RZ-21-003**

* * * * * * * * * * * *

APPLICANT'S MEMORANDUM IN SUPPORT OF
MAJOR CHANGE TO APPROVED BLACK ROCK PUD

Introduction

The Applicant offers the following memorandum in support of its proposed major change to the approved Black Rock PUD. The purpose of this memorandum is to assist the Board of County Commissioners ("BOCC") with its evaluation of the zoning application in accordance with the statutorily prescribed criteria set forth in Article 16A of the Washington County Zoning Ordinance. In addition, the Applicant wishes to advise the BOCC that it will require no less than 1 hour to present its zoning application. Recent experience before the Washington County Planning Commission ("Planning Commission") has demonstrated that procedural due process will not be afforded to the Applicant if an unreasonable time constraint is imposed upon the Applicant's presentation by the BOCC. When this zoning application was presented to the Planning Commission, the Applicant was afforded only 30 minutes to present its application. This time constraint proved to be inadequate and did not afford the Applicant a reasonable opportunity to present testimony from its traffic consultant or civil engineer. The Applicant is requesting that the BOCC afford the Applicant due process by allowing the Applicant a minimum of 1 hour to present its zoning application.

Preliminary Matter – Validity of the Black Rock PUD

At the Planning Commission meeting to consider this zoning application several protestants suggested that the Black Rock PUD was no longer a valid PUD. Therefore, as a preliminary matter the Applicant would like to affirmatively address this issue by introducing into the record a copy of the approved Revised Final Development Plan for the Black Rock PUD (attached as **Exhibit A**). It should be noted that the Revised Final Development Plan was approved by the Planning Commission on March 2, 2020 as evidenced by the signature of its Executive Director dated on May 29, 2020. The accompanying letter from the Planning Commission (also dated May 29,2020) clearly states, "The development plan approval is effective for a period of two (2) years." Accordingly, the current Black Rock PUD will remain valid until at least March 2, 2022.

Proposed Major Amendment to the Approved Black Rock PUD

On November 19, 2002, this Board approved a zoning map amendment (RZ-02-006) for the subject property, thereby assigning a PUD floating zone to the site. The approved map amendment tentatively approved up to 595 units residential dwelling units (or 2.7 units per acre). The Applicant is requesting a major change in the approved number of units. The Applicant now seeks tentative approval for up to 1,148 residential dwelling units (5.2 units per acre) and therefore must comply with the provisions of Section 16A.5 of the zoning ordinance.

When evaluating a request for a major change to a previously approved PUD development plan, this Board is required to consider the following criteria:

1. The purpose of the PUD District;

2. The applicable policies of the adopted Comprehensive Plan;

3. The compatibility of the proposed changes of the PUD with neighboring properties;

4. The effect of the proposed changes to the PUD on community infrastructure;

5. Consistency with the intent and purpose for the establishment of the PUD.

For the reasons set forth below, the Applicant's requested major change to the approved Black Rock PUD fully satisfies all of the criteria under Article 16A.5.

Evaluation of Criteria Under Article 16A.5(a)3.

1. The purpose of the PUD District.

The purpose of the PUD District is set forth in Section 16A.0 of the zoning ordinance which provides:

> The intent of this Article is to manage the implementation of regulations for existing approved PUD Developments within the framework of the Urban Growth Area Rezoning of 2012. All PUD Floating Zones approved by the Board of County Commissioners prior to July 1, 2012 shall maintain their validity in accordance with this Article. This Zoning District is not available for new application on any property within the jurisdiction of Washington County.

The Applicant's major change to the approved Black Rock PUD clearly satisfies this criterion because the Black Rock PUD is an existing approved PUD approved by the BOCC prior to July 1, 2012 and this major change request has been submitted by the Applicant in accordance with the provisions of Article 16A.

2. The applicable policies of the adopted Comprehensive Plan.

Chapter 12 of the adopted Comprehensive Plan sets for the county's Land Use Plan. The subject property is located in an area of the county designated as the Urban Growth Area. It is further located within a sub-policy area designated as Low Density Residential. Chapter 12 of

the Comprehensive Plan describes the purpose of establishing Urban Growth Areas and Boundaries. Chapter 12, Section C.1 provides:

> The purpose for establishing growth areas is to identify areas within the County where development is to be encouraged. These areas surround urban locations where the required infrastructure to support intensive development is in existence or planned. They contain the centers of gravity for human activity with future investments in public utilities, facilities and transportation linkages being the most cost effective in these areas.

Chapter 12 of the Comprehensive Plan also describes eight (8) sub policy areas within the Urban Growth Area. Chapter 12, Section C.2(f) describes the Low Density Residential sub-policy area.

> This policy area designation would be primarily associated with single-family and to a lesser degree two-family or duplex development. It is the largest policy area proposed for the Urban Growth Area and becomes the main transitional classification from the urban to rural areas. Major existing residential development in Fountainhead, Halfway, St. James, Van Lear/ Tammany, Maugansville, and along Mt. Aetna Road would be included in the Low Density policy area. The two zoning classifications most associated with this policy area are Rural Residential and Residential Suburban. A considerable amount of land in this policy area is also currently zoned Agricultural. Typical densities in this policy area range from two to four units per acre unless the property is approved for a planned residential or mixed use development. If the property is approved for a high density development the maximum density should be 12 units per acre.

The Applicant's proposed major change to the approved PUD satisfies the above criterion for approval because the requested increase in density to 5.2 dwelling units is well within the density parameters recommended in Chapter 12 of the Comprehensive Plan. At 5.2 units per acre, the proposed increase in approved density would only amount to approximately one (1) dwelling unit per acre more than what is typical for a non-PUD or Mixed-Use development within the Low Density Residential sub-policy area. More importantly, the requested density is nearly seven (7) units per acre less than the density limits recommended for the Low Density

Residential sub-policy area when higher density developments are approved under a PUD or Mixed-Use zone. The Applicant's requested density of 5.2 units per acre is barely 43% of the Comprehensive Plan's recommended density limit for PUD development in the Low Density Residential sub-policy area. In comparison with other PUD zoned properties in the vicinity, the residential density proposed under this application is 35% less dense than the residential density approved for the Rosewood PUD, the later having an approved residential density of 8.2 units per acres. In addition, 29.3% (22.8 acres) of the Rosewood PUD site has been zoned for commercial development.

3. The compatibility of the proposed changes of the PUD with neighboring properties.

The southern and western boundaries of the Black Rock PUD are surrounded by existing residential development. The northern and eastern boundaries of the site adjoin agricultural land. The revised Black Rock PUD is designed to locate a mixture of residential dwelling types throughout the community. The multi-family component of the revised Black Rock PUD is centrally located within the interior of the site and is therefore well-buffered from off-site adjacent properties. A mixture of residential dwelling types are proposed to be located along the perimeter boundaries of the site. These dwelling units are located to take advantage of the existing site characteristics and topography to ensure compatibility with neighboring properties. Accordingly, single-family detached dwellings are proposed to be located along the southern perimeter of the site. These units will serve as an appropriate buffer to the neighboring Black Rock Estates subdivision. Similarly, single-family detached dwellings are proposed to be located along the northern site boundary and will provide an appropriate buffer to the adjacent rural land uses. Townhouses are proposed to be located along the western boundary of the site and are compatible with the neighboring townhouse and multifamily neighborhoods. Several sections of

townhouses are proposed along the eastern boundary of the site. To ensure compatibility with the adjacent farmland uses the rear yards of these units will be located below the eastern ridge line thereby using topography to ensure appropriate buffering from adjacent off-site uses. In addition, 55+ age-targeted duplex dwelling units are also proposed along a portion of the eastern perimeter of the site. These dwelling units will be buffered from adjacent off-site uses by enhanced landscaping and berms. The proposed distribution of the residential dwelling products throughout the community will create a well-integrated multi-generational neighborhood. As a result of this careful design and layout of the community, the proposed changes to the Black Rock PUD will remain fully compatible with neighboring properties.

4. The effect of the proposed changes to the PUD on community infrastructure.

Proper evaluation of the above criterion is of course forward looking to a time when the proposed changes to the PUD are approved for development, as opposed to this early stage in the process when they are *tentatively* approved for zoning purposes. With all due respect, the Planning Commission did not understand how to properly evaluate this criterion. In its one page recommendation dated July 23, 2021, the Planning Commission recommended denial of this proposed major change to the Black Rock PUD. (See, Planning Commission Recommendation attached as **Exhibit B**). In doing so, the Planning Commission misapplied the legal standard for evaluating the above criterion by failing to properly apply the regulatory scheme created by the interrelationship between the Zoning Ordinance and the Adequate Public Facilities Ordinance (APFO). This regulatory scheme is discussed in detail by the Maryland Court of Appeals in Cremins v. County Commissioners of Washington County, 164 Md.App 426 (2005). Attached as **Exhibit C**. This regulatory scheme is also described in detail in the *Brief of Appellee County Commissioners of Washington County, Maryland* as filed in Cremins. Attached as **Exhibit D**.

The Applicant hereby adopts as its own the legal analysis set forth in the Cremins decision and the brief filed by the County Commissioners of Washington County in that case. The Cremins decision and the County's legal brief filed in that action correctly describe the legal standard that the Planning Commission should have, but failed, to apply when evaluating the above community infrastructure criterion.

As has been previously stated, the revised Black Rock PUD is not anticipated to be completed for 10 to 15 years. The pace of development is anticipated to be approximately 70 to 100 dwelling units per year on average. It is legal error to evaluate the above criterion by comparing the proposed future demand for community infrastructure against the presently available infrastructure capacity without regard for the APFO. A proper evaluation of this criterion must recognize the purpose and role of the APFO vis-à-vis ensuring the concurrency of adequate community infrastructure and New Development. In its legal brief, the County Commissioners described this as the "concurrency principal." Brief at p. 15.

This Board properly applied this analysis on November 19, 2002 when it first considered and subsequently approved the creation of the original Black Rock PUD (RZ-02-006). In its decision, this Board correctly evaluated the effect of the PUD on community infrastructure and stated:

> The Adequate Public Facilities Ordinance (APFO) has taken on a supportive role that was previously the sole responsibility of this item in the Zoning Ordinance during the rezoning stage when considering the deliberation of PUD cases. Due to this change, it would appear that now the Planning Commission and the County Commissioners would only have to access infrastructure issues at the zoning stage that would appear to be highly unsolvable. The applicant has indicated that he is fully aware of the APFO implications and is willing to assume the burden placed upon him. The Chief Engineer did not take exception to the rezoning and responded to the application by stating that road adequacy and stormwater

> management requirement "can be adequately addressed through our normal site plan and subdivision processes."

See, Board of County Commissioner' minutes from November 19, 2002 attached as **Exhibit E**.

With respect to the impact on community infrastructure, the analysis to be undertaken by the Board as it considers the currently proposed changes to the Black Rock PUD is identical to the analysis it undertook when it reviewed and approved the original PUD request. Accordingly, this Board must once again recognize the role that APFO continues to play in controlling the pace of development while ensuring that adequate infrastructure is in place concurrently with New Development.

Considering the evidence before this Board and applying the proper legal analysis, this Board must find the above criterion to have been satisfied. While this Board cannot help but to acknowledge the fact that several elements of community infrastructure (traffic, schools, water pressure) are currently inadequate, there is no credible evidence that these existing infrastructure inadequacies are "highly unsolvable" and cannot be rectified. Rather, the evidence is that all of the existing infrastructure inadequacies are capable of being solved. For example, excessive traffic congestion in the area of the Black Rock PUD can be mitigated in a number of ways. This can include, for example, the widening of local roadways, the addition of new road access points into the community; the addition of new lanes on local roads, the use of roundabouts, the synchronization of traffic signals, and the improvement and expansion of transit services. Inadequate water pressure is readily solved by upgrading existing water pump stations and the addition of new water towers and larger diameter pipes in the segments of the system where water pressure is constrained. Similarly, inadequate school capacity can be readily solved by the

modification of school attendance areas; the construction of new schools; or expansions of existing schools.

Based upon the Applicant's community outreach and the public testimony before the Planning Commissions, it is evident that members of the community are concerned with the potential for the revised PUD to increase traffic on Mt. Aetna Road. The Applicant is confident that this potential traffic congestion can be appropriately mitigated using the techniques described above. Regardless, were the Board to approve this request for a major change to the approved Black Rock PUD, it does have the authority to impose as a condition of approval that additional road access be afforded to the northern portion of the site in order to further reduce traffic demand on Mt. Aetna Road. With the addition of an access point along the northern boundary of the site, the Black Rock PUD would be exceedingly well served with a total of three (3) points of ingress/egress.

The Applicant recognizes the existing infrastructure inadequacies and the challenges they create. The Applicant also recognizes and understands that all infrastructure inadequacies must be rectified in accordance with APFO concurrently with the construction of each phase of the proposed Black Rock PUD. The Applicant understands and agrees that the infrastructure must be provided concurrently with New Development. As explained in Cremins, it is not however a requirement that all community infrastructure be adequate and in place at this early zoning stage of the approval process.

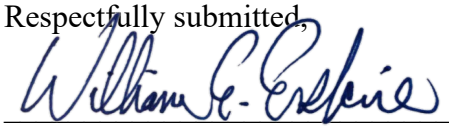
5. Consistency with the intent and purpose for the establishment of the PUD which is to permit flexibility and creativity in the design of residential areas, promote economical and efficient use of the land, provide for a harmonious variety of housing choices, a varied level of community amenities and the promotion of adequate recreation, open space and scenic attractiveness.

The proposed major changes to the Black Rock PUD are consistent with the intent and purpose for the establishment of the PUD. By employing the flexibility provided by the PUD zoning district, the revised Black Rock PUD provides an integrated, multi-generational residential community. The modest increase in residential density from 2.7 units per acres to 5.2 units per acre promotes the economical and efficient use of the land because the substantial cost of providing public infrastructure is able to be divided over a greater number of dwelling units. The net result is that public infrastructure can be provided at a lower cost when viewed on a per unit basis. A lower per unit infrastructure cost translates into a lower housing cost to the ultimate homeowner. In addition, the revised Black Rock PUD provides a variety of housing choices including single family detached; single family semi-detached; and multi-family apartments with a variety of community amenities and recreational opportunities. The revised Black Rock PUD preserves an abundance of open space which contributes to its ability to maintain its scenic attractiveness.

Conclusion

The evidence before the Board clearly demonstrates that the Applicant has satisfied the criteria for approval of its request for a major change to the approved Black Rock PUD. The Applicant respectfully requests approval of this application subject to any reasonable conditions imposed by the Board.

Respectfully submitted,



William E. Erskine, Esq.
Offit Kurman, P.A.
8850 Stanford Boulevard, Suite 2900
Columbia, Maryland 21043
(301) 575-0363
werskine@offitkurman.com
Counsel for Petitioner

EXHIBIT A

WASHINGTON COUNTY PLANNING COMMISSION
100 West Washington Street, Suite 2600 Hagerstown, MD 21740-4710 | P: 240.313.2430 | F: 240.313.2431 | Hearing Impaired: 7-1-1

Date: 05-29-2020

EMRALSHAOOL MANSOOR
72 W WASHINGTON ST
HAGERSTOWN, MD 21740

Recieved 6/1/20

DEVELOPMENT PLAN NAME	: Black Rock PUD
ENGINEER	: FOX & ASSOCIATES INC
APPLICATION NUMBER	: DP-20-001
LOCATION	: 10954 SASHA BLVD HAGERSTOWN, MD 21742

Dear Owner:

This is to inform you that the Development Plan referenced above was acted on by the Washington County Planning Commission on March 02, 2020 and was approved with the conditions stated at the bottom of this letter.

The Development Plan approval is effective for a period of two (2) years.

Sincerely,

(For) Clint Wiley
Washington County Planning Commission

CC: FOX & ASSOCIATES INC
LAK/MSG

CONDITIONS:

Not Applicable

SITE DATA

EXISTING ZONING: "P.U.D."–RESIDENTIAL PLANNED UNIT DEVELOPMENT
GROSS ACREAGE: 220.11 Ac.
PROPOSED UNITS: 593 Units
PROPOSED GROSS DENSITY: 2.69 D.U.A.

PROPOSED LAND USES:

REQUIRED OPEN SPACE: (25% OF GROSS ACREAGE) 55.03 Ac.
PROVIDED OPEN SPACE/RECREATION: 52.70 Ac. — REMAINING OPEN SPACE REQUIREMENT WILL BE MET WHEN COMMUNITY CENTER IS REDESIGNED IN A FUTURE PHASE.

RESIDENTIAL:	UNITS	MAX HT. (FT)
SINGLE-FAMILY:	182	32
ZERO LOT LINE SINGLE-FAMILY:	73	32
SEMI-DETACHED:	50	32
TOWNHOMES:	100	35
CONDOMINIUMS:	180	40

ESTIMATED AVE. DAILY TRAFFIC VOLUMES*:
SINGLE-FAMILY: 9.55 x 182 ... 1,738
SEMI-DETACHED/ZERO LOT LINE: 9.55 x 123 ... 1,175
TOWNHOMES: 5.86 x 100 ... 586
CONDOMINIUMS: 5.86 x 180 ... 1,055
GROSS # OF VEHICLE TRIPS PER DAY: ... 4,554
*Data Source: Institute of Transportation Engineers, Text Dated 1994

ESTIMATED AVE. DAILY WATER CONSUMPTION: 200 Gal./Unit
ESTIMATED AVE. DAILY SEWAGE FLOW: 200 Gal./Unit

NOTES

1. PROPOSED BUFFER YARDS, WHERE REQUIRED SHALL COMPLY WITH SECTION 16.7 (E).
2. THERE WILL NOT BE ANY COMMERCIAL USES ASSOCIATED WITH THE PROPOSED PUD.
3. THE TOPOGRAPHIC INFORMATION DEPICTED ON THE PLAN WAS PROVIDED BY WINGS AERIAL MAPPING CO., DATED APRIL 14, 1989.
4. THE PLANNING COMMISSION HAS CONFIRMED THAT THE LIMITS OF THE SUBJECT PARCEL ARE ENTIRELY WITHIN THE URBAN GROWTH AREA.
5. PROPOSED SETBACKS (FRONT, REAR, AND SIDE YARD) IN THE CONDOMINIUM SECTION ARE TEN (10) FEET.
6. ROADWAY CROSSINGS SHALL BE REVIEWED BY THE MARYLAND DEPARTMENT OF THE ENVIRONMENT.
7. BEARINGS AND DISTANCES IN AGREEMENT WITH A SURVEY BY FOX & ASSOCIATES, INC.
8. PROPERTY SHOWN HEREON IS NOT WITHIN THE 100-YR FLOOD PLAIN AS SHOWN ON FLOOD INSURANCE RATE MAP No. 240070-0095-B.
9. A TEN (10) FOOT EASEMENT FOR UTILITIES AND DRAINAGE TO BE DEDICATED ALONG INTERIOR OF ALL FRONT LOT LINES.
10. AN EIGHT (8) FOOT EASEMENT FOR UTILITIES AND DRAINAGE TO BE DEDICATED ALONG INTERIOR OF ALL SIDE AND REAR LOT LINES, WITH THE EXCEPTION OF ZERO SETBACK LOT LINES.
11. INTERSECTION IMPROVEMENTS WILL BE REQUIRED AT MT. AETNA ROAD AND ELATH LANE INTERSECTION, AND THE MT. AETNA AND JERRY DRIVE INTERSECTION TO INCLUDE ACCEL. AND DECEL. LANE CONSTRUCTION.
12. THE CONDOMINIUM AND TOWNHOUSE PORTION OF THIS PROJECT WILL BE A GATED COMMUNITY WITH PRIVATE STREETS MAINTAINED BY THE H.O.A.
13. PROPOSED WALKS WITHIN THE COUNTY RIGHT-OF-WAY MUST BE PORTLAND CEMENT CONCRETE AND MAINTAINED BY THE H.O.A.
14. ALL LANDSCAPE AREAS IN A PARTICULAR PHASE SHALL BE INSTALLED BEFORE ANY SUBSEQUENT PHASES CAN BE STARTED.
15. TOT LOT REQUIREMENTS (180 MULTI-FAMILY UNITS):
    180 UNITS @ 12 S.F./UNIT = 2,160 S.F.
    2,160 S.F./ 780 S.F. = 3 LOTS REQ'D
16. THE OWNER/DEVELOPER SHALL BE RESPONSIBLE FOR THE CONSTRUCTION OF BUS WAITING AREA(S) IN ACCORDANCE WITH THE APPLICABLE REQUIREMENTS OF THE WASH. CO. ZONING ORDINANCE UPON DETERMINATION OF LOCATION(S) BY THE WASH. CO. TRANSPORTATION DEPT. & THE BOARD OF EDUCATION.

DEVELOPMENT SCHEDULE

PHASE I-A (127 DWELLINGS, ACTIVE RECREATION FACILITIES) ... 2009–2011 (3 YEARS)
PHASE I-B (35 DWELLINGS) ... 2012–2013 (2 YEARS)
PHASE 2 (220 DWELLINGS) ... 2014–2016 (3 YEARS)
PHASE 3 (203 DWELLINGS) ... 2017–2020 (4 YEARS)

NOTE: THE PHASING/DEVELOPMENT SCHEDULE MAY BE EFFECTED BY THE SEWER CAPACITY LIMITATIONS PER THE CITY OF HAGERSTOWN SEWER CAPACITY ALLOCATION PROGRAM.

FOREST EASEMENT AREA
EXIST. FOREST EASEMENT AREA

TYPICAL LOT LAYOUTS

TYPICAL ZERO LOT LINE SINGLE FAMILY LOT
LOTS 117 TO 147 AND 346 TO 387
3,825 sq. ft.

TYPICAL SINGLE-FAMILY LOT
LOTS 1 TO 84, 148 TO 186, 281 TO 339
16,500 sq. ft.

TYPICAL SEMI-DETACHED LOT
LOTS 85 TO 116, 187 TO 198, AND 340 TO 345
7,500 sq. ft.

TYPICAL TOWNHOME LOT (W/GARAGE)
LOTS 199 TO 280 AND 388 TO 405
2,400 sq. ft.

SENSITIVE AREA NOTE

THE STREAM BUFFER SHOWN ON THIS PLAT IS ESTABLISHED PURSUANT TO THE REQUIREMENTS OF THE WASHINGTON COUNTY SUBDIVISION ORDINANCE ARTICLE IV, SECTION 409. IN AN EFFORT TO PRESERVE OR IMPROVE WATER QUALITY, THE PROPERTY OWNER IS REQUIRED TO ESTABLISH AND THEREAFTER MAINTAIN IN PERPETUITY VEGETATIVE GROUND COVER IN ACCORDANCE WITH RURAL OR URBAN BEST MANAGEMENT PRACTICES RECOMMENDED BY THE W.C.S.C.D. NO PERMANENT STRUCTURES AND NO CONSTRUCTION ARE PERMITTED WITHIN THE STREAM BUFFER EXCEPT THOSE DESIGNATED TO IMPROVE WATER QUALITY OR FLOW AS APPROVED BY THE WASHINGTON COUNTY PLANNING COMMISSION IN ACCORDANCE WITH ALL APPLICABLE REGULATIONS, LAWS AND POLICIES. NO SEPTIC SYSTEM SHALL BE CONSTRUCTED WITHIN THE BUFFER.

TYPICAL SECTION (MINOR STREET)
SIMCHA STREET, JAMIE, & MANAZ LANE
N.T.S.

TYPICAL SECTION (COLLECTOR STREET)
SASHA BLVD. EXTENSION & JERRY DRIVE
N.T.S.

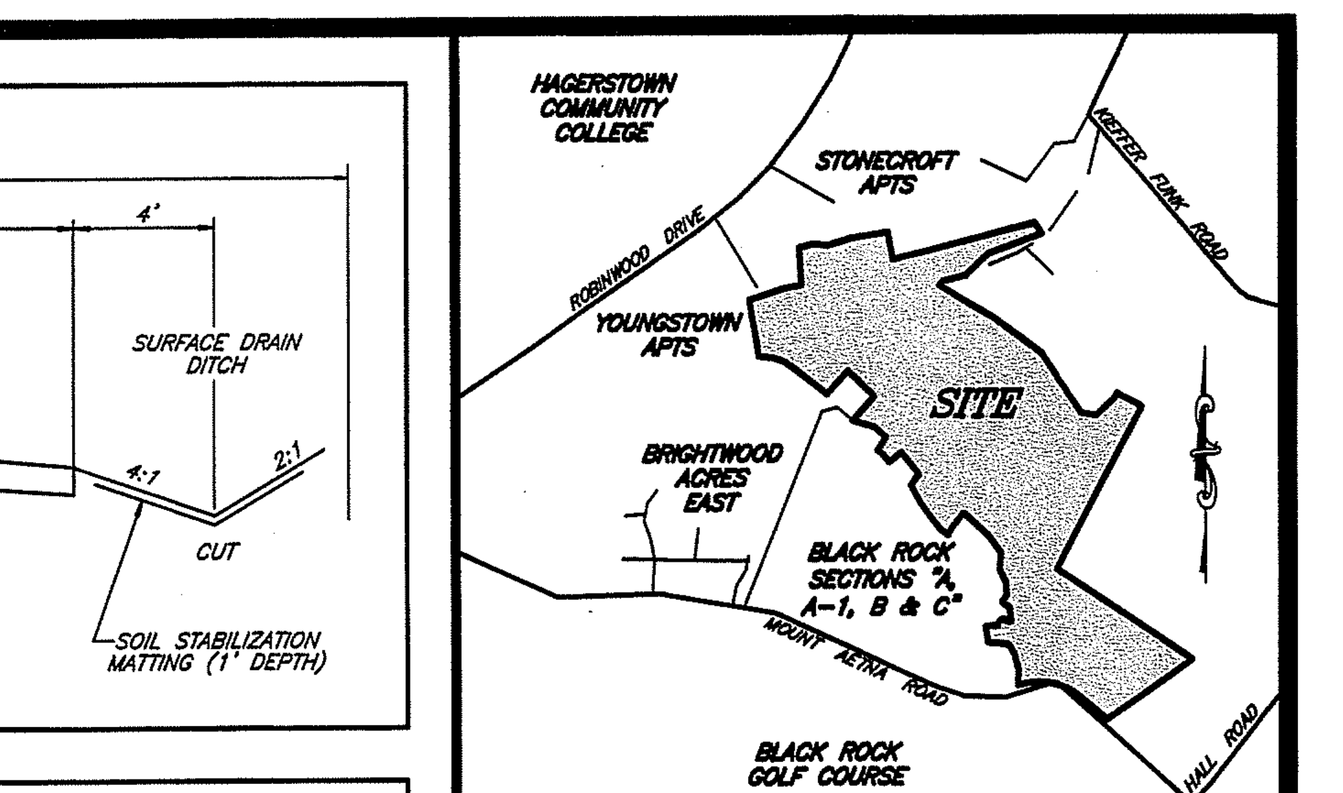
TYPICAL SECTION (LOCAL STREET)
ALL OTHER STREETS
N.T.S.

PAVEMENT SECTION (COLLECTOR STREET)
SASHA BLVD. EXTENSION & JERRY DRIVE
N.T.S.

STONE BASE
1. 4" HOT MIX ASPHALT SURFACE COURSE
2. 4" HOT MIX ASPHALT BASE COURSE
3. 6" AGGREGATE BASE COURSE (2–3" COURSES)
4. PREPARED SUBGRADE
5. TACK COAT
6. SHOULDERS: 3" HOT MIX ASPHALT SURFACE COURSE
7. SHOULDERS: 11" AGGREGATE BASE COURSE (2–5.5" COURSES)

PAVEMENT SECTION (LOCAL & MINOR STREETS)
ALL OTHER STREETS
N.T.S.

STONE BASE
1. 3" HOT MIX ASPHALT SURFACE COURSE
2. 3" HOT MIX ASPHALT BASE COURSE
3. 6" AGGREGATE BASE COURSE (2–3" COURSES)
4. PREPARED SUBGRADE
5. TACK COAT
6. SHOULDERS: 3" HOT MIX ASPHALT SURFACE COURSE
7. SHOULDERS: 9" AGGREGATE BASE COURSE (2–4.5" COURSES)



VICINITY MAP
SCALE: 1" = 2000'
TAX MAP 50 PARCEL 309 & 321

OWNER/DEVELOPER
MANSOOR E. SHAOOL
72 WEST WASHINGTON STREET
HAGERSTOWN, MARYLAND 21740
PHONE: (301) 797-7434

REZONING CASE No. RZ-02-006
APPROVED ON 11/19/2002
PRELIM. DEVELOPMENT PLAN CASE NO. DP-03-003
APPROVED ON 8/2/2004

REVISED FINAL DEVELOPMENT PLAN
BLACK ROCK P.U.D.

SITUATE NORTH OF MOUNT AETNA ROAD
AND WEST OF WHITE HALL ROAD
WASHINGTON COUNTY, MARYLAND

THIS FINAL DEVELOPMENT PLAN REVISION HAS BEEN PERFORMED TO REVISE PROJECT PHASING TO ACCOMODATE FURTHER ALIGNMENT STUDIES BY COUNTY DPW FOR FUTURE, MASTER-PLANNED ROADWAY.

OWNER/DEVELOPERS CERTIFICATION
I CERTIFY THAT I WILL ABIDE BY THE TERMS AND CONDITIONS OF THIS FINAL DEVELOPMENT PLAN.
DATE 5/27/20 — OWNER – BLACKROCK P.U.D.

CERTIFICATE OF APPROVAL
FINAL APPROVAL GRANTED WASHINGTON COUNTY PLANNING COMMISSION
DATE 5/29/2020 BY: EXECUTIVE DIRECTOR

APPROVAL OF THIS FINAL DEVELOPMENT PLAN DOES NOT CONSTITUTE APPROVAL OF SPECIFIC LOCATIONS, ARRANGEMENTS, OR CONFIGURATION OF THE FACILITIES OR LAND USES SHOWN HEREON, INCLUDING ANY REQUIRED OFF-SITE IMPROVEMENTS OR MONETARY CONTRIBUTIONS. EACH INDIVIDUAL PHASE OF THIS PUD MAY REQUIRE APPROVAL OF SUBDIVISION PLATS OR SITE PLANS BY THE WASHINGTON COUNTY PLANNING COMMISSION. SUCH SPECIFIC APPROVALS SHALL BE IN ACCORDANCE WITH THE REQUIREMENTS OF COUNTY ORDINANCES IN FORCE AT THE TIME ANY SUBDIVISION PLATS OR SITE PLANS ARE SUBMITTED, INCLUDING WITHOUT LIMITATION THE SUBDIVISION, ZONING, AND ADEQUATE PUBLIC FACILITIES ORDINANCES.

OWNER/DEVELOPER: SEWER CAPACITY LIMITATION – Revised
THE ALLOCATION OF SEWER CAPACITY TO PROVIDE SEWER SERVICE FOR THE LOT(S) SHOWN HEREON IS SUBJECT TO THE CONSENT JUDGEMENT OF JANUARY 12, 2005. THE SEWER CAPACITY ALLOCATION PROGRAM (SCAP) DEVELOPED AS A RESULT OF THIS JUDGEMENT ESTABLISHES PROVISIONS FOR THE SPECIFIC ALLOCATION OF A MAXIMUM NUMBER OF GALLONS PER YEAR FOR ALL PROPERTIES TO BE SERVED BY THE HAGERSTOWN WASTEWATER TREATMENT PLANT. APPROVAL OF THIS PRELIMINARY PLAT/SITE PLAN IS SUBJECT TO AVAILABILITY OF SEWER CAPACITY UNDER THE SCAP AND MAY REQUIRE PHASING OF THIS DEVELOPMENT AS THE ANNUAL AVAILABLE SEWER CAPACITY PERMITS. THE APPROVAL OF A SPECIFIC NUMBER OF GALLONS OF REQUIRED SEWER ALLOCATION FOR COMMERCIAL SUBDIVISIONS/INFILL OR REDEVELOPMENT/EXPANSIONS WILL REQUIRE VERIFICATION OF PROPOSED NEED AND/OR DOCUMENTATION RELATIVE TO COMPARABLE USE. THE APPROVAL OF THIS PLAT/SITE PLAN IS NOT A GUARANTEE OF SEWER SERVICE, BUT AN INDICATION THAT THE WATER AND SEWER INFRASTRUCTURE PLANS FOR THE DEVELOPMENT/SITE PLAN HAVE BEEN APPROVED BY THE CITY'S WATER AND SEWER DEPARTMENT. APPLICATION FOR SEWER SERVICE MAY BE MADE AT FINAL PLAT/SITE PLAN SUBMISSION. THE SCAP LIMITATION MAY AFFECT THE TIMING OF APPROVAL OF ANY OR ALL SEWER PERMITS.
DATE 5/27/20 — OWNER – BLACKROCK P.U.D.

SOIL TYPES

DmA	DUFFIELD SILT LOAM, 0 TO 3 PERCENT SLOPES
DmB2	DUFFIELD SILT LOAM, 3 TO 8 PERCENT SLOPES, MODERATELY ERODED
FvC2	FRANKSTOWN VERY ROCKY SILT LOAM, 3 TO 15 PERCENT SLOPES, MODERATELY ERODED
FwB2	FRANKSTOWN AND DUFFIELD CHANNERY SILT LOAMS, 3 TO 8 PERCENT SLOPES, MODERATELY ERODED
FwC2	FRANKSTOWN AND DUFFIELD CHANNERY SILT LOAMS, 8 TO 15 PERCENT SLOPES, MODERATELY ERODED
FwC3	FRANKSTOWN AND DUFFIELD CHANNERY SILT LOAMS, 8 TO 15 PERCENT SLOPES, SEVERELY ERODED
HaB2	HAGERSTOWN EXTREMELY ROCKY SILT LOAM, 0 TO 25 PERCENT SLOPES, MODERATELY ERODED
HbD2	HAGERSTOWN EXTREMELY ROCKY SILTY CLAY LOAM, 0 TO 25 PERCENT SLOPES, MODERATELY ERODED
HcB2	HAGERSTOWN SILT LOAM, 3 TO 8 PERCENT SLOPES, MODERATELY ERODED
HcC2	HAGERSTOWN SILT LOAM, 8 TO 15 PERCENT SLOPES, MODERATELY ERODED
HgC2	HAGERSTOWN VERY ROCKY SILT LOAM, 3 TO 15 PERCENT SLOPES, MODERATELY ERODED
HhC2	HAGERSTOWN VERY ROCKY SILTY CLAY LOAM, 3 TO 15 PERCENT SLOPES, MODERATELY ERODED
HhC3	HAGERSTOWN VERY ROCKY SILTY CLAY LOAM, 8 TO 15 PERCENT SLOPES, SEVERELY ERODED
Hk	HUNTINGTON SILT LOAM, LOCAL ALLUVIUM
Rk	ROCKY ERODED LAND

SITE AMENITY SCHEDULE

*PHASE I-A & I-B: POOL, CLUBHOUSE, TENNIS COURTS, CONCRETE SIDEWALK & ASPHALT WALKS WITHIN PHASE LIMITS.
PHASE II: CONCRETE SIDEWALK & TOT LOTS WITHIN PHASE LIMITS.
PHASE III: ASPHALT WALKS & CONCRETE SIDEWALK WITHIN PHASE LIMITS.

* SUBSEQUENT PHASES OF DEVELOPMENT WILL NOT BE APPROVED UNTIL THE SITE AMENITIES CALLED FOR IN PHASE I-A & I-B ARE CONSTRUCTED.

GRAPHIC SCALE
(IN FEET)
1 inch = 100 ft.

AREA TABULATION

	PHASE I-A (135 UNITS)	PHASE I-B (35 UNITS)	PHASE II (220 UNITS)	PHASE III (203 UNITS)	TOTAL (585 UNITS)
TOTAL ACREAGE	108.71	19.53	43.61	48.26	220.11
OPEN SPACE	31.65	0.97	9.06	10.55	59.93
RIGHT-OF-WAY	13.32	3.30	7.19	5.74	29.55
LOT ACREAGE	57.38	15.26	24.42	30.46	119.82
WATER TOWER LOT				1.51	1.51
STORMWATER MGMT.	6.36		2.94		9.30
DENSITY (UNIT/Ac.)	1.2	1.8	5.0	4.2	2.7
CUMULATIVE DENSITY (UNIT/Ac.)	1.2	1.3	2.2	2.7	

CURVE TABLE

CURVE	RADIUS	LENGTH	TANGENT	CHORD	BEARING	DELTA
C1	666.62	161.74	81.27	161.34	S86°20'19"W	13°54'05"
C2	666.62	216.80	109.37	215.85	N57°19'55"W	18°38'03"
C7	25.00	23.55	12.73	22.69	S69°59'25"E	53°58'05"
C8	60.00	148.02	171.10	113.34	S86°19'05"W	141°21'06"

RECEIVED
MAY 28 2020
WASHINGTON COUNTY PLAN REVIEW DEPARTMENT

PREPARED BY:

FOX & ASSOCIATES, INC.
ENGINEERS • SURVEYORS • PLANNERS
981 MOUNT AETNA ROAD
HAGERSTOWN, MARYLAND 21740
PHONE: (301) 733-8503 FAX: (301) 733-1853

PROJECT No. 19-51007 DATE: FEBRUARY, 2020
DRAWING No. DD-2465 DRAWN BY: J.FRITZ

CASE NO. DP-20-001

EXHIBIT B

Washington County
MARYLAND
DEPARTMENT OF PLANNING & ZONING
COMPREHENSIVE PLANNING | LAND PRESERVATION | FOREST CONSERVATION | GIS

July 23, 2021 RZ-21-003

APPLICATION FOR AMENDMENT OF DEVELOPMENT PLAN
PLANNING COMMISSION RECOMMENDATION

RECOMMENDATION

The Washington County Planning Commission held a public information meeting on June 14, 2021 for the purpose of taking public comment on an application for a major change to the existing development plan for the Black Rock PUD. The proposed amendment would increase the overall number of residential units from 595 dwelling units to 1,148 units, thereby increasing the residential density from 2.7 dwelling units per acre to 5.2 dwelling units per acre. The Planning Commission considered the applicant's application and supporting documents, oral testimony from more than 30 residents of the area, written comments including a petition signed by nearly 400 residents of the area, and the Staff Report and Analysis.

At their regular meeting on July 19, 2021, the Planning Commission unanimously voted to deny the requested major change for the following reasons:

1. The transportation network serving the area (specifically Mt. Aetna Road between White Hall Road and MD 66) is not adequate to handle the additional traffic from additional units.
2. The water system does not appear to be adequate to properly serve the additional units as it relates to water pressure and availability of sufficient capacity for public fire suppression efforts.
3. The school system would not have adequate capacity to serve the new pupil yield of the proposed new units.

Copies of the application packet and supporting documents, Staff Report and Analysis, written comments, petition, and minutes of the June 14, 2021 public information meeting and July 19, 2021 regular meeting are attached.

Respectfully submitted,

Jill Baker, AICP
Director, Washington County Dept. of Planning & Zoning

JLB/dse
Attachments
cc: Kirk Downey
Morris & Ritchie Associates

EXHIBIT C

164 Md.App. 426
Court of Special Appeals of Maryland.

James CREMINS, et al.
v.
COUNTY COMMISSIONERS OF
WASHINGTON COUNTY, Maryland, et al.

No. 2200, Sept. Term, 2003.
|
Sept. 29, 2005.

Synopsis

Background: Adjacent property owners to proposed development sought review of county commissioners' decision to rezone a parcel of property to a planned unit development (PUD). The Circuit Court, Washington County, Frederick C. Wright, III, J., affirmed. Adjacent owners appealed.

Holdings: The Court of Special Appeals, Barbera, J., held that:

[1] substantial evidence supported commissioners' zoning decision;

[2] ordinance did not require that commissioners find that adjacent roadway was currently adequate for proposed development; and

[3] commissioners were not required to determine whether proposed development had necessary infrastructure.

Affirmed.

Procedural Posture(s): On Appeal.

West Headnotes (17)

[1] **Administrative Law and Procedure** Review using standard applied below

When the Court of Special Appeals reviews the decision of an administrative agency, its role is the same as that of the circuit court.

[2] **Administrative Law and Procedure** Wisdom, judgment, or opinion in general

A reviewing court may not substitute its judgment for that of the agency.

[3] **Zoning and Planning** Legislative, administrative, judicial, or quasi-judicial power

Zoning and Planning Arbitrary, Capricious, or Unreasonable Action

Zoning and Planning Presumptions and Burdens

Zoning and Planning Substantial evidence in general

Zoning matters are, first of all, legislative functions and, absent arbitrary and capricious actions, are presumptively correct, if based upon substantial evidence, even if substantial evidence to the contrary exists.

[4] **Zoning and Planning** Substantial evidence in general

There is substantial evidence to support the zoning agency's conclusion if reasoning minds could reasonably reach the conclusion from facts in the record; evidence is substantial if there is a little more than a scintilla of evidence.

4 Cases that cite this headnote

[5] **Administrative Law and Procedure** Construction, interpretation, or application of law in general

The standard for judicial review of an administrative agency's legal rulings requires the reviewing court to determine if the administrative decision is premised upon an erroneous conclusion of law.

2 Cases that cite this headnote

[6] **Administrative Law and Procedure** Presumptions and Burdens on Review

Administrative Law and Procedure Correctness or error

A reviewing court must review the agency's decision in the light most favorable to it, and the decision of the agency is deemed prima facie correct and presumed valid.

[7] **Administrative Law and Procedure** Agency expertise in general

Administrative Law and Procedure Relationship of agency with statute in general

Administrative Law and Procedure Competence, expertise, and knowledge of agency

Administrative Law and Procedure Competence, expertise, and knowledge of agency

In reviewing an agency decision, the agency's interpretations and applications of the statutory or regulatory provisions that it administers should be afforded considerable weight, and the expertise of the agency in its own field should be respected.

1 Cases that cite this headnote

[8] **Zoning and Planning** Preservation before board or officer of grounds of review

Property owners waived on appeal their argument that testimony at public hearing before the county commissioners regarding rezoning issues could not be considered due to the fact that the testimony presented in favor of the rezoning was unsworn, where the owners failed to object to the unsworn testimony during the administrative proceedings.

1 Cases that cite this headnote

[9] **Administrative Law and Procedure** In general; necessity

A party who knows or should have known that an administrative agency has committed an error and who, despite an opportunity to do so, fails to object in any way or at any time during the course of the administrative proceedings, may not thereafter complain about the error at a judicial proceeding.

3 Cases that cite this headnote

[10] **Administrative Law and Procedure** Witnesses

It is important that the presiding officer of the administrative agency proceedings be certain that witnesses are properly sworn and identified and that the record does not contain unsworn comments by unidentified persons.

[11] **Administrative Law and Procedure** Documentary evidence

It is important that all documents and other exhibits presented during administrative agency proceedings be carefully identified and cataloged in the record.

[12] **Zoning and Planning** Particular Uses or Restrictions

Zoning and Planning Agricultural uses, woodlands and rural zoning

County commissioners' decision to rezone property to a planned unit development (PUD) was supported by substantial evidence, where commissioners had before them numerous documents concerning rezoning, including minutes of the planning commission meeting, zoning maps, a plat of the property, a deed to the property, letters from individuals opposed to rezoning, and recommendation reports from several agencies.

[13] **Zoning and Planning** Hearing or meeting in general

County commissioners were entitled to consider documentary evidence presented at hearing

in deciding rezoning issue, even though the documents were not placed before the commissioners by sworn witnesses who were subject to cross-examination; the commissioners were not bound by the technical rules of evidence.

1 Cases that cite this headnote

[14] Zoning and Planning Evidence

A zoning board, along with other administrative agencies, is generally not bound by the technical rules of evidence although it must observe fundamental fairness in dealing with the parties who appear before it.

1 Cases that cite this headnote

[15] Zoning and Planning Applicability of general statutory construction principles

The interpretation of a local zoning regulation is made under the same canons of construction that apply to the interpretation of statutes.

1 Cases that cite this headnote

[16] Zoning and Planning Particular Uses or Restrictions

County zoning ordinance regarding planned unit developments (PUD) did not require the county commissioners to find, before approving rezoning of land to a PUD, that an adjacent roadway was currently adequate to handle both existing and future traffic; instead, the zoning scheme as a whole mandated that the planning commission monitor the adequacy of roadway facilities throughout the PUD review and approval process, and throughout the period of development.

[17] Zoning and Planning Particular Uses or Restrictions

Rezoning scheme contained in county zoning ordinance regarding planned unit developments (PUD) was more flexible and more effective than the reasonably probable of fruition in the foreseeable future test that was used to determine whether a proposed development had necessary infrastructure to support it, and thus, the county commissioners were not required to address infrastructure issues at the rezoning approval stage of the PUD review and approval process, unless those infrastructure issues appeared to be highly unsolvable, where under the ordinance, development of a PUD, or any phase of a PUD, could not begin until the planning commission was satisfied that the required improvements to public facilities were made.

Attorneys and Law Firms

****968** William C. Wantz of Hagerstown, for appellant.

William J. Chen, Jr. of Rockville, E. Kenneth Grove(Mark D. Thomas on the brief), Hagerstown, for appellee.

JAMES R. EYLER, ADKINS, BARBERA, JJ.

Opinion

BARBERA, J.

***429** In Washington County, an application to rezone a parcel of property to a "Planned Unit Development," or "PUD," must pass through a five-step review and approval process. *See* Washington County Zoning Ordinance § 16.5. [1] This appeal ***430** involves step two of that process, "Zoning Approval." At that step, a party seeking re-zoning of his or her property to a PUD must obtain approval of the re-zoning from the County Commissioners of Washington County ("County Commissioners"), after a joint public hearing before the Washington County Planning Commission ("Planning Commission") and the County Commissioners.

****969** Appellants, James Cremins, *et al.,* [2] reside in Foxleigh Meadows, a single-family residential subdivision located adjacent to the property that is the subject of this appeal. They appeal from a judgment in the Circuit Court for Washington County, rendered in favor of the County Commissioners and Paul N. Crampton, Jr. (collectively, "appellees"). That judgment affirmed the County Commissioners' decision to re-zone certain property to the PUD zoning classification.

Appellants present four questions for our review, which we have re-ordered:

I. In a piecemeal rezoning hearing, may facts presented by unsworn witnesses be considered in determining whether the applicant's case is supported by substantial evidence?

II. Is remand inappropriate in the absence of substantial evidence of adequacy of the adjacent roadway and of general compatibility?

III. In Washington County, may a planned unit development floating zone be established in the absence of an affirmative finding by the rezoning authority that the proposed site is located adjacent to an adequate roadway, as required by the applicable zoning ordinance?

IV. In Washington County, should the reasonably probable of fruition requirement or a concurrency standard be applied in the floating zone compatibility analysis?

For the reasons that follow, we affirm.

***431 FACTS AND LEGAL PROCEEDINGS**

On November 7, 2002, Mr. Crampton filed an "Ordinance Amendment Application" ("the application") with the Planning Commission. Mr. Crampton proposed to reclassify a 97.27 acre parcel of land ("the property") from its "A" Agricultural zoning designation to the "A" Agricultural Planned Unit Development ("PUD") zone.[3] The property, also referred to as "Emerald Pointe PUD," is bounded on the west by Marsh Pike and on the east by a large parcel of private property that is used for agricultural purposes. To the north is Longmeadow Road and on the property's southern border is Maryland Route 60.

During the Concept Plan Review step of the PUD rezoning process, *see* § 16.5(a)(1), several local administrative agencies submitted reports and recommendations to the Planning Commission concerning the application. None of these agencies had objections to the application at that stage of the review and approval process.[4] The Planning Commission also received letters from neighboring property owners in support of and opposed to the application.

On January 13, 2003, a joint public hearing on the application was held before the Planning Commission and the County ****970** Commissioners. *See* § 16.5(a)(2). At the outset of the hearing, at which no oaths were administered, a staff member of the Planning Commission discussed the "Staff Report and Analysis" (the "Report") that was conducted in response to the application. The Report included enrollment figures for the public schools serving the property, and a statement that the ***432** Maryland State Highway Administration ("MSHA") had requested that access to the property be limited to Marsh Pike.

Attached to the Report was a "Preliminary Consultation" ("the Consultation"), prepared by the Planning Commission. The Consultation reflected that Mr. Crampton and several officials, including members of the Washington County Engineering Department (the "Engineering Department") and the Washington County Planning Department, had met to discuss, among other things, the traffic conditions along Marsh Pike. The Consultation noted that the Engineering Department had decided that Mr. Crampton and the Washington County officials would have to reach an agreement on "the liability and maintenance of [a] proposed median" at any entrance to the property on Marsh Pike. The Engineering Department also stated that the "Traffic Impact Study" would have to be revised.

The Planning Commission staff member stated at the joint hearing that Mr. Crampton proposed that the property be developed to include 89 semi-detached or duplex lots, 88 single family lots, 92 townhouse lots, a residential retirement center, a community center, and 9,000 square feet of commercial development. The staff member also stated that the Engineering Department and MSHA had requested updated traffic impact studies.

Mr. Crampton appeared at the joint hearing. He discussed the application and the development proposal in detail, noting in his statement that 35 to 40 units would be added to the development each year, and that the entire project would take 10 to 15 years to complete.

An engineer with Fox & Associates also appeared in support of the application. He discussed the application and stated that a company called "Street Traffic Group" had prepared a traffic study for the property. He reported that the traffic study indicates "that the existing system could be supported by the surrounding area network and the critical intersections will continue to operate at acceptable levels of service with

the full development of the PUD provided that ***433** some improvements are made." [5] The Engineering Department and MSHA had a copy of the study and were reviewing it, and had several preliminary comments regarding traffic along Marsh Pike, including that Marsh Pike needed "widening" and other improvements at intersections along Marsh Pike. The engineer did not know whether the Engineering Department and MSHA had made formal comments on the traffic study as of the date of the hearing. The engineer also stated that the property would "have a minimal impact on [public] schools."

More than 25 members of the public, several of whom are appellants, spoke in opposition to the application. The protestants generally asserted that the existing public schools did not have the capacity to handle the influx of children the development of the PUD would produce, the PUD was not compatible with neighboring properties, and the development would adversely affect traffic along Marsh Pike.

****971** The chairperson of the Planning Commission stated that the "file" would remain open for 10 days to allow additional comments to be submitted to the County Commissioners before they decided whether to approve the application.

On March 3, 2003, the Planning Commission voted three-to-one to recommend that the County Commissioners deny the application. In a letter dated the following day, the Planning Commission informed the County Commissioners of its recommendation. The Planning Commission stated that it "based this recommendation on" the traffic study submitted at the January 23, 2003 hearing, and on "concerns that the residential development density proposed for the [property] was not consistent with the residential density in adjacent developments." The Planning Commission also stated its "opinion that the road infrastructure in the immediate vicinity of the [property] was defici[ent.]"

***434** On March 13, 2003, the County Commissioners held a regular meeting to consider and vote on the application. The County Commissioners voted unanimously to accept "the findings of fact as set forth in the report from the County Attorney." [6] The County Commissioners also voted three-to-one to approve the rezoning of the property to PUD. Pertinent to this appeal, the County Commissioners made the following findings of fact:

Education Facilities

> The proposed residential uses within the PUD are single-family, semi-detached units, and townhouses. The single-family and semi-detached units would be exempt from the Article V School section of the Adequate Public Facilities Ordinance because this property is situated within the Urban Growth Area. Townhouses, however, would not be exempt. The subject property is located within the school districts of Paramount Elementary, Northern Middle, and North Hagerstown High School.
>
> * * *
>
> ***Present and future transportation patterns in the area.***
>
> The subject property ... has approximately 3,080 feet of frontage along Marsh Pike. The Washington County Highway Plan classifies this section of Marsh Pike as a Major Collector, which requires a minimum distance of 300 feet between all new access points and 40 feet of future dedicated right of way from centerline. This classification's major function is to provide for intra-county travel.... The property has approximately 1,082 feet of frontage along Leitersburg Pike, an Intermediate Arterial.... One access point onto Leitersburg Pike from Emerald Pointe has been proposed, however, the [MSHA] has requested that all access points to the development be limited to Marsh Pike.
>
> ***435** The ... Engineering Department and the [MSHA] made numerous comments regarding the subject property's impact on surrounding roadways and internal street design....
>
> * * *
>
> The Planning Commission opined that the road infrastructure in the immediate vicinity of the subject property was deficient based upon a traffic study submitted by [Mr. Crampton] and that the ****972** residential development density proposed for the subject property was not consistent with the residential density in adjacent developments.
>
> For the reasons set forth elsewhere in these findings of fact, [the County Commissioners] respectfully decline[] to adopt this opinion.
>
> * * *
>
> ***Effect of the PUD on community infrastructure.***

The adoption of the Adequate Public Facilities Ordinance (APFO) in 1990 has taken on a supportive role that was previously the sole responsibility of this item in the zoning ordinance during the rezoning stage when considering the deliberation of PUD cases. Due to this change, it would appear that now the Planning Commission and the [County Commissioners] would only have to address infrastructure issues at the zoning stage that would appear to be highly unsolvable.

A major concern of neighborhood residents who testified at the public hearing and who sent in correspondence during the comment period dealt with the PUD's effect on the area road network as a result of increased traffic. Terrence McGee, Chief Engineer, County Engineering Department, did not take exception to the rezoning and responded to this application by stating, "all issues under our jurisdiction associated with this request can be adequately addressed through the site plan approval process." One of the major comments is that the existing Traffic Impact ***436** Study will need to be revised to reflect the new plan. To date, the [ ] Engineering Department has no final comments with regard to the updated traffic study....

Another item that generated a significant amount of testimony at the public hearing was the issue of the PUD's impact on the neighborhood schools of Northern Middle, North Hagerstown High and, in particular, Paramount Elementary....

[Data pertaining to school capacity and projected student population is omitted.]

.... Discarding the units proposed for the retirement center, there would be 267 units subjected to APFO testing under the new policies. This would equate to 54 students or a total of 108 students projected from this development or in the pipeline. Since the PUD is projected for a build out over ten years, it is reasonable to assume that not all 54 students would come on line in the same year. With an available capacity of 81 students, it would seem that projected student population from this PUD as well as approved developments would not generate an inadequate condition in the near future....

The PUD article of the zoning ordinance was adopted prior to the adoption of the APFO. Within the context of the PUD article ..., references are made regarding impact on infrastructure (sections 16.0 and 16.7(a)). Neither of these references says that public school capacity must be adequate in order for a PUD zoning to be approved. However, the impact on the public schools must be given consideration when determining the appropriateness of the PUD and the proposed density. The APFO, on the other hand, allows the [County Commissioners] and the Planning Commission to take control of school adequacy issues associated with new development....

.... During the Development Plan review stages, [Mr. Crampton] should be investigating the adequacy of the schools and prepare a course of action if an adequacy problem is anticipated. The ****973** Planning Commission shall determine if the schools are adequate during the Final ***437** Development Plan review stage. As specified under [ ] section 16.6(d)2ii, agreements for responsibility between County and developer for providing on-site and off-site improvements[ ] shall be developed as part of the Final Development Plan. This would include addressing the developer's responsibility for school adequacy if he intends to continue with the project. If any of the schools are determined to be inadequate, and the developer does not wish to make them so, the final plat or site plan cannot be approved. If approval of the plat does not occur within six months, the PUD zoning designation would be lost and the property would revert back to its original, underlying classification.

(Emphasis added.)

Appellants filed a petition for judicial review of the County Commissioners' decision, in the Circuit Court for Washington County. Appellees participated in the petition. After a hearing, the court issued an opinion and order affirming the County Commissioners' decision. [7]

Appellants noted this timely appeal. We shall add facts as they become pertinent to our discussion.

STANDARD OF REVIEW

[1] **[2]** When we review the decision of an administrative agency, our role is the same as that of the circuit court. *Capital Commercial Props., Inc. v. Montgomery County Planning Bd.,* 158 Md.App. 88, 95, 854 A.2d 283 (2004). We may not substitute our judgment for that of the agency. *Id.* We have said that, "[i]n zoning matters, the zoning agency is considered to be the expert in the assessment of the evidence,

not the court." *Bowman Group v. Moser,* 112 Md.App. 694, 699, 686 A.2d 643 (1996), *cert. denied,* 344 Md. 568, 688 A.2d 446 (1997). *See also White v. Spring,* 109 Md.App. 692, 699, 675 A.2d 1023, *cert. denied,* 343 Md. 680, 684 A.2d 455 (1996).

***438** **[3]** We have said that, in all zoning cases, including floating zone cases, the reviewing court should not " 'zone or rezone, or [ ] substitute its judgment for that of the zoning authority if the action of the zoning authority is based on substantial evidence and the issue is thus fairly debatable.' " *Montgomery County v. Greater Colesville Citizens' Ass'n,* 70 Md.App. 374, 381, 521 A.2d 770 (1987) (quoting *Northampton Corp. v. Prince George's* County, 273 Md. 93, 101, 327 A.2d 774 (1974)). *See also Stansbury v. Jones,* 372 Md. 172, 182, 812 A.2d 312 (2002). "The basic reason for the fairly debatable standard is that zoning matters are, first of all, legislative functions and, absent arbitrary and capricious actions, are presumptively correct, if based upon substantial evidence, even if substantial evidence to the contrary exists." *White,* 109 Md.App. at 699, 675 A.2d 1023.

[4] There is substantial evidence to support the zoning agency's conclusion if "reasoning minds could reasonably reach [the] conclusion from facts in the record[.]" *Stansbury,* 372 Md. at 182–83, 812 A.2d 312. Evidence is "substantial" "if there is 'a little more than a "scintilla of evidence." ' " *Greater Colesville,* 70 Md.App. at 382, 521 A.2d 770 (citation omitted). *See also Lucas v. People's Counsel for Baltimore County,* 147 Md.App. 209, 225, 807 A.2d 1176 (2002).

[5] **[6]** **[7]** The standard for judicial review of an administrative agency's legal rulings ****974** requires the reviewing court to " 'determine if the administrative decision is premised upon an erroneous conclusion of law.' " *Maryland Aviation Admin. v. Noland,* 386 Md. 556, 573–74 n. 3, 873 A.2d 1145 (2005) (citations omitted). In making this determination, the reviewing court " 'must review the agency's decision in the light most favorable to it,' " and the decision of the agency is deemed " 'prima facie correct and presumed valid [.]' " *Id.* (citations omitted.) In addition, "the agency's interpretations and applications of [the] statutory or regulatory provisions" that it administers should be afforded considerable weight, and " 'the expertise of the agency in its own field should be respected.' " *Id.* (citations omitted.)

*439 DISCUSSION

The PUD re-zoning process in Washington County

We are asked in this appeal to decide whether the County Commissioners properly interpreted the Zoning Ordinance for Washington County and the APFO. We begin with a discussion of the County Commissioners' authority to re-zone property to the PUD classification, and the process through which an application for re-zoning must pass.

The authority of the County Commissioners to reclassify the zoning of property in Washington County is derived from Maryland Code (1957, 2003 Repl.Vol.), Article 66B ("Article 66B"). *See Bd. of County Comm'rs of Washington County v. H. Manny Holtz, Inc.,* 60 Md.App. 133, 135 n. 1, 481 A.2d 513 (1984) (noting that Article 66B authorizes Washington County to create a Board of Zoning Appeals with limited authority, and recognizing that "[a]pplications for reclassification [of land] must be made directly to the Board of County Commissioners, which alone is authorized to approve them"). Article 66B, § 10.01(a) specifically authorizes the County Commissioners "to enact [] ordinances or laws providing for or requiring," *inter alia,* PUDs and floating zones.

Section 27.1 of the zoning ordinance authorizes an individual to petition the County Commissioners for a re-zoning of property. The provisions specifically governing the rezoning of land in Washington County to a PUD or floating zone are located in Article 16 of the zoning ordinance. Section 16.0, entitled "Purpose," provides:

> The intent of these PUD regulations is to permit a greater degree of flexibility and more creativity in the design and development of residential areas than is possible under conventional zoning standards. The purpose is also to promote a more economical and efficient use of the land while providing for a harmonious variety of housing choices, a more varied level of community amenities, and the promotion of adequate open space and scenic attractiveness.
>
> The PUD is a floating zone that may be established in any of the Districts specified in Section 16.4. The change or ***440** mistake rule does not apply to the PUD process, but the Planning Commission and the Board

of County Commissioners, in the deliberation of a PUD application, shall establish findings of fact that consider, at a minimum, the purpose of the PUD District, the applicable policies of the adopted Comprehensive Plan for the County, the compatibility of the proposed PUD with neighboring properties, and the effect of the PUD on community infrastructure.

Section 16.5 outlines a "multi-step" review and approval process for a PUD re-zoning application. Subsection (a) of that section provides, in pertinent part:

> ****975** Design and Development Schedule: It is the intent of this Ordinance that the PUD not be a speculative device. The Concept Plan as submitted by the applicant shall reflect the actual development to be designed and constructed within a reasonable time frame. Each phase of the design and development review process must occur within specified periods. If the applicant fails to submit his plans, or if construction does not commence, as specified by this Ordinance, the zoning of the site shall automatically revert to its previous classification.
>
> If the applicant abandons the plans for the PUD at any time prior to the start of construction before the automatic reversion date and desires to proceed with development permitted under the previous zoning, he may do so by submitting notification to the Planning Commission. Such notification shall constitute official withdrawal of the applicant's plans for the PUD and shall permit reversion of the previous zoning classification without the necessity of the rezoning process.
>
> 1. Concept Plan Review: The purpose of the Concept Plan Review is to provide an exchange of information between the developer and the Planning Commission. The intent is that the developer provide the [Planning] Commission with general information for the layout, density, specific uses and the like. The [Planning] ***441** Commission, in turn, will provide the developer with corresponding response.
>
> 2. Zoning Approval: Following the Concept Plan Review, a joint public hearing with the Board of County Commissioners and the Planning Commission will be scheduled. Within 120 days after the public hearing, the Board of County Commissioners, after receiving a recommendation from the Planning Commission, shall render a decision on the PUD application. Zoning approval constitutes tentative approval of density and design features as shown on the Concept Plan. Minor changes in concept design may subsequently be approved by the Planning Commission without an additional public hearing.

(Footnote omitted.)

The remaining three steps of the review and approval process require approval of the Planning Commission. *See* § 16.5(a)3. through 5.

Two other provisions of the zoning ordinance concern traffic. Section 16.4(b), which is one of the provisions we are asked to interpret in this appeal, provides that, as a general requirement, a PUD "shall be located ... adjacent to adequate roadway facilities capable of serving existing traffic and the future traffic generated by the uses in the PUD." Section 16.7(i), titled "Traffic Circulation and Parking," provides:

> 1. Existing and planned streets and highways shall be of sufficient capacity to serve existing traffic and all new traffic when fully developed.
>
> 2. The capacity of existing streets and highways serving a PUD shall be considered by the [Planning] Commission in determining density. Density resulting in traffic capacity being exceeded on streets and highways shall not be permitted.

In 1990, Washington County approved an APFO pursuant to the authority granted it by Article 66B, § 10.01. *See* APFO Article XII. Section 1.2 of the APFO provides:

> ***442** It is the purpose of the [County Commissioners] that public facilities and services needed to support new development shall be available concurrently ****976** with the impacts of such new developments. In meeting this purpose, public facility and service availability shall be deemed sufficient if the public facilities and services for new development are phased, or the new development is phased, so that the public facilities and those related services which are deemed necessary by the local government to operate the facilities necessitated by that new development, are available

> concurrently with the impacts of the new development.

Article 66B, § 4.04(b)(1) provides that a decision of the County Commissioners to rezone a portion of land "may not become effective until 10 days after at least one public hearing on the matter, at which parties in interest and citizens shall have an opportunity to be heard."

Section 27.2 of the zoning ordinance requires, *inter alia,* that the County Commissioners "hold at least one public hearing" before making a "map amendment." Following the public hearing, the County Commissioners must "make findings of fact in each specific case" involving an application for re-zoning approval to a PUD. § 27.3. Section 27.3 requires that the County Commissioners make findings of fact involving, *inter alia,* "the following matters":

> (a) The report and recommendations of the [Planning Commission].
>
> (b) Population change in the area of the proposed change.
>
> (c) Availability of public facilities in the area.
>
> (d) Present and future transportation patterns in the area.
>
> (e) Compatibility with existing and proposed development of the area including indication of neighboring sites identified by the Washington County Historic Sites Survey and subsequent revisions or updates.
>
> (f) The relationship of the proposed change to the Adopted Plan For the County, Development Analysis Plan Map and Policies.
>
> * * *
>
> ***443** (i) Whether there has been a convincing demonstration that the proposed rezoning would be appropriate and logical for the subject property.

Issues 1 and 2: The joint public hearing in this case and the appropriateness of a remand

Appellants contend that the County Commissioners' decision cannot properly be sustained because, at the January 13, 2003 joint public hearing, all of the "testimony" presented in favor of the application was "unsworn." It follows, appellants argue, that the evidence presented at the joint public hearing "may not be considered" in determining whether the County Commissioners' decision is supported by substantial, competent evidence.

Appellees counter that appellants did not object to the lack of an oath given at the joint public hearing; therefore, the argument is waived. Appellees further assert that, should we reach the merits of the argument, there is no requirement in statute, the County Code, or case law that "testimony" at a public hearing like the one in this case be given under oath.

[8] Appellees are correct that appellants, many of whom spoke at the joint public hearing without having taken an oath, did not object or otherwise raise the issue at the hearing. Appellants, moreover, remained silent on this subject during the 10–day period in which the "file" remained open for the County Commissioners to receive written materials.

****977** **[9]** "A party who knows or should have known that an administrative agency has committed an error and who, despite an opportunity to do so, fails to object in any way or at any time during the course of the administrative proceedings," may not thereafter complain about the error at a judicial proceeding. *Cicala v. Disability Review Bd. for Prince George's County,* 288 Md. 254, 261–62, 418 A.2d 205 (1980). *See also id.* at 262–63, 418 A.2d 205 (stating that failure of appellant's attorney to object at a hearing before the Disability ***444** Review Board that the Board did not have a report that it was required to obtain and consider, cannot thereafter properly raise the issue at the judicial review proceeding and therefore cannot properly raise the issue before the appellate court); *Capital Commercial,* 158 Md.App. at 102, 854 A.2d 283 (holding that because the appellant did not present to the administrative agency the argument it raised before this Court, the issue was not preserved, and holding that, even if preserved, the argument failed); *Brzowski v. Maryland Home Improvement Comm'n,* 114 Md.App. 615, 691 A.2d 699 (holding that, despite the merits of the argument the appellant raised on appeal, the issue was not preserved for judicial review because it was not raised before the administrative agency), *cert. denied,* 346 Md. 238, 695 A.2d 1227 (1997); *Templeton v. County Council of Prince George's County,* 21 Md.App. 636, 645, 321 A.2d 778 (1974) (holding that, because the appellant did not present a question before a hearing examiner or District Council, the question was "not properly before this Court"); *cf. Anne Arundel County*

v. Nes, 163 Md.App. 515, 535–36, 881 A.2d 1161 (2005), (holding that the appellees' argument was waived because they had "expressly abandoned" the argument before the administrative agency).

We have previously addressed the question of waiver of a challenge to the use of unsworn statements by a witness, albeit in the context of a contested custody case. *See Schaefer v. Cusack,* 124 Md.App. 288, 722 A.2d 73 (1998). In that case, the complaint was raised on appeal that the chancellor had erroneously relied in its custody decision on the testimony of the child's headmistress, after having decided that it was not necessary to have her put under oath. *Id.* at 312–13, 722 A.2d 73. We said, in response to the claim:

> The attorney for [the cross-appellant] did not insist [that the witness be sworn]. She testified. There was no objection to her testimony. The attorney for [the cross-appellant] did not move to strike the testimony. [The cross-appellant]'s attorney had the opportunity to cross-examine Ms. Gentry. Rule 2–517 states in pertinent part:
>
> > ***445** An objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter as a grounds for objection become apparent. Otherwise, the objection is waived.
>
> Professor Lynn McLain in her excellent work on *Maryland Evidence,* Section 603.1 at 26 (1987) states:
>
> > "Objection to a witness' testifying who has not made an oath or affirmation will be considered waived unless made before the testimony or, if the witness is not on the stand as soon as it should be apparent that the witness is testifying."
>
> We deem the point waived.

Id. at 313, 722 A.2d 73.

[10] **[11]** We can conceive of no reason why the same waiver rule ought not apply to the present case. The failure of appellants to object to the witnesses' not being sworn at the joint hearing constitutes a ****978** waiver of appellants' right to complain now. [8]

[12] Even if we discount the unsworn witness testimony, however, there was substantial evidence before the County Commissioners to make the issues raised in this appeal fairly debatable. Indeed, the only ground upon which appellants rely in their argument that the County Commissioners lacked ***446** substantial evidence to support their findings is that "[r]emoving unsworn commentary and argument of counsel from the body of evidence before the [County Commissioners] leaves the decision of the [County Commissioners] unsupported." We disagree.

The County Commissioners had before them numerous documents. Included among those documents were Mr. Crampton's application; the minutes of the Planning Commission's meeting during which the Planning Commission voted against approving the application; numerous letters from individuals opposed to the re-zoning application; zoning maps; a plat of the property; the Report of the Planning Commission's staff; a deed to the property; and recommendation reports of several agencies including the Engineering Department, Health Department, MSHA, and the Washington County Water & Sewer Department.

[13] Appellants make no argument that those documents do not constitute substantial evidence upon which the County Commissioners could render their decision. Appellants argue only that the documentary evidence came from Mr. Crampton, the Planning Commission, and appellants, yet the County Commissioners did not require any of them to face cross-examination before submitting those documents. Appellants maintain that all of this documentary evidence should have been placed before the County Commissioners by sworn witnesses who faced cross-examination, and, therefore, it should not have been considered by them.

[14] We disagree. "A zoning board, along with other administrative agencies, is generally not bound by the technical rules of evidence although it must observe fundamental fairness in dealing with the parties who appear before it." *Ginn v. Farley,* 43 Md.App. 229, 236, 403 A.2d 858, *cert. denied, sub nom. Engel v. Farley,* 286 Md. 747 (1979). *See also* *Entzian v. Prince George's County,* 32 Md.App. 256, 262, 360 A.2d 6 (1976) (recognizing that "zoning agency bodies [ ] are not bound by strict rules of evidence"). The documents properly could be considered by the County Commissioners.

***447** We have reviewed the documents and conclude that they make fairly debatable the appropriateness of rezoning the property to the PUD zone. In other words, the County Commissioners' decision, even ****979** without the unsworn witness statements, was supported by substantial evidence.

Because we hold that there was substantial evidence in the record to support the County Commissioners' decision, we need not discuss appellants' contention that we should reverse that decision without remand.

Issue 3: Interpretation of § 16.4

Appellants assert that § 16.4(b) requires the County Commissioners to make a specific factual finding concerning whether the site for a proposed PUD is "capable of serving existing traffic and the future traffic generated by the uses in the PUD." Appellants argue that nothing in the zoning ordinance authorizes the County Commissioners to defer a finding of roadway adequacy. Appellants insist that the finding must be made at the time the County Commissioners decide whether to re-zone a property to PUD, *i.e.,* after the joint public hearing that occurs at the second step of the PUD review and approval process.

Appellees respond that § 16.4(b) should not be read in isolation. They contend that re-zoning land to the PUD zone is a multi-step process under § 16.5, and that the County Commissioners properly determined that § 16.4(b) should be read in conjunction with the rest of the zoning ordinance and the APFO.

Whether the County Commissioners properly construed the zoning ordinance is a question of law. *See Capital Commercial,* 158 Md.App. at 96, 854 A.2d 283 (noting that " '[a] challenge as to a regulatory interpretation is, of course, a legal issue' ") (citation omitted). Our task, therefore, is to determine whether the County Commissioners " ' "interpreted and applied the correct principles of law governing the case[.]" ' " *Lucas v. People's Counsel for Baltimore County,* 147 Md.App. 209, 225, 807 A.2d 1176 (2002) (quoting *Eastern Outdoor* ***448** *Adver. Co. v. Mayor & City Council of Baltimore,* 128 Md.App. 494, 514, 739 A.2d 854 (1999), *cert. denied,* 358 Md. 163, 747 A.2d 644 (2000)). We nevertheless keep in mind our obligation to give considerable weight to "an administrative agency's interpretation and application of the statute which the agency administers[.]" *Noland,* 386 Md. at 572, 873 A.2d 1145.

[15] When we review the interpretation of a local zoning regulation, we do so "under the same canons of construction that apply to the interpretation of statutes." *O'Connor v. Baltimore County,* 382 Md. 102, 113, 854 A.2d 1191 (2004). " 'The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature.' " *Motor Vehicle Admin. v. Jones,* 380 Md. 164, 175, 844 A.2d 388 (2004) (quoting *Holbrook v. State,* 364 Md. 354, 364, 772 A.2d 1240 (2001)). We assign words in a statute or, as here, an ordinance, their ordinary and natural meaning. *O'Connor,* 382 Md. at 113, 854 A.2d 1191. When the plain language of the provision "is clear and unambiguous, our inquiry ordinarily ends[.]" *Christopher v. Montgomery County Dep't of Health & Human Servs.,* 381 Md. 188, 209, 849 A.2d 46 (2004) (quotation marks and citation omitted). Only when the language is ambiguous do we look beyond the provision's plain language to discern the legislative intent. *Jones,* 380 Md. at 176, 844 A.2d 388.

Moreover, when we "construe[] two statutes that involve the same subject matter, a harmonious interpretation of the statutes is 'strongly favor [ed].' " *Dep't. of Public Safety & Corr. Servs. v. Beard,* 142 Md.App. 283, 302, 790 A.2d 57, *cert. denied,* 369 Md. 180, 798 A.2d 552 (2002) (citation omitted). When "two enactments—one general, the other specific—appear to cover ****980** the same subject, the specific enactment applies." *Id.*

[16] Section 16.4(b) provides, in pertinent part: "The specific site [of the PUD] shall be located adjacent to adequate roadway facilities capable of serving existing traffic and the future traffic generated by the uses in the PUD." Appellants ***449** argue that the plain language of the ordinance mandates that, when the County Commissioners decide to re-zone property to a PUD, *i.e.,* step two of the re-zoning process, the property must be located adjacent to roadway facilities that are at that time "capable of serving existing traffic and the future traffic generated by the uses in the PUD." We disagree.

Section 16.4(b) plainly and simply states the County Commissioners' intention that a specific piece of property, re-zoned as a PUD, be located adjacent to roadway facilities that can adequately support the uses generated by the PUD. Contrary to appellant's argument, the statute does not state,

or even imply, that the County Commissioners must assure themselves, at the time of re-zoning, that roadways adjacent to the property are able at that time to accommodate future traffic generated by the uses of the PUD.

A statute that " 'is part of a statutory scheme' " must not be read in isolation; instead, the statute must be read together with the rest of the statutory scheme to ascertain the true intention of the Legislature. *Mayor & Council of Rockville v. Rylyns Enters., Inc.,* 372 Md. 514, 551, 814 A.2d 469 (2002) (citation omitted). *See also* *Marsheck v. Bd. of Trustees,* 358 Md. 393, 403, 749 A.2d 774 (2000) (stating that the appellate court's "interpretation of [a] statute and the legislature's intent must be examined by looking to the statutory scheme in its entirety rather than segmenting the statute and analyzing only its individual parts").

Subsection (b) of § 16.4, read in the context of the entire section, advances the County Commissioners' interpretation of the subsection. Section 16.4 is entitled, "General Requirements," and reads in its entirety:

> (a) Ownership: The tract of land to be approved for development as a PUD must be in single ownership with proof of that ownership submitted to the Planning Commission by no later than review and approval of the Final Development Plan. Application for a PUD may be filed either by the owner or by a person having a substantial contractual interest in the land.
>
> ***450** (b) Location: PUDs shall be located within the Urban Growth Area or the Town Growth Areas in the A, RR, RS, RU, RM and HI–2 Districts. The specific site shall be located adjacent to adequate roadway facilities capable of serving existing traffic and the future traffic generated by the uses in the PUD.
>
> (c) Utilities: All PUDs shall be served with public water and public sewer.
>
> (d) Concept plans previously approved by the Planning Commission for planned residential development under the PR Article of this Ordinance shall be considered valid and shall not be constrained by time periods as specified in subsequent paragraphs. A public hearing is not required unless a major change is made by the developer to the Concept Plan; minor changes may be approved by the Planning Commission. Where there is a question about the degree of change being major or minor, the Planning Commission shall make that determination. All other provisions of Sections 16.5(a)3, 4 and 5 shall apply.

(Footnote omitted).

Nothing in § 16.4 places an affirmative duty on the County Commissioners to ****981** make specific findings concerning the adequacy of adjacent roads or water and sewer facilities during the re-zoning stage of the PUD review and approval process. Subsection (c), for example, simply declares that all PUD zones must be served by public water and public sewer facilities. Consistent with the title of the section, the requirements that a PUD be located next to adequate roadway facilities and be serviced by public water and sewer facilities are merely "general requirements."

We have also examined § 16.7, entitled, "Design Standards." That section provides a series of standards that "are intended to ensure that the PUD is compatible with neighboring properties and ... provides a quality living environment for its residents." Subsection (i) of that section is titled, "Traffic Circulation and Parking," and provides, in pertinent part, that "[e]xisting and planned streets and highways shall ***451** be of sufficient capacity to serve existing traffic and all new traffic *when fully developed.*" (Emphasis added). Section 16.7, read together with § 16.4(b), confirms the County Commissioners' conclusion that the latter provision does *not* require their determination, at the re-zoning stage, that adjacent roads are currently capable of handling both existing traffic and the predicted future needs of the PUD.

This construction of § 16.4(b) also makes sense in light of § 1.2 of the APFO. Section 1.2 of the APFO provides that the purpose of the ordinance is to ensure "that public facilities and services needed to support new development shall be available *concurrently with* the impacts of such new developments." (Emphasis added).[9] It follows from the use of the word "concurrently," that public facilities, including roads, need not be available *in advance* of "the impacts of such new developments."

The County Commissioners recognized that appellants were understandably concerned with increased traffic resulting from the PUD. The County Commissioners also recognized, correctly, that such concerns can be and must be addressed by the Planning Commission at later stages of the PUD review and approval process. APFO § 3.4 provides:

> New development not meeting the requirements for adequate public facilities contained within this Ordinance shall not be approved by the Planning Commission unless the developer reaches an agreement with the Board of County Commissioners for the purpose of ensuring the adequacy of public facilities[.]

And, APFO § 4.4 provides, in pertinent part:

> Except as otherwise provided in this Ordinance, if an existing road is determined by the Planning Commission to be inadequate to accommodate the traffic flow projected to ***452** be generated from the new development when combined with existing traffic flow, the new development shall not be approved.

These provisions ensure that the Planning Commission does not approve new development if it will cause an existing road to be inadequate to handle traffic generated by that development, unless the developer first reaches an agreement with the County Commissioners to ensure the adequacy of the roadway facilities.

Appellants argue that, under *Annapolis Mkt. Place, LLC v. Parker,* 369 Md. 689, 802 A.2d 1029 (2002), "the benchmark of ****982** adequacy [is] defined such that, in order to be adequate, the facilities must be in existence or programmed for construction." From that premise, appellants argue that, in this case, adequacy of facilities must be resolved at the time of re-zoning, and not deferred.

In *Parker,* the Court of Appeals interpreted specific provisions of the Anne Arundel County Code ("AACC"), provisions that are significantly different from the provisions of the zoning ordinance and APFO at issue in this case. The AACC mandated that " 'a rezoning may not be granted except on the basis of an affirmative finding that ... transportation facilities ... are either in existence or programmed for construction.' " 369 Md. at 693, 802 A.2d 1029. Annapolis Market Place, LLC ("AMP"), the property owner, filed an application with Anne Arundel County to rezone its property from residential classifications to a commercial classification. *Id.* at 697, 802 A.2d 1029. An Administrative Hearing Officer denied the application. *Id.* at 698, 802 A.2d 1029. AMP appealed the hearing officer's decision to the Anne Arundel County Board of Appeals ("Board of Appeals"). *Id.* The Board of Appeals granted the application, reasoning, *inter alia,* that public facilities were adequate to accommodate the uses permitted by the commercial zoning classification. *Id.* at 699, 802 A.2d 1029. With regard to transportation concerns, the Board of Appeals determined "that the accomplishment of [ ] proposed traffic ***453** improvements is reasonably probable of fruition." *Id.* at 700, 802 A.2d 1029.

Neighboring property owners sought judicial review in the Circuit Court for Anne Arundel County. The circuit court reversed the Board of Appeals' decision. One of the grounds upon which the circuit court ruled was "that a developer's 'promises to make [traffic] improvements' did not satisfy the requirement of being either 'in existence or programmed for construction.' " *Id.* at 701–702, 802 A.2d 1029. AMP appealed the circuit court's decision to this Court. We affirmed, in an unreported opinion, and held, *inter alia,* that " 'the Board [of Appeals] erred, as a matter of law, in disregarding the plain language of the statute that requires that adequate facilities be "in existence or programmed for construction,' " the latter of which [we] found did not include a developer's promise." *Id.* at 702, 802 A.2d 1029.

The Court of Appeals affirmed. The Court interpreted AACC, Art. 3, § 2–105(a)(3), *id.* at 705, 802 A.2d 1029, focusing on the meaning of the phrase "programmed for construction," *id.* at 709, 802 A.2d 1029. As for the Board of Appeals' "consideration of the adequacy of roads," the Court held that the Board of Appeals should not have relied on *Greater Colesville, supra,* to determine that improvements to transportation facilities were reasonably probable of fruition in the foreseeable future. *Id.* at 717, 802 A.2d 1029. The Court declared that the Board of Appeals erred in noting "that 'improvements to transportation facilities w[ould] be required prior to approval of any subdivision of th[e] Property,' "

because the Board of Appeals should have determined, as required by the AACC, "that adequate access roads ... were either in existence or programmed for construction." *Id.* at 718, 802 A.2d 1029. The Court held that, "[b]y its own terms, ... § 2–105(a)(3) excludes from consideration at zoning as an acceptable level of commitment facilities that are characterized merely as 'reasonably probable of fruition' and/or those the provision of which at the time of subdivision may be proffered by the developer." *Id.*

***454** *Parker* is inapposite for the simple, yet dispositive reason that the AACCprovisions ****983** at issue in *Parker* are different in material respect from § 16.4(b). The applicable Code provisions addressed in *Parker* mandated that the Anne Arundel County Board of Appeals determine that roadway improvements are "either in existence or programmed for construction," and therefore the "reasonably probable of fruition in the foreseeable future" test should not have applied. Section 16.4(b) does not mandate that, at the time of PUD re-zoning consideration, the County Commissioners must determine that improvements to adjacent roadways be "either in existence or programmed for construction."

We hold that the zoning ordinance and APFO, read together, do not require that the County Commissioners find, before approving the re-zoning of land to a PUD, that an adjacent roadway is currently adequate to handle both existing and future traffic. Instead, the statutory scheme as a whole mandates that the Planning Commission monitor adequacy of roadway facilities throughout the PUD review and approval process, and throughout the period of development.

Issue 4: Applicability of the "reasonably probable of fruition in the foreseeable future" test

Appellants argue that the County Commissioners erred because they did not "require that infrastructure necessary to support the development contemplated in the proposed [PUD] be existing or reasonably probable of fruition in the foreseeable future." Referring to school facilities in particular, they argue that the County Commissioners should have employed "the reasonably probable of fruition in the foreseeable future" test, applied in, *e.g.*, *Montgomery County v. Greater Colesville Citizens' Ass'n,* 70 Md.App. 374, 521 A.2d 770 (1987), before determining whether such facilities are adequate to support development of the PUD. [10]

***455** Appellees respond that the PUD review and approval process outlined in § 16.5 "is much more time sensitive and definite than the 'reasonably probable of fruition in the foreseeable future' test," and that, together, the zoning ordinance and APFO take the place of that test.

Greater Colesville, supra, guides our analysis of these arguments. We therefore discuss the case in some detail.

In *Greater Colesville,* we reviewed a decision of the County Council for Montgomery County, sitting as the District Council ("the Council"), to re-zone land to a floating zone. 70 Md.App. at 376, 380–81, 521 A.2d 770. Of primary concern in the decision to re-zone was the capacity of an intersection near the property to handle traffic generated by the development. *Id.* at 377, 521 A.2d 770. A hearing examiner concluded that the applicant's proposed improvements to the intersection "would render the intersection adequate" to support traffic generated by the project, and that those "improvements were reasonably probable of accomplishment within the foreseeable future[.]" *Id.* at 379, 521 A.2d 770.

The Council agreed with the hearing examiner and approved the re-zoning. *Id.* at 380, 521 A.2d 770. The circuit court reversed the Council's decision. ****984** *Id.* at 380, 521 A.2d 770. We reversed the circuit court. *Id.* at 391, 521 A.2d 770.

The issue we decided was whether the Council's findings on the traffic issue were "fairly debatable." *Id.* at 384, 521 A.2d 770. We recognized that resolution of that issue was determined by "whether the improvements proposed to be made in the traffic system are reasonably probable of fruition in the foreseeable future." *Id.* at 384, 521 A.2d 770.

We reviewed the zoning scheme in Montgomery County. That scheme required an applicant to submit a development plan to a planning board. The planning board, a hearing ***456** examiner, and the Council were required to review the plan. Then, if re-zoning is granted, no construction could occur until the planning board, after a public hearing, approved a site plan. *Id.* at 386–87, 521 A.2d 770.

We said that "[t]he 'reasonably probable of fruition in the foreseeable future' test is functionally a mechanism for gauging the likelihood of premature development and, thereby, to avoid it." *Id.* at 387, 521 A.2d 770. That test, therefore, "necessarily involves assessing the probability that actions required to be done in the future will, in fact, occur." *Id.*

We concluded in *Greater Colesville* that the zoning ordinance at issue, like the "reasonable probable of fruition in the foreseeable future" test, is "a mechanism for controlling premature development." *Id.* at 389, 521 A.2d 770. We took into account the requirement in the zoning ordinance "of development in compliance with an approved development plan and its post zoning controls," which permits the development to be phased in conformance "with the accomplishment of required improvements or services." *Id.* Indeed, the zoning ordinance at issue in *Greater Colesville* is "more flexible, as well as more effective than the 'reasonably probable of fruition' test." *Id.* Therefore, "[w]hen that test is applied in the context of this ordinance not only is the timing of required improvements controlled, but because no development may be undertaken unless and until the required improvements have been made, the order of their completion vis-vis commencement of the approved development is controlled as well." *Id.* As a result, "under this zoning scheme, improvements that are reasonably probable of fruition in the foreseeable future become reasonably certain of fruition." *Id.*

[17] We turn now to ascertain whether the Washington County zoning scheme, provided by the zoning ordinance and APFO, like the Montgomery County scheme, is more flexible, as well as more effective, than the "reasonably probable of fruition in the foreseeable future" test.

In order to obtain PUD rezoning approval in Washington County, a developer is required to submit a "Concept Plan" to ***457** the County Commissioners and the Planning Commission. *See* § 16.5(a). The concept plan must "reflect the actual development to be designed and constructed within a reasonable time frame." *Id.* If the developer does not submit the concept plan or does not commence construction in accordance with the timing provisions of the zoning ordinance, the zoning classification of the PUD will automatically revert to the original zoning classification. *Id.*

During the review process, the Planning Commission and the developer exchange information concerning, *inter alia,* the density and layout of the PUD development. *See* § 16.5(a)1. At this stage, the Planning Commission must consider, and "make findings of fact concerning, at a minimum, the impact of the proposed development on adjacent properties, the availability of public facilities, the impact of the proposed development on public ****985** roadways, the impact on public schools, fire and police protection, and the availability of adequate open space." § 16.7(a).

Next, a joint public hearing is held before the County Commissioners and the Planning Commission. The Planning Commission must submit to the County Commissioners its recommendation concerning whether to re-zone the property. If the County Commissioners approve the re-zoning to PUD, such "[z]oning approval constitutes tentative approval of density and design features as shown on the Concept Plan." § 16.5(a)2.

Even after zoning approval is obtained, the developer is required to submit a "Preliminary Development Plan" to the Planning Commission within six months of the zoning approval, with an extension of time allowed only for a good cause finding by the Planning Commission. At this stage, the Planning Commission may either approve or disapprove the Preliminary Development Plan. *See* § 16.5(a)3.

If the Planning Commission approves the Preliminary Development Plan, the developer must then submit a "Final Development Plan" for approval. If the Planning Commission approves the Final Development Plan, *see* § 16.5(a)4., the ***458** developer must then "submit a Site Plan ... for the entire PUD or for any phase for [Planning] Commission review ...." § 16.5(a)5. The Planning Commission must approve or disapprove the Site Plan. *Id.* [11]

Each of these steps requires the Planning Commission to make decisions that involve administration of the APFO. *See* APFO § 3.1 (providing, in part, that the APFO "shall be administered by the Planning Commission"). The APFO provides that the Planning Commission may not approve any new development that does not meet the requirements of the APFO, "unless the developer reaches an agreement with the [County Commissioners] for the purpose of advancing the adequacy of public facilities[.]" *See* § 3.4.

Section 1.2 of the APFO is titled "Purpose," and provides that the APFO's purpose is to ensure

> that public facilities and services needed to support new development shall be available concurrently with the impacts of such new developments. In meeting this purpose, public facility and service availability shall be deemed sufficient if the public facilities and services for new development are phased, or the new development is phased, so that the public facilities and those related services which are deemed necessary by the local government to operate the facilities necessitated by that new development, are available concurrently with the impacts of the new development.

The zoning ordinance and APFO, in conjunction, require that development of a PUD comply with an approved site plan, together with post re-zoning approvals administered by the Planning Commission. The zoning ordinance and APFO permit such development to be phased commensurate with establishment of adequate public facilities, for the purpose of controlling premature development.

***459** We conclude that the PUD rezoning scheme in Washington County, like the scheme at issue in *Greater Colesville,* is more flexible and more effective than the reasonably probable of fruition in the foreseeable future test. Indeed, in Washington County, development of a PUD, or any phase of a PUD, may not begin until the ****986** Planning Commission is satisfied that the required improvements to public facilities are made. We conclude, as we did in *Greater Colesville,* that under the zoning scheme we consider, " improvements that are reasonably probable of fruition in the foreseeable future become reasonably certain of fruition." *See id.*

Given the zoning scheme, the County Commissioners did not err when they decided that they did not "have to address infrastructure issues" at the re-zoning approval stage of the PUD review and approval process, unless those infrastructure issues "appear to be highly unsolvable." The County Commissioners correctly recognized that development controls are in place in the zoning ordinance and APFO that permit the County Commissioners to make findings regarding adequacy of public facilities at the zoning approval stage, but leave to the Planning Commission the duty of handling the details related to the adequacy of those facilities, in accordance with the zoning ordinance and APFO. [12]

***460 JUDGMENT AFFIRMED.**

COSTS TO BE PAID BY APPELLANTS.

All Citations

164 Md.App. 426, 883 A.2d 966

Footnotes

1 Hereinafter, unless otherwise indicated, all citations are to the Washington County Zoning Ordinance.

2 The other appellants include: Karen Cremins, Michael G. Marschner, Angela K. Marschner, Joseph W. Kinter, Patricia A. Kinter, Merih O'Donoghue, Renee L. Scott, Joseph M. Sebrosky, Kathleen A. Sebrosky, Catherine Skaggs, and Kelly Bennet–Unger.

3 The land is owned by Rokane, LLC. Rokane authorized Mr. Crampton to file the rezoning application.

4 For example, the Washington County Engineering Department had no objections to the application and noted that any of its concerns could "be adequately addressed through [the remaining steps of] the site plan approval process." The Washington County Health Department stated that its approval would be "contingent on the availability of public water and sewer" services for the property. The Washington County Water & Sewer Department determined that the property is "eligible for public [sewer] service."

5 The traffic study was submitted to the County Commissioners and Planning Commission, but was not made part of the record before the circuit court and is not before us.

6 The report of the County Attorney was not made part of the record that was transmitted to us. We granted a motion by the County Commissioners to supplement the record with the County Attorney's report.

7 Because we ordinarily do not review the circuit court's decision, *see* *Days Cove Reclamation Co. v. Queen Anne's County,* 146 Md.App. 469, 484, 807 A.2d 156, *cert. denied,* 372 Md. 431, 813 A.2d 258 (2002), we do not summarize it here.

8 In *Heard v. Foxshire Assocs.,* 145 Md.App. 695, 806 A.2d 348 (2002), we discussed, in *dicta,* the general nature of proceedings before administrative agencies. We said that, because judicial review of the decision of an administrative agency at both the circuit court and appellate levels is based on the record made before the agency, it is essential that the record of the administrative proceedings be orderly and accurate. *Id.* at 710, 806 A.2d 348. Therefore, "it is important that the presiding officer [of the administrative agency proceedings] be certain that witnesses are properly sworn and identified and that the record does not contain unsworn comments by unidentified persons." *Id.* at 709–10, 806 A.2d 348. In addition, "[i]t is equally important that [all] documents and other exhibits be carefully identified and cataloged in the record." *Id.* at 710, 806 A.2d 348. Although appellants have waived their right to complain that the witnesses at the joint public hearing were not placed under oath, we reaffirm the importance of having witnesses sworn at such proceedings.

9 A "new development" under the APFO "consists of new subdivisions and site plans for new construction received for approval by the [Planning Commission] after [December 1, 1990]...." § 2.3.13. Appellants present no argument that Mr. Crampton's development plans would not constitute a "new development."

10 Appellants also assert, without citation to authority and without developing the argument, that the County Commissioners "impermissibly delegated an essential zoning function to" the Planning Commission when they left to the Planning Commission the determination of the PUD's "compatibility" with the surrounding neighborhood. We shall not make the argument for them, and decline to address the issue. *See* *Honeycutt v. Honeycutt,* 150 Md.App. 604, 618, 822 A.2d 551, *cert. denied,* 376 Md. 544, 831 A.2d 4 (2003).

11 We note that § 25.4 provides that "[a]n appeal to the [Washington County] Board [of Appeals] may be taken by any person aggrieved ... by any decision of the [Planning Commission.]"

12 In a footnote, appellants bring to our attention the County Commissioners' findings concerning adequacy of public school facilities to handle any increased enrollment brought about by the uses in the PUD. At the time the County Commissioners made their decision, the APFO provided that student enrollment at public schools not exceed 105% of the state-rated student enrollment capacity of the school. Also at that time, the County Commissioners used data from a June, 2002 enrollment report concerning the number of students enrolled at the public schools that would be effected by development of the PUD. Since that time, the APFO has been amended. It now provides, with regard to public elementary schools in Washington County, that enrollment may not exceed 85% of the state-rated student enrollment capacity. *See* APFO § 5.4.1(a).

Relying on the proposition that we apply the law in effect at the time we make our decision, appellants ask us to hold that the increased number of students that is projected to be caused by development of the PUD would violate the 85% provision of APFO § 5.4.1(a). This we cannot do. The effect of the change in capacity contemplated by the APFO is a matter for the administrative agency to decide in the first instance. The Planning Commission, therefore, should consider the revised APFO when it considers whether to approve subsequent plans during the PUD plan and approval process.

EXHIBIT D

2004 WL 1958852 (Md.App.) (Appellate Brief)
Maryland Court of Special Appeals.

James CREMINS, et al., Appellants,
v.
COUNTY COMMISSIONERS OF WASHINGTON COUNTY, Maryland Appellees.

No. 2200.
September Term, 2003.
August 2, 2004.

On Appeal from the Circuit Court for Washington County, Maryland,
(Hon. Frederick C. Wright, III).

Brief of Appellee County Commissioners of Washington County, Maryland

Richard W. Douglas, County Attorney for Washington, County, Maryland, 100 W. Washington Street, Suite 202, Hagerstown, MD 21740, (240) 313-2232, Co-Counsel for Appellee County, Commissioners of Washington County

William J. Chen, Jr., 200A Monroe Street, Suite 300, Rockville, MD 20850, (301) 279-9500, Co-Counsel for Appellee County, Commissioners of Washington County, of Counsel: Chen, Walsh, Tecler & McCabe, L.L.P., 200A Monroe Street, Suite 300, Rockville Maryland 20850, (301) 279-9500

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***1** The Appellee, County Commissioners of Washington County, Maryland (hereafter "County Commissioners"), by their attorneys, Richard W. Douglas and William J. Chen, Jr., hereby files its Appellee's Brief pursuant to Maryland Rule 8-502 and the stipulation of counsel.

STATEMENT OF THE CASE

Pursuant to Maryland Rule 8-504(a)(2), the County Commissioners of Washington County accept the "Statement of the Case" contained in the Brief of Appellants.

QUESTION PRESENTED

I. IS THE DECISION OF THE COUNTY COMMISSIONERS SUPPORTED BY SUBSTANTIAL EVIDENCE OF RECORD WHICH IS FAIRLY DEBATABLE AND PREMISED UPON A CORRECT APPLICATION OF LAW?

The County.Commissioners submit that the question should be answered in the affirmative.

STATUTES, ORDINANCES, AND CONSTITUTIONAL PROVISIONS

Included in the Appendix to this Brief:

Section 4.0 l(c), Article 66B, Annotated Code of Maryland, as amended (1957, 2003 Repl. Vol.). (Apx. 1)

Section 10.01 (a), Article 66B, Annotated Code of Maryland, as amended (1957, 2003 Repl. Vol.). (Apx. 1)

Chapter 406, Laws of Maryland, 2004 Regular Session (Section 14.08, Article 66B). **(Apx. 38 - Apx. 39)**

Article 16, entitled "'PUD' Planned Unit Development," Zoning Ordinance of Washington County, Maryland. **(Apx. 2 - Apx. 9)**

Article 27, entitled "Amendments", Section 27.4, entitled "Additional ***2** Conditions," Zoning Ordinance of Washington County, Maryland. (Apx. 10)

Adequate Public Facilities Ordinance of Washington County, Maryland (Revision 6, May 25, 2004). (Apx. 11 - Apx. 30)

STATEMENT OF FACTS

On November 7, 2002, Paul M. Crampton, Jr. (hereinafter "Applicant"), filed an application with the Washington County Planning Commission to rezone an area of land consisting *of 97.27* acres from the "A" Agricultural Zone to the "PUD" Planned Unit Development Zone.[1] (E.10-E.12) The real property in question was owned by Rokane, LLC, and the Applicant was authorized to file the application. (E.12) The application was designated as Case No. RZ-02-008. The real property is located on the east side of Marsh Pike, the north side of Maryland Route 60, and on the south side of Long Meadow Road in Washington County, Maryland. (E.10). The proposed PUD is known as "Emerald Pointe." (E.70)

Upon completion, the PUD would have 88 single-family detached dwellings, 92 townhouses, 87 semi-detached or duplexes, and a retirement center with approximately 126 units. (E.33, E.91) The retirement center will be two and a half to three stories in height, and the units would be one and two bedroom apartments. (E.44) An historic farmhouse on the property will be adapted to retain the structure for office use. (E.50) ***3** There also will be a community center that will contain small businesses to serve the PUD community such as a coffee shop, a tailor. (E.42) The businesses also could be a deli, dry cleaner or accountant. (E.42, E.55) The community center would also house a gym, a workout facility, and a computer lab in its main building. *Id*.

Various comments about the application were submitted to the County's Planning Department from mandatory referral agencies. The City of Hagerstown Water Pollution Control reported that as to sanitary sewer service it had no objection to the proposed development although there was limited capacity that was allocated on a "first come, first serve" basis. (E.14) The Washington County Engineering Department reported "We have completed our review of the subject request and take no exception to it. All issues under our jurisdiction associated with this can be adequately addressed through the site plan approval process." (Apx. 31) The Washington County Health Department reported "Approval will be contingent on the availability of public water and sewer." (Apx. 32) The Washington County Water & Sewer Department reported "The Department has completed its review of the reference rezoning request and has determined that the subject property is within an existing County Sewer Service area (SD-150 as amended) and is, therefore, eligible for public service. Allocation is available in accordance with the County's rules, policies and regulations, subject to approval by the City of Hagerstown." (Apx. 33) Additionally, the Washington County Planning Commission's staff issued a report on the application dated December 17, 2002 (E.16-E.21)

The State Highway Administration reported: "We have reviewed the re-zoning case for Rokane, LLC (formerly Emerald Point) and have no objection to approval with the stipulation that access be denied to MD 60. Access can be gained via Marsh Pike." (Apx. 34)

On January 13, 2003, the application was presented before a joint public hearing ***4** of the County Commissioners and the Planning Commission.[2] At the public hearing, testimony and information in support of the rezoning application was given by the Applicant **(E.41)**, his attorney, Kenneth Grove **(E.40)**, and his engineer, Russ Townsley of Fox & Associates. **(E.50-E.60)** In particular as to the affected road system, Mr. Townsley testified:

On the traffic study, Street Traffic Group has prepared a traffic study. They prepared one on the original concept plan that had the commercial in there. When we did a new lay-out, that study was revised, new counts were taken. The County Engineer and State Highway both had quite a few comments that had to be addressed. Those comments were addressed. There are some improvements that are going to be made such as widening of Marsh Pike. There's some improvements up at the Longmeadow Road/Marsh Pike intersection that Mr. Crampton will have to do as part of his work that has to be done. The study states that the existing system could be supported by the surrounding area network and the critical intersections will continue to operate at acceptable levels of service with the full development of the PUD provided that some improvements are made. Mr. Grove has the study. It has been submitted to the County Engineer and State Highway. They have done an initial review of it. I don't know if they've gotten back to the Traffic Engineer for the formal comments yet, but the County is reviewing it. (E.52)[3]

Additionally, at the hearing **(E.40)** the Applicant's attorney submitted a report, with attachments, for consideration by the County Commissioners and the Planning Commission. **(E.67-E.89)** The report addressed zoning requirements and as to the

affected road system it stated:
d. Emerald Pointe will have no adverse impact on public roadways. Street Traffic Studies, Ltd., a highly-respected firm that studies the impact of development on public highways throughout Maryland, has ***5** concluded that the approval of Emerald Pointe would not adversely affect traffic on the Marsh Pike. (See the "Traffic Impact Analysis Emerald Pointe PUD" revised December 13, 2002, the "Study") previously provided to the Commission. Note that the Study states that the existing system"...could be supported by the surrounding area road network" and that the "critical intersections will continue to operate at acceptable levels of service with the full development of the PUD provided some improvements are made." Since PUDs are constructed over a number of years, the County has the right to require the Applicant to conduct additional traffic studies to determine to what extent, if at all, the development and changes in traffic flows either are or will adversely affect the public roadways that serve this area. This requirement insures that the impact of the development on public roadways is monitored on a periodic basis and protects the public interest. (E.75)[4]

Several individuals testified at the hearing in opposition to the requested rezoning.

After the public hearing the technical staff of the Washington County Planning Department issued its post-hearing report and analysis. **(E.90-E.96**) As to traffic, the report, in part, states as follow:
The adoption of the Adequate Public Facilities Ordinance (APFO) in 1990 has taken on a supportive role that was previously the sole responsibility of the Zoning Ordinance during the rezoning stage when considering the deliberation of PUD cases. Due to this change, it would appear that the Planning Commission and the County Commissioners would only have to address infrastructure issues at the zoning stage that would appear to be highly unsolvable. Terrence McGee, Chief Engineer, County Engineering Department, did not take exception to the rezoning and responded to this application by stating "all issues under our jurisdiction associated with this request can be adequately addressed ***through the site plan approval process."*** (Emphasis added) **(E.95**)

Subsequently, by a split decision, the Planning Commission voted to recommend that the rezoning application be denied. That recommendation was transmitted to the Commissioners by letter dated March 4, 2003. **(E.99**)

Thereafter, on March 13, 2003, at a regular meeting the County Commissioners ***6** considered the application, and voted to approve it. **(E.103-E.105**) The official decision of the County Commissioners consists of the section of their minutes of March 13, 2003, when it considered and voted on the application **(E.103-E.105**) and their adopted Findings of Fact. **(E.1**03)[5] Pertinent to the issues raised in this appeal, the County Commissioners addressed the adequacy of public facilities and as to traffic they found:

The adoption of the Adequate Public Facilities Ordinance (APFO) in 1990 has taken on a supportive role that was previously the sole responsibility of this item in the Zoning Ordinance during the rezoning stage when considering the deliberation of PUD cases. Due to this change, it would appear that now the Planning Commission and the County Commissioners would only have to address infrastructure issues at the zoning stage that would appear to be highly unsolvable.
Increased traffic was a major concern of neighborhood residents who testified at the public hearing. Terrence McGee, Chief Engineer, did not take exception to the rezoning. He responded "all issues can be adequately addressed through the site plan approval process," The existing Traffic Impact Study will need to be revised to reflect the new plan. The Engineering Department has no final comments on the updated traffic study. State Highway Administration has no objection to approval stipulation that access be denied to Leitersburg Pike. A revised traffic study would be required. (Emphasis added) **(E.104-E.105**)

Further, the County Commissioners' decision expressly requires that the Applicant enter into development agreements as required by Section 16.6(d)2.ii. **(Apx.** 7) of the Zoning Ordinance. **(E.105)**[6]

***7** Appellants James Cremins, *et al.*, noted an appeal to the Circuit Court for Washington County, Maryland, After oral argument held on November 7, 2003, the lower court issued an opinion and order dated November 21, 2003, which affirmed the decision of the County Commissioners. (E.106-E.118) This appeal followed.

ARGUMENT

I. THE DECISION OF THE COUNTY COMMISSIONERS IS SUPPORTED BY SUBSTANTIAL EVIDENCE OF RECORD WHICH IS FAIRLY DEBATABLE AND PREMISED UPON A CORRECT APPLICATION OF LAW.

Standard of Review

This appeal involves the decision of a local legislative body that granted an application to rezone[7] real property to a "floating zone." In this situation, this Court reviews the decision of the local legislative body, and not the decision of the circuit court. *Cf.* *Watkins v. Dept. of Safety*, 377 Md. 34, 45-46 (2003); *Kram v. Maryland Military*, 374 Md. 651, 656 (2003); *B&S v. Consumer Protection*, 153 Md.App. 130, 150-51 (2003), *cert. denied* 380 Md. 231, 844 A.2d 427 (2004); *Dept. of Public Safety v. PHP*, 151 Md.App. 182, 194 (2003), *cert. denied* 376 Md. 545 (2003).[8]

The following propositions of law apply to this Court's review of the decision of the County Commissioners.

Judicial review of a rezoning decision is limited. *Total AVv. Dept. of Labor*, 360 Md. 387, 394 (2000); *Meadows v. Foxleigh*, 133 Md.App. 510, 514 (2000). The ***8** decision is considered *prima facie* correct, and an appellate court must review the decision in the light most favorable to the zoning authority. *Cf., Giant v. Dept. of Labor*, 356 Md. 180, 185 (1999). Such deference is afforded to the decisions of zoning authorities because courts recognize and defer to expertise, and the decisions "therefore [carry] a presumption of correctness." *Citizens for Rewatico v. Comm's of Hebron*, 67 Md.App. 466, 470, *cert. denied* 306 Md. 260 (1968).

The zoning authority's factual findings are binding upon a reviewing court so long as they are supported by substantial evidence in the record. *Cf.,* *United Parcel v. People's Counsel*, 336 Md. 569, 576-77 (1994). "Substantial evidence" has been defined as:

"...such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." It means "more than a 'scintilla of evidence,' such that a reasonable person could come to more than one conclusion." In other words, the reviewing court must ask whether "reasoning minds could reach the same conclusion from the facts relied upon by the [agency]."

Eastern Outdoor v. Baltimore, 146 Md.App. 283, 301 (2002) (citations omitted).

The court cannot substitute its judgment for that of the zoning authority. *Moseman v. County Council*, 99 Md.App. 258 (1994); *Eger v. Stone*, 253 Md. 533 (1969). The decision of a zoning authority must be affirmed by the reviewing court if the findings are "fairly debatable" in light of the evidence adduced. *Cromwell v Ward*, 102 Md.App. 691 (1995); *Red Roof Inns v. People's Counsel*, 96 Md.App. 219 (1993). A decision by a zoning authority is fairly debatable if it is based upon substantial evidence, even if substantial evidence to the contrary exists. *North v. St. Mary's County*, 99 Md.App. 502, 509(1994).

Moreover, the duty of drawing inferences from the evidence and resolving conflicts in the evidence is exclusively within the province of the fact-finding role of the zoning authority. *Eastern Outdoor*, 146 Md.App. at 301; *see* *MVA v. Kanvacki*, 340 Md. 271, 283 (1995). And, "where inconsistent inferences from the same evidence can be ***9** drawn, it is for the [zoning authority] to draw the inferences." *Department of Economics v. Lilley*, 106 Md.App. 744, 754-55 (1995); *quoting, Bulluckv. Pelham Wood Apts.*, 283 Md. 505,513(1978).

A court will "refrain from making [its] own independent findings of fact or substituting [its] judgment for that of the agency when the record contains substantial evidence supporting the agency's determination." *Marsheck*, 358 Md. at 402.

Although it is said that courts do not normally defer to an agency's legal conclusions, the court in *Gigeous v. ECI*, 363 Md. 481, 496 (2001), held "[e]ven with regard to some legal issues, a degree of deference should often be accorded the position of

the administrative agency." *Board of Physician v. Banks*, 354 Md. 59, 69 (1999). In particular, "an administrative agency's interpretation and application of the statute which the agency administers should ordinarily be given considerable weight by reviewing courts." *Id*. More recently, the Court of Appeals has stated: "We must respect the expertise of the agency and accord deference to its interpretation of a statute that it administers." *Watkins v. Dept. of Safety*, 377 Md. 34, 46 (2003).

As noted, this appeal involves the decision of a local legislative body and the County ordinances which were applied and interpreted in making the rezoning decision were enacted by the local legislative body. In other words, in making the decision which is the subject of this appeal, the decision-maker was applying and interpreting laws which it, itself, had enacted. Consequently, this situation is significantly different than that which occurs when a different governmental entity, *i.e.*, a zoning board of appeals, renders a zoning decision implementing and interpreting an ordinance which has been enacted by the local legislative body. When the decision-maker is also the legislative body which enacted the local laws being administered, the role of the court is to defer to the interpretation of the legislative body unless its action is violative of constitutional rights. *Cf. Watkins Dept. of Safety, supra*, 377 Md. at 46 ("Moreover, in cases that involve determining whether a constitutional right has been infringed, we make an ***10** independent constitutional appraisal.").

With specific regard to floating zones, in *Richmarr v. American PCS*, 117 Md.App. 607 (1997), this Court explained:
.....In reviewing floating zones, the courts have specifically applied the fairly debatable standard to actions taken by the legislative body. Reviewing courts must not substitute their judgment for that of the zoning agency and must affirm any decision which is supported by substantial evidence and therefore fairly debatable. In *Prince George's County v. Meinenger [Meininger]*, 264 Md. 148, 152, 285 A.2d 649, 651 (1972), it was explained that "substantial evidence" means a little more than a "scintilla of evidence," and in *Eger v. Stone*, 253 Md. 533, 542, 253 A.2d 372, 377 (1969), the "fairly debatable" standard was defined as follows:

We have made it quite clear that if the issue before the administrative body is "fairly debatable," that is, that its determination involved testimony from which a reasonable man could come to different conclusions, the courts will not substitute their judgment for that of the administrative body....

Courts in Maryland tend to defer to zoning agencies because of their presumed "expertise," and because it is thought best to allow the agency, rather than the reviewing court, to exercise the "discretion" to grant or deny an application.

This floating zone case is to be judged by the same "substantial evidence" and "fairly debatable" standards as apply in zoning cases generally.

117 Md.App. at 639-40.

The ultimate rule is that "[ajppellate courts, therefore, defer to zoning agencies because of their presumed expertise, and because zoning agencies - and not the courts -are better situated to exercise the discretion to grant or deny rezoning applications." *Colao v. Prince George's County*, 109 Md.App. 431, 458 (1996), *citingFloyd v. County Council of P.G. Co.*, 55 Md.App. 246, 258 (1983).

In this case, the decision of the County Commissioners is supported by substantial ***11** evidence of record which is fairly debatable and premised upon a correct application of law.

The Washington County Ordinance Scheme

a. State Law

The instant appeal involves the interrelationship between a floating zone, a planned unit development, and an adequate public

facilities ordinance duly enacted by a local government. That local government is the County Commissioners of Washington County, Maryland, and its authority to enact legislation for floating zones, including a planned unit development, and an adequate public facilities ordinance is expressly provided in Section 10.01(a)(1),(6), and (8), Article 66B, Annotated Code of Maryland, as amended (1957, 2003 Repl. Vol.). **(Apx. 1) The** state statute, in pertinent part, states "[t]o encourage the preservation of natural resources or the provision of affordable housing and to facilitate orderly development and growth, a local jurisdiction that exercises authority granted by this article may enact, and is encouraged to enact, ordinances or laws providing for or requiring...(1) The planning, staging, or provision of adequate public facilities and affordable housing...(6) Planned unit developments... (8) Floating zones..." *Id.* **(Id.)**

In enacting Section 10.01 the General Assembly explicitly recognized that local governments regulated under Article 66B could utilize an adequate public facilities ordinance, planned unit developments, and floating zones among their regulatory tools "[t]o encourage the preservation of natural resources...and to facilitate orderly development and growth." Section 10.01 (a), Article 66B, Annotated Code of Maryland, as amended (1957, 2003 Repl. Vol.). **(Apx. 1)** Indeed, the General Assembly legislated that local governments were "encouraged to enact, ordinances or laws providing for" ***12** adequate public facilities ordinances, planned unit developments, and floating zones. *Id.*[9]

Additionally, Section 4.01(c)(1), Article 66B, Annotated Code of Maryland, as amended (1957, 2003 Repl. Vol.), states as follow:

(c) *Construction of powers.* - (1) On the zoning or rezoning of any land under this article, ***a local legislative body may impose any additional restrictions, conditions, or limitations*** that the local legislative body considers appropriate to preserve, improve, or protect the general character and design of:

(i) The lands and improvements being zoned or rezoned; or

(ii) ***The surrounding or adjacent lands and improvements.***

Section 4.01(c)(1), Article 66B (Emphasis added). (Apx. 1)

In accordance with the State law, the County Commissioners of Washington County amended its Zoning Ordinance (hereafter "ZO") to provide for the floating zone involved in this appeal, a Planned Unit Development Zone (hereinafter "PUD"), enacted an Adequate Public Facilities Ordinance (hereinafter "APFO"), and provided for the imposition of restrictions, conditions, or limitations at the time of zoning or rezoning.

***13 b. Zoning Ordinance**

The ordinance regulatory scheme by which Washington County has chosen to provide the type of floating zone involved in this case, the PUD Zone, is found in Article 16 of the Washington County Zoning Ordinance. **(Apx. 2 -Apx. 9)** Article 16 is entitled "'PUD' Planned Unit Development," and Section 16.0, entitled "Purpose," of Article 16, ZO, states as follow:

The intent of these PUD regulations is to permit a greater degree of flexibility and more creativity in the design and development of residential areas than is possible under conventional zoning standards. The purpose is also to promote a more economical and efficient use of the land while providing for a harmonious variety of housing choices, a more varied level of community amenities, and the promotion of adequate open space and scenic attractiveness.

The PUD is a floating zone that may be established in any of the Districts specified in Section 16.4. The change or mistake rule does not apply to the PUD process, but the Planning Commission and the Board of County Commissioners, in the deliberation of a PUD application, shall establish findings of fact that consider, at a minimum, the purpose of the PUD District, the applicable policies of the adopted Comprehensive Plan for the County, the compatibility of the proposed PUD with neighboring properties, and the effect of the PUD on community infrastructure. **(Apx. 2)**

Article 16 contains a detailed process for the review and approval of applications to rezone real property to the PUD Zone and to permit its development under development requirements set forth in that Article. That process is set forth in Section 16.5, entitled "Review and Approval Process." The two introductory paragraphs to Section 16.5, ZO, state:
Flexibility and site design is inherent in the PUD process. The Planning Commission may modify specific requirements and may establish other requirements deemed necessary to satisfy the purpose of this Article.

The review and approval of PUDs is a multi-step process. Those ***14** ***steps are: Concept Plan Review, Zoning Approval, Preliminary Development Plan Review and Approval, and Final Development Plan Review and Approval.*** Following zoning approval, the review and approval of the development plans may be combined when appropriate for smaller developments. (Emphasis added) **(Apx.** 3)

After the introductory paragraphs of Section 16.5, the Zoning Ordinance contains a subsection (a), entitled "Design and Development Schedule," which states:
It is the intent of this Ordinance that the PUD not be a speculative device. The Concept Plan as submitted by the applicant shall reflect the actual development to be designed and constructed within a reasonable time frame. ***Each phase of the design and development review process must occur within specified periods. If the applicant fails to submit his plans, or if construction does not commence, as specified by this Ordinance, the zoning of the site shall automatically revert to its previous classification.***

If the applicant abandons the plans for the PUD at any time prior to the start of construction before the automatic reversion date and desires to proceed with development permitted under the previous zoning, he may do so by submitting notification to the Planning Commission. Such notification shall constitute official withdrawal of the applicant's plans for the PUD and shall permit reversion of the previous zoning classification without the necessity of the rezoning process. (Emphasis added) **(Apx. 3 -Apx.** 4)

The "multi-step process" is then laid out in five subsections in the "Design and Development Schedule" which itemize five successive different required approvals; four of which are plan approvals. The multi-step review and approval process begins with a "Concept Plan Review," Section 16.5(a) l., ZO[10] (Apx. 4), followed by "Zoning Approval," which "constitutes ***tentative approval*** of density and design features as shown on the Concept Plan," Section 16.5(a) 2., ZO (emphasis added). ***(Id.)*** Subsequently, within six months of the Zoning Approval, the "applicant" must submit a ***15** "Preliminary Development Plan" which is subject to approval or disapproval by the Planning Commission within sixty days although the Commission may grant an extension of time "for good cause." Section 16.5(a) 3., ZO. (Id.) Thereafter, within six months of approval of the Preliminary Development Plan the "applicant" must submit for approval or disapproval by the Planning Commission a "Final Development Plan." Section 16.5(a) 4, ZO. **(Id.**) The Planning Commission may grant an extension of time to file the Final Development Plan "for good cause." *Id.* Finally, within six months of approval of the Final Development Plan the "applicant" must file a "Site Plan" for the entire PUD, or any phase, for Planning Commission review. Section 16.5(a) 5, ZO. (Id.) The Planning Commission has authority to grant an extension of time to file the Site Plan. *Id.* The Zoning Ordinance states: "Each phase of the design and development review process must occur within specified periods. If the applicant fails to submit his plans, or if construction does not commence, as specified by this Ordinance, the zoning of the site shall automatically revert to its previous classification." Section 16.5(a), ZO. (Apx. 4)

Under the PUD Zone "[z]oning approval constitutes tentative approval of density and design features as shown on the Concept Plan." Section 16.5(a) 2, ZO. **(Apx.** 4) The "Final Development Plan" serves "as the master plan for all subsequent site plans and subdivision plats and is the official record of agreement between the developer, and Planning Commission for development of the tract." Section 16.6(d), ZO. **(Apx. 6 Apx.** 7) Subsection 16.6(d)2. requires that the Final Development Plan include, *inter alia*, "[s]pecific terms and conditions agreed to by the developer" which may include "[a]greements for responsibilities between County and developer for providing on-site and off-site improvements."[11] **(Apx.** 7) As noted, within six months of approval of the ***16** Final Development Plan the applicant must submit a Site Plan for the entire PUD, or a phase, and construction must begin within one year of Site Plan approval. Section 16.5(a) 5, ZO. (Apx. 4 - Apx. 5) In other words, development of the PUD cannot commence unless, and until, a Site Plan for the PUD, or a phase of it, has been approved by the Planning Commission.

Further, as explained *infra*, the express language of the County's APFO dovetails into the PUD Zone's multi-step plan review and approval process. The APFO ties into the PUD's Site Plan in that the requirements of the APFO for adequate public facilities must be met at the time the PUD Site Plan is approved. *See* Section 3.3, APFO. **(Apx. 18**)

The provisions of Article 16 of the Zoning Ordinance are specific to the PUD Zone. The County's Zoning Ordinance, however, has certain general provisions in Article 27, entitled "Amendments," which apply to all rezoning applications. In particular, Section 27.4, entitled "Additional Conditions," states as follow:
The Board of County Commissioners upon the zoning or rezoning of any land or lands pursuant to the provisions of this Article, ***may impose such additional restrictions, conditions, or limitations as may be deemed appropriate to preserve, improve, or protect the general character and design of the lands and improvements being zoned and rezoned, or of the surrounding or adjacent lands and improvements, and may, upon the zoning or rezoning of any land or lands, retain or reserve the power and authority to approve or disapprove*** the design of buildings, construction, landscaping, or ***other improvements***, alterations, and changes made or to be made on the subject land or lands to assure conformity with the intent and purpose of the Ordinance.

The Planning and Zoning Commission shall be responsible for administering and enforcing any such conditions imposed by the Board of County Commissioners. Any violation of conditions imposed by the Board of County Commissioners shall be deemed a violation of this Ordinance.

(Emphasis added) **(Apx. 10**)

The provision in Section 27.4, ZO, to impose restrictions, conditions, or ***17** limitations on the grant of a requested rezoning is very significant. This authority has been conferred on the County Commissioners by Section 4.01(c)(1), Article 66B, Annotated Code of Maryland, as amended (1957, 2003 Repl. Vol.). (Apx. 1)

The power of the County Commissioners to impose restrictions, conditions, or limitations upon rezoning is part of the County's land use regulatory process and double bolts the ability of the local government to tie-in the requirements of the APFO. Aside from the clear relationship between the PUD Zone and the APFO, the power to impose restrictions, conditions, or limitations upon rezoning is a component of the regulatory process of the local government's authority and ability to coordinate development with the adequacy of public facilities.

And, it is recalled that Zoning Approval in the PUD Zone "constitutes tentative approval of density and design features [for the PUD] as shown on the Concept Plan." Section 16.5(a) 2., ZO. (Apx. 4)

c. Adequate Public Facilities Ordinance

In accordance with the General Assembly's proviso in Section 10.01 of Article 66B to "encourage the preservation of natural resources...and to facilitate orderly development and growth" the County Commissioners of Washington County first enacted the Washington County APFO in 1990. It has amended that law on several occasions[12] A fair reading of the APFO makes clear that it is intended to be read with, ***18** and administered in conjunction with, the Zoning Ordinance. Section 1.2, entitled "Purpose," of the APFO states:

It is the purpose of the Board of County Commissioners of Washington County ***that public facilities and services needed to support new development shall be available concurrently with the impacts of such new developments.*** In meeting this purpose, public facility and service availability shall be deemed sufficient if the public facilities and services for ***new development*** are phased, or the ***new development*** is phased, so that the public facilities and those related services which are deemed necessary by the local government to operate the facilities necessitated by ***that new development, are available concurrently with the impacts of the new development.*** (Emphasis added). **(Apx. 14**)

The "Purpose" section of the APFO is explicit in legislating a land use regulatory process by which public facilities and services must be ***"available concurrently"*** with the impact of "new development." Section 1.2, APFO. **(Apx.** 14)

Undeniably, when the County Commissioners enacted the APFO the concurrency principle was a fundamental component of the land use regulatory process.

The term ***"new development"*** as used in the APFO is important. It is a technical term with a defined meaning. Section 2.3.13 of the APFO defines "New Development" as follow:
New development consists of new subdivisions *and* ***site plans*** for ****19*** new construction received for approval by the Washington County Planning Commission after the effective date of this Ordinance as set forth in Article XII. *New* ***development also consists of construction activity requiring a*** building and/or ***zoning permit*** but does not consist of construction activity for agricultural purposes provided that, after said development, the parcel does not lose the "Agricultural Use Assessment" classification as determined by the Department of Assessments and Taxation. (Emphasis added) **(Apx. 16)**

The term ***"siteplan"*** is another important technical term with a defined meaning. Section 2.3.21 of the APFO defines a "Site Plan" as follow:

> A drawing which shows all of the existing conditions of a specified area (the site) and all of the improvements and changes proposed to be made on the site. *A* ***site plan is the drawing required by the Zoning Ordinance for all new development and certain additions and must contain all applicable information as specified in the Zoning Ordinance.*** (Emphasis added) **(Apx.** 17)

The references to "zoning permit" in Section 2.3.13 and "Zoning Ordinance" in Section 2.3.21 of the APFO undeniably establish the interrelationship between the APFO and the Zoning Ordinance. When the APFO defines "new development" by reference to "new...site plans" and "construction activity requiring a...zoning permit," Section 2.3.13, and when it defines a "site plan" as the "site plan... required by the Zoning Ordinance for all new development," Section 2.3.21, the APFO ties itself to the multi-step process in the Zoning Ordinance. The fact that the Zoning Ordinance may have been enacted first is of no legal consequence.

As noted, a ***site plan*** is the final plan in the "multi-step process" in the PUD Zone. Section 16.5(a) 5. of Article 16 of the Zoning Ordinance provides: "Site Plan Review and Approval: Following approval of the Final Development Plan, the applicant shall submit a Site Plan within 6 months for the entire PUD or for any phase for Commission review and construction shall begin within 1 year of Site Plan Approval." **(Apx.** 4 - **Apx.** 5) Article III of the APFO is entitled "Administration," and Section 3.3, entitled "New ****20*** Development," of that article states:
This Ordinance applies to all new subdivisions and ***site plans*** **for** new construction received for preliminary approval, not to include preliminary consultations under the Subdivision Ordinance or Zoning Ordinance, by the Planning Commission after the effective date of this Ordinance, as set forth in Article XII. Except as provided in this Section or Section 3.5[13] of this Ordinance, ***all new development shall meet the requirements set forth in this Ordinance prior to final approval.*** Nothing in this Ordinance shall prevent the Planning Commission from approving portions of subdivisions or site plans of new development if the portions of the subdivision or site plan comply with the provisions of this Ordinance. If the Planning Director of the Washington County Planning Department determines that a site plan contains minor additions to existing development, the site plan is not subject to the requirements of this Ordinance. (Emphasis added) (Apx. **18**)

Section 3.3 of the APFO deals with the application of the APFO to "New Development." As seen, the definition of "New Development" includes "site plans," Section 2.3.13, which are defined in the APFO to be the "site plan... required by the Zoning Ordinance." Section 2.3.21., APFO Administration of the APFO "applies to all new...site plans" and "all new development shall meet the requirements set forth in this Ordinance prior to final approval." Section 3.3, APFO. Accordingly, the express language of the APFO plugs the adequacy of public facilities into the "multi-step process" of the PUD Zone. Pursuant to Section 3.3, APFO, at the time of the PUD Zone Site Plan approval the new development must comply with the requirements of the APFO. In other words, the Washington County ordinance scheme requires ***concurrent availability*** of adequate public facilities. *See* Section 1.2, APFO. **(Apx. 14)**

The multi-step regulatory process created by the PUD Zone and the APFO dovetail and are intricately intertwined. This is a legally permissible relationship. *Annapolis Market v. Parker*, 369 Md. 689 (2002); ***21** *Steel v. Cape Corp.*, 111 Md.App. 1, 31-32 (1996). Given the County's ordinance scheme, at the time of Zoning Approval for the PUD the County Commissioners knew that adequate public facilities had to be available at the time of Site Plan approval for the PUD, and it could take that knowledge into consideration when it approved the application for the PUD Zone. Indeed, the County Commissioners was not merely the body that granted the controverted zoning application, it was also the legislative body that enacted the ordinance scheme by which the PUD Zone and APFO regulate the land use process. As noted, the County Commissioners were fully authorized to enact both of those ordinances pursuant to express State law. Section 10.01(a)(1), (6), and (8), Article 66B, Annotated Code of Maryland, as amended (1957, 2003 Repl. Vol.). (**Apx**. 1) The two ordinances must be read together. *Marsheck v. Board of Trustees, supra*, 358 Md. at 403 ("...we bear in mind that our interpretation of the statute and the legislature's intent must be examined by looking to the statutory scheme in its entirety rather than segmenting the statute and analyzing only its individual parties."); *Blitz v. Beth Isaac*, 352 Md. 31, 40 (1998) ("Moreover, neither the words in the statute nor any portion of the statutory scheme should be read 'so as to render the other, or any portion of it, meaningless, surplusage, superfluous, or nugatory.'"); *Motor Vehicle Admin, v. Gaddy*, 335 Md. 342, 346 (1994) ("...when a particular statute is part of a statutory scheme, the legislative intent must be discerned from the entire statute, and not from a single part in isolation."); *Comptroller v. Fairland*, 136 Md.App. 452, 456 (2001) (Statutory "language must be read in congruence with the statutory scheme so that no part of the statute is rendered 'meaningless, surplusage, superfluous, or nugatory.'"); *Smack v. Dept. of Health*, 134 Md.App. 412, 421(2000), aff'd 378 Md. 298 (2003) ("an appellate court attempts to divine legislative intent from the entire statutory scheme, as opposed to scrutinizing parts of the statute in isolation.").

The language used in the ordinance scheme is logical, and creates a multi-step process to regulate land use development. Quite simply, at the time of Zoning Approval ***22** the County Commissioners could take into consideration the fact that under the County's concurrent regulatory process, adequate public facilities for the PUD would be available.

Response to Appellants' Arguments

The Appellants have raised four issues on appeal which are: (a) unsworn testimony was impermissibly received by the County Commissioners at its hearing, (b) the PUD rezoning should not have been approved because it was at a location which was adjacent to a roadway which was not adequate to support the proposed development, (c) the County Commissioners erred in failing to apply the "reasonably probable of fruition in the foreseeable future" test for considering public facilities, and (d) a remand of the rezoning application to the County Commissioners is not appropriate in the absence of substantial evidence of the adequacy of the adjacent roadway and compatibility.[14] None of these arguments has any merit. Each of the foregoing issues are addressed as follow.

a. Unsworn Testimony

The first argument raised by the Appellants is that testimony presented by witnesses at the hearing conducted by the County Commissioners and Planning Commission should have been under oath. Brief of Appellants, pp. 4-9. They state that "[t]his appeal raises the question of whether witnesses should be sworn in piecemeal rezoning proceedings." *Id.*, p.4. In support of this argument the Appellants present certain propositions of law which have application to certain types of quasi-judicial proceedings and cite court decisions in support of those propositions. *Id.*, pp.4-9. However, they have not cited a single case for the proposition that the legislative body with express zoning authority must hear only testimony under oath. The County Commissioners submit that the Appellants' contention is not the law.

***23** Significantly, in their brief the Appellants do not refer the Court to any part of the record in which the Appellants, or anyone else, objected at the hearing that unsworn testimony was being received.[15] There is no such reference because no objection to the receipt of unsworn testimony or other evidence was raised by the Appellants, or anyone else, at the hearing. In this situation, the Appellants cannot be heard to complain about the proceeding. A party who knows, or should have known, that an administrative agency has committed error, and who, despite an opportunity to do so, fails to object in any

way, or at any time, during the course of the administrative proceeding, may not raise an objection for the first time upon judicial review. *Cicala v. Disability Review Bd.*, 288 Md. 254, 261-62 (1980). Indeed, if no objection has been raised in the proceeding before the agency, such will not be considered by the court upon judicial review. *Brzowski v. Md. Home Improvement*, 114 Md. App. 614, 637 (1997), *reconsideration denied, cert, denied*, 346 Md. 238 (1997). The law of Maryland establishes that upon judicial review of an administrative decision, the issues that may be raised are limited to those that were raised before the agency. *Rockville v. Woodmont C.C.*, 348 Md. 572, 582 n.3 (1998), *citing, Insurance Commissioner v. Equitable*, 339 Md. 596, 634 (1995).

Because no objection was raised before the County Commissioners to the receipt of unsworn testimony, the Appellants are barred from raising that issue on appeal.

Beyond the foregoing, the law of Maryland has long held that the touchstone of a government hearing is that the hearing be fair with notice and an opportunity to be heard. *E.g., Bernstein v. Bd. of Education.*, 245 Md. 464, 473 (1967). Such hearings are "not bound by common law rules of evidence." *Rogers v. Radio Shack*, 271 Md. 126, 129 (1974). Hearsay evidence is admissible, even in a contested case, and hearsay, if credible ***24** and sufficiently probative, maybe the basis for the agency decision. *MVA v. McDorman*, 364 Md. 253, 262 (2001); *Trovers v. Baltimore Police Dept.*, 115 Md.App. 395, 412 (1997). In *Travers* this Court stated that "administrative agencies are not constrained by technical rules of evidence," 115 Md.App. at 411, and "the Court countenances the relaxation of evidentiary rules so long as they are not applied in an arbitrary or oppressive manner that deprives a party of his or her right to a fair hearing." *Id.*, at 412. In *Widomski v. Chief of Police*, 41 Md.App. 361, 378-79 (1979), this Court observed: "Yet, it is just as clearly established in Maryland that administrative bodies are not ordinarily bound by the strict rules of evidence of a law court.....Procedural due process in administrative law is recognized to be a matter of greater flexibility than that of strictly judicial proceedings, (citation) The concept of due process requires that we examine 'the totality of the procedures afforded rather than the absence or presence of particularized factors.'"

In light of the foregoing, the County Commissioners asserts that there was no legal requirement that testimony, or any other evidence, be presented under oath at its hearing.

The Appellants rely upon this Court's recent decision in *Heard v. Foxshire*, 145 Md.App. 695 (2002), in which it is stated: "It is imperative that evidence given before an adjudicator/ body be under oath, whether from an attorney or lay person, a lay witness or an expert witness." *Id.*, at 707. First, the aforesaid statement from *Heard* has no application to the County Commissioners who are the legislative body empowered by the General Assembly to grant rezonings. Second, *Heard* does not correctly state the law of Maryland.

The requirement for an oath appears to be a common law requirement applicable solely to judicial proceedings. *See*, 6 Wigmore, *Evidence in Trials at Common Law* (Chadbourn, ed., 1976) § 1816 ("The theory of the oath, in modern common law, may be termed a subjective one, in contrast to the earlier one, which may be termed ***25** objective."); 13 Halsbury's Laws of England (2d ed., 1934) § 797, footnote *(b)* ("At common law there were various classes of persons who were incompetent as witnesses, *e.g.*, parties to an action or their husbands and wives, persons interested in an action, infamous persons, and persons who had no religious belief...or had conscientious objectives to taking an oath."). *See also, Hourie v. State*, 53 Md.App. 62, 64 (1982) ("Common law perjury was and is the giving of a false oath in a judicial proceeding in regard to a material matter."). The hearing of the County Commissioners, however, was "not bound by common law rules of evidence," *Rogers v. Radio Shack, supra*, 271 Md. at 129, and testimony, as well as all evidence, was not required to be under oath.

b. Adjacent Roadway Adequacy

The second argument raised by the Appellants is that Section 16.4(b) of the PUD Zone creates a "threshold consideration", Brief of Appellants, p.9, which requires that a PUD's adjacent roadway facilities be capable of serving the traffic to be generated by the PUD development *at the time ofrezoning*. The Appellants also assert that the Applicant's case presentation did not address the requirement of Section 16.4(b). *Id.*, p.10.

The evidence of record clearly demonstrates that consideration of the adequacy of adjacent roadway facilities as contemplated by Section 16.4(b).02., ZO, was addressed by both County staff and the Applicant. Those facilities are the two public roads which border the PUD site, Maryland Route 60 (Leitersburg Pike) and Marsh Pike. The comments of the State Highway Administration were: "We have reviewed the re-zoning case for Rokane, LLC (formerly Emerald Point) and have no objection to approval with the stipulation that access be denied to MD 60. Access can be gained via Marsh Pike." (Apx. 34) The restriction on access to Maryland Route 60 was acceptable for the PUD, and, as the State Highway Administration noted, access could be provided via Marsh Pike.

Contrary to the Appellants' assertion, the Applicant's evidence addressed Section ***26** 16.4(b) of the PUD Zone and made this issue a fairly debatable one. Among other points, the Applicant's engineer, Russ Townsley, explained that a traffic study that had been submitted to both the "County Engineer and State Highway" in support of the rezoning application. (E.52) Mr. Townley reported: "The study states that the existing system could be supported by the surrounding area network and the critical intersections will continue to operate at acceptable levels of service with the full development of the PUD provided that some improvements are made." ***(Id.)***

Additionally, the report submitted at the public hearing by the Applicant also demonstrated that there would be no adverse impact on the public road system. (E.75)

The Court of Appeals has repeatedly held that reports of technical staff in connection with rezonings can be sufficient to make the facts of record "fairly debatable." *Montgomery v. Ed, of Co. Comm'rs*, 263 Md. 1, 8 (1971); *Yewell v. Board of Co. Comm'rs*, 260 Md. 42, 49 (1970); *Montgomery County v. Shiental*, 249 Md. 194,199 (1968). The factual evidence before the County Commissioners as to the adequacy of the adjacent roadway facilities and the PUD was fairly debatable, and this Court should not substitute its judgment on that debatable issue.

The Appellants argue that Section 16.4(b) is a ***locational*** requirement that ***at the time of rezoning requires that*** the affected real property must be "located adjacent to adequate roadway facilities capable of serving existing traffic and the future traffic generated by the uses in the PUD." Section 16.4(b), ZO. (Apx 3) The argument is erroneous. A zoning ordinance could require that at the time of applying for rezoning or at the time of rezoning the affected real property had to meet a locational requirement.[16] ***27** Such a requirement, however, is not contained in the Washington County Zoning Ordinance. On this point, it must be remembered that the PUD Zone uses a multi-step plan approval process, and Section 16.4(b), ZO, cannot be read in isolation. The language of Section I6.4(b) contemplates the development of the PUD in the future. It expressly refers to "the future traffic." **(Apx**. 3) Indeed, at the time the rezoning application is decided the ultimate development has not been determined and will not be determined until after the development plan approval process. This aspect of the multi-step process in the PUD Zone is readily apparent when its Section 16.7(i), titled "Traffic Circulation and Parking," is taken into account. That section states:

1. Existing and planned streets and highways shall be of sufficient capacity to serve existing traffic and all new traffic when fully developed.
2. The capacity of existing streets and highways serving a PUD shall be considered by the Commission in determining density. Density resulting in traffic capacity being exceeded on streets and highways shall not be permitted.

Section 16.7(i), ZO. **(Apx. 9**)

Section 16.7(i) makes clear that "existing and planned streets and highways" and "existing streets and highways serving a PUD" must be considered in determining the PUD density. Section 16.4(b), ZO, cannot be read in isolation, and must be read in conjunction with Section 16.7(i), ZO. *Marsheck v. Board of Trustee, supra; Blitz v. Beth Isaac, supra; Motor Vehicle Admin*, v. *Gaddy, supra; Comptroller v. Fairland, supra; Smack v. Dept. of Health, supra*. When read in context, Section 16.4(b) does not require a demonstration that *at the time of rezoning* the adjacent roadway facilities must be ***28** capable of serving "the future traffic generated by the uses in the PUD."[17] Appellants' myopic construction of Section 16.4(b) ignores the ordinance scheme. Their position is contorted and strained in a fashion not supported by a reading of the Zoning Ordinance as a whole. It also fails to read the APFO in a consistent manner with the PUD Zone.[18]

In actuality, the process used in the Washington County PUD Zone is similar to that which this Court upheld in

Montgomery Co. v. Gr. Colesville Ass'n, 70 Md.App. 374 (1987). In *Gr. Colesville Ass 'n* the County Council for Montgomery County, sitting as a District Council, approved a rezoning to the P-D ("Planned development") Zone. The critical issue involved needed improvements to the off-site intersection of two major roads. 70 Md.App. at 378. The Montgomery County P-D Zone utilized a development plan process and the applicant amended its development plan to provide for making the intersection improvements which the applicant, apparently, would fund through the ***29** County's CIP. *Id.*, pp. 378-79. On this issue, this Court described the recommendation of the County's hearing examiner thusly:

> The hearing examiner extensively reviewed the history of the application and found the project to be compatible with the PD zone. He, therefore, recommended its approval of the rezoning. ***Concerning capacity of the critical intersection to accommodate the traffic to be generated by the project***, the hearing examiner concluded that the proposed improvements, when completed would render the intersection adequate. He further found that the improvements were reasonably probable of accomplishment within the foreseeable future....

Id., at 379 (Emphasis added). After the foregoing statement this Court quoted from the hearing examiner's report and recommendation which, in pertinent part, stated: "Moreover, before any development can take place under an approved P-D Zone, ***the Planning Board must approve a site plan and will review extensively the impact of the proposed development on the community." Id***. (Emphasis added). *See also Rouse-Fainvood v. Supervisor, supra*, 138 Md. App. at 625-27 (Prince George's County M-X-C ("Mixed Use Community") Zone, multistep plan review process, actual development could not begin until planning commission approved post-rezoning final development plan).

The Montgomery County P-D Zone process and the Prince George's County M-X-C Zone process are very similar to the multi-step process used in Washington County. All require approval of a site plan or final development plan before any actual development. The Appellants' argument on this point misses the mark.

c. "Reasonably Probable of Fruition in the Foreseeable Future" Test

Appellants' third argument is that the County Commissioners erred in failing to require that the infrastructure necessary to support the PUD be existing or reasonably probable of fruition in the foreseeable future. *See* Brief of Appellants, p. 18. Relying on *Montgomery Co. v. Gr. Colesville Ass 'n, supra*, the Appellants argue that the Commissioners were required to apply the "reasonably probable of fruition in the ***30** foreseeable future" test to evaluate the availability of adequate public facilities and compatibility for the requested PUD. *Id.*, pp. 19-21. The Appellants criticize the Commissioners, asserting that by "leaving the determination of compatibility for subsequent evaluation by the Planning Commission under the provisions of an adequate public facilities ordinance, the County Commissioners impermissibly delegated an essential rezoning function to an administrative body." *Id.*, p. 19. They also argue that the County Commissioners "does not have discretion to permit even the most willing developer to construct school facilities" and "[i]t is beyond the power of the Appellee to cause the necessary schools to be planned, funded, sequenced or constructed." *Id.*, p.20.

The error in the Appellants' argument is that the ordinance scheme in Washington County contains a multi-step process in the PUD Zone which involves progressive review and approval of development plans. Indeed, given the time deadlines by which a Preliminary Development Plan, Final Development Plan, and Site Plan must be filed, *see*, Section 16.5(a) 3., 4., and 5., **(Apx**. 4), the Washington County process is much more time sensitive and definite than the "reasonably probable of fruition in the foreseeable future" test.[19] Under the Washington County ordinance scheme the applicant, the public, and local authorities know when development plans must be filed for review and approval. In the absence of a comprehensive ordinance scheme such as that employed in Washington County the "reasonably probable of fruition in the foreseeable future" test ***31** might be applicable.[20] However, where the local legislative body has created an ordinance scheme by which a different test is utilized, the legislated test is applicable and controlling. Accordingly, the "reasonably probable of fruition in the foreseeable future" test does not apply to an application to rezone property to the Washington County PUD Zone. In effect, the Appellants seek to impose their own view of how PUDs are to be approved and developed. In fact and law, the

County Commissioners have adopted a development process in Article 16 that does not mandate the scheme argued by the Appellants.

The argument that the County Commissioners have "impermissibly delegated an essential rezoning function to an administrative body," Brief of Appellants, p. 19, is not meritorious. This argument refers to the role of the Planning Commission in approving development plans under the Zoning Ordinance and, presumably, the tie-in of the APFO at the time of Site Plan review and approval. That ordinance scheme has been lawfully enacted by the local legislative body. *Annapolis Market v. Parker, supra; Steel v. Cape Corp., supra*. Further, with floating zones the Court of Appeals has long held that a zoning ordinance that provided for site plan approval by an administrative agency at which compatibility factors could be considered and decided was permissible. *Bigenho v. Montgomery Comity*, 248 Md. 386, 396 (1968) (At site plan approval a "building that would be detrimental to the surrounding area" - a compatibility factor - could be denied). The "site plan approval" considered in *Bigenho* was a planning board approval, not the zoning authority. In *Bigenho* the Court of Appeals expressly recognized that "special precautions" to ensure compatibility included the "requirement that a site plan be approved, and a provision for revocation of the classification if the specified restrictions are not complied with." 248 Md. at 391. In ***32** *Mortimer v. Howard Research*, 83 Md.App. 432, 436 (1990), this Court noted that under the Howard County New Town Zone no land could be developed unless a "Final Development Plan" "for the specific area is approved by the Planning Board." Additionally, this Court's review and analysis of the development plan approval process for the Montgomery County P-D Zone in *Gr. Colesville Ass 'n* should lay to rest any question about plan approvals, particularly site plans, by a planning board/commission. The Montgomery County zoning ordinance provides that "[t]he Planning Board must approve, approve subject to modifications, or disapprove" site plans. Section 59-D-3.4(a), Chapter 59, Montgomery County Code 1994, as amended.

There are three integral parts of adequate land planning which are: the master plan, zoning, and subdivision regulation. *Board of County Comm'rs v. Caster*, 285 Md. 233, 246 (1979); *Richmarr v. American PCS, supra*, 117 Md.App. at 645. Further, "the terms planning and zoning...are not synonymous. Zoning is concerned with the use of property but planning is broader in its concept." *Caster, id*. The review and approval of development plans is part of the zoning process, and review and approval of such plans by an administrative agency, such as a planning board or commission, after rezoning approval is lawful. In the instant case, the multi-step process for plan approvals in the PUD Zone is proper and lawful.

The Appellants' argument that the County Commissioners did "not have discretion to permit even the most willing developer to construct school facilities" and that it was "beyond the power of the Appellee to cause the necessary schools to be planned, funded, sequenced or constructed", Brief of Appellants, p.20, is without merit. A zoning authority such as the County Commissioners may consider the impact on public schools when considering an application to rezone property. *E.g., Shapiro v. Montgomery Co. Council*, 269 Md. 380, 387-88 (1973). Further, as previously noted, consideration of the adequacy of public facilities, through an adequate public facilities ordinance, at the time of rezoning is legally permissible. *Annapolis Market v. Parker*, ***33** *supra; Steel v. Cape Corp., supra*.

At footnote 7 on page 20 of their brief the Appellants state that the APFO has been amended since the decision of the lower court and that the amendment changes the APFO provision for analyzing the adequacy of school facilities. Brief of Appellants, p.20. It then is asserted that "[t]he applicant's development proposal did not comply with the previous standard, and fails to meet the more rigorous standard recently enacted." *Id*. Citing *Co. Council v. Carl M. Freeman Assoc.*, 281 Md. 70 (1977); *DalMaso v. Bd. of Co. Comm'rs*, 264 Md. 691 (1972); *Yorkdale v. Powell*, 237 Md. 121 (1964); and *F&B Dev. Corp. v. County Council, 22* Md.App. 488 (1974), the Appellants state "[t]he law in effect at the time of judicial review governs the outcome of this appeal." *Id. See, Powell v. Calvert County*, 368 Md. 400 (2002). The APFO was amended after the lower court's decision to, *inter alia*, change the analysis by which a PUD's projected pupil enrollment and school capacity is measured. As explained in Footnote 12, *ante*, after the lower court's decision the Washington County APFO was amended twice with Revision 6, effective May 25, 2004, being the current version of that ordinance. As noted, on March 30, 2004, the County Commissioners adopted a Resolution which establishes a Transition Policy for the amendments to its APFO. (Apx. 36 - Apx. 37) The Resolution provides that amendments to the APFO do not apply to preliminary plats formally approved prior to July 1, 2003, and final plats formally approved prior to January 1, 2004, and that the Resolution applies retroactively to new development or proposed development on or after December 1, 1990. (Apx. 36). The amendments do, therefore, apply to all other new development.

As to school facilities under the current APFO, there is a "preliminary consultation", then "a preliminary plat review", and,

ultimately, it is formally applied at the time of "final plat approval." Section 5.3.1, APFO. (Apx. 23) The consultations and application of the pupil enrollment and school capacity measurement occur *after* rezoning. Accordingly, the issue raised by the Appellants in their footnote is premature and not germane to this appeal.

***34 d. Remand**

Finally, the Appellants argue that "[a] review of the record establishes that the applicant failed to adduce testimony and evidence, whether or not under oath, meeting the requirements for establishment of a floating zone. For that reason, remand is inappropriate." Brief of Appellants, p.22. The Appellants further assert "[bjecause the applicant failed to meet its burdens of production and persuasion, the decision of the Board *[sic]* of *[sic]* County Commissioners should be reversed without remand." *Id*. Their contention is not an argument that addresses the legality of the County Commissioners' rezoning action. Rather, it is a contention addressed to a remedy should this Court invalidate the rezoning decision under review. That contention is meritless.

For the reasons previously stated, the decision of the County Commissioners is supported by substantial evidence of record which is fairly debatable and premised upon a correct application of law. Accordingly, the Commissioners' decision should be affirmed. In this situation remand is not a relevant consideration.

CONCLUSION

For all of the foregoing reasons, the arguments presented by the Appellants are not meritorious in any respect. The decision of the County Commissioners to approve rezoning application Case No. RZ-02-008 is supported by substantial evidence of record which is fairly debatable and premised upon a correct application of law. Accordingly, the rezoning decision of the County Commissioners of Washington County, Maryland, should be affirmed.

***35 STATEMENT AS TO FONTS USED**

Pursuant to Rule 8-504(a)(8), this is to certify that we have used Times New Roman and CG Times fonts in this brief in various font sizes, and are 13 point or greater.

Footnotes

[1] This Court recently described planned unit development zoning, in part quoting from Ziegler, Rathkopf 's The Law of Zoning and Planning (4th Ed.Rev. 1994), as follow: "Modern zoning ordinances...strive to meet society's current development needs by providing greater flexibility in zoning patterns....A PUD is a particular type of zoning technique used to obtain the level of flexibility needed to meet changing community needs.... In contrast to Euclidean zoning, which divides a community into districts, and explicitly mandates certain uses...the PUD is an instrument of land use control which... permits a mixture of land uses on the same tract.... Generally, it is a zoning technique that encompasses a variety of residential uses, and ancillary commercial, and...industrial uses." *Rouse-Fainvood v. Supervisor*, 138 Md.App. 589, 623 (2001) (internal quotes and citations omitted), *cert denied* 365 Md. 475 (2001).

[2] An excerpt from the transcript of the Commissioners' hearing is reproduced in the Record Extract. **(E.29-E.66)**

[3] The traffic study was part of the record before the County Commissioners although it apparently was not included in the record transmitted to the lower court.

[4] Internal footnote deleted.

[5] The adopted Findings of Fact were inadvertently not included in the Record, and are the subject of a motion to supplement the record which has been filed with this Court pursuant to Maryland Rule 8-414.

[6] The adopted Findings of Fact are more expansive than the minutes in expressing the reasons for the decision to approve the requested rezoning. However, because the Findings of Fact are not reproduced in the Record Extract nor is a copy in the Record, this brief does not quote from the Findings of Fact. *See* footnote 5.

[7] The terms "rezone" or "rezoning" and "reclassification" are synonymous, and refer to "a *change in the existing zoning law itself*, so far as the subject property is concerned." *Cadem v. Nanna*, 243 Md. 536, 543 (1966). (Emphasis not added)

[8] Although this Court's review is that of the zoning authority, the lower court, after due consideration of the arguments put forward by the Appellants, affirmed the rezoning action. (E.106-E.118) The lower court's decision is correct, deserves serious consideration by this Court, and should be affirmed.

[9] During its 2004 Regular Session the General Assembly enacted Chapter 406 **(Apx. 38** - Apx. 39), effective July 1, 2004. This legislation enacted a Section 14.08 to Article 66B of the Annotated Code of Maryland which clarifies the authority conferred by Section 10.01 of Article 66B on local legislatures to enact adequate public facilities laws. The new Section 14.08(D)(7) and (8) authorize the County Commissioners to determine the adequacy of public facilities in areas affected by new development in the development plan review process and to enter into agreements with developers for the payment of monetary compensation to address inadequacies in public facilities as part of the development plan process. (Id.) This legislation merely clarifies the authority conferred by Section 10.01, particularly as to the role of the adequate public facilities law in a local government's development plan review process. **(Apx. 40 - Apx.** 41)

[10] The Applicant's proposed PUD had undergone Concept Plan Review prior to the Zoning Approval which is the subject of this appeal. (E.17)

[11] The County Commissioners required these agreements in its decision approving the Applicant's requested rezoning. (E.105)

[12] The decision of the County Commissioners to approve the rezoning in this case occurred on March 13, 2003. (E.103) At that time the operative version of the APFO was Revision 4, effective November 26, 2002. The lower court's hearing occurred on November 7, 2003, and its opinion and order was rendered on November 21, 2003. (E. 118) At that time the operative version of the APFO still was Revision 4. Subsequently, the APFO was amended twice pursuant to Revision 5, effective January 1, 2004, and Revision 6, effective May 25, 2004. The current version of the APFO, Revision 6, is applicable to this appeal, *Powell v. Calvert County*, 368 Md. 400 (2002), *Co. Council v. Carl M. Freeman Assoc.*, 281 Md. 70 (1977); *Dal Maso v. Bd. of Co. Comm'rs*, 264 Md. 691 (1972); *Yorkdale v. Powell*, 237 Md. 121 (1964); *F&B Dev. Corp. v. County Council*, 22 Md.App. 488 (1974), and it is reproduced in the Appendix to this Brief. **(Apx. 11 - Apx. 30).** On March 30, 2004, the County Commissioners adopted a Resolution **(Apx. 36** - **Apx.** 37) which establishes a Transition Policy for amendments to its APFO because "certain procedural issues have arisen concerning its enactment and implementation". **(Apx. 36)** The Resolution states that amendments to the APFO do not apply to a preliminary plat which was formally approved prior to July 1, 2003 and final plats formally approved prior to July 1, 2004, and that it applies retroactively to new development or proposed development commencing on or after December 1, 1990. **(Apx. 36 - Apx. 37**)

[13] Section 3.5 of the APFO has no relevance to this appeal.

[14] The Appellant's final argument does not set forth a meritorious basis for overturning the zoning decision of the County Commissioners. Rather, it contends that remand is not a proper disposition of this case, and that this court should reverse the rezoning approval. As explained *infra.*, the Appellants' contention is erroneous.

[15] The speakers in opposition to the requested rezoning included a John Urner who addressed the County

Commissioners and Planning Commission stating "...many of you know in my profession as an attorney, I work with the Zoning Ordinance all the time. I have since 1973." (**Apx**. 35)

16 For example, the Montgomery County P-D ("Planned Development") Zone contains a true locational requirement. *See*, Section 59-C-7.12, Chapter 59, Montgomery County Code 1994, as amended. Subsection 59-C-7.121 is a master plan requirement that states that "[n]o land can be classified in the planned development zone unless such land is....", and subsection 59-C-7.122 contains a minimum area requirement which states "[n]o land can be classified in the planned development zone unless the district council finds that the proposed development meets at least one of the following criteria...."

17 In this case the zoning authority also is the local legislative body which enacted the Zoning Ordinance and the APFO. Further, the regulatory control exercised by the County Commissioners includes the ability to condition its rezoning approvals. *See*, Section 4.01(c)(1), Article 66B, Annotated Code of Maryland, as amended (1957, 2003 Repl. Vol.) and Section 27.4, Washington County Zoning Ordinance. The Commissioners have exercised their authority to condition rezoning in this case in that its decision requires that: "As specified under Zoning Ordinance section 16.6(d)(2)ii, agreements for responsibility between County and developer for providing on-site and off-site improvements shall be developed as part of the Final Development Plan." (E.105) *See, Floyd v. County Council ofP.G. Co.*, 55 Md.App. at 260 ("Where...the district council's [rezoning] approval was granted subject to ten conditions, which addressed every substantial concern revealed in the record, this Court cannot hold that the council's approval of...rezoning was arbitrary or unlawful.").

18 In support of their argument the Appellants heavily rely upon *Annapolis Market v. Parker, supra*. That reliance is misplaced. The *Annapolis Market* case was decided upon the specific language contained in the Anne Arundel County code pertaining to rezonings and the adequcy of public facilities. Washington County has a different ordinance scheme, and, therefore, the court's analysis of the Anne Arundel County code in *Annapolis Market* is not instructive in this case.

19 In *Gr. Colesville Ass 'n* this Court quoted from the county's hearing examiner who stated: "the present Development Plan [is] a much more stringent control over premature development than any test that attempts to measure whether the improvements are 'reasonably probable of fruition in the foreseeable future.' The plan makes the improvements definite, explicit, and an essential prerequisite to development. Under the 'reasonably probable' test, a bad guess about future events could still lead to premature development. However, this situation cannot occur under the current Development Plan because any uncertainty has been eliminated." 70 Md.App. at 380.

20 It is suggested that the "reasonably probable of fruition in the foreseeable future" test was judicially created, and *Trustees v. Baltimore County*, 221 Md. 550, 570-71 (1960), may be an early explication of the test to use those words.

End of Document

EXHIBIT E

BOARD OF COUNTY COMMISSIONERS
OF WASHINGTON COUNTY, MARYLAND
Washington County Administration Building
100 West Washington Street, Room 226
Hagerstown, Maryland 21740-4727
Telephone: 240-313-2200
FAX: 240-313-2201
Deaf and Hard of Hearing call 7-1-1 for Maryland Relay

November 26, 2002

Mr. Mansoor Shaool
72 West Washington Street
Hagerstown, MD 21742

Dear Mr. Shaool:

RE: Rezoning Cases RZ-02-006

At the regular meeting of the Board of County Commissioners of Washington County on November 19, 2002, the referenced rezoning map amendment, RZ-02-006, was approved. A copy of the County Commissioners' minutes for that meeting are attached for your information.

Sincerely,

Joni L. Bittner, County Clerk

BOARD OF COUNTY COMMISSIONERS
OF WASHINGTON COUNTY, MARYLAND

:jb

cc: Robert Arch, Director, Planning & Community Development
Timothy O'Rourke, Supervisor of Assessments
Fox & Associates, Inc.

attachment

EXHIBIT A

Motion made by Commissioner Iseminger, seconded by Schnebly, that there has been a convincing demonstration that the proposed rezoning from Agriculture (A) to Residential Rural (RR) would be appropriate and logical for the subject property based on the staff report and recommendation of the Planning Commission, the fact that it is consistent with the development and development patterns that have occurred in the area, the availability of water and sewer to the site, the fact that there are sufficient options available for road access; and the property lies within the Urban Growth Area boundary. Unanimously approved.

Motion made by Commissioner Iseminger, seconded by Schnebly, based upon the previous motions for rezoning case RZ-00-007 that the proposed rezoning from Agriculture (A) to Residential Rural (RR) is granted. Unanimously approved.

REZONING MAP AMENDMENT - RZ-02-006 - MANNY SHAOOL

Richard Douglas, County Attorney, reviewed map amendment RZ-02-003, submitted by Fox & Associates, Inc. on behalf of Manny Shaool to rezone the subject property from Agriculture (A) to Agricultural/Planned Unit Development (A/PUD). Mr. Douglas stated that the Planning Commission has recommended that the rezoning be denied.

Motion made by Commissioner Iseminger, seconded by Swartz, to adopt the findings of fact set forth in the report of the County Attorney, a copy of which is attached to these minutes. Unanimously approved.

Purpose of PUD District

The purpose of the PUD district "is to permit a greater degree of flexibility and more creativity in the design and development of residential areas than is possible under conventional zoning standards…"

The applicant's plan provides more efficient use of the land as well as the provision of open space, pedestrian facilities, and substantial amenities such as a swimming pool, a community building, golf practice area, and tennis courts to address the purpose of the PUD.

Aplicable policies of the Comprehensive Plan for the County

The Plan encourages growth to occur within the Urban Growth Area where adequate public facilities exist or are planned, and development will offer a wide variety of housing types and costs.

The use of PUD zoning in this area is consistent with both the 1981 and 2002 Comprehensive Plans. This is illustrated by the fact that the largest concentration of Planned Unit Developments in the County are located near the subject property. The new Comprehensive Plan establishes "Policy Areas" in which certain uses and zoning designations are recommended. The subject property is located within the Urban Growth Area - Low Density Residential policy area. In addressing development within the Low Density Residential policy area, the Plan states, "typical densities in this policy area range from two to four units per acre unless the property is approved for a planned residential or mixed use development. If property is approved for a high density development, the maximum density should be 12 units per acre." The density of the proposed PUD is 2.7 dwelling units per acre.

The compatibility of the PUD with neighboring properties

The Robinwood Drive corridor near Hagerstown Community College has developed with apartments, townhouses, and other forms of higher density housing that would be consistent with some of the elements of the proposed PUD. The revised concept plan for the proposed 595-unit PUD includes some modifications by reducing the number of townhouse units and concentrating them in the southeast corner of the property. The revised plan also increased the buffer to fifty feet between the townhouse units and the adjacent farmland. The amount of higher density housing adjacent to the Growth Area boundary has been reduced from the original proposal.

The effect of the PUD on community infrastructure.
The Adequate Public Facilities Ordinance (APFO) has taken on a supportive role that was previously the sole responsibility of this item in the Zoning Ordinance during the rezoning stage when considering the deliberation of PUD cases. Due to this change, it would appear that now the Planning Commission and the County Commissioners would only have to access infrastructure issues at the zoning stage that would appear to be highly unsolvable. The applicant has indicated that he is fully aware of the APFO implications and is willing to assume the burden placed upon him. The Chief Engineer did not take exception to the rezoning and responded to the application by stating that road adequacy and stormwater management requirement "can be adequately addressed through our normal site plan and subdivision processes."

Motion made by Commissioner Iseminger, seconded by Swartz, that there has been a convincing demonstration that the proposed rezoning from Agriculture (A) to Agricultural/Planned Unit Development (A/PUD) would be appropriate and logical for the subject property based on the uses that have been provided, the measures that have been taken to provide buffers between this property, adjacent single-family uses, and adjacent agricultural uses, and the fact that the Adequate Public Facilities Ordinance will play a role in infrastructure needs at final development plat approval. Motion carried with Commissioners Iseminger, Schnebly, and Swartz voting "AYE" and Commissioners Wivell and Snook voting "NO."

Motion made by Commissioner Iseminger, seconded by Swartz, based upon the previous motions for rezoning case RZ-02-006 that the proposed rezoning from Agriculture (A) to Agricultural/Planned Unit Development (A/PUD) is granted, contingent upon all buffers being in place and at the revised densities. Motion carried with Commissioners Iseminger, Swartz, and Schnebly voting "AYE" and Commissioners Wivell and Snook voting "NO."

YOUTH OF THE MONTH AWARDS - OCTOBER 2002
Commissioner Iseminger presented a Certificate of Merit to Scott Stevens in recognition of his selection as the October 2002 Youth of the Month by the Washington County Community Partnership for Children & Families (WCCP). The Commissioners commended Scott for his leadership, academic and extra-curricular activities. Commissioner Iseminger stated that Scott would also receive a $50 savings bond from the WCCP.

PROCLAMATION - NAPA RAYLOC DIVISION OF GENUINE PARTS COMPANY
Commissioner Schnebly presented a proclamation to Dave Waters, General Manager, and Wayne Younkers, HR Director, at NAPA Rayloc Division of Genuine Parts Company in recognition of their contribution and dedication to the Hancock Volunteer Fire Company, the Hancock Volunteer Rescue Squad, and the citizens of Hancock and their fine example of caring and community involvement.

Jason Baer, President of the WCVFRA, stated that he was impressed with NAPA Rayloc Division of Genuine Parts Company and its commitment to the Hancock community by allowing their employees to respond to fire and rescue calls during daytime employment. Mr. Baer presented a plaque to Mr. Waters and Mr. Younker from the WCVFRA. Members of the Hancock Volunteer Fire Company and Hancock Emergency Services were also present to support the recognition. Mr. Baer thanked the Board of County Commissioners for their work with the Association over the past four years.

EMPLOY ECONONIC DEVELOPMENT DIRECTOR
Motion made by Commissioner Schnebly, seconded by Iseminger, to employ Timothy Troxell as Director of the Economic Development Director (Grade 17) at the salary of $68,500 to fill an existing vacancy. Unanimously approved.

ADJOURNMENT
Motion made by Commissioner Schnebly, seconded by Iseminger, to adjourn at 3:06 p.m. Unanimously approved.

Washington County
MARYLAND
DEPARTMENT OF PLANNING & ZONING
COMPREHENSIVE PLANNING | LAND PRESERVATION | FOREST CONSERVATION | GIS

July 23, 2021 RZ-21-003

APPLICATION FOR AMENDMENT OF DEVELOPMENT PLAN
PLANNING COMMISSION RECOMMENDATION

RECOMMENDATION

The Washington County Planning Commission held a public information meeting on June 14, 2021 for the purpose of taking public comment on an application for a major change to the existing development plan for the Black Rock PUD. The proposed amendment would increase the overall number of residential units from 595 dwelling units to 1,148 units, thereby increasing the residential density from 2.7 dwelling units per acre to 5.2 dwelling units per acre. The Planning Commission considered the applicant's application and supporting documents, oral testimony from more than 30 residents of the area, written comments including a petition signed by nearly 400 residents of the area, and the Staff Report and Analysis.

At their regular meeting on July 19, 2021, the Planning Commission unanimously voted to deny the requested major change for the following reasons:

1. The transportation network serving the area (specifically Mt. Aetna Road between White Hall Road and MD 66) is not adequate to handle the additional traffic from additional units.
2. The water system does not appear to be adequate to properly serve the additional units as it relates to water pressure and availability of sufficient capacity for public fire suppression efforts.
3. The school system would not have adequate capacity to serve the new pupil yield of the proposed new units.

Copies of the application packet and supporting documents, Staff Report and Analysis, written comments, petition, and minutes of the June 14, 2021 public information meeting and July 19, 2021 regular meeting are attached.

Respectfully submitted,

Jill Baker, AICP
Director, Washington County Dept. of Planning & Zoning

JLB/dse
Attachments
cc: Kirk Downey
Morris & Ritchie Associates

Washington County
MARYLAND
DEPARTMENT OF PLANNING & ZONING
COMPREHENSIVE PLANNING | LAND PRESERVATION | FOREST CONSERVATION | GIS

April 2021 Case #: RZ-21-003

Application for Map Amendment
Staff Report and Analysis

Property Owner(s)	:	Mansoor & Janet Shaool
Applicant(s)	:	Morris & Ritchie Associates Inc.
Location	:	N/S of Mt. Aetna Road; approximately 1.5 miles east of Robinwood Drive/Edgewood Drive
Election District	:	#18 – Chewsville
Comprehensive Plan Designation	:	Low Density Residential
Zoning Map	:	50
Parcel(s)	:	309 & 321
Acreage	:	220.11 acres
Existing Zoning	:	RT-PUD (Residential Transition w/ Planned Unit Development Overlay) approved for up to 595 residential dwelling units
Requested Zoning	:	RT-PUD w/proposed 1,148 residential dwelling units
Date of Meeting	:	May 3, 2021

Background and Findings Analysis:

Location and Description of Subject Properties

The subject parcels are located along the north side of Mt. Aetna Road approximately 1.5 miles east of Robinwood Drive and Edgewood Drive. The total acreage of the two parcels that are the subject of this rezoning case is 220.11 acres and is further described as follows:

Subject Parcel #1: Tax Map 50; Parcel 309 – The parcel has an irregular shape consisting of approximately 160 acres and is currently unimproved. The property has a slightly rolling topography with a high point in the northeast corner of the property that slopes downward travelling west along the property. There are a few areas of steep slope on the property, however there are no identified streams, wetlands, floodplains, or threatened or endangered species habitats. The property consists of mostly farmed cropland and heavily forested areas to the west of the property.

Subject Parcel #2: Tax Map 50; Parcel 321 – This parcel also has an irregular shape and consists of approximately 60 and is currently unimproved. The topography is generally flat with a gentle downward slope moving from west to east. There is one small area of steep slope located on the property as well as an intermittent stream. There does not appear to be wetlands or floodplain associated with the stream. There are no threatened or endangered species habitats identified on the property. It is generally flat and consists of primarily farmed cropland with sporadic islands of forest.

Both properties are located within the Urban Growth Area that surrounds the City of Hagerstown and the Towns of Williamsport and Funkstown. These properties form the easternmost boundary of the UGA.

Population Analysis

To evaluate the change in population, information was compiled from the US Census Bureau over a thirty-year time frame. A thirty-year horizon was picked to show long term population trends both in the election district of the proposed rezoning, as well as the overall trends of the County.

Both of the properties that are the subject of this rezoning are located in the Chewsville Election District, # 18. As shown in Table 1 below, this district has shown large increases in population over the thirty-year time frame between 1980 and 2010. Population increases within this election district have far outpaced the average growth rate compared to the County as a whole during this 30-year time period. This district has increased approximately 122.1% (4.1% per year) while the County has increased in population by 30.37% (1.01% per year) during the same period.

Table 1: Population Trends 1980 - 2010

Year	Area	Population	% change from previous decade
1980	District	5,532	
	County	113,086	
1990	District	6,712	21.3%
	County	121,393	7.3%
2000	District	9,098	35.5%
	County	131,932	8.7%
2010	District	12,287	35.1%
	County	147,430	11.7%

Source: US Census Bureau

Availability of Public Facilities

Water and Sewerage

The adopted Water and Sewerage Plan for the County establishes the policies and recommendations for public water and sewer infrastructure to help guide development in a manner

that helps promote healthy and adequate service to citizens. By its own decree, the purpose of the Washington County Water and Sewerage Plan is "…to provide for the continued health and well-being of Washington Countians and our downstream neighbors…"[1] This is achieved through implementing recommendations within the County Comprehensive Plan and the Water and Sewerage Plan to provide for services in a timely and efficient manner and by establishing an inventory of existing and programmed services.

Both properties are located within the County designated Urban Growth Area that surrounds the City of Hagerstown as well as the Towns of Funkstown and Williamsport. Both parcels are currently unimproved.

Water:

Both parcels are delineated as a W-3 Programmed Water Service area in the 2009 Water and Sewerage Plan and service is provided by the City of Hagerstown. In accordance with the City of Hagerstown Water and Wastewater (CHWW) policy, *"...the City of Hagerstown will only provide new or expanded water and wastewater service outside of Hagerstown's corporate boundaries to properties that annex into the City or that enter into pre-annexation agreements with the City..."*. In addition, the CHWW also states, *"...the City will not extend water or wastewater services beyond the Hagerstown Medium-Range Growth Areas as defined in the City's Annexation Policy..."*.

This application was sent to the City of Hagerstown Water Department for review and comment. The following comments have been offered:

> *"The future water usage within this PUD will be approximately 229,600 gallons (1148 units x 200 gpd/unit). This PUD is located within the City of Hagerstown's Water System Zone 5. Water Zone 5 has limitations in distribution system pressure and fire flow ability even without the addition of this PUD. These limitations are detailed in the Hagerstown Fire Department comments to this PUD. The existing average water demand within Zone 5, per the 2008 City of Hagerstown Water System Master Plan, was 0.48 MGD. The 2008 Master Plan incorporated a future planning year of 2025 and an average water usage of 0.61 MGD. This PUD will increase the average water demand within this Zone to a rate that exceeds the planned future average water usage. Per the Master Plan, upgrades to the water infrastructure are required when this future flow is approached. The required upgrades are detailed in the 2008 Master Plan but generally the upgrades include improvements to the water pump station #6, the addition of a water storage tank within Zone 5 and water distribution system improvements. The City and their Consultant Engineer will work with the Developer and their Engineer on the final design of these necessary upgrades and additions to the water system infrastructure."*

Both properties are currently located with the City designated Medium Range Growth Area (MRGA) boundary. They also have an executed pre-annexation agreement

[1] Washington County, Maryland Water and Sewerage Plan 2009 Update, Page I-2

with the City. While this statement alludes to the availability of water resources currently, it is not a guarantee of allocation. Allocation is received on a first come-first served basis until capacity is exhausted.

Furthermore, the City maintains a growth model for the areas within the MRGA in accordance with their adopted Water Resources Element of the City Comprehensive Plan. This model analyzes existing development and estimates new growth based on assumptions derived from existing zoning. Therefore, adjustments to zoning within the MRGA are also evaluated for their impacts upon the City water resources. It has been confirmed by the City that these properties have been included within their water resource model based on the development plan approved by the County for 595 new residential units. The City has confirmed that an increase of units to 1,148 will create an imbalance in the model that will need to be accounted for in another location namely through retraction of the MRGA in other locations.

Wastewater:

Both parcels are located within an S-3 Programmed Wastewater Service Area as delineated in the 2009 Water and Sewerage Plan and service is provided by the City of Hagerstown. In accordance with the City of Hagerstown Water and Wastewater (CHWW) policy, *"...the City of Hagerstown will only provide new or expanded water and wastewater service outside of Hagerstown's corporate boundaries to properties that annex into the City or that enter into pre-annexation agreements with the City..."*. In addition, the CHWW also states, *"...the City will not extend water or wastewater services beyond the Hagerstown Medium-Range Growth Areas as defined in the City's Annexation Policy..."*.

This application was sent to the City of Hagerstown Wastewater Division for review and comment. The following comments have been offered:

> *"In regards to the City wastewater collection system infrastructure, the wastewater generated within this PUD would travel through the City owned gravity collection system as well as multiple wastewater pump stations. Depending on the final site grading and proposed sewer collection system layout within this development, upgrades to City Wastewater pump station 19 and possibly the discharge force main will most likely be required. Currently, this pump station was designed for the development in which it is located with limited excess capacity. Pump Station 19 is located near the intersection of Sani Lane and Ayoub Lane. The layout of wastewater collection/conveyance infrastructure within this PUD that avoids wastewater conveyance through Pump Station 19 would be acceptable and can be evaluated as the project progresses.*
>
> *The remaining City wastewater pump stations affected by this PUD appear to have sufficient hydraulic capacity for the anticipated wastewater flow generated within this PUD.*

The City owned gravity sewers between this PUD and Wastewater Pump Station 8 appear to have sufficient hydraulic capacity however the City reserves the right to require sewer collection system upgrades depending on the final sewer collection system layout within the PUD. City Wastewater Pump Station 8 is located along Robinwood Drive in front of Hagerstown Community College."

Both properties are currently located with the City designated Medium Range Growth Area (MRGA) boundary. They also have an executed pre-annexation agreement with the City. While this statement alludes to the availability of wastewater resources currently, it is not a guarantee of allocation. Allocation is received on a first come-first served basis until capacity is exhausted.

Emergency Services

Fire:

Subject Parcel #1 is located within the service area of the Smithsburg Volunteer Fire Company (Company #11) and is approximately 5 miles away from the fire station. Subject Parcel #2 is located within the service area of the Funkstown Fire Company (Company #10) and is located approximately 3 miles away from the fire station.

A copy of this application was sent to each volunteer fire company and also forwarded to the City of Hagerstown Fire Department for review and comment. There was no response received from the County volunteer companies, however the City Fire Chief had the following comments to offer:

"The HFD has had the opportunity to review the revised PUD for the Black Rock development off of Mt Aetna Rd and offer the following comments unique to fire protection in that area of Washington County. Be advised that even though HFD units typically are included on responses in this area, it is the first due area of the Funkstown Volunteer Fire Company to provide comments for this portion of the county. If you have not already done so, I recommend that you reach out to them for their input and guidance.

HFD comments and concerns:

1. This development is located within Hagerstown Water Zone 5 which historically has struggled to meet both domestic and fire protection water flows within the entire zone. These struggles are known issues and well documented over time. This is exasperated by the geography (high elevation, lack of a storage tank or standpipe, and undersized water transmission / distribution lines supplying zone-5). After several large fires in that area of the county in recent years including Doey's House, Woodbridge Dr., and others where fire protection water is limited to successfully deploy large caliber streams, the Funkstown VFD has added multiple tankers (water on wheels) to the assignments to partially compensate for the lack of needed fire flow (NFF).

2. The city has recently added an automatic swing check valve in the vicinity of the Elk's club on Robinwood Dr. to provide some interim relief by increasing the available water from the main zone 1 when demand exceeds supply. This however is limited.

3. The proposed development and existing construction in zone-5 is primarily comprised of very large single-family homes, townhomes and some extended residence buildings that are of Type-5 light-weight, wood-frame construction that are a challenge for FD's everywhere. The need for additional FF-ing water streams is essential to stopping well advanced fires in these buildings.

4. To achieve effective FF streams, the correct combination of pressure and volume is needed to adequately protect structures like those proposed. I will defer to the technical expertise of the Water Department to recommend a permanent solution(s).

5. In the interim, and without an adequate size storage tank for fire protection water located within zone-5, the HFD strongly recommends that further development does not occur as proposed. There simply is inadequate water necessary to flow two or more large caliber streams necessary to stop fires in well involved attic spaces of the type and size of buildings proposed.

By our understanding, the revised proposal nearly doubles the number of units initially reviewed in 2004. Specifically, the large number of apartments and townhomes clustered together present a real challenge for any FD. This is particularly true in the unsprinklered attic spaces of these buildings with peaked roofs.

Finally, and by the copy of the draft drawings we reviewed, there appears to be a single entrance only off of Mt. Aetna Rd. to the development. This seems problematic for such a large number of dwelling units (1, 148) without some redundancy and access from another point."

These comments were forwarded to the applicant who requested a subsequent meeting with Staff to discuss these concerns. After some discussion, the applicant believes that they will be able to mitigate these concerns either through water line improvements (i.e. looping of lines to create additional pressure) or via a water tower or other facility. The issue of access redundancy will be addressed by the applicant as part of their presentation at the input meeting.

Emergency Rescue:

Emergency Rescue services are provided by Community Rescue Service (Company #75). The properties are approximately 3 miles away from the station. A copy

of this application was sent to each of the volunteer companies as well as to the Washington County Division of Emergency Services. No comments have been received.

Schools

The two properties that comprise this proposed development currently acts as the dividing point between two different school district feeder systems. Subject parcel #1 (P. 309) is in the property is located within Ruth Ann Monroe/Eastern Elementary/Smithsburg Middle/Smithsburg High districts. Subject parcel #2 (P. 321) is in the Greenbrier Elementary/Boonsboro Middle/Boonsboro High school districts. The requested increase of dwelling units would impact both school districts.

To evaluate the impacts of development on public school system resources we first look at existing conditions. In accordance with the adopted Adequate Public Facilities Ordinance (APFO), adequacy is determined based upon the State Rated Capacity (SRC) of each school district. The threshold for adequacy (stated as the Local Rated Capacity) at the elementary school level is 90% of the SRC. Middle and high school thresholds are 100% of the SRC. The tables below show the existing capacity and enrollment figures for each school district affected by this proposed rezoning. It should be noted that enrollment figures are significantly lower in the elementary school levels than in previous years due to impacts from the COVID-19 pandemic. These numbers are expected to rise again as schools return to normal in person operations.

School	State Rated Capacity	Local Rated Capacity	Current Enrollment (Dec 2020)
Ruth Ann Monroe/Eastern Elem.	1264	1138	993
Smithsburg Middle	839	839	566
Smithsburg High	897	897	725

School	State Rated Capacity	Local Rated Capacity	Current Enrollment (Dec 2020)
Greenbrier Elementary	274	247	222
Boonsboro Middle	870	870	623
Boonsboro High	1098	1098	872

In addition to current enrollment figures, the APFO outlines a specific formula that accounts for several variables that can influence changes in school enrollment. These factors include pipeline and background enrollment. Pipeline development equates to approved subdivision lots that have not yet been built upon while background enrollment is an average of enrollment changes within a given district over a 3-year period. The table below shows the adjusted enrollment for the school districts that serve the subject property.

School	Current Enrollment (Dec 2020)	Pipeline Enrollment	Background Enrollment	Adjusted Enrollment
Ruth Ann Monroe/Eastern Elem.	993	110.98	11.7	1115.68
Smithsburg Middle	566	34.98	6.8	607.78
Smithsburg High	725	34.98	-7.5	752.48

School	Current Enrollment (Dec 2020)	Pipeline Enrollment	Background Enrollment	Adjusted Enrollment
Greenbrier Elementary	222	17.63	0.8	240.43
Boonsboro Middle	623	52.36	0.4	675.76
Boonsboro High	872	52.36	9.8	934.16

To determine the impacts of the specific development, the Board of Education has provided the County with pupil generation rates for each level of a school district. These generation rates are used to calculate the potential number of students that may be produced by the development. Generation rates are based on the level of the school and the type of housing unit that may be produced. The table below shows current pupil generations rates.

Pupil Generation Rates			
Type	Elem	Mid	High
Single Family	0.43	0.22	0.22
Townhouse	0.32	0.11	0.14
Multi-Family	0.31	0.12	0.16

Using the number of proposed units multiplied by the pupil generation rate, the estimated number of students that may be generated from this development is summarized in the table below. The figures are estimated based upon the development plan submitted in February 2021. Enrollments can and will vary depending upon the final layout of the development.

Subject Parcel #1 (P.309) Ruth Ann Monroe/Eastern/Smithsburg/Smithsburg								
		Pupil Gen Rates			Pupils Generated			
Unit Type	Number of lots	Elem	Mid	High	Elem	Mid	High	Total
Single Family	182	0.43	0.22	0.22	78.26	40.04	40.04	158.34
Townhouse	447	0.32	0.11	0.14	143.04	49.17	62.58	254.79
Multi-family	300	0.31	0.12	0.16	93.00	36.00	48.00	177.00
Totals	929				314.3	125.21	150.62	590.13

Subject Parcel #2 (P.321) Greenbrier/ Boonsboro/Boonsboro								
		Pupil Gen Rates			Pupils Generated			
Unit Type	Number of lots	Elem	Mid	High	Elem	Mid	High	Total
Single Family	193	0.43	0.22	0.22	82.99	42.46	42.46	167.91
Townhouse	26	0.32	0.11	0.14	8.32	2.86	3.64	14.82
Multi-family	0	0.31	0.12	0.16	0.00	0.00	0.00	0.00
Totals	219				91.31	45.32	46.1	182.73

When added together, the current adjusted enrollment and new pupils generated from the proposed development shows an inadequacy at the elementary school level in both the receiving districts. While the exceedance in the Ruth Ann Monroe/Eastern district is within a mitigatable range, the exceedance in the Greenbrier district far exceeds typical mitigation methods within the County. There are currently no redistricting plans, capital projects or other reasonable mitigation efforts proposed for this district that could offset the magnitude of the exceedance.

Reviewing the middle and high school capacities it appears that the development occurring within the Smithsburg feeder systems will be pushed slightly over Local and State Rated Capacities but well within a mitigatable range. Development within the Boonsboro feeder systems appears to have no negative impact on school capacity. Because the two districts abut one another at this location it may be in the best interest of all parties to investigate the possibility of redistricting middle and high school students from Smithsburg to Boonsboro to help balance student enrollment in each feeder system.

Subject Parcel # 1 (P. 309)					
School	Adjusted Enrollment	New Pupils Generated	Total Impact	Local Rated Capacity	% of LRC
Ruth Ann Monroe/Eastern Elem.	1115.68	158.34	1274.02	1138	112.0%
Smithsburg Middle	607.78	254.79	862.57	839	102.8%
Smithsburg High	752.48	177	929.48	897	103.6%

Subject Parcel #2 (P. 321)					
School	Adjusted Enrollment	New Pupils Generated	Total Impact	Local Rated Capacity	% of LRC
Greenbrier Elementary	240.43	167.91	408.34	247	165.3%
Boonsboro Middle	675.76	14.82	690.58	870	79.4%
Boonsboro High	934.16	0	934.16	1098	85.1%

**Disclaimer – School enrollment calculations are estimated as a snapshot of existing conditions. These figures can and will change over time and are only included as illustrations of potential outcomes based on information available at the time of writing this document.

Present and Future Transportation Patterns

Highways

While subject parcel # 1 is technically land locked and absent direct access to a public road, the application is being viewed as a whole so that both parcels will construct new road infrastructure that will use Mt. Aetna Road as the developments access point.

In addition to evaluating public access of a parcel for rezoning purposes, it is also important to evaluate traffic generation and existing traffic volumes. This is commonly accomplished through analysis of historic and existing traffic counts as well as any existing traffic impact studies. Mt. Aetna Road is a County owned and maintained highway segment. There is little data available related to County traffic counts due to limited resources. The most recent traffic count data collected in this area was in 2016 and is shown in the chart below. The data shown in the chart is expressed in annual average daily traffic volumes.

Table 2: Traffic Volumes at Select Locations

Mt. Aetna Rd. @ Sasha Blvd.	557
Mt. Aetna Rd. @ White Hall Rd.	1622
Mt. Aetna Rd. @ Edgewood Dr.	5553

Source: Washington County Division of Engineering and Construction

A traffic impact analysis was completed by the property owner in 2002 to evaluate the impacts of applying a Planned Unit Development overlay on the property with a density of 595 units (2.7 units per acre). It was estimated that the gross number of vehicle trips per day would 4,592 trips. Conclusions of the analysis indicated that the additional traffic generated from the development would increase delays to the signalized intersections along US Route 40 and Robinwood Drive. Furthermore, the development would add increase traffic volumes along White Hall Road through to its intersection with MD 66. It was noted in the study that several road improvements would need to be completed to offset the traffic generation of the development.

An updated traffic impact study has not been completed but is recommended as part of the development plan phase should the rezoning be approved. While a complete study has not been conducted the developer is estimating that the gross number of vehicle trips per day generated by the proposed increase in density would be approximately 8,109 trips.

A copy of this application was sent to the Division of Plan Review and Permitting and their comments are as follows:

1. There have been significant changes to the road networks in the Robinwood corridor since the initial traffic study for Black Rock PUD was prepared. Updated analysis will be necessary at the Development Plan stage to evaluate any possible impact the increased density would have on the adequacy of the roads serving the development.

2. A second connection to another major roadway should be provided.

3. Given the entrance design and the trip generation (8109 ADT) the road near the entrance will resemble a "Major Collector" which would carry a 300-foot access separation requirement under the highway plan. However, the concept includes single family dwellings with direct access through this section. Consideration should be given to limiting

access along the main throughfare and/or provide traffic calming to increase safety for vehicles and pedestrians.

4. The proposed access to Mount Aetna Road has been consolidated from the previous development plan. The design of this connection will need to be evaluated should the project proceed to confirm adequate intersection sight distance, as well as the need for any accessory lanes.

5. Several roads in the conceptual development appear to not meet Washington County geometric criteria (horizontal curve radii too small, cul-de-sac configurations). The design criteria will need to be demonstrated in subsequent review phases should the project move forward.

Public Transportation

This specific property is not currently served by public transportation. However, the Washington County Transit Department does have a fixed route in the Robinwood area that passes within 1.5 miles of the site.

Compatibility with Existing and Proposed Development in the Area:

The area surrounding the subject parcels contain a mixture of residential and farmland uses. Development bordering the west of the property is comprised of moderate to high residential density uses including a mixture of single family, townhouses, and apartment units. Bordering the property to the south is an existing single-family subdivision known as Black Rock Estates. The northern and eastern boundaries of the property abut large areas of active agriculture and forms the westernmost boundary of the Urban Growth Area.

Another important component of compatibility is the location of historic structures on and around the parcels being proposed for rezoning. The following historic sites listed on the Washington County Historic Sites Survey are located within a 0.5 mile radius of the proposed rezoning areas.

WA-I-063 – Snavely (Warvel) Farm, early 19th Century stone house, located on subject parcel #1; structure has been demolished.
WA-I-075 – Snavely Farm (Michael Hamilton Farm), late 18th century log & brick house, located on subject parcel #1; structure has been demolished.
WA-I-032 – Melrose Manor (Samuel McCauley Farm), constructed in 1850, located approximately 0.75 miles west of subject parcel #2 along Mt. Aetna Rd.
WA-I-441 – Melrose Manor secondary dwelling; Early 20th century brick house, located approximately 800' from the subject property; structure has been demolished.
WA-II-137 – Price Farm; Early 20th century wood frame & stone house, located approximately 450' west of subject parcel #2.
WA-I-184 – 19th century stone house, located approximately 1200' from the subject parcel #2.

WA-I-033 – Par of Carr's Quesy (Query, White Hall); Early 19th century stone house covered in stucco, located approximately 1700' from subject parcel #2.

Relationship of the Proposed Change to the Adopted Plan for the County:

The purpose of a Comprehensive Plan is to evaluate the needs of the community and balance the different types of growth to create a harmony between different land uses. In general, this is accomplished through evaluation of existing conditions, projections of future conditions, and creation of a generalized land use plan that promotes compatibility while maintaining the health, safety, and welfare of the general public.

Both properties are located in the sub-policy area Low Density Residential. The Comprehensive Plan offers the following policy statements for this policy area:

Low Density Residential:

"This policy area designation would be primarily associated with single-family and to a lesser degree two-family or duplex development."

"Typical densities in the policy area range from two to four units per acre unless the property is approved for a planned residential or mixed-use development. If the property is approved for high density development the maximum density should be 12 units per acre.[2]

Change to the approval of an existing Planned Unit Development

Application of floating zones such as a Planned Unit Development (PUD) do not follow the same legal statues of review and analysis as those used in a piecemeal rezoning of a Euclidian district. Instead of meeting the legal standard of the change or mistake rule, floating zones are analyzed using criteria specified with the zoning ordinance referring to the requested floating zone.

In this particular case, the property has already been assigned a PUD floating zone and approved for total of 595 units (or 2.7 units per acre density). The applicant is requesting a major change in the approved number of units and must therefore comply to the standards of Section 16A.5 of the zoning ordinance.

When evaluating the request for a major change from a previously approved PUD development plan, both the Planning Commission and Board of County Commissioners are required to consider the following criteria:

1. The purpose of the PUD District;
2. The applicable policies of the adopted Comprehensive Plan;
3. The compatibility of the proposed changes of the PUD with neighboring properties;
4. The effect of the proposed changes to the PUD on community infrastructure;
5. Consistency with the intent and purpose for the establishment of the PUD.

[2] 2002 Washington County, Maryland Comprehensive Plan, Pages 245 and 246

Staff Analysis:

As stated in the previous section, there are 5 stated criteria in the zoning ordinance that are to be evaluated as part of the decision-making process for applying a PUD floating zone. These criteria have been analyzed by Staff below.

1. The purpose of the PUD District

According to the zoning ordinance, the intent of the PUD Article is, "to manage the implementation of regulations for existing approved PUD Developments within the framework of the Urban Growth Area Rezoning of 2012." As part of the 2012 UGA rezoning the PUD district was effectively replaced by a new district known as the Mixed Use (MX) district. Therefore, any requests to implement a new mixed-use development must follow the guidance and regulation of the MX district. Existing PUDs were not rezoned or converted to the new MX district therefore Section 16A was left in the ordinance to regulate those existing uses. The applicant has submitted this request in accordance with Article 16A.

2. The applicable policies of the adopted Comprehensive Plan

There are numerous policies within the adopted Comprehensive Plan that can apply to any given application in very specific ways. However, Staff believes that the intent of this requirement is to evaluate applications in a broader sense of Countywide land use policies.

The primary goal of the Comprehensive Plan is to manage growth in a way that is safe, reasonable, and efficient for our community. To that end the County promotes an overarching land use policy that directs new development to occur in areas where existing resources and infrastructure are available. These areas are delineated in the Plan as 'growth areas'. Growth areas contain the existing infrastructure, utilities, and services needed for our citizens. This property's location within the defined Urban Growth Area meets this overarching policy.

To further refine the policy of directing growth into these areas, the Comprehensive Plan defines sub-policy areas that delineate generalized land use categories based on existing and projected land uses. The purpose of these sub-policy areas is to define broad land use categories such as residential, commercial, industrial, institutional, etc that guide future growth and development decisions such as rezonings and functional plan amendments.

As noted in a previous section, these properties are located within the Low-Density Residential Policy area. While this policy area is usually associated with a lower density of 2-4 units per acre, there is specific reference to increased density being allowable with the application of a PUD floating zone. The requested change is to increase the density within the existing PUD, it is still in accordance with policies outlined in the Comprehensive Plan is therefore compatible with the Plan.

3. The compatibility of the proposed changes of the PUD with neighboring properties

As stated in a previous section the subject properties are surrounded on the south and west by existing residential development while the north and east boundaries are adjacent to active agricultural land. Evident in both the proposed design and subsequent discussion with the developer is the desire to mix the residential development in a manner that is as compatible as possible with existing development in the area.

Single family homes are located along the southern boundary of the development to provide a buffer of similar uses adjacent to the existing Black Rock Estates subdivision. Additional single-family homes are located on the northern edge of the property to provide a transitional area into the more rural land uses. Townhouses are located along the western boundary of the property to be compatible with existing townhouse and multifamily developments along Robinwood Drive (i.e. Kings Crest, Stonecroft Apartments, and Youngstoun Apartments & Townhouses). The apartment portion of the development is centralized to contain and surround the multifamily units internal to the new construction and away from existing non-compatible development.

Additional sections of townhouses are proposed for the eastern boundary of the property which is not compatible with the adjacent farmland uses and low residential density zoning. In addition, slightly higher density uses in the form of duplexes are also located on the eastern boarder adjacent to rural farmland. While these uses may not be wholly compatible with adjacent uses in these two primary areas the developer has provided reasonable support for the layout. The location of the additional townhouse sections on the eastern portion of the property was sited to keep traffic closer to the two primary entrances to the development rather than put higher count uses deeper into the development and impacting a larger portion of the overall development. Furthermore, it is the desire of the developer to distribute the different residential types throughout the development to provide a more integrated neighborhood. The location of the duplexes was intended to be slightly separated from the higher density areas with the anticipation that they may be marketed as age-restricted units.

4. The effect of the proposed changes to the PUD on community infrastructure

This topic has been evaluated in previous sections as well. According to the City of Hagerstown Water Department, there are issues involving water quantity and pressure in this service zone that impacts daily usage as well as fire suppression efforts. This comment was echoed by the City Fire Chief. In subsequent meetings with the developer (and in their response letter dated April 16, 2021), these concerns have been acknowledged and deliberated as part of the plan application. The developer has stated that they are aware that significant upgrades will be needed to the existing water distribution system in this area to serve their proposal.

Concerns regarding water capacity have also been discussed in a comprehensive context as it impacts the availability of water resources within the City MRGA. Per the

City model the additional allocation that will be needed by increasing the density in this development will create a deficit in the overall MRGA allocation indicating a need to likely retract some other area to balance the model.

There will be some impacts upon the transportation network, however, the full effects are unknown at this time due the absence of an updated traffic impact study. The applicant has addressed some of the concerns related to traffic counts and access points for the proposed development in their response letter. They have also indicated that they will provide additional information at the public input meeting detailing additional traffic analysis.

Finally, a snapshot analysis of current school enrollments coupled with additional impacts from this proposal indicate a severe deficiency in capacity of the elementary schools serving this area. It is difficult to predict if these projections will totally come to fruition but there is a high probability that some impact will occur. The developer will be required to act in accordance with adopted Adequate Public Facilities Ordinance in effect at the time of subdivision plat approvals.

5. **Consistency with the intent and purpose for the establishment of the PUD which is to permit flexibility and creativity in the design of residential areas, promote economical and efficient use of the land, provide for a harmonious variety of housing choices, a varied level of community amenities and the promotion of adequate recreation, open space and scenic attractiveness.**

Based upon the analysis already provided in previous section it appears that this plan is consistent with the intent and purpose of establishing a PUD. Once area of weakness in this plan is the discussion of community amenities and the promotion of adequate recreation facilities. This issue can likely be addressed with the existing design; however, specific plans should be provided to ensure the proper type and distribution of said uses.

Recommendation:

This request for a major change to an approved development plan for the Black Rock PUD development conforms to the policies and guidance in the adopted Comprehensive Plan and County Zoning Ordinance. While the proposal is consistent with these policies, evaluation of existing infrastructure has shown several deficiencies including water supply and pressure, traffic impacts, lack of recreational areas, and school capacity issues. The developer has acknowledged and provided responses to the majority of these issues and will provide further information as part of their presentation at the public meeting.

The variables of this request make it difficult to render a conclusive recommendation. When weighing the contributions of this new development against its potential impacts, it highlights areas of competing interests. For example, the issue of water resource provision in the area already exists so if the new development is permitted, the upgrades that will be made to the water system could provide a net gain for the overall water zone and its users. This action would meet the goals of both the City and County by providing a better water and fire suppression service

to citizens. Conversely, the increase of density in this development will have a heavy impact to school capacities in an area that doesn't seem to have a definitive solution either from a developer perspective or from a governmental capital perspective. This goes against the goals of the local jurisdictions to provide adequate public educational facilities.

Therefore, Staff's recommendation is not a finding in favor of, or against the proposal. Instead, it is Staff's recommendation that careful consideration of resource deficiencies be evaluated, and appropriate conditions be applied to potential development plan approvals that adequately address/resolve the deficiencies. These conditions should provide direction to the developer that will assist in their deliberation of project feasibility.

Respectfully Submitted,

Jill Baker
Director

Washington County
MARYLAND

FOR PLANNING COMMISSION USE ONLY
Rezoning No. RZ-21-003
Date Filed: 02-16-21

RECEIVED
FEB 16 2021
Washington County
Dept. of Planning & Zoning

WASHINGTON COUNTY PLANNING COMMISSION
ZONING ORDINANCE MAP AMENDMENT APPLICATION

Morris & Ritchie Assoc.
Applicant

□Property Owner □Contract Purchaser
□Attorney ■Consultant
□Other: _____

1414 Key Highway
Address

Baltimore, MD 21230
Primary Contact

410-935-5050
Phone Number

Sean Davis, RLA
Address

sdavis@mragta.com
E-mail Address

Property Location: East side of Hagerstown Growth Area Boundary

Tax Map: 50 Grid: 0017/0023 Parcel No.: 309/321 Acreage: 220.11

Current Zoning: PUD Requested Zoning: PUD

Reason for the Request: □ Change in the character of the neighborhood
□ Mistake in original zoning

PLEASE NOTE: A Justification Statement is required for either reason.

Applicant's Signature

Subscribed and sworn before me this 16 day of February, 2021

My commission expires on 7-31-23

Kelly Golden
Notary Public
Kelly Golden

KELLY GOLDEN
NOTARY PUBLIC
Comm. Exp. Jul 31, 2023
Baltimore City
STATE OF MARYLAND

FOR PLANNING COMMISSION USE ONLY

- ☑ Application Form
- ☑ Fee Worksheet
- ☑ Application Fee
- □ Ownership Verification
- □ Boundary Plat (Including Metes & Bounds)
- ☑ Names and Addresses of all Adjoining & Confronting Property Owners
- ☑ Vicinity Map
- ☑ Justification Statement
- □ 30 copies of complete Application Package

Washington County
MARYLAND

WASHINGTON COUNTY PLANNING COMMISSION
ZONING ORDINANCE MAP AMENDMENT

REQUIRED APPLICATION MATERIALS CHECKLIST

All materials must be clearly labeled
(Original plus 30 copies of all materials are required)

X 1. **Application Form**: A completed and signed application form.

X 2. **Fee Worksheet and Application Fee**: A completed Fee Worksheet and the Application Fee must be submitted at the time application is made. Checks must be made payable to the "Washington County Treasurer".

X 3.**Ownership Verification**: Proof of ownership interest in the subject property, including a copy of the current deed to the property; OR, if the application is made by a contract purchaser, a copy of the fully-executed Contract of Sale.

X 4. **Boundary Plat**: A boundary description, including metes and bounds, prepared and sealed by a land surveyor registered in the State of Maryland.

X 5. **List of the Names and Addresses for all Adjoining and Confronting Property Owners**: A list of the names and addresses, obtained from the latest property tax assessment record, of owners of adjoining or confronting properties, improved or unimproved, including properties separated by streets, railroads, or other rights-of-ways. (Must have house numbers or P.O. box numbers.)

X 6. **Vicinity Map**: An 8 ½" x 11" page size map showing the zoning of all property within 1,000 feet of the site.

X 7. **Justification Statement:** A written explanation of the reasons why the map amendment is being sought, setting forth in sufficient detail to properly advise County officials as to the justifications for the rezoning change. Applications for floating zones shall include such information as required by the respective Articles of the Ordinance. Other applications must address the following information:

   a. A statement as to whether or not there is evidence of mistake in the current zoning, and, if so, the nature of the mistake and the facts to support the allegation.
   b. A statement as to whether or not there is evidence of a substantial change to the character of the neighborhood subsequent to the most recent comprehensive rezoning including the nature of the change, all facts to support the allegations, and a description of the neighborhood.

MORRIS & RITCHIE ASSOCIATES, INC.

Architects | Planners | Urban Designers | Landscape Architects | Engineers | Surveyors

February 16, 2021

Ms. Jill Baker
Director, Planning & Zoning Department
Washington County, Maryland
100 West Washington Street
Hagerstown, Maryland 21740

RE: Black Rock Planned Unit Development – Major Change Request

Dear Ms. Baker:

Thank you for all of your assistance in helping our team prepare this request for a Major Change to the current Black Rock Planned Unit Development. Attached please find our completed Application form, list of adjacent property owners (I will also email the Excel file to you for easier use), and 33 copies of the PUD plan set (a total of four pages each). Outlined below is our Justification Statement, as requested in the application requirements. We hope this completes our submission and that we will be placed on the agenda for the May 3, 2021 Planning Commission meeting. Please let us know so we can plan accordingly.

There are several important reasons for this Major Change request. These include:

1. Market demand. The previous PUD had home types that were not indicative of current market demands. The revised PUD provides a variety of homes types for new buyers.
2. Regulatory Compliance. The previous PUD did not take into account certain regulatory requirements that pertain today, mainly stormwater management. The new PUD does.
3. Community Design. We believe the new PUD creates a much stronger overall community design by having a major spine road that services each individual neighborhood.
4. Increased density. The current plan increases the overall density based on the preferred home types and site plan. This increased density is necessary to offset increased costs for regulatory compliance and anticipated amenities.

We look forward to expanding on these justifications during our presentation/discussion with the Commission. If there is anything else you need during your review of our application please call on me at 410-935-5050. Thank you!

Respectfully
Morris & Ritchie Associates, Inc.

Sean D. Davis
Principal

Attachments
Cc: The Black Rock Development Team

Adjacent Parcels Table				
Tax Map	Parcel	Owner Name	Owner Address 1	Owner Address 2
50	1690	ARNOLD JODIE C & VICKI L	20525 MOUNT AETNA RD	
50	3	HARVEY CHARLES W & RYAN JANICE IRENE	10941 SASHA BLVD	
50	1343	AKMAL MOHAMMAD	10947 SASHA BLVD	
50	307	TOOTHMAN RONALD G & TOOTHMAN COLLEEN M	PO BOX 185	
50	1343	KENNEDY MICHAEL D & KENNEDY SHERYL K	20513 MT AETNA RD	
50	1727	TARIQ MOHAMMAD	11003 SASHA BLVD	
50	1659	PRYOR JONATHAN W	20617 MOUNT AETNA RD	
50	1577	POTOMAC EDISON CO	TAX DEPT	800 CABIN HILL DR
50	1636	VALLEY VIEW LMTD PARTNERSHIP	C/O DANIEL M SHEEDY	P O BOX 68
50	1727	AKMAL ALI M & RAZI AKMAL RABAIL R	20510 TEHRANI LA	
50	1686	HARR ANN M & HARR TINA L	11403 SUNNY HILL CT	
50	1648	EL MOHANDES ALI EL MOHANDES LAURA	11248 EASTWOOD DR	
50	1731	ATCHLEY BETHANY	11113 SHALOM LN	
50	1727	KURAPATY SAMUEL M & MERCY S	10907 SASSAN LN	
50	1709	GARNER JAMES GREGORY	20541 MT AETNA RD	
50	1727	STIANSEN STEVEN C STIANSEN JENNIFER S	10904 SASSAN LANE	
50	319	LIAO WEIDONG & CHEN MEI	11121 SHALOM LN	
50	1648	MCCLAIN JOSHUA TRAVIS MCCLAIN KEELY	6702 92ND ST CT NW	
50	1731	CRIST CANDACE R & CRIST BRAD W	11133 SHALOM LANE	
50	1686	SHAOOL WOODBRIDGE DEVELOPMENT LLC	1730 EDGEWOOD HILL CIRCLE #101	
50	1686	SHAOOL WOODBRIDGE DEVELOPMENT LLC	1730 EDGEWOOD HILL CIRCLE #101	
50	1727	BOYER JONATHAN L BOYER KASI B	10900 SASSAN LN	
50	1731	STEED LINCOLN E & STEED ROSA DELIA	20415 CHUCK LN	
50	2	STRYKER WILLIAM L STRYKER LISA M	20533 MT AETNA RD	
50	1686	FRANK ROBERT & KATIE	11302 DAY BREAK CT	
50	1674	PRYOR DAVID P & DARLENE F TRUSTEES	20615 MOUNT AETNA RD	
50	1688	SHAOOL BEN & SHAOOL KATHY	1201 DUAL HWY STE 203	
50	1686	STAGG MARY ANNE	11405 SUNNY HILL CT	
50	1686	SOLIMANI IRAJ	7145 BROOKS RD	
50	1686	SHAOOL WOODBRIDGE DEVELOPMENT LLC	1730 EDGEWOOD HILL CIRCLE #101	
50	319	MASOOD SAQIB	11211 SHALOM LN	
50	1648	PARKS STEVEN M PARKS BECKY A	11306 EASTWOOD DR	
50	1727	BONATTI HUGO & BONATTI JANANI KARUNARATNE	20509 SHAHEEN LN	
50	1727	DURELLI ANDREW B & DURELLI MARIA P	20514 TEHRANI LN	
50	319	MARTIN DAVID R & BAILEY JENNIFER G	11125 SHALOM LN	
50	1727	HULL STEVEN G & HULL ARLENE B	20506 SHAHEEN LN	
50	1	PRYOR DAVID ET AL PRYOR KENNETH	20615 MT AETNA RD	
50	1648	REGINATO ANDREW REGINATO FLOYCE	11314 EASTWOOD DR	
50	1686	REED NICOLE WINTER	11303 DAY BREAK CT	
50	1701	SAGBA YAO A	20537 MT AETNA RD	
50	689	STONECROFT ASSOCIATES LP	C/O INTERSTATE REALTY MGMT	3 E STOW ROAD STE 100
50	1648	MIRDAMADI REZA MIRDAMADI DEBORAH	11300 EASTWOOD DR	
50	1727	SPESSARD LORETTA IRENE & SPESSARD NED L	664 TRAFALGAR DR	
50	1731	JOHNSON THEODORE E & JOHNSON SANDRA M	11117 SHALOM LN	
50	1652	EAGLES NEST	C/O VALENTINE ELECTRIC CO	110 WESTERN MARYLAND PKWY
50	322	MILLER JAMES H & MILLER ELAINE K	12290 SCOTT RD	
50	1751	EMRALSHAOOL MANSOOR	72 W WASHINGTON ST	
50	1675	PRYOR STEVEN	20605 MOUNT AETNA RD	
50	1686	LEITER CHRISTOPHER A & LEITER NICOLE	11304 DAY BREAK CT	
50	1686	WASH CO COMMISSIONERS BOARD OF	100 W WASHINGTON ST	
50	1648	BRODY JOHN WILLIAM BRODY KATHLEEN A	11252 EASTWOOD DR	
50	1727	AKHMEDOV IZMIR & FEYZULOVA SABINA	10977 SASSAN LANE	
50	1218	MEADOW VIEW ASSOCIATES LIMITED PARTNERSHIP	1 WATERFORD PROFESSIONAL CTR	
50	1727	UDDIN ZIA & ABID FARAH	10973 SASSAN LN	
50	1688	SHAOOL BEN & SHAOOL KATHY	1201 DUAL HWY STE 203	
50	1727	PETERSON ERIC JONATHAN & PETERSON SHANNON CHRISTINE MARSHAL	20510 SHAHEEN LN	
50	1727	HUNGRIA CARLOS R & HUNGRIA ANA ROSA V CO TRUSTEES	10969 SASSAN LN	
50	1667	KINGS CREST	C/O VALENTINE ELECTRIC CO	110 WESTERN MARYLAND PKWY
50	308	HESSONG EDWARD L	13082 WILLIAMSPORT PIKE	
50	1727	TARIQ MOHAMMAD	11003 SASHA BLVD	
50	1751	EMRALSHAOOL MANSOOR	72 W WASHINGTON ST	
50	1751	EMRALSHAOOL MANSOOR	72 W WASHINGTON ST	
50	1751	EMRALSHAOOL MANSOOR	72 W WASHINGTON ST	
50	1751	EMRALSHAOOL MANSOOR	72 W WASHINGTON ST	

SITE DATA

1. GROSS ACREAGE: 220.11 AC.
2. EXISTING ZONING: "P.U.D." – RESIDENTIAL PLANNED UNIT DEVELOPMENT
3. PERMITTED UNITS (12 DU/AC.): 2641 UNITS
4. PROPOSED UNITS: 1148 UNITS
5. PROPOSED GROSS DENSITY 5.2 DU/AC.
6. OPEN SPACE (25% OF GROSS ACREAGE): 55.03 AC.
7. PROVIDED OPEN SPACE/RECREATION: 56 AC.

LOT YIELD TABULATION

PARCEL	SFD	TOWNS	APTS	DUPLEX	
A				72	
B	34				
C		98			
D		118			
E	20				
F	58				
G		81			
H		99			
I	29				
J	41				
K	34				
L			300		
M		77			
N	47				
O	40				
TOTAL	303	473	300	72	1,148
%	26	41	26	6	

MRA
MORRIS & RITCHIE ASSOCIATES, INC.
ARCHITECTS, PLANNERS, URBAN DESIGNERS, LANDSCAPE ARCHITECTS, ENGINEERS, AND SURVEYORS
1414 KEY HIGHWAY
SUITE M301
BALTIMORE, MD 21230
(443) 490-7175 / (410) 935-5050
sdavis@mragta.com

DRB GROUP
Washco MANAGEMENT

BLACK ROCK

PUD CONCEPT PLAN

HAGERSTOWN, WASHINGTON COUNTY, MARYLAND

NO.	REVISION	DATE

JOB NO. 20335 | SCALE 1"=200' | ISSUED 02/05/21

SHEET TITLE

RECEIVED
FEB 16 2021
Washington County
Dept. of Planning & Zoning

SHEET NUMBER

PUD
1

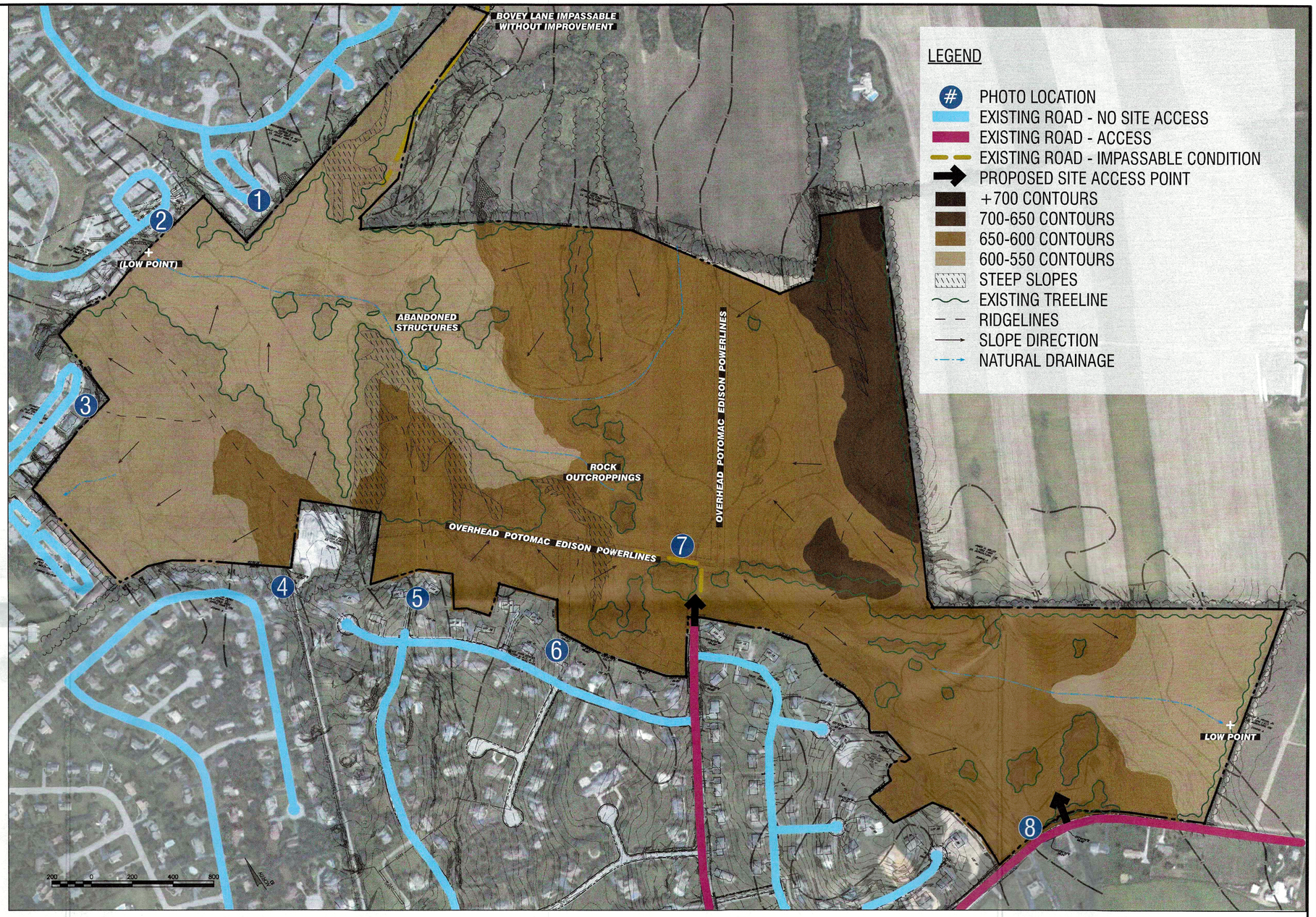
SITE INVENTORY & ANALYSIS

The subject property is located 10 minutes outside of Hagerstown in Washington County, Maryland, near Hagerstown Community College and across Mt. Aetna Road from Black Rock Golf Course. The eastern portion is surrounded by a mix of residential housing (documented in the photographs below), while the northeast is wrapped by agricultural fields and farms. The property has a large overhead powerline and a few remaining dilapidated farm structures on-site. It is the ridge of the area, draining to the tributaries of Antietam Creek.

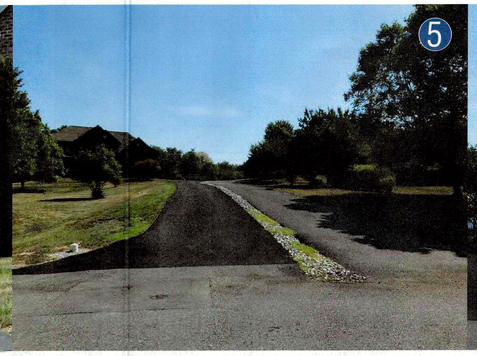
NEIGHBORING PROPERTY: FOR RENT TOWNHOUSES

NEIGHBORING PROPERTY: SINGLE-FAMILY DETACHED HOMES

NEIGHBORING PROPERTY: FOR RENT APARTMENTS



ADJOINING SUBSTATION BETWEEN RESIDENTIAL AND SUBJECT PROPERTY



ADJACENT NEIGHBORHOOD OPEN ROAD SECTION WITH NO PUBLIC ACCESS

NEIGHBORING HOMES WITH REAR TO SUBJECT PROPERTY, NO PUBLIC ACCESS

OVERHEAD ELECTRIC EASEMENT TO SUBSTATION, ROCK OUTCROPPINGS

PUBLIC ACCESS ON EXISTING MT. AETNA ROAD

MRA
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SUITE M301
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(443) 490-7175 / (410) 935-5050
sdavis@mragta.com

DRB GROUP
Washco MANAGEMENT

BLACK ROCK

PUD CONCEPT PLAN

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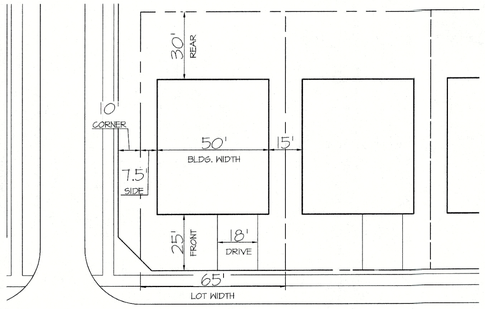
PUD 2

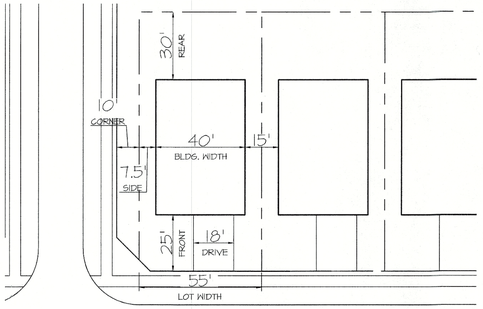
SINGLE-FAMILY DETACHED HOME



PROPOSED LOT CONFIGURATION (PLAN VIEW)

LOT SIZE: 65' x 115'

50' WIDE x 60' DEEP BUILDING
2-CAR FRONT GARAGE
25' MINIMUM FRONT YARD
7.5' MINIMUM SIDE YARD (15' COMBINED)
ADDITIONAL 10' MIN. SIDE ON CORNER LOTS
30' MINIMUM REAR YARD (35 'PROVIDED)
115' MINIMUM LOT DEPTH (120' PROVIDED)



LOT CONFIGURATION (PLAN VIEW)

LOT SIZE: 55' x 115'

40' WIDE x 60' DEEP BUILDING
2-CAR FRONT GARAGE
25' MINIMUM FRONT YARD
7.5' MINIMUM SIDE YARD (15' COMBINED)
ADDITIONAL 10' MIN. SIDE ON CORNER LOTS
30' MINIMUM REAR YARD (35 'PROVIDED)
115' MINIMUM LOT DEPTH (120' PROVIDED)

DAN RYAN CATAWBA HOME ELEVATION RENDERING

DAN RYAN MARION HOME ELEVATION RENDERING

DAN RYAN CABERNET HOME ELEVATION RENDERING

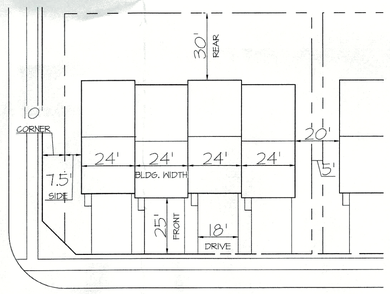
DAN RYAN GREGORY HOME ELEVATION RENDERING

DAN RYAN BIRCH HOME ELEVATION RENDERING

SINGLE-FAMILY ATTACHED HOME

LOT SIZES: 24' x 107' CENTERS, 31.5' x 107' ENDS

24' WIDE x 50' DEEP BUILDING
2-CAR FRONT GARAGE
25' MINIMUM FRONT YARD
2' STAGGER ALONG FRONTS
7.5' MINIMUM SIDE YARD (15' COMBINED)
ADDITIONAL 10' SIDE ON CORNER LOTS
20' BUILDING-TO-BUILDING (5' BETWEEN PROPERTY LINES)
30' REAR YARD (35' PROVIDED)
107' MINIMUM LOT DEPTH (112' PROVIDED)

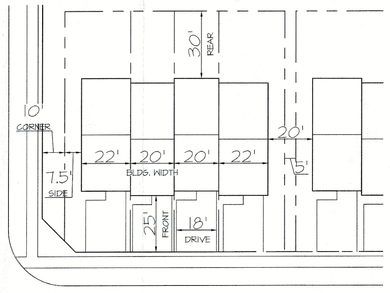


LOT CONFIGURATION (PLAN VIEW)

DAN RYAN KENWOOD HOME ELEVATION RENDERING

LOT SIZES: 20' x 107' CENTERS, 29.5' x 107' ENDS

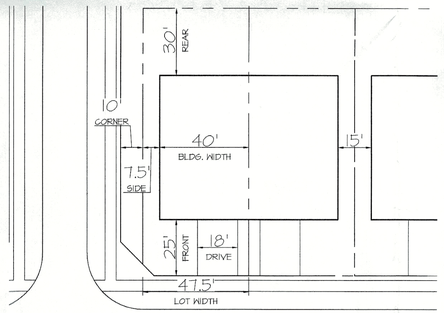
20' WIDE x 50' DEEP CENTERS, 22' WIDE x 50' DEEP ENDS
1-CAR FRONT GARAGE
25' MINIMUM FRONT YARD
2' STAGGER ALONG FRONTS
7.5' MINIMUM SIDE YARD (15' COMBINED)
ADDITIONAL 10' SIDE ON CORNER LOTS
20' BUILDING-TO-BUILDING (5' BETWEEN PROPERTY LINES)
30' REAR YARD (35' PROVIDED)
107' MINIMUM LOT DEPTH (112' PROVIDED)



LOT CONFIGURATION (PLAN VIEW)

DAN RYAN DEEP CREEK HOME ELEVATION RENDERING

SINGLE-FAMILY SEMI-ATTACHED HOME



LOT CONFIGURATION (PLAN VIEW)

LOT SIZES: 47.5' x 119' (95' x 119' FOR TWO)

40' WIDE x 64' DEEP BUILDING
2-CAR FRONT GARAGE, 18' x 25' DRIVEWAYS
25' MINIMUM FRONT YARD
7.5' MINIMUM SIDE YARD (15' COMBINED)
ADDITIONAL 10' SIDE ON CORNER LOTS
30' MINIMUM REAR YARD (31' PROVIDED)
119' MINIMUM LOT DEPTH (120' PROVIDED)

DAN RYAN LONGSTREET HOME ELEVATION RENDERING

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PROPOSED BULK REGULATIONS

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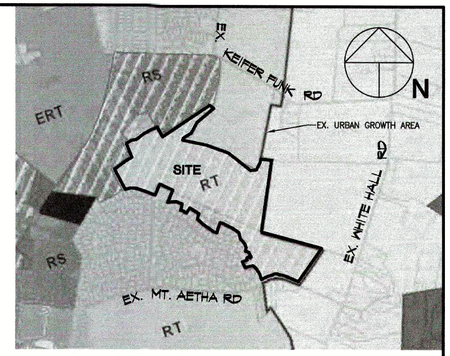
PUD 3



VICINITY MAP

SCALE: 1" = 2000'

SITE DATA:

1. THE TOPOGRAPHIC INFORMATION DEPICTED ON THE PLAN WAS PROVIDED BY WINGS AERIAL MAPPING CO., DATED APRIL 14, 1989.
2. THE PLANNING COMMISSION HAS CONFIRMED THAT THE LIMITS OF THE SUBJECT PARCEL ARE ENTIRELY WITHIN THE URBAN GROWTH AREA, ACCORDING TO THE FOX & ASSOCIATES, INC. REVISED FINAL DEVELOPMENT PLAN, DATED FEBRUARY, 2007.
3. BEARINGS AND DISTANCES IN AGREEMENT WITH A SURVEY BY FOX & ASSOCIATES, INC.
4. PROPERTY SHOWN HEREON IS NOT WITHIN THE 100-YR FLOODPLAIN AS SHOWN ON THE FLOOD INSURANCE RATE MAP NO. 240070-0095-B.
5. SITE AREA: 220.11 AC
   EXISTING ZONING: RESIDENTIAL PLANNED UNIT DEVELOPMENT (P.U.D.)- THE ENTIRE PUD AREA IS SUBJECT TO CHANGE
   PERMITTED GROSS DENSITY: 12.0 DWELLING UNITS PER ACRE
   PERMITTED UNITS: 2,641 UNITS
   PROPOSED UNITS: 1,148 UNITS
   PROPOSED GROSS DENSITY: 5.2 DWELLING UNITS PER ACRE
6. RESIDENTIAL UNIT TYPES AND BUILDING HEIGHTS

RESIDENTIAL	UNITS	MAX HEIGHTS
SINGLE-FAMILY DETACHED	303	32'
SEMI-DETACHED	72	32'
TOWNHOMES	473	42'
APARTMENTS	300	55'
	1,148	

7. REQUIRED OPEN SPACE: 55.03 AC (25% OF GROSS ACREAGE)
   PROVIDED OPEN SPACE: 56 AC

SITE DATA (CONTINUED):

8. THERE WILL NOT BE ANY COMMERCIAL USE ASSOCIATED WITH THE PROPOSED PUD.
9. MULTIFAMILY BUFFER SHALL BE 50' FROM COMMON BOUNDARY OF SINGLE-FAMILY USE ACCORDING TO SECTION 16.7(e).
10. ESTIMATED AVERAGE DAILY TRAFFICE VOLUMES*

SINGLE FAMILY: 9.55 X 303	2,893
SEMI-DETACHED: 9.55 X 72	687
TOWNHOMES: 5.86 X 473	2,771
APARTMENTS: 5.86 X 300	1,758
GROSS VEHICLE TRIPS PER DAY:	8,109

*DATA SOURCE: INSTITUTE OF TRANSPORTATION ENGINEERS, TEXT DATED 1994

11. ESTIMATED DAILY WATER CONSUMPTION AND SEWER FLOW
    WATER: 200 GAL. / UNIT = 229,600
    SEWER: 200 GAL. / UNIT = 229,600

200 0 200 400 800

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