

1 And as you see on this plan, the dark green preserves 100%
2 of those areas that were the key forest reserve areas. So,
3 there's a total of 662 acres of forest that is being
4 preserved as well. We're also creating 3 miles of equestrian
5 trails as requested by the Planning, er, the Parks staff. I
6 would like to save any time I have remaining because I would
7 like to have a rebuttal, there are many speakers here, and I
8 want to make sure that we fully address the issues, but in
9 essence, this is a great plan, half the permitted density,
10 90% of the site is preserved in farm-sized parcels, and 300
11 acres, I misspoke, not 662 acres, 662 acres is either forest
12 or agriculture, but 300 acres of forest are being protected
13 without any County money. Thank you.

14 CHAIRMAN BERLAGE: Thank you. You'll have 7 minutes for
15 rebuttal.

16 COMMISSIONER ROBINSON: Could you please show me where the
17 62-acre lot is and the 70-acre lot is.

18 MR. HARRIS: I will ask David McKee to do that, if...

19 MR. DAVID MCKEE, THE APPLICANT'S ENGINEER: This is 60.6
20 acres, lot 7.

21 COMMUNITY OUTREACH AND MEDIA RELATIONS STAFF: You need to
22 use the hand mic, please.

23

24

1 MR. DAVID MCKEE, THE APPLICANT'S ENGINEER: David McKee
2 with Benning & Associates, lot 3 is 79.4 acres, and lot 7 is
3 60.6 acres.

4 COMMISSIONER ROBINSON: Thank you.

5 CHAIRMAN BERLAGE: Thank you very much. We will take
6 speakers in groups of 3. As soon as I call your name please
7 come right on up, Judy Koenick, David Fischer, Royce Hanson.

8 MS. JUDY KOENICK: I'll defer to Mr. Hanson.

9 CHAIRMAN BERLAGE: All right, Mr. Hanson, you're up.

10 MR. ROYCE HANSON: Mr. Chairman, members of the Planning
11 Board. This is the first occasion in the 24 years since I
12 left this Board that I have spoken here on any matter. I'm
13 here today reluctantly from concerned that the subdivision
14 before you, if approved, represents a serious threat to the
15 integrity of the agricultural reserve, which you so recently
16 and appropriately celebrated as one of the most important
17 planning achievements in the nation. Moreover, its approval
18 threatens the capacity of the Planning Board and the Council
19 to say what its plans mean, conceding that power to the
20 Department of Permitting Services. I address a single issue
21 for it's the fundamental one before you. Can you find that
22 this residential subdivision, which is premised on the use
23 of sand mound septic technology, substantially conforms to
24 the master plan for the Preservation of Agricultural and

1 Open Space adopted in 1980, as required by section 50-35(1)
2 of the subdivision regulations. The staff report argues that
3 it does. It reaches that conclusion by an argument that
4 tortures both history and logic. Basically, you're told that
5 the recommendation of a plan respecting water and sewage
6 services to deny private use of alternative, individual, and
7 community systems in all areas designated for rural density
8 transfer zone does not mean now what it meant when the plan
9 was adopted. Although the plan determined, and this is the
10 logic, I think, that the staff went through. Although the
11 plan determined that the use of alternatives, conventional
12 systems as then defined, such as sand mounds, would
13 undermine the intent of the plan, the Department of
14 Permitting Services has since redefined conventional systems
15 to include them. Notwithstanding the clear meaning and
16 intent of the plan to the contrary, you're now said to be
17 bound by implication to read the new definition into the
18 plan because the Department alone can define what is
19 conventional, and what is alternative. Therefore, the plan,
20 according to the staff, must have meant to approve for the
21 use for any system not then in use, that the department
22 might some day decide is conventional. In other words, if an
23 anointed bureaucrat redefined the Tech Way as a rustic road,
24 you would have to pretend that it was consistent with the

1 plan. If the 1980 language were read to mean what those of
2 us who approved and adopted it clearly intended it to mean,
3 it would impose de facto density standards far more
4 restrictive than what the zoning permits, and finally, the
5 staff says that the only serious issue before you, is who is
6 authorized to define what is an alternative individual
7 system, and if the department is the defining agency, and
8 they determine that sand mounds are no longer alternative
9 systems, then these systems should be found acceptable. The
10 staff appears untroubled by this conclusion if it is
11 contrary, even if it is contrary to the explicit provisions
12 of the master plan. The staff report begs the question. It
13 is deeply and fundamentally misapprehending the different
14 functions of a plan and zoning in the subdivision process as
15 established by Maryland Case Law and as practiced for
16 decades by this commission and other jurisdictions in
17 Maryland. The issue is not whether the Board instead of the
18 department has the authority to define what is and is not a
19 conventional system; rather the question before you is what
20 is the intent of the master plan with regard to the use of
21 sewage technologies that would essentially permit extensive
22 subdivision of agricultural land in the reserve. On that
23 question there is no dispute. Even the staff report
24 recognizes that the master plan abjured the use of such

1 systems. When the plan was adopted, we were quite aware of
2 various alternative technologies, including sand mounds.
3 Because we anticipated they could eventually be proposed for
4 the reserve, we recommended against them. I confess it
5 didn't occur to us to enumerate them, even if we could have.
6 Our reference to the suitability of land to support septic
7 systems seemed sufficient to preclude any alternatives to
8 those then in use. If you find that the intent of the plan
9 in its overall approach to the protection of the reserve was
10 to limit the use of individual sanitary systems that would
11 increase densities above that which could be accomplished
12 with traditional septic systems, then you must reject the
13 plan that relies on them. That you may have mistakenly or
14 unwisely approved some lots on sand mounds in the RDT zone
15 is not a justification for compounding the error. You have
16 ample authority, indeed a duty, to reject it under the
17 sections of the subdivision regulations, which require that
18 a preliminary plan must substantially conform to the plan
19 unless the Planning Board finds that events have occurred
20 that render the plan no longer appropriate. The Maryland
21 Court of Appeals has repeatedly upheld the authority and
22 duty to reject plans that do not comply with the applicable
23 master plan. In *Commissioners versus Gastor* the court upheld
24 denial of a subdivision in rural Cecil County that otherwise

1 conformed the zoning on grounds that the master plan
2 recommended lower density, saying that when the County
3 adopted its zoning regulations providing for rural zones and
4 for lot sizes and densities in such zones, it was not
5 contemplating that all undeveloped land would become
6 developed area. The County simply was specifying the size of
7 lot it regarded as compatible with the rural zone. It was
8 not contemplated that numerous homes would be built, yet had
9 the County provided in a rural area that no homes could be
10 built other than on a farm, it would have been impossible
11 for a farmer to convey out a lot to a son or daughter. In
12 Maryland- National Capital Park and Planning Commission
13 versus Washington Business Park Associates, the court quoted
14 from a reasoning of case decided on the same day, *Coffee*
15 *versus Maryland National Capital Park and Planning*
16 *Commission*, which applied the logic to holding of *Gastor* to
17 the Regional District with regard to, and I'm quoting the
18 court here, whether when subdivision regulations require
19 that a proposed subdivision comply with a master plan, an
20 application for approval of a preliminary subdivision plan,
21 which fails to so comply, might be rejected upon that
22 ground. The subdivision plan proposed a maximum development
23 density of 8 to 11.9 units per acre and the master plan
24 restricted density to 2.7 to 3.5 dwelling units per acre. We

1 found such non-compliance to be a valid reason for rejection
2 of the plan. The court goes on to say, the need for
3 regulations specifying that a subdivision plan must conform
4 to the master plan can be illustrated by comparison to
5 putting of water in a tea cup drop by drop. After a period
6 of time, there comes the drop, which will cause the cup to
7 overflow. By analogy, developing some of the lots in
8 conformity with the existing zoning will not disrupt the
9 master plan. Concentrated use in development, however, will
10 disrupt it. The legislative body wished to avoid this when
11 it specified that subdivisions must comply with the master
12 plan. Accordingly, the commission was justified in rejecting
13 Coffee's proposed subdivision for his failure to conform
14 that proposal with the master plan. End of quote. This plan
15 adds 15 drops to the teacup. Other kettles are brewing,
16 waiting for the signal that this Board will not honor its
17 plans. The proposed subdivision is inconsistent with the
18 plan's objective of sustaining a critical mass of farmland
19 by preventing its fragmentation. Recognizing farmland as a
20 permanent use and quoting the plan and not simply a holding
21 land use to be utilized for future development. While it is
22 true that residential uses are allowed in the RDT zone, the
23 purpose of the plan and the purpose of the zone is to allow
24 them and some commercial uses again quoting, to serve the

1 agricultural community and the rural community at large. It
2 therefore states that, quote, residential options are
3 available in farming areas, but only on a limited basis and
4 in a manner that is consistent with preservation policies.
5 End quote. This is a subdivision plan of residential
6 development primarily using clusters of small lots. It does
7 not substantially conform to the master plan or the spirit,
8 if not the letter, of the zone. Finally, a word concerning
9 the role of the Board versus the role of the Department of
10 Permitting Services in the subdivision process. The
11 authority to determine what kind of system is necessary to
12 serve residences, if a subdivision were approved, is not an
13 amendment to the master plan, that something can be done
14 does not mean that it must be done. If you approve the
15 reasoning of the staff report, you will have de facto ceded
16 the authority to interpret master plans that depend in part
17 for their realization on various forms of infrastructure,
18 so, the oedipal logic [? phonetic] vicissitudes of
19 administrative agencies of the County, thus accomplishing
20 the remarkable feat though allowing the tail to wag the dog.
21 I trust this Board will continue its long practice in the
22 County of taking its plans seriously and defending them
23 zealously. Thank you, Mr. Chairman.

24 CHAIRMAN BERLAGE: Thank you, Judy Koenick.

1 MS. JUDY KOENICK: It's nice to see you here, it's been a
2 while. It's a shame it's taken you that long to come back
3 and tell them to do their job. All right, my name is Judy
4 Koenick. I have a couple of questions. You talk about
5 reforestation that they have to do. Who is required to
6 maintain it? Is it the homeowner or do you have the ability
7 to go in and see if they're maintaining the trees? Same
8 thing you are talking about installing fencing. Who is
9 required, you say a permanent fence, who is required to
10 maintain it? Is the homeowner required to do it, how do you
11 know that it's being done? When you are talking about
12 different size lots, some of which are astronomically big,
13 how do you know that they're not going in there doing things
14 they're not supposed to be, how do you investigate that? The
15 incidents are the ones on [inaudible] extended that back up
16 to the park, there has been evidence from time-to-time that
17 the adjacent property owner has actually encroached on the
18 park property, and since there is no way for any one to
19 really get, unless they happen to be back there at that time
20 to see it, how do you maintain it, how do you make sure that
21 the integrity of the adjacent area is done? I have a
22 question because I was making a note and didn't quite hear.
23 The credits that you can get, in other words, if you keep a
24 big area, you can go then not do something someplace else.

1 Did they say they were giving them up or they're still going
2 to have them? Because my question is, can those be
3 transferred and they do less reforestation at Indian
4 Springs? You talk about that range, is this that firing
5 range where they have the problem with lead in the water?

6 MR. HARRIS: No.

7 MS. JUDY KOENICK: And if so, will this get into the
8 ground water and into the septic systems or anything or the
9 septic systems be adding to it? We used to have a septic
10 system when our house was initially built and that's going
11 back in the mid 50s. Who maintains it, who cleans it out,
12 who makes sure it's working properly? How do you do that,
13 how does any one do that to make sure that a person is
14 properly maintaining it and it's not going into the ground
15 water? Do you have to wait until someone takes a water
16 sample a mile away and you have a stream that's no longer
17 usable that's killing the fish? I agree with Mr. Hanson when
18 he says, look you did it in the past, so what? There is no
19 justification for using these septic systems then, if that
20 means what they need for the development. On the opposite to
21 that side, if they were to come up with better systems, as
22 there are better systems even if you approve this, who is
23 responsible to come in and see that they use the better
24 systems or are they are able to continue to use the old

1 outdated systems? They talk in here also about this 300 and
2 some size lot, and they also say that it could be used as a
3 private stables. Who maintains, who has the ability to go in
4 and say they have not developed through this lot extensive
5 trails for the horses? Or they are not holding lessons
6 there, or they are not boarding horses there on this
7 facility? You have no way of doing that and the example
8 would be that when Pegasus was in use, we discovered the
9 back of our land that there were trails going across all the
10 way down the back because it was an acre lot, it was long,
11 it was down a hill, and it was being damaged and the mud and
12 so forth was down there. Regardless of whether it's on that
13 large lot or not, you have no way to find out what they are
14 doing and what they are not doing in that lot. And you have
15 an obligation to do so.

16 CHAIRMAN BERLAGE: Thank you very much, Judy. Mr Fischer.

17 MS. JUDY KOENICK: Excuse me, in deference to Mr. Hanson,
18 I watched the clock.

19 CHAIRMAN BERLAGE: Mr. Fischer.

20 MS. JUDY KOENICK: So, may I finish summing up, then?

21 CHAIRMAN BERLAGE: No we're going to hold to the time
22 limits. Mr. Fischer.

23 MS. JUDY KOENICK: You did not hold it for Mr. Hanson.

24

1 CHAIRMAN BERLAGE: Mr. Fischer, please proceed. Yes, he,
2 he has nine minutes.

3 MR. DAVID FISCHER: Good afternoon, my name is David
4 Fischer of Fischer & Steinhilber, LLC. I am counsel to the
5 conservation organization For A Rural Montgomery or FARM. I
6 appreciate this opportunity to address the Planning Board
7 today. Although the Board delayed vote on the Stoney Springs
8 preliminary plan at its December 9th hearing, there is no
9 doubt that the Board would have rejected the plan. Thus, the
10 question before the Board today is this, has the developer
11 sufficiently altered the preliminary plan so that it now
12 substantially conforms to the master plan? The answer is a
13 resounding no. The two key problems identified with the
14 previous plan remain. The plan still fails to substantially
15 conform to the master plan because it continues to rely
16 exclusively on sand mound technology and is inconsistent
17 with the master plan's agricultural land preservation goals
18 and policies. Therefore, we once again urge the Board to
19 reject the preliminary plan before it. The agricultural
20 reserve represents Montgomery County's critical mass of
21 farms and is a focus of the master plan's farmland
22 preservation goals and policies. Importantly, the
23 unsuitability of the soil to support traditional septic
24 systems described in the master plan as the PERC policy is

1 one of the most important tools available to limit
2 population density within the agricultural reserve. Failing
3 to pass a PERC test is a positive outcome that furthers
4 agricultural preservation and not one generally to be over-
5 written through the application of an alternative system. By
6 definition, the sand mound system is an alternative sewage
7 system because it compensates for the soil's natural
8 inability to pass a percolation test. That is why the sand
9 mound system was developed. Although the County Council
10 sitting as a local Board of Health and not as the District
11 Council approved executive regulation 28-93-AM in 1994
12 regarding the use of sand mound systems in the County as a
13 special method of sewage collection and disposal, this
14 regulation did not in any way amend the Agricultural and
15 Rural Open Space master plan. Thus, the Planning Board must
16 ensure that the Stoney Springs preliminary plan
17 substantially conforms to the master plan as it was written
18 and approved in 1980, and the RDT of zoning requirements. On
19 page 7 of the Planning Board Staff Report several arguments
20 are proffered against denying preliminary plans that rely on
21 sand mound technology. These arguments have no legal
22 foundation. First, the fact that the Planning Board has
23 previously approved subdivisions using sand mounds is not
24 grounds to continue approving their use. Especially when

1 they are relied on for entire subdivision. At the December
2 9th hearing, the Board explicitly stated that they had not
3 actually discussed the sand mound issue when approving the
4 previous plans. Second, staff misconstrued the intent of the
5 holding capacity study. Denial of the private use of
6 alternative individual and community systems in the RDT zone
7 was not alone intended to limit development in the
8 agricultural reserve. Other growth-limiting tools include
9 the RDT zoning and public service guidelines, and I would
10 draw your attention to chapter 6 of the plan, which starts
11 on page 59. Third, with regard to the allowable density in
12 the RDT zone, the master plan explicitly states on page 17,
13 although the population holding capacity is limited by this
14 PERC policy, it is imperative to develop not only land use
15 recommendations for this area, but a comprehensive public
16 policy regarding the use of alternative individual or
17 community sewage systems outside of the sewer envelope. The
18 master plan specifically recommends on page 4, support of a
19 rural sanitation policy that does not encourage development
20 within the critical mass of active farm land. This section
21 of the master plan was a subject of much discussion by the
22 Planning Board on December 9th, and still provides the basis
23 for rejecting the preliminary plan. All 15 lots rely
24 exclusively on sand mound technology, entirely inconsistent

1 with the express recommendations of the master plan. To
2 remain consistent with the master plan, alternative sewage
3 systems such as sand mounds should only be used for failing
4 septic systems or where necessary to support family farms
5 and agricultural activity. The preliminary plan still fails
6 to substantially conform to the master plan's agricultural
7 preservation goals and policies. The preliminary plan still
8 consists largely of two cluster developments on the
9 property's prime agricultural land. These clusters consist
10 of several small lots unsuitable for agricultural uses. The
11 staff report notes that the minimum lot size in the RDT zone
12 is 40,000 square feet and thus justifies the development of
13 clusters of small lots by claiming, quote, the intent of
14 this flexible lot size was to allow property owners to carve
15 off smaller lots while retaining the bulk of their land in
16 contiguous fields for agricultural purposes. Close quote.
17 This assertion has no basis in the master plan. Nowhere can
18 one find any basis for asserting that smaller clustered lots
19 are needed to preserve farmland. By definition, all land
20 parcels within the agricultural reserve are considered
21 important to protect and promote agriculture within
22 Montgomery County. According to the Montgomery County Code
23 the intent of the RDT zone is to promote agriculture as a
24 primary land use in sections of the County designated for

1 agricultural preservation. This is to be accomplished by
2 providing large areas of generally contiguous properties
3 suitable for agricultural and related uses. Furthermore, in
4 the RDT zoning section of the staff report, staff misquote
5 and thus misconstrue text from page 30 of the master plan in
6 an attempt to justify the cluster configuration of the
7 preliminary plan. The preliminary plan still has a perverse
8 effect of surrounding an actively farmed 25-acre parcel with
9 upscale, large estate lots further exacerbating development
10 pressures within the agricultural reserve and completely
11 contrary to the land use policies expressed in the master
12 plan. As stated in the master plan on page 35, residential
13 options are available in farming areas, but only on a
14 limited basis and in a manner that is consistent with
15 preservation policies. That is why the master plan proposes
16 two rural land use categories. One emphasizes agriculture,
17 the other open space. Planning Board staff confirmed at the
18 December 9th hearing that the clusters are located on prime
19 agricultural soils, they still are. And members of the
20 Planning Board made clear that they would not approve a
21 preliminary plan that includes lots on prime agricultural
22 land. The extensive use of clustering small lot sizes, sand
23 mound systems and the use of lengthy driveways forever
24 removes a substantial portion of the property from

1 agricultural usage. In addition, each sand mound consumes at
2 least 10,000 square feet per lot, further exacerbating the
3 loss of agricultural land. The loss of farmland through
4 fragmentation and small lot developments was one of the
5 driving forces behind the master plan. Yet this preliminary
6 plan would shift the clock back over 25 years to a time when
7 the loss of farmland was proceeding unabated. Finally, the
8 Stoney Springs preliminary plan does not conform to the
9 rustic roads master plan. As noted in the staff report,
10 Mount Nebo Road is designated as a rustic road. The Rustic
11 Roads Functional Master Plan recommends placement of
12 buildings in order to maintain a scenic vista. The 5 lots
13 including the cluster that would be visible from Mount Nebo
14 Road will essentially destroy that scenic vista. In
15 conclusion, we urge the Planning Board to reject this
16 preliminary plan for the same reason it would have rejected
17 the plan reviewed on December 9th. It still fails to
18 substantially conform to the master plan. Thank you.

19 CHAIRMAN BERLAGE: Thank you very much. The next group is
20 Richard Tustian, Ginny Barnes, and Nancy Wendt. Mr. Tustian.

21 MR. RICHARD TUSTIAN: Thank you. Mr. Chairman, members of
22 the Board, I served as Montgomery County Planning Director
23 between 1969 and 1990. During which time in 1980, the
24 Agriculture and Rural Open Space Plan and the Rural Density

1 Transfer zone were adopted. Because of the high esteem that
2 I retain for the staff of the Commission, which is my
3 professional family, I guess you might say, I have refrained
4 from commenting publicly on staff report since my
5 retirement, that's 15 years. I regret that I must do so now.
6 The conclusions of the staff report derive from an
7 assumption about the intent of both the Ag plan and the RDT
8 zone. Staff argues that in essence the intent of both the
9 plan and the zone was to permit and encourage the
10 development of residential neighborhoods of clustered houses
11 within the agricultural preserve. And that the 1980 limits
12 on septic tank technology were never intended to undercut
13 the maximum achievable average density of 1 house per 25
14 acres. This is not historically accurate. The primary intent
15 of both the plan and the zone was to limit the use of land
16 in the agricultural preserve to agriculture and open space.
17 Preserving farmland was the primary and overriding objective
18 of the whole exercise. Although other objectives such as
19 preserving farmers and the farm economy were ranked close on
20 the heels of preserving the land, they were all subservient
21 to this one primary purpose. Without the land it is
22 impossible to farm. In adopting the plan the Council
23 concluded that farmland was the most important vital
24 resource to be preserved. I make this statement based not

1 only on my memory of the conversations and debates that
2 surrounded the events at the time. I submit that both the
3 plan and the zone can be seen to reveal this intent today.
4 If they are approached with a holistic perspective rather
5 than put narrowly under a selective microscope. Regarding
6 the plan, one of the central arguments made therein was that
7 although farmland by itself was a pre-eminent focus, the
8 preservation of farmland was intricately connected with the
9 preservation of farming. Preserving both together required
10 preserving a large area of contiguous open space. Studies
11 had proved that any development of non-agricultural uses
12 that intruded into this contiguous space would deteriorate
13 the cohesion of the farmland, the farm economy, and the farm
14 culture, and lead to their collective demise, much the way
15 that moths in the closet will soon render a suit un-
16 wearable. It is for this reason that the Agriculture and
17 Open Space Plan set up 3 different categories of land use:
18 agriculture reserve, rural open space, and rural
19 residential. Parenthetically, this is the idea of different
20 kinds of uses that are referred to on page 35 of the plan,
21 and it does not specifically target the Ag Reserve, it
22 targets the whole study area that the plan covered. The very
23 fact that the plan separated the latter two low-density
24 residential areas from the agricultural reserve is clear

1 evidence when taken together with all the other explanatory
2 language in the plan, that residential uses were intended to
3 be part of the agricultural reserve only to the extent that
4 they were necessary to support agriculture, so much for the
5 plan and my comments on that. Regarding the RDT zone, it is
6 true that it permits residential density at an average of 1
7 house per 25 acres. It is not true that its intent was to
8 produce a development pattern of houses on 25-acre lots
9 spread across the Ag preserve, let alone produce
10 neighborhoods of clustered houses such as the Stoney Springs
11 subdivision. Quite the opposite. The intent of the zone and
12 the reason it is called the Rural Density Transfer zone was
13 basically to exclude all residential uses that were not
14 necessary for farm operations. The intent was to transfer
15 this residential density to other parts of the County where
16 development was encouraged by the general plan, in locations
17 that would be in proximity to appropriate infrastructure
18 facilities and other compatible uses. In short, the
19 principal at work was similar to what has come to be known
20 now as smart growth. It is not an accident that the RDT zone
21 is listed in the Zoning Ordinance under the heading of
22 agricultural zones rather than residential zones. Neither is
23 it an accident that the purpose section of this zone says
24 that its purpose is to quote, promote agriculture as a

1 primary land use, unquote, and quote, agriculture is the
2 preferred use, unquote.

3 Nor is it an accident that this purpose section makes no
4 mention whatsoever of residential uses. And it is also no
5 accident that by contrast, residential users are both
6 permitted and encouraged in the purpose section of the two
7 other zones that came from the Agriculture and Open Space
8 Plan, the rural cluster zone and the low-density rural
9 cluster zone. This contrast, I suggest, is instructive. In a
10 similar vein, although the RDT zone does permit a minimum
11 residential lot size of 40,000 acres, it is also no accident
12 that there is no mention whatsoever in this zone of any
13 provision for the clustering of houses on lots of this size.
14 By contrast, section 59C-95, the Cluster Development
15 Section, specifically reserves the cluster option to the 2
16 other open space zones, the rural cluster zone and the low-
17 density rural cluster zone. The RDT zone was excluded from
18 this section on cluster. To underscore this point, note that
19 the low-density rural cluster zone makes clear that one of
20 its primary purposes is to serve as, quote, a buffer or
21 transitional use between agricultural areas and low-density
22 one-family uses, unquote. Consider the implications of this
23 statement. If a low-density residential cluster zone is
24 created specifically to act as a buffer between agricultural

1 areas and low-density residential areas, is it not obvious
2 that the agricultural areas are intended to be free of
3 clustered residences? If two things are alike you don't need
4 a buffer between them. If the RDT zone was intended to
5 encourage low-density residential clusters there would be no
6 need for a buffer zone. I submit that it is clear from both
7 the history and the evidence that the 40,000 acre minimum
8 residential lot size in the RDT zone was intended simply to
9 prevent the construction of individual houses as needed to
10 support farming and that the RDT zone never intended the
11 construction of clustered neighborhoods of mega-mansions for
12 ex-urban commuters such as the Stoney Springs subdivision
13 proposal supports.

14 And with regard to this particular subdivision, it can be
15 argued that the out-lots from this subdivision could be
16 farmed. This is true. But there is also strong possibilities
17 that it will not be farmed or as efficiently farmed. History
18 shows that ex-urban homeowners do not like the noise,
19 smells, and general disturbance of residential tranquility
20 that are created by farm operations. That's part of the
21 impermanent syndrome that led to the whole theory and idea
22 that you have to cluster a composite, integrated mass of
23 land. Ownership by multiple ex-urban homeowners, excuse me,
24 changing single ownership of a very large area to fragmented

1 ownership by multiple ex-urban commuters will make it more
2 difficult for farmers to lease it or farm it, whether they
3 will do it at all. It is true that this subdivision is
4 agriculturally better than the completely residential
5 subdivision, it's better than an industrial area, but that's
6 not the comparison. Stoney Springs is not better than the
7 Agricultural Reserve as it is now. In any event, whether one
8 likes the outcome of this plan or not, I believe that what I
9 have said above is an accurate reflexion of the ideas in
10 play when it was adopted. I wish you wisdom as you make this
11 present decision and others in the future, and thank you for
12 the opportunity to comment.

13 CHAIRMAN BERLAGE: Thank you. Ginny Barnes.

14 MS. GINNY BARNES, REPRESENTING THE WEST MONTGOMERY COUNTY
15 CITIZENS' ASSOCIATION AND THE MONTGOMERY COUNTY GROUP OF THE
16 SIERRA CLUB: Thank you. For the record, I'm Ginny Barnes and
17 today I'm wearing two hats. I am representing the West
18 Montgomery County Citizens' Association as I did in December
19 and I'm also speaking as the Vice Chair of the Montgomery
20 County Group of the Sierra Club. We are substantially in
21 agreement on the major issues. You have a letter from the
22 Sierra Club stating our position. The key to the plan before
23 you today is preservation. Not just preservation of land,
24 but preservation of the purpose for preserving it in the

1 first place. Does the plan meet the requirements of the
2 master plan for Agriculture and Rural Open Space? We still
3 believe, as we did in December, that it does not. The number
4 of houses is not the issue, the size of the lots is not the
5 issue; rather, the use of sand mounds encourages development
6 within the critical mass of active farmland in direct
7 contravention to the master plan. A precedent is a
8 precedent. This development plan still contains within it a
9 precedent that opens a dangerous path into the heart of
10 agricultural preservation, which is the purpose of the mater
11 plan, the purpose of the reserve and the reason why what we
12 have done in Montgomery County is a national model. We agree
13 with the esteemed Mr. Hanson, you are ceding your role to
14 interpret master plans to the Department of Permitting
15 Services, which makes me shudder. And if you approve this
16 plan, regardless of the number of units, not honoring the
17 master plan, the very master plan that makes and keeps the
18 agricultural preserve possible. Thank you.

19 CHAIRMAN BERLAGE: Thank you. Nancy Wendt.

20 MS. NANCY WENDT: Thank you.

21 CHAIRMAN BERLAGE: Fresh from the Olney Master Plan, back
22 again.

23 MS. NANCY WENDT, REPRESENTING THE OLNEY COALITION: For
24 the record, my name in Nancy Wendt. I'm here today

1 representing Olney Coalition. Good afternoon, Chairman and
2 members of the Board. The Olney Coalition believes there is
3 really 3 issues here. Again, we would agree with Ginny that
4 it is not the size of the lots or this particular plan. This
5 plan is certainly better than the one in December. The
6 fundamental issues are preservation, precedent, and the
7 integrity of master plans. The Olney Coalition opposes the
8 revised Stoney Springs development in the Agricultural
9 Reserves, south west of Poolesville. Half of the Olney
10 Master Plan is in the Ag Reserve and many of the TDRs in the
11 Agricultural Reserve were built in Olney. Olney paid a very
12 high price in terms of density to protect the Ag Reserve.
13 We're extremely concerned regarding the precedent this could
14 set for additional residential development in the Reserve.
15 While we support the development of innovative technologies,
16 we oppose applying them in ways that they were never
17 intended. The alternative sand mound septic technology
18 proposed for this development is a case in point. The
19 recommended water and sewerage guidelines that began on page
20 59 of the Agricultural and Rural Open Space master plan
21 states: Deny private use of alternative individual and
22 community systems in all areas designated for Rural Density
23 Transfer Zone. On December 9th, former Council member Nancy
24 Daisek reaffirmed that the intent of the 1994 Council

1 resolution regarding sand mounds was to allow farm families
2 who wanted to build additional homes on their land for other
3 family members wont replace their own failed septic systems.
4 It was not an amendment to the master plan to allow for
5 residential subdivisions. Further, the General Plan
6 Refinement states, on page 33: The Agricultural Wedge is an
7 invaluable resource for Montgomery County beyond its
8 agricultural use. Maintaining large amounts of Rural Open
9 Space protects the environment, especially sensitive
10 headwaters, conservation areas, wildlife habitats, and flood
11 plains from the impacts of development. It also serves as a
12 clean air shed to cleanse the atmosphere as well as the
13 mechanism to protect the quantity and quality of water
14 resources.

15 If this development is approved, then it encourages other
16 areas in the Ag Reserve to subdivide. This will erode the
17 very reasons the Agricultural Reserve was created in the
18 first place to preserve farmland and to protect water and
19 air quality for all residents of Montgomery County. We ask
20 you to hold true to the vision for the Agricultural Reserve
21 and deny this application. Thank you.

22 COMMISSIONER ROBINSON: Mr. Chairman, I have a question
23 for the gentleman to the left, and I apologize for my
24 memory.

1 CHAIRMAN BERLAGE: Dick Tustian.

2 COMMISSIONER ROBINSON: Dick. You said that the purpose of
3 the plan is to not have 25-acre development scattered
4 throughout the Agricultural Reserve. Your interpretation of
5 that language would then say that every 25-acre farmette
6 being scattered throughout the Agricultural Reserve where
7 septic works is inconsistent with the purpose of the plan.

8 MR. TUSTIAN: No, I would say that they are permitted.
9 It's a matter of the fact that we have to use the
10 instruments of regulation that are available to us. The
11 theory that because the maximum density permitted under a
12 zone is put in the Zoning Ordinance, I think has long been
13 overlain in this County by the fact that other ordinances,
14 regulations, factors, criteria may come to bear so that the,
15 the concept that a landowner is entitled to the full density
16 simply because the Zoning Ordinance permits it is, that's
17 Euclidean zoning as it was 50, 60 years ago. What has
18 evolved, I believe, in this County is a system in which
19 there are multiple factors applied to the land that are not
20 all contained in this Zoning Ordinance. In this case, the
21 intent, I submit, if you think of the plan as the original
22 DNA or impulse or purpose, conceptually, all these other
23 things are instruments to try to achieve that purpose.

24 COMMISSIONER ROBINSON: Well, I don't think, with all due

1 regard, you really haven't really answered my question.

2 MR. TUSTIAN: I'm sorry.

3 COMMISSIONER ROBINSON: Because it is a critical point.

4 MR. TUSTIAN: Yes sir.

5 COMMISSIONER ROBINSON: There is two lines of argument
6 here - don't ever use septic, that is one line of argument,
7 and don't ever use sand mounds, I apologize, it's been a
8 long day. Your argument seems to say, because you didn't
9 address the distinction really between septic and sand
10 mounds. The point that I'm addressing, as you said, you
11 don't think that the RDT zone is intended to have 25-acre
12 zoning scattered across the County. You didn't draw any
13 distinction between where that could be done with septic and
14 where it could be done with sand mounts. So, that is a very
15 categorical statement that we shouldn't have the 25-acre
16 zoning scattered across the County. How can we prevent that,
17 either in the septic area or in the sand mound area?

18 MR. TUSTIAN: The way the plan envisaged preventing it was
19 with the restrictions on the extension of non-septic tank
20 technologies.

21 COMMISSIONER ROBINSON: So, if we could use septic tank
22 technology throughout the RTD, then it would be fine to have
23 25-acre zoning throughout the entire rural density transfer
24 zone.

1 MR. TUSTIAN: I believe it would not be the intent of the
2 plan. The intent of the plan was to clear the entire
3 Agricultural Reserve of any houses except those that are
4 necessary to house farmers. That was the intent of the plan.

5 COMMISSIONER ROBINSON: And how do you define a farmer?

6 MR. TUSTIAN: Someone who makes a living from farming.

7 COMMISSIONER ROBINSON: So, if I have 25-acre farmland and
8 I have 2 horses, and I like to sit out on the back porch and
9 drink mint juleps on martinis, depending on my cultural
10 background, then I'm not a farmer under your definition?

11 MR. TUSTIAN: You could be a farmer if we use the
12 definitions of the agricultural assessment, which said that
13 you had one cow or, however, wherever you want to set the
14 bar, one could go to that level of trying to make that
15 distinction. These are imperfect

16 COMMISSIONER ROBINSON: But this is really an important
17 point because it is very possible that your definition would
18 say, if I want to have be an ex-urban development, a rural
19 ex-urban life, 25 acres, couple of horses, and that's
20 permitted throughout the RDT zone if septic, if the land
21 will perc, I mean, that's what I hear you saying, unless you
22 define farming as someone who actually produces something to
23 sell. Then your definition is internally consistent.

24 MR. TUSTIAN: I appreciate the point you're raising sir. I

1 make a slight distinction between intent and what is the
2 letter of the law. What is the spirit of the law, what is
3 the letter of the law.

4 COMMISSIONER ROBINSON: Then tell me what the letter of
5 the law is.

6 MR. TUSTIAN: The letter of the law is that if you have a
7 25-acre piece of land in the Agricultural Reserve, you can
8 put a house on it, if it will perk.

9 COMMISSIONER ROBINSON: And if I have 200 acres, I can put
10 8 houses on it if it will perk.

11 MR. TUSTIAN: That's correct.

12 COMMISSIONER ROBINSON: That's the letter of the law.

13 MR. TUSTIAN: But, you can't, you know, I don't submit
14 that they're to be clustered.

15 COMMISSIONER ROBINSON: That's a different issue. We'll
16 set the cluster issue aside. It is a different, another very
17 complicated point. So, if the land perks, it's 200 acres, I
18 can get 8 houses, that may not be the spirit of the intent,
19 you would say that if you get a 25-acre lots and they are
20 ex-urban estates 25 acres, it's prevented.

21 MR. TUSTIAN: That is possible under what it says, but
22 what's intended is that they reuse the mechanism of the
23 transferable development rights rather than building on the
24 25-acre lots.

1 COMMISSIONER ROBINSON: I understand that also.

2 MS. GINNY BARNES: May I say something?

3 COMMISSIONER ROBINSON: Yes, please.

4 MS. GINNY BARNES: I hear what you're saying, but I also
5 want to submit, the same is true with the Potomac master
6 plan as a green wedge, a residential green wedge. It was
7 understood, it was known, that the land, all of the land,
8 would not perk. So, there was a built-in limitation, which
9 was the perkability of the land and by limiting development
10 to that which would perk, it was known that that would be a
11 limitation, another layer of limitation. So, it was known
12 that there would not be 25-acre lots all across the Ag
13 Reserve, just as it was known that,

14 COMMISSIONER ROBINSON: Of the perc policy, if that's what
15 you are arguing. The perk policy would act to prevent that.

16 MS. GINNY BARNES: Yes, it was intended to be a
17 restriction just as it is in the Potomac sub-region master
18 plan.

19 COMMISSIONER ROBINSON: See, you're advancing a point that
20 I think it is a very important argument that your colleague
21 didn't, see, because you are drawing a regulatory
22 distinction Ms. Barnes, that he didn't, and that is why I
23 was asking the questions I did.

24 MS. GINNY BARNES: Well, I hope I answered you.

1 COMMISSIONER ROBINSON: Well, you addressed the question.

2 CHAIRMAN BERLAGE: Okay, we all need to keep moving.

3 MR. TUSTIAN: I might, if I may, Mr. Chairman, just
4 quickly, very quickly. There are many I think..

5 CHAIRMAN BERLAGE: With all due respect, we've got too
6 many folks.

7 COMMISSIONER ROBINSON: The Chairman has been very
8 tolerant.

9 CHAIRMAN BERLAGE: Teresa Cummings, Larry Schaudies, and
10 Andrea Arnold. Teresa Cummings.

11 MS. TERESA CUMMINGS, ADJACENT PROPERTY OWNER: Hey! My
12 name is Teresa Cummings, I am the director of Poplar Spring
13 Animal Sanctuary, which is located 15200 Mount Nebo Road on
14 the 430-acre farm immediately adjacent to the proposed
15 subdivision, where my husband and I have lived for the last
16 18 years. I testified against this subdivision at the first
17 hearing in December, and few of the changes the developer
18 has made to the proposal are very minor. The number of
19 houses built will still be 13, with only the number of out-
20 lots being reduced from 8 to 2. The clusters of large houses
21 will still take valuable agricultural land out of farming
22 use and completely change the character and use of the open
23 space on which they would be built. One of the large
24 clusters will be less than a stone's throw from our wildlife

1 and farm animal sanctuary and only a short distance from a
2 bald eagle nesting site. We believe strongly that the Ag
3 Reserve should be available to be enjoyed by the many
4 citizens down-County and in the surrounding metro area who
5 are weary of the endless subdivisions and shopping centers
6 and jewelry coming to an area that is open, scenic and
7 bucolic. Thousands of school children visit our sanctuary
8 every year to learn about farm animals and enjoy overall
9 experience. If the subdivisions such as Winchester home
10 proposal and the many subdivisions that will surely follow
11 if you approve this are allowed into the Ag Reserve there
12 will never be a unique and beautiful area in the County that
13 residents can come to for recreation and relaxation. Five of
14 the proposed houses and one of the two cluster driveways
15 will destroy the scenic vista of 123

16 Mount Nebo Road and now when school children travel by
17 bus to the sanctuary they will pass by large Potomac-style
18 houses instead rolling fields and farmland. I also just
19 wanted to briefly read a letter from the owner of our farm,
20 Sheila Cochran, who wrote that, I, Sheila Cochran, own the
21 farm adjoining the proposed development of Stoney Springs.
22 For over 50 years, my husband and I have done everything we
23 can to keep our farm in open space. My husband's father
24 bought the farm in 1931, so there has been plenty of time

1 for us to build houses or sell it for development. We
2 realized many years ago the importance of our farm in the
3 bend of the Potomac River and how crucial it is to keep it
4 green. We rejoiced over the master plan. What is a master
5 plan for if it is not strictly adhered to? We have been
6 fortunate that my farm is a part of many contiguous acres
7 where the owners feel the we do. The Summit Hall Turf Farm
8 and McKee-Beshers Wildlife Sanctuary along with our farm and
9 Casey Property form a unique area, which has been included
10 in the Legacy Open Space list of last best places. All the
11 green land must be kept in agricultural use or it will
12 slowly disappear as green space in the County. I beg you to
13 vote No on the proposed cluster development. Thank you.

14 VICE CHAIR WENDY C. PERDUE: Thank you. Larry Schaudies.

15 MR. LARRY SCHAUDIES, ADJACENT PROPERTY OWNER: Hi! I am
16 Larry Schaudies and I am the current owner and operator of
17 the farm in the wide area up here, yes. May I step up here
18 is just to point something out?

19 VICE CHAIR PERDUE: Absolutely, would you just take the
20 mike with you when you go, thank you.

21 MR. SCHAUDIES: I've been living here for 20 years and I
22 know this land very, very well. It is very difficult looking
23 at this in a flat, 2-dimensional representation to
24 understand what's going on here. The absolute best land in

1 this entire, all of this, is this area right here where the
2 cluster is going. I've seen the farmers; they bring their
3 farm equipment down along here because this is high ground
4 and if you look at it topographically, you can also see that
5 my farm is on top of a hill. This is a hill. Everything else
6 around it is lowland. The reason these dark green areas are
7 so dark green is because it's almost a swamp. Right now, if
8 you were to walk out in any of this land, you would sink up
9 to here in mud. So, the fact that this road will come in
10 across here and fragment all this land including this very
11 farmable land up here, in addition to the fact that it will
12 be broken up into these subdivisions, I can tell you that no
13 farmer will want a farm any of this. It will be completely
14 taken out of productive farming. In addition, I would just
15 like to say that I agree and support what the other speakers
16 have said in opposition to this, that they are spot on in
17 what they have said. Thank you for the opportunity of
18 speaking.

19 VICE CHAIR PERDUE: Thank you. Andrea Arnold.

20 MS. ANDREA ARNOLD, REPRESENTING SOLUTIONS NOT SPRAWL: My
21 name is Andrea Arnold and I represent Solutions Not Sprawl.
22 I want to emphasize that we have members throughout the
23 County not just within the Ag Reserve, but throughout the
24 County, and we all share that support for preservation of

1 the Ag Reserve, and I also support what the previous
2 speakers have said, and I want to, if I may, remind you that
3 this is the 25th anniversary of the creation of the
4 Agricultural Reserve and creating it 25 years ago was an
5 incredible accomplishment for the County and it is now an
6 indispensable asset to residents throughout Montgomery
7 County and throughout the entire region, and if you approve
8 this development, don't expect the Ag Reserve to remain for
9 another 25 years, so, I urge you to oppose this development.

10 VICE CHAIR PERDUE: Thank you. I don't see any questions.
11 The next 3 speakers.

12 COMMISSIONER ROBINSON: Sorry, I was talking to my lawyer,
13 but I did hear your testimony about the particular
14 topographical, soil and environmental concerns that are
15 involved in this project.

16 VICE CHAIR PERDUE: And the next 3 speakers are Perry
17 Kapsch, Gil Rocha, and Jay Cinque. I probably mangled all 3
18 names and I apologize. Who do we have? Do we have Perry
19 Kapsch?

20 MS. PERRY KEPHARD KAPSCH, REPRESENTING HISTORIC MEDLEY
21 DISTRICT: My name's Perry Kephard. I am here on behalf of
22 Historic Medley District. We ask that you deny the Stoney
23 Springs preliminary plan. Since, our non-profit was
24 organized in '74, we have supported the conservation of

1 historic open space as well as the preservation of historic
2 structures. We're not expecting you to bring back Native
3 Americans hunting deer in the forest or colonial farmers
4 growing wheat to ship to the West Indies, but we do ask that
5 the Planning Board continue to protect the historic uses of
6 the land as farm land, hunting grounds, undeveloped open
7 space, and woodland that were recognized in 1980 with the
8 passage of the master plan. The plan itself developed quote,
9 a zoning map and land use that recognized this farmland as
10 permanent land use and not simply a holding land use to be
11 utilized for future development. Please understand, the RDT
12 in the Ag Reserve is an industrial zone. You wouldn't put
13 houses in the middle of a canning factory floor. It is the
14 industry of farming. This is an industry, an enterprise that
15 has served the County well for many centuries. It is an
16 industry that requires substantial contiguous land mass in
17 order to be viable. In the Ag Reserve that viability still
18 exists as long as projects such as Stoney Springs are
19 denied. Although the subject property has been temporarily
20 taken out of farming by the developer in anticipation of
21 permission being given to change the zoning from farming to
22 housing, the land continues to be an important component of
23 the future of the industry. To convert the land to housing
24 would be to downgrade the RDT land from its preferred use as

1 farmland. It would be in direct contravention to the
2 permanent syndrome in farming that the Ag Reserve was
3 created to support. For the Planning Board to support the
4 proposed use of sand mounds is again counter to the Ag
5 Reserve, which recommends, quote, support of a rural
6 sanitation policy that does not encourage development within
7 the critical mass of active farm land, as was previously
8 also quoted. Attached is a letter, I also want to read from
9 a letter to the Gazette that was published after the last
10 hearing that talks about farming: We ask that the Planning
11 Board put the future, the welfare of the County's people
12 ahead of the financial objectives of the housing industry.
13 The Ag Reserve was a visionary and sagacious gift, which the
14 Planning Board of the County Council made to the people of
15 the County. We ask that this Board support the wisdom of
16 that action. I would also point out, in response to
17 Commissioner Robinson's question about 8 houses on 200
18 acres, to take the historic, put that in historic context.
19 You still have 25 acres of open space that is set aside as
20 farmland. In the back of the master plan, it talks a bit of
21 the use of a 25-acre farmette and it decides that a formette
22 would work, but that's taken into account, it was not
23 something that the master plan did not understand. In the
24 letter, I say, I respond to Rich Parsons, the CEO and

1 President of the Montgomery County Chamber, who said that
2 the land area, he said 47% of the land area of the County is
3 locked away from development including the Ag Reserve. I
4 want to point that the Ag Reserve is not locked away from
5 development. It is not land waiting to be used. It is in
6 fact, already fully and actively developed as farmland.
7 There is no room in the Ag Reserve for suburban expansion.
8 The land has been entirely committed to beneficial
9 industrial use, farming, that is compatible with the welfare
10 of all the people in the County no matter their income
11 level. Farming has prevailed as an industry for several
12 thousand years. It is able to continue in the same piece of
13 ground for decades. Unlike the housing industry, it does not
14 require more and more land being consumed in order for the
15 business to be viable. What wears out in farming is the
16 farmer. As he or she grows old and wants to retire, the need
17 for a replacement farmer, if there is no one in the family
18 to take over, creates an interval when the land could go out
19 of farming, as is possible with Stoney Springs. It is
20 completely appropriate that the County has recognized the
21 need to protect the land while the transition takes place so
22 the County continues to have farms. Thank you.

23 CHAIRMAN BERLAGE: Thank you. Gil Rocha.

24 MR. GIL ROCHA OF WASCHE ROAD: Yes, sir, good afternoon,

1 thank you for letting me comment. My name is Gil Rocha and
2 my wife and I live on Wasche Road, which is what Edwards
3 Ferry Road changes into, so I'm in the neighborhood.
4 Lifelong County resident and I would like to urge you to not
5 approve any of these cluster developments. I think it's not
6 in the spirit of the Ag Reserve and I can't understand all
7 these zoning issues, but, you know, when you buy a house and
8 the zoning is 1 house for 25 acres that's what you expect, I
9 don't think it is fair to come back and find out that you're
10 going to have a cluster of houses in the neighborhood there
11 when it does not seem like that's the way it should have
12 been. I think that when you do that, if you do that this
13 time, you open a flood gate for this type of development
14 throughout the Ag Reserve and I'm sure that someone's going
15 to come up here and say that you have to look at this one
16 case and decide this one development, but I think you really
17 have to think about the precedent you're going to set and
18 the consequences of making that decision. So, I would
19 strongly urge you not to do that. I also do not support this
20 use of sand mounds for new construction, but only as an
21 emergency situation, for emergency situations, and I just
22 want to point out and remind you that if you cluster these
23 houses together, and leave large open lots that future
24 government may come or court and decide that its have to