

1 going to change again and allow development of the part that
2 you left open, and you don't have to look very far from this
3 development to see where that's already happened, right
4 across the river, they have come back and thrown out their
5 rules and now I'm sure they're going to go back and double
6 dip on developments they already did once and rebuild them
7 again. So, that's all I want to say. Thank you very much and
8 I hope you make the right decision.

9 CHAIRMAN BERLAGE: Thank you. Jay Cinque.

10 MR. JAY CINQUE, REPRESENTING THE PEACHTREE RIDGE CIVIC
11 ASSOCIATION: Hi! My name is Jay Cinque. I am here as
12 President of the Peachtree Ridge Civic Association. On
13 behalf of the Peachtree Ridge Civic Association, I would
14 like to register our strong opposition to the proposed
15 Stoney Springs subdivision plan. We would also like to
16 support and endorse the position of the Clarksburg
17 Initiatives Association, which I would like now to read into
18 the record. This statement was prepared by Tom Hoffmann who
19 was the Vice President of the Clarksburg Initiatives
20 Association: I am writing to register the strong opposition
21 of the Clarksburg Initiatives Association to the subdivision
22 plan proposed by the Stoney Springs subdivision on your
23 agenda March 17, 2005. If the plan is approved, the Planning
24 Board will be contributing to the gradual dismantling of the

1 Agricultural Reserve without any legislative basis for doing
2 so. The staff report examines the nails and pegs in the barn
3 wall, so to speak, but otherwise misses the side of the barn
4 entirely. The Planning Board should not make such a
5 monumental policy decision that will affect the future of
6 the entire agricultural RDT area based upon a narrow staff
7 analysis. The staff interprets the master plan and
8 regulations as being designed to facilitate development in
9 the RDT zone so long as the 25-acre rule is observed. On the
10 contrary, the proposed RDT zone was to preserve agriculture
11 and with it open space. That is why the master plan provides
12 various special rules for farm families and that is why sand
13 mounds were first approved to solve septic problems in a
14 narrow selection of situations. The goal of the master plan
15 and the 25-acre zone is not to facilitate development on
16 every parcel of land with every possible technology. The
17 goal was to preserve agriculture and open space. Sand mounds
18 may be appropriate to solve health risk situations and
19 preserve family farming opportunities. They are not
20 appropriate to accelerate, via technology advance, the
21 demolition of Agricultural Reserve preservation efforts that
22 have been so successful for the last 25 years. We urge the
23 Board to reject the plan and the staff report. This is the
24 report submitted by the Tom Hoffmann of the Clarksburg

1 Initiatives Association. With the Board's indulgence, I
2 would also like to read a brief statement from Mike Rubin,
3 who I am sure, is familiar to the Board. He states that:
4 Dear President Berlage and Planning Board Members, I feel
5 there is no need for me to ballet with the point so well
6 articulated by Tom Hoffmann. You know well that I worked
7 very hard and at a large expense to do my share for the
8 preservation of the Agricultural Reserve. All you have to do
9 in this case is follow the master plans directives in intent
10 and word. Mike Rubin.

11 Clearly, we believe that the decision on this subdivision
12 plan can be a critical issue not just for this development,
13 but for the future of the Agricultural Reserve. As you are
14 well aware the, and quoting to Royce Hanson, in his earlier
15 testimony, the other drops of development plans are waiting
16 in the wings. The teacup will soon overflow. As you may be
17 aware, the Hilltop Farm proposal is going to be coming
18 before you and not too long ago, you've heard the Thompson
19 Farm Development, and there are many other plans coming in.
20 So, you are the guardians and stewards who are charged with
21 the protection of the Reserve. Your decision on this plan
22 will impact the agricultural legacy that has been given to
23 you to protect. Thank you.

24 COMMISSIONER ROBINSON: A question for both the gentleman

1 on the right and the lady on the left. What's agriculture?
2 [inaudible] I would like you both to give me a definition of
3 agriculture.

4 MS. KEPHARD: I would defer to the master plan, which
5 actually does define agriculture.

6 COMMISSIONER ROBINSON: No, your definition of
7 agriculture. 25 acres, a martini and 2 horses, or selling
8 things?

9 MS. KEPHARD: I would say agriculture is working the land.

10 COMMISSIONER ROBINSON: Fair enough.

11 MS. KEPHARD: Using it either for horticulture or for
12 viniculture or for livestock.

13 COMMISSIONER ROBINSON: Thank you. Sir.

14 MR. CINQUE: I would agree that agriculture would be
15 defined as working the land, farming the land. Now, you
16 mentioned earlier that 25 acres and 2 horses, well, if the
17 person who owned the 2 horses raising hay and growing hay.

18 COMMISSIONER ROBINSON: And raising horses

19 MR. CINQUE: And raising horses, and one of those horses
20 was a stallion or a broodmare there's no problem with that.
21 That is a farming operation.

22 COMMISSIONER ROBINSON: Fair enough.

23 MS. KEPHARD: And also, the next generation on that 25
24 acres is as important as that generation and the generation

1 before, so if the person today has 2 horses, the next person
2 might be growing herbs and the next person might be growing
3 strawberries, but they're still farmers. This is just that
4 the uses and the generations as they come along will find
5 different uses for that land.

6 COMMISSIONER ROBINSON: Thank you. Both of those answers
7 were very helpful.

8 CHAIRMAN BERLAGE: Thank you and the next group and the
9 last group is Kenneth Northup, Wayne Goldstein, and Deloris
10 Milmoe. Mr. Northup.

11 MR. KENNETH NORTHUP: Hi! Kenneth Northup with the Izaak
12 Walton League Bethesda Chevy Chase Chapter, we're an
13 adjacent landowners. To this project, I was here in December
14 and testified at that time. We are still opposed to this new
15 design. I guess I should tell who the Izaak Walton League is
16 and what we represent. We're a conservation farm, 493 acres
17 out there. We are outdoors people with the interest of wise
18 stewardship of the land and its resources. Conservation is
19 our mission. Like I said, we have 493 acres adjacent to this
20 property. We have 900 members out there and we've been out
21 there since the late 40s and early 50s on this farm. We have
22 2 ponds and seasonal streams that are directly affected by
23 every drop of water that comes through this property. Right
24 now, in the Izaak Walton League we have 2 water quality

1 programs that we have been running. One is called SOS - Save
2 Our Streams. Basically, what it is is we train people to go
3 out and test the waters through water quality tests, you
4 know, PH, acid content, and that, plus they're also looking
5 at the aquatic life. This information has been going back to
6 DNR and is now used as a database to find out where our
7 streams are and whether we're doing better or worse. This is
8 incorporated all over the nation. The second thing we do out
9 there is what we call an environmental stewardship plan.
10 Basically, what we're trying to do there is, we're look at
11 our property and its conservation needs. We look at the
12 buffer areas around our creeks, our ponds, the water quality
13 there, the crops we plant, we plant over a 100 acres of
14 crops on this and we don't harvest anything. Everything is
15 for wildlife management and soil structure. One of the parts
16 of the environmental stewardship plan, we realized, and we
17 incorporated this 2 years, is we started testing every drop
18 of water that comes in on streams on our property and every
19 drop of water that goes out, and earlier you were talking
20 about drinkable water in streams. We have potable water
21 coming off this farm at this point of time. I have 40 years
22 experience in the construction industry and have been
23 involved in water quality issues since its conception in
24 1972 in Montgomery County. I have had the ability to see

1 septic systems when they fail and one thing runs true
2 through all of them, lack of maintenance. With these new
3 sand mound systems I don't think that the technical staff
4 has the devices in place to enforce preventative
5 maintenance. If one these things fail, and there is a
6 possibility it can, it will immediately show up in our
7 ponds. So, our position here is

8 CHAIRMAN BERLAGE: Your time's up. Thank you. Wayne
9 Goldstein.

10 MR. WAYNE GOLDSTEIN, REPRESENTING MONTGOMERY COUNTY CIVIC
11 FEDERATION AND MONTGOMERY PRESERVATION: I am Wayne Goldstein
12 here speaking for both Montgomery County Civic Federation
13 and Montgomery Preservation. The Civic Federation continues
14 to oppose approval of the Stoney Springs plan, even modified
15 as it is by the reduction of the number of proposed lots
16 from 21 in last December's plan to 15. It is contrary to the
17 intent of the master plan and to the intent of the
18 Agricultural Reserve. If the master plan and the use of sand
19 mounds on clay soils supported the premise of this plan, it
20 would be a good plan in a number of ways. The willingness of
21 the applicant to preserve agriculture and forest land and to
22 lower density is to be commended. Sand mounds on clay soils
23 is not a conventional technology. It is accepted for water
24 logged and thin soils. However, MDE's 2003 edition does not

1 find that sand mounds on clay soils is conventional. It
2 still needs to be worked out. In fact, there are new
3 technologies that boast of their ability to avoid the many
4 problems of sand mounds. The No Mound System is one such
5 example. Sand mounds are used in Pennsylvania where there
6 are thin soils. Even so, based on reading of literature, I
7 was able to find failure rates can be high because perfect
8 construction and perfect maintenance are difficult to
9 achieve. It is contrary to smart growth and to concentrating
10 development around transit where infrastructure exists to be
11 building subdivisions way out in the Agricultural Reserve.
12 Anyone listening here? Thank you.

13 CHAIRMAN BERLAGE: We always listen to you.

14 COMMISSIONER ROBINSON: You are hard to overlook sir.

15 MR. WAYNE GOLDSTEIN: A couple of hours ago, you may have
16 missed the subtle hint I made about how, as the owner of a
17 historic building, I was willing to accept greater density
18 because I wanted the density here rather than out in
19 agricultural areas, and I am not suffering from density rage
20 over such a thing.

21 CHAIRMAN BERLAGE: Are you living in the train station
22 now, Wayne?

23 COMMISSIONER ROBINSON: I didn't miss the point.

24 MR. GOLDSTEIN: Perhaps I should, it would be closer to

1 here, I could get over here more easily. Now, we've just
2 accepted over 500 homes, almost 500 downtown Silver Spring
3 and that's where it belongs, not putting them in 10, or 15
4 or 20 at a time out in the Ag Reserve. Whatever is approved,
5 the applicant should agree to restore the log cabin on
6 Offutt Road to complete the promise of the Ag Reserve that
7 they are offering, which is to preserve vistas, and this
8 particular historic resource is really part of that vista. A
9 line in the sand should have been drawn, not only the first
10 time sand mounds were proposed for non-farm related housing,
11 but the first time any kind of system was proposed for non-
12 farm related housing in the RDT zone. I believe that all of
13 us will have to make that more explicit, and we really need
14 to sit down and figure out what the future of the Ag Reserve
15 is going to be, not go at it in a piece meal approach, where
16 we're looking at private institutional facilities, and the
17 density for them, and what's the conventional or
18 unconventional technology for sand mounds or any kind of
19 alternative system, but a more comprehensive view and,
20 because we need to really decide now what we are going to
21 have 25 years from now, and then put in place whatever
22 policies are going to ensure that we get that result. And
23 it's better late than never to start that process. Thank
24 you.

1 CHAIRMAN BERLAGE: Thank you, Doloris.

2 MS. DOLORIS MILMOE, REPRESENTING THE AUDUBON NATURALIST
3 SOCIETY: Good afternoon, I am Doloris Milmoe from the
4 Audubon Naturalist Society and I want to open my testimony
5 by reminding you of the broad opposition to this plan. There
6 are over 16 groups opposing this. Some of them have been
7 here today, others have written. First and foremost, the
8 Legacy Open Space Task Force unanimously oppose this plan.
9 Along with Audubon, Sierra Club, Montgomery County Civic
10 Fed, Potomac Conservancy, Sugarloaf Citizens Association,
11 Boyds Civic Association, The Olney Coalition, Historic
12 Medley, Dickerson Community Association, Solutions Not
13 Sprawl, Clarksburg Initiatives, West Montgomery Civic
14 Association, Peachtree Ridge Civic Association, FARM, Poplar
15 Spring Animal Sanctuary. We're very grateful for both the
16 esteemed former Chair Royce Hanson and former Planning
17 Director Dick Tustian who took the time out of their busy
18 lives to come down here because they thought this was
19 really, really an important issue. They provided clarity for
20 the master plan and historical context. As far as I'm
21 concerned, they are speaking from the planning mount. I
22 don't think anybody in this room knows more than they do
23 what went into it and what the intent of this master plan
24 was. Last week, Doug Duncan and Chairman Berlage and others

1 recognized and named Royce Hanson and Dick Tustian; Dick was
2 present, as the important people on whose shoulders we
3 stand. They were the ones who were not afraid of being sued.
4 They were sued a lot on this master plan. They knew that
5 that this policy was the right way to preserve agricultural
6 Montgomery County and we owe a great debt to them and I
7 would like to remind you what Doug Duncan said that day. He
8 said, Montgomery County leads the nation in land
9 conservation, but in order to continue our environmental
10 success, we must now act to save family farms. He did not
11 say we must now allow McMansion, multi-million dollar homes
12 on clustered lots on our prime farmland. Upstairs you have a
13 stack of letters, over 80, again, and they represent people
14 from all over the County, not just Ag Reserve residents,
15 we're talking about Silver Spring, Bethesda, Derwood, Takoma
16 Park, Chevy Chase, Olney, Germantown, Clarksburg, and many
17 of them have told me, Look, we're paying the price for
18 preserving this land up there. We're getting the density and
19 the only way it makes it palatable to us is that we know
20 that's not going to be developed. In terms of the cluster
21 development, I want to say with all due respect that Cathy
22 said only one of the clusters is on so-called prime
23 farmland. According to your own soil maps that I got from
24 Mark Pfefferle, and several of us and staff have reviewed

1 it, the same numbers identifying the soils under the so-
2 called prime label on that one cluster are the same soil
3 types under the other cluster. And I think the prime has
4 been left off the other cluster.

5 The other thing to mention about this clustering is that
6 over 55 acres of the clustered acres alone will be taken
7 forever out of farmland. Our staff at Audubon did a quick
8 Google search and other research on sand mound septic
9 systems, and again and again when you do a Google search,
10 you get the word alternative associated with this septic
11 system. Mound septic systems are really the granddaddy of
12 alternative systems.

13 I'd like to close by saying that the Planning Board is
14 under pressure now and it will increase to condemn the Ag
15 Reserve to slow death by a 1000 cuts. Every speculative
16 purchaser of land reserve will come to you with a well-
17 rehearsed story and a good lawyer probing to figure out how
18 best to dismantle the public trust that was created 25 years
19 ago when the Ag Reserve was created. Your job in this case
20 is pretty simple, enforce the master plan and in doing so
21 protect the agricultural reserve. I think, finally, that
22 Royce said it all, that the one overarching question here is
23 whether or not you want to put, put out sand mounds on the
24 side, or discuss the configuration of this, whatever you

1 ordnance and the master plan should have said 1 per 50, but
2 it said 1 per 25. And in fact it referenced in there that 25
3 acres was selected because that was a viable farm. And so,
4 for those who believe that it's not, that's the legislative
5 conclusion and we have nothing in there that says contrary.

6 In terms of the sand mound system, look at the
7 regulations and the policy that I passed out; the first and
8 second pages make it clear. While some may wish that it were
9 only for kids' lots, it doesn't say that. While some may
10 wish it was only for failing septic systems, it doesn't say
11 that. Frankly, read the language, and it very clearly says
12 that it's intended to allow property owners to achieve the
13 zoned density of their land in the agricultural reserve.
14 We're not trying to do that, we're not trying to seek 1 per
15 25, we're trying to seek 1 per 47. So, we're clearly within
16 the policy of, the corners of that sand mound policy. And
17 that's not a policy of the Department of Environmental
18 Protection, or Department Permitting Services, that was
19 adopted by the County Council and follows regulations of the
20 County Executive. In fact, it was done because the
21 agricultural master plan recommended in there that the
22 County look at a policy to deal with septic systems. That's
23 at page 17 of the master plan and again on page 62. Now, the
24 opposition interprets that to mean that those systems were

1 prohibited, but in fact they were allowed for a number of
2 years, but there was always uncertainty as to their context.
3 And, therefore, at the request of the agricultural
4 community, in 1994, the County adopted the sand mound policy
5 that explicitly says it's intended to allow people to
6 achieve their zoned density. There have been many cases
7 approved under that policy; some have been debated,
8 including the Kinsey property last year. This is something
9 that you have discussed and, in fact, Mr. Robinson last year
10 in the Kinsey property said that that's what it says, if
11 people want a different policy, they have to go to the
12 legislature and get a different policy. But they haven't,
13 and this is a policy that is there today. The RDT allows
14 this, we are conforming with it, and I believe that the
15 subsequent clarification by the council in terms of that
16 executive, in terms of the sand mound policy makes it clear
17 what the master plan intended.

18 In terms of agricultural protection, let's be honest,
19 there is no good farmland on this property. It's, it's, you
20 know, the soils may technically rate prime, but it is not
21 good farmland. Nonetheless, we are preserving all of the
22 yellow area on the plan there, within lots that are deemed
23 by law, within the master plan, to be supportive of
24 agriculture. Minimum lot size is 25 acres, and it will,

1 ultimately we're preserving 90% of the farmland on this
2 property. That is very significant. I doubt that that are
3 many RDT subdivisions that do that, but there aren't many
4 that come in at half the zoned density either. We ask that
5 you also consider not only the interests of those people, I
6 believe they are addressed in our reduction in the density
7 to half of what the zone allows, but also the rights of
8 property owners to rely on a zoning ordinance that says 1 to
9 25. The sand mound policy that says you can use sand mounds
10 to achieve your zoned density. And a master plan that allows
11 residential uses like this. We're completely in conformity
12 with the master plan, with the zoning ordinance, with the
13 septic regulations, and I believe that we've come up with a
14 very good response to unfortunately competing objectives.
15 There are private property interests at stake here, there
16 are agricultural preservation goals at stake, and there are
17 forest conservation goals. And the County wants to achieve
18 these without buying the land. We are doing that, by
19 creating a agricultural easement, and forest conservation
20 easements that will preserve a significant amount of this
21 property as agriculture and rural open space. And we ask
22 that you approve it. Thank you.

23 CHAIRMAN BERLAGE: Thank you. Discussion?

24 COMMISSIONER ROBINSON: Well rather than discussion, I

1 would like to have a quick, a purportedly simple question
2 for Mr. Harris, okay. You've got three lots that are over 50
3 acres; we can debate whether 25 acres to 50 acres actually
4 work. And there's been an analysis that some of you say,
5 let's assume that the 300 acres, the 60 acres, and the 74
6 acres are suitable for agriculture. How, as a policy maker,
7 do I know that they're going go be used for agriculture?

8 MR. HARRIS: The 300-acre property will have an, a
9 declaration of intent or covenant, if you will, registered
10 with the County because of the size of that property, and
11 the forest issues on that, we will do that. In terms of the
12 others, I guess there is no guarantee that I can give you.
13 The very strong likelihood in my opinion is that they will
14 be horse farms of sorts, like much of the other agricultural
15 land in the County. Very few of the people who testified
16 today are farmers. Many of them live in the agricultural
17 reserve. They are not farmers by the strict sense, but they
18 may keep horses, they may keep other animals. Those are
19 considered to be agricultural uses.

20 COMMISSIONER ROBINSON: So, you'll be putting an
21 agricultural easement in essence on the one large out-lot?

22 MR. HARRIS: On the large, the 309 acre property. Yes.

23 COMMISSIONER ROBINSON: Who will be the beneficiary of the
24 easement?

1 MR. HARRIS: I believe it runs to you folks, um, I don't
2 recall, Mr. Robinson. I think I have a copy of it in my

3 MS. CONLON: There isn't, what Mr. Harris is referring to
4 is, to get an agricultural exemption for forest conservation
5 purposes, we require filing of a declaration of intent,
6 which runs with the land, but it doesn't have an overlapping
7 easement on it.

8 COMMISSIONER ROBINSON: The point I'm driving at is, can
9 we get the 300 acres here, which is presently open land, as
10 I understand it. It could be farmed, I mean you could go in
11 there with a tractor tomorrow and farm it. Okay, now last
12 week Mike Rubin's came in with a proposal where he had about
13 150 acres, and he had two lots with houses on them, then he
14 had, what I believe is called an agriculture district, which
15 you put it on, and it's a commitment, that really that it's
16 going to be used for agriculture. So, if we're going to, and
17 I'm just saying, if the Board were to go with your proposal
18 and the 300 acres there it seems to me it's very reasonable
19 for us to say all right, give us an easement so that we can
20 go out and lease it, and make sure that it's used for
21 agriculture. Because, otherwise, why are we going through
22 this agony, you know, to have the land suitable for
23 agriculture, noted for agriculture, but not used for
24 agriculture, you know, we do lease other farmland, as I

1 understand as the Chairman has told me.

2 CHAIRMAN BERLAGE: That's a very interesting question. We
3 lease lots of, parkland we lease all the time to farmers.

4 MR. HARRIS: We do intend to put a new house on it. There
5 old farmhouse is on there now, and we intend to put a new
6 house on that property.

7 COMMISSIONER ROBINSON: Okay, that's why, that's why I
8 mentioned the example of, of what Mike Rubin did last week,
9 which is he has a couple of lots that sit on the 150 acres,
10 I forget the exact numbers, but I think that there are about
11 28, maybe 15, 20 acres each and then they have the easement.
12 And maybe that would work on this lot, maybe it would work
13 on the 70 acre lot, maybe it would work on the 60 acre lot.
14 Question is

15 MS. KNUPPEL: One of the purposes for the new house is
16 because the existing one burnt down over

17 COMMISSIONER ROBINSON: That's okay, I'm not debating the
18 fact that you can put one house on it, the issue you come
19 down to is, A, the location of the house, and how we would
20 ensure that the land can actually be used for agriculture,
21 because if the house goes right in the center of the place,
22 then we have a driveway and, you know, I've been there, done
23 that when I was a farmer 40 years ago, 40 or 50 years ago.
24 So, these are really important issues.

1 MR. MIKE CONLEY OF THE APPLICANT COMPANY: I hope I'm not
2 out of turn here, but

3 COMMISSIONER ROBINSON: You're not. I'm pursuing

4 MR. CONLEY: I'm trying to answer your question and
5 address the easement issue. Mike Conley, Vice President of
6 Development for Winchester Homes. It is our intent in this
7 community to market these lots as farmette lots, and we
8 intend with, in particular the trail system--which we agreed
9 to that is throughout the property, connected with other
10 trail systems, and equestrian uses abut the property--We
11 intend to market and sell to that community, and we would be
12 surprised if in fact that were not a significant utilization
13 of the smaller, if you will, farmettes.

14 COMMISSIONER ROBINSON: Smaller lots, all right. I
15 understand that.

16 MR. CONLEY: Having said that, economically, we cannot
17 guarantee a livelihood of farming and nor can we guarantee
18 it for any farm in Montgomery County, or require a farm in
19 Montgomery County, to in perpetuity be a farm, a successful,
20 a viable enterprise. It's, it's an

21 COMMISSIONER ROBINSON: Not the issue. The issue here is,
22 you're saying there's 300 acres here that are being
23 certified as suitable for agricultural land. Why shouldn't
24 we say, all right, give us the easement, we'll lease out the

1 land, if it's viable--If it's not viable, it's not viable--
2 put the one house in the location where it doesn't disrupt
3 the agriculture. We'll lease out the rest.

4 MR. HARRIS: I don't, with due respect, I don't believe we
5 would give you the property rights to that, they're valuable
6 to lease out that land.

7 MR. CONLEY: We would like to sell a 300-acre farm, that's
8 why we would not give the County 300 acres, but in a lease
9 in perpetuity, it's the intent to sell the farm, not to sell
10 the, the farm is more valuable than the house in terms of
11 the sale of the property.

12 COMMISSIONER ROBINSON: All right, so then would you put
13 an agriculture, you don't have to give us the easement, what
14 I'm pushing for is, in agricultural circumference it gets
15 sold as farm.

16 VICE CHAIR PERDUE: I guess I'm having a little trouble
17 understanding what an agricultural easement even means. I
18 understand things that say you, what you, or that there
19 could be a conservation easement, that would preclude
20 farming. Ordinarily a conservation easement

21 COMMISSIONER ROBINSON: That's why we get an exemption.

22 VICE CHAIR PERDUE: I mean, the easements that say what
23 you can't do I'm pretty clear on. So, you can't cut down the
24 trees, that's a conservation easement, you can't do this,

1 you can't do that, an easement that says you must do, you
2 must farm, I just am

3 MR. CONLEY: We have an agreement where we must farm the
4 300 acres and, Mr. Harris is pulling it out.

5 MR. HARRIS: What, the agricultural declaration of intent
6 that we will sign says that as the owner, we hereby declare
7 our intention to continue and/or place into agricultural
8 use, the above property in accordance with provisions of
9 Montgomery County Forest Conservation, COMAR, um, for a
10 period of at least five consecutive full taxable years. It's
11 not in perpetuity, I admit that, none of us can guarantee
12 anything in perpetuity, but this is the kind of agricultural
13 declaration of intent that has been used elsewhere, and we
14 do intend to record that on the 300-acre property.

15 VICE CHAIR PERDUE: And I guess beyond that I just have
16 trouble trying to figure out what it would look like to say,
17 and so if a year goes by that you didn't, I understand, say,
18 in the context of forest conservation, that if we decide you
19 didn't play straight on that, that you might, might come
20 back with it and say all right didn't, you're going to have
21 to comply with the forest conservation laws. That looks
22 pretty straightforward to me. It doesn't work, if it's not
23 being used for agriculture, so, so, so I guess.

24 COMMISSIONER ROBINSON: So, it gets subdivided after five

1 years, it can't be.

2 MR. HARRIS: No it could not be, all of the TDRs, we have
3 committed to transfer all the TDRs. There will be no
4 additional development rights on the 704, or whatever the
5 acreage is.

6 COMMISSIONER MEREDITH WELLINGTON: So, how many TDRs are
7 there?

8 MR. HARRIS: Ms. Wellington, I don't recall.

9 MS. KNUPPEL: I believe, if there is, if there is 15 lots,
10 there is 125 TDRs.

11 MR. CONLEY: Left over after the 15 lots. Yes, so the
12 intent is, and we're agreeing to, if it's in the form of a
13 condition of approval, great, we're agreeing to strip the
14 balance of the subdivision potential from the property and
15 look, we're at 50-acre density, the zone is 25 acres.

16 COMMISSIONER WILLINGTON: I thought you are at 47, right.

17 MR. HARRIS: 1 per 47.

18 COMMISSIONER ROBINSON: The reason I raised the point I
19 did, if I could go back to Commissioner Wellington's concern
20 is that we now have a legislative proposal, we had
21 recommendation by our staff, both in 1999 and 2000, that's a
22 matter of public record, that we sent up to the council,
23 over a transmittal letter by this board, that said for
24 exactly this type of situation, mark it on the plat: A, an

1 easement for agriculture, or some other limitation that
2 makes it agricultural forever, that was a, that was one of
3 our policy recommendations. If that easement runs to us,
4 which you say you won't do, then we could make sure that
5 it's agriculture forever.

6 COMMISSIONER WELLINGTON: John can I just ask a question
7 because you first raised Mike Rubin's agricultural district,
8 is that what you're thinking of?

9 COMMISSIONER ROBINSON: That's what I'm referring to,
10 could they make an agricultural district. How does that
11 work?

12 MR. HARRIS: I have to plead ignorance on it, I'm not
13 knowledgeable.

14 MS. MICHELE ROSENFELD, LEGAL COUNSEL TO THE PLANNING
15 BOARD: Michele Rosenfeld with legal staff, I'm not certain,
16 but I believe that that is a State program, and not a County
17 program and it's, the jurisdiction and the administration of
18 that program would come from the State level and not from
19 the County level.

20 COMMISSIONER ROBINSON: Well, for my purposes, we approved
21 it last week, so

22 CHAIRMAN BERLAGE: I believe it's a program that results
23 in a, a lower assessment in exchange for a promise by the
24 owner that the land will be actively farmed.

1 COMMISSIONER ROBINSON: That's correct.

2 CHAIRMAN BERLAGE: That's what it is.

3 COMMISSIONER ROBINSON: I doubt, I'm not sure if that's
4 permanent.

5 CHAIRMAN BERLAGE: It isn't as, no, it is not permanent,
6 but it's a way to, in fact it is sort of a, in the nature of
7 a way to accomplish what you were suggesting, might be
8 accomplished through an easement

9 COMMISSIONER ROBINSON: If you don't farm it, you lose the
10 tax exemption. Pure and simple.

11 MR. CONLEY: We would agree to that, in that, in that, in
12 that, in that context. Again, I represent that the 25 an
13 acre, 25-acre and larger, and frankly even some of the
14 smaller properties, would likely have horses on them, or
15 some type of Ag use. I can't imagine that not naturally
16 occurring on the property, given its character and its
17 location. And to the extent that there is a tax break in
18 association with an Ag use, if the Ag use ceases to exist,
19 there's a remedy, the tax break is extinguished, there may
20 even be taxes in arrears, I don't know what happens with the
21 thing, we would agree to that. That we would agree to.

22 COMMISSIONER ROBINSON: But there really is a fundamental
23 issue of policy here, because the Ag Reserve talks about
24 large contiguous parcels, ah, I'm getting a double line of

1 argument from, from your opponents here is, we really
2 shouldn't have clustering, because we should have large
3 contiguous parcels, sections of land because that's what
4 agriculture is about, and I think the plan clearly
5 contemplates that. If that's what the plan clearly
6 contemplates, 25 acres with horses, maybe farming, but it's
7 not for the purposes of the statute, but it's not spirit of
8 the plan, which is, the spirit of the plan is 100, 200, 300
9 acres with combines or tractors, or something like that
10 going around on it. Because otherwise you would not need
11 large contiguous parcels. You could have 25-acre parcels
12 everywhere, assuming that the other requirements of the
13 statute were met.

14 MR. HARRIS: I think the intent is a combination, some
15 large farms, some small lots, and that's how you get to the
16 large farms and still maintain the right to 1 per 25.

17 COMMISSIONER ROBINSON: So, we can have a range of farms,
18 25 acres farms, 50 acre farms, but they want large
19 contiguous parcels, so clearly we don't want 25 and 30 acre
20 parcels everywhere.

21 MR. CONLEY: Right, but clustering enables that to occur,
22 I mean, we heard from the Planning Board when we were here
23 last how important that farm was. The existing Ag use, and
24 that 300 acre farm, that is the area bounded by existing

1 woodlands, that is the existing farm that was up until I
2 don't know 2, 4, whatever years ago, in farming. And
3 incidentally when Winchester became contract purchaser on
4 the property, it was not being farmed, and we did not ask
5 that it not be farmed. It was just not being farmed, so I
6 presume for whatever reasons Mrs. Casey didn't want it
7 farmed. I can't answer that.

8 COMMISSIONER ROBINSON: I can think of a lot of reasons
9 why she wouldn't want it farmed, because she a foresighted
10 lady, and she wouldn't want to establish a possible argument
11 that it was farmland. But, this is very helpful because
12 there is a lot of core policy issues here, there's statutory
13 interpretation issues here, and then there's the policy
14 issues behind them, but now that I think I've dealt with
15 maybe what the definition of a farm is, I'll stop talking
16 for a while.

17 MR. HARRIS: We can agree to the agriculture designation
18 that did you refer to.

19 CHAIRMAN BERLAGE: Commissioner Wellington?

20 COMMISSIONER WELLINGTON: Yes, first I wanted to ask
21 Brenda, did you want to comment on the farmland use?

22 MS. BRENDA SANDBERG, LEGACY OPEN SPACE PROGRAM STAFF: I
23 just wanted to comment that the Ag District says, and again
24 with my incomplete understanding, how I understand them is

1 that they are both set up by the state for tax exemption
2 purposes. They also are required that you set up an Ag
3 District for certain of the state's Ag easement programs.
4 For instance, I believe if you're going to sell a Rural
5 Legacy Easement to the state, which separates development
6 rights from the land, you have to create an Ag District
7 first. I'm not sure if that also is required for the County
8 AEP program. But that's one of the other aspects of an Ag
9 District. That was the comment I wanted TO MAKE.

10 COMMISSIONER WELLINGTON: And while you're there, I just
11 want to flesh out the fact that we mentioned last time that
12 was, and by the way, I listened to the tapes of our
13 deliberation last time, that's why I'm looking a little
14 punchy. It's just that I reviewed the bidding and I learned
15 a lot. We're a very articulate group, some of us. But,
16 Brenda, my question is, on the legacy thing, I then, that
17 took me to the master legacy, master plan, and this has
18 been, was identified as an exceptional property, or what
19 happened?

20 MS. SANDBURG: Okay, just to give sort of a summary of
21 where Legacy Open Space

22 COMMISSIONER WELLINGTON: Yeah, quickly because

23 MS. SANDBURG: stands on the issue. The site was nominated
24 to us as part of a process we went through several years

1 ago, looking for new sites for Legacy. We looked in this
2 whole area and found that a lot of the properties in this
3 area were already in some form of Ag easement. Either they
4 had already separated all the excess TDRs or more than just
5 the excess TDRs. Many of them in the area have also been
6 gone through a State Rural Legacy Easements, MET easements,
7 etc., which are even more restrictive and remove more of the
8 development rights off the property. Two large properties
9 remaining in this area that were not currently under any
10 easement, it was this Casey Property, and the neighboring
11 Cochran Property, the Popular Springs Animal Sanctuary. It
12 was designated because, as you mentioned, it was determined
13 the way the Legacy Plan was set up, to be an exceptional
14 property in the Ag zone, largely for the fact that it has
15 rustic roads going through it and rural vistas, but largely
16 because of the quality of the forest, there was very high
17 quality wetland forest on the site.

18 COMMISSIONER WELLINGTON: And did you have density
19 standards for an exceptional Legacy property?

20 MS. SANDBERG: Not so much standards that well, here's how
21 it's phrased in the, in the Legacy Plan. The plan talked
22 about using Legacy dollars to actually purchase easements at
23 market rate from property owners of exceptional properties,
24 where maybe we could give them a slightly better deal, or

1 piggy back on top of a State Rural Legacy, or a County AEP
2 easement, and try and get some real protection there. The
3 plan discusses some standards that should be taken into
4 account if we do that, and one of the standards was, is that
5 the density should be reduced to no greater than 1 unit per
6 50 acres. So, that was talking about if we were going out
7 and purchasing an easement, in this case the property owner
8 is not interested in selling an easement, any TDRs they
9 can't use to build on the property they're going to separate
10 and use for their own developments so they don't want to
11 sell an easement, but we thought it was appropriate to try
12 and apply the same standard.

13 COMMISSIONER WELLINGTON: For these exceptional properties
14 you chose 1 to 50.

15 MS. SANDBERG: As the maximum density, we would think
16 would be appropriate.

17 COMMISSIONER WELLINGTON: As the maximum density.

18 VICE CHAIR PERDUE: Except for properties where we, where
19 the County is putting up money, or just in general? I'm
20 sorry.

21 MS. SANDBERG: That's for where if the County is putting
22 up money to try and buy an easement.

23 VICE CHAIR PERDUE: Okay, but not, not beyond, it does not
24 state that as a standard where we're not putting up money.

1 MR. HARRIS: Right.

2 VICE CHAIR PERDUE: I understand the notion that if you
3 put, you keep guidelines on, if you're buying something make
4 sure you get a lot for it.

5 MS. SANDBURG: Right, and in this case I felt it was
6 appropriate to look at that as a standard for this
7 development, because in this case the developer is not
8 interested in selling the easement, because they're going to
9 separate it anyway, so in effect we're getting whatever you
10 approve is built, and what isn't approved they will separate
11 the TDRs and it's the same, well, not the same, but it's as
12 if a farmer built something, then separated the TDRs, and
13 then sold it to Winchester Homes to build somewhere else.
14 So, I felt it was a similar process even though we're not
15 spending money and, therefore, the 1 per 50, again as a
16 maximum density.

17 COMMISSIONER WELLINGTON: As a maximum, so you would
18 actually like less.

19 MS. SANDBERG: I think clearly Legacy Open Space, one of
20 the goals is to preserve Ag and rural open space. And if
21 there's a way to keep more of it open than this plan shows,
22 that would be great. But we're in a situation where the
23 developer is going through the process. They're not
24 interested in selling an easement; we're not able to entice

1 them with that sort of an offer, so, I just wanted

2 COMMISSIONER WELLINGTON: Okay. I just, there was just one
3 thing that we glossed over that I wanted to understand and I
4 hadn't heard a density standard.

5 MR. HARRIS: Just to clarify, we are going to grant that
6 conservation easement without cost. We're not selling it,
7 we're granting it. There's no compensation to us.

8 COMMISSIONER WELLINGTON: Well you're in the RDT, so, but
9 could we have our discussion, is it time to discuss now or?

10 CHAIRMAN BERLAGE: I thought that's what we were doing.

11 COMMISSIONER WELLINGTON: Okay, well I'm ready to talk.
12 I'm going to start with, you know, the basic finding that we
13 need to make, which is the finding for the preliminary plan
14 that, you know, under the relation to the master plan that a
15 preliminary plan must substantially conform to the
16 applicable master plan, unless the Planning Board finds that
17 events have occurred to render the relevant master plan,
18 sector plan recommendation no longer appropriate. When we
19 had our last discussion, I think we talked in detail about
20 the meaning of the master plan, but we did not talk about
21 the idea of what finding we would have to make if we did not
22 apply the master plan. So, I just want to bring that out.
23 And I think that Royce Hanson did frame the issue, at least
24 in a way that I found helpful, which is, what is the intent

1 of the master plan with regard to the use of sewage
2 technologies that would permit extensive subdivision of
3 agricultural land in the reserve. We danced around the issue
4 last time, last time we had a much denser plan, so the issue
5 wasn't joined as directly as it is now. But as has been more
6 eloquently pointed out, than I probably can do, but I will
7 still go through it, it is quite clear in the master plan
8 that the density of 1 to 25 is in the zoned density, but
9 that the master plan used a range of tools to arrive at what
10 the actual density would end up being in the Ag reserve. And
11 one of the primary tools was the use of the septic system.
12 We talked about page 17 last time, since I listened to the
13 tape last night, and this morning. And we said they're the
14 same, this policy results in a population holding capacity
15 that is less than the zoned population holding capacity. And
16 on page 18 is a map that actually, as someone else
17 mentioned, it's not, I think in the context of the Potomac
18 Master Plan, in that context it wasn't that it's an unknown
19 quantity, it's a known quantity as where perks would be, and
20 there was an understanding based on that, what kinds of
21 densities we would have. And, actually, Commissioner Perdue
22 addressed this issue, too, last time, when she said that if
23 sand mounds were not permitted, then it will be per se a
24 situation that the, this kind of developments could just not

1 go forward. And I don't think it is a question of sand
2 mounds, it's more the broader question of did the master
3 plan look forward to the idea of other kinds of technologies
4 that could seriously change what the densities could be in
5 the Ag reserve. And I think it's quite clear in reading the
6 master plan that it did. And that it looked to only septic
7 as the system that could be used as a control on the
8 densities within the master plan.

9 So, then you say, well wait a minute, this is an old
10 master plan, its you know, 25 years old, getting a bit
11 older, has, has there been change, as the preliminary plan's
12 definition suggests. So, all right, let's start with the
13 more simple thing. Has the master plan been amended, since
14 that time? Has there been any thing that has amended the
15 master plan. And my answer is no. The master plan has not,
16 it's been read a lot, it's kind of like getting to be like
17 the Bible and everyone can find the verse that supports
18 them. But it's still there, and the much discussed council
19 executive regulation was a council, I think I'm now going
20 back to what Chairman Berlage said last time, this is not
21 original on my part, that the council approved an executive
22 regulation dealing with health and that the executive, the
23 County Executive, does not have a role in the master plan
24 process. He advises, he/she, I mean in the generic sense, on

1 master plans, but it's not binding and it does not end up an
2 amendment. So, with all due respect to what the council
3 said, and yes it's led to a lot of hue and cry and worry,
4 and wringing hands, and, but it's not an amendment to the
5 master plan. So master plan has remained in force. And then
6 there have been other County actions that also support it.
7 One was the rural road, the Rustic Road Functional Master
8 Plan, the Legacy Master Plan, and when I read this master
9 plan, I have to think about what is the overall goal of this
10 master plan and that is to preserve viable farmland. I don't
11 have all my quotes in front of me, but to, and that the
12 residential development really is ancillary to the
13 preservation of the farmland. It is not a situation where we
14 just look at the zone, and gee, by golly, we have to allow
15 suburbanization or a mansionization of the Ag reserve with
16 mini estates. The goal was to preserve agriculture, once
17 again, as the Chairman says, he quoted it from the master
18 plan, agriculture as the preferred use. And so I think that
19 the council has not changed that, we've had no amendment,
20 and I must abide, in looking at this preliminary plan, by
21 the master plan, and I think the intent of the master plan
22 was to not allow a subdivision of this kind to go forward
23 with this technology because it would upset the intent as to
24 the density in the plan. So I will not support this plan.

1 CHAIRMAN BERLAGE: If I could ask a follow up question
2 based on what Commissioner Wellington just said, and you're
3 correct that during the last discussion I was very focused,
4 and I'm still very focused, on page 17 of the master plan,
5 which is actually, seemed to be so critical to those writing
6 the plan that they put it in a big box and what it says is,
7 you quoted part of it, but I think it's worth quoting the
8 whole thing: The population holding capacity within the
9 agricultural preservation study area is governed to a large
10 extent, and I am going to ask staff question and I'd like
11 Mr. Harris to respond as well, so get ready. The population
12 holding capacity within the agricultural preservation study
13 area is governed to a large extent by the suitability of
14 land to support septic systems as regulated by the
15 Montgomery County Department of Environmental Protection.
16 This policy results in a population holding capacity that is
17 less than the zoned population holding capacity. And the
18 next sentence, which I find very critical says: This perk
19 policy is one of the most significant in limiting population
20 density within the study area. This perk policy is one of
21 the most significant in limiting population density within
22 the study area.

23 And my question is do we really think that in 1994 the
24 council intended to abandon a limit in a master plan that it

1 had said was most significant when it was reviewing a Board
2 of Heath Regulation that had been sent to it by the
3 executive branch, that doesn't even really have a role in
4 master plans. Wouldn't they have amended the master plan
5 itself if they meant to abandon a most significant limit of
6 this type?

7 MS. CONLON: Well, lacking participation by Community-
8 Based Planning, who couldn't stay or be here today, I think
9 I have to point to their, their testimony in the staff
10 report, and the conclusion that Judy Daniel, who was
11 reviewing this plan, made was that a large part of this
12 holding capacity study applied to the 5-acre zoning. And
13 that it wasn't intended to limit the 25-acre zoning that was
14 being created as part of the master plan. That's the way I
15 read her interpretation within the staff report.

16 CHAIRMAN BERLAGE: All right, I respect your
17 interpretation, but then it goes at the bottom of that box,
18 it says you've got a number. It says population-holding
19 capacity based on septic system suitability, 20,000 dwelling
20 units. It's almost like, you know, that's the limit. You go
21 beyond that, you're in moratorium.

22 MS. CONLON: Right, and I'm afraid I can't tell you how
23 that number was generated.

24 CHAIRMAN BERLAGE: Does anybody know how many dwelling

1 units we have in the RDT zone?

2 MS. CONLON: I don't know.

3 CHAIRMAN BERLAGE: And I don't know whether it's above 20
4 or below 20, but my point again is that this notion that the
5 density was to be limited by the number of properties that
6 could actually perk, and support a traditional septic
7 system, it is not in any sense a footnote, it's not in any
8 sense a passing, an issue of passing importance. And the
9 council has always, always used the availability of sewer
10 service, or septic service as a land use planning tool. I
11 know there are those who want to put things in a different
12 box, you know, if you want to regulate density you should do
13 it in the zone, and when you're dealing with septic or
14 sewer, well that's a health issue. But in fact that's not
15 the history, and the council has always understood that the
16 extension of sewer for example is a critical tool in
17 controlling land use. And I think it's logical, and indeed
18 it says right here, that in 1980 they intended the
19 availability of septic to be likewise a land use tool, a way
20 of limiting land use.

21 COMMISSIONER ROBINSON: Unfortunately, the Chairman
22 omitted one paragraph in the box that makes the situation

23 CHAIRMAN BERLAGE: No, you can read that paragraph; I know
24 about that paragraph, but go ahead.

1 COMMISSIONER ROBINSON: Although the population-holding
2 capacity is limited by this policy, it is imperative to
3 develop not only land use recommendations for this area,
4 well, they've already defined it as 25 acres or per
5 whatever, but a comprehensive public policy regarding the
6 private use of alternative individual or community sewer
7 systems outside the sewer envelope. So, that implies if you
8 read those two paragraphs in juxtaposition there is at least
9 an implication that there is some possibility under some
10 appropriate policy that you might be able to use alternative
11 systems. Where I disagree with Mr. Hanson and some of the
12 other witnesses, is that they say this, this plan says don't
13 use non-septic systems, conventional septic systems
14 anywhere. That is clearly not what the plan says, it doesn't
15 say that literally anywhere in it, and I've also read the
16 plan about 3 times. The conundrum I'm having is, first of
17 all I agree with the Chairman, and I agree with Commissioner
18 Wellington that in 19__ when this plan was passed, Royce
19 Hanson and others looked down the road and they saw that
20 alternative systems were going to come along. And I said
21 last time I didn't care whether it was a soundman system,
22 sound.

23 CHAIRMAN BERLAGE: Sand mound.

24 COMMISSIONER ROBINSON: Sand mound, thank you.

1 CHAIRMAN BERLAGE: Say it 6 times fast.

2 COMMISSIONER ROBINSON: I must have lost some sleep over
3 this case last night, but anyway, I didn't care whether it
4 was a sand mound technology or was it advanced Martian sewer
5 technology, clearly, Royce and the drafters of this plan
6 looked down the road, and they saw that there was going to
7 be something come along that would be other than
8 conventional septic. And even if you look at the council
9 resolution, I don't think Mr. Harris has read it quite
10 right, and we'll see if I can find that in the paper. You
11 read it to say that you were supposed to help you develop to
12 the density. That's not what it says. It says, explore with
13 applicants ways in which particular site restrictions,
14 whatever they are, may be dealt with to allow development,
15 allowed by zoning, to be constructed. In other words, if you
16 read that language and you put the most logical
17 interpretation on it, it says if the zoning--and then
18 necessarily the master plan, the purpose of the master plan
19 and all the findings we have to make--allows a certain type
20 of development and you can use sand mounds to do it then go
21 ahead and use sand mounds. Maybe, and the maybe is it
22 doesn't say, authorize us to say, use sand mounds to go to
23 the maximum density. It says if you're going to do this
24 health and safety thing with sand mounds, or whatever

1 technology, you have to do it in a way that's consistent
2 with the zone. The way the zone is interpreted through the
3 master plan and the zoning regulations.

4 CHAIRMAN BERLAGE: And it's not directed to us. It's
5 directed to the Department of Health.

6 COMMISSIONER ROBINSON: It's directed at the Department of
7 Health, it's a health regulation and on its face it doesn't
8 affect our zoning authority and it's not intended to be
9 inconsistent. So, with our guidance under the applicable
10 master plan, it's irrelevant. It's relevant only in the
11 sense that council's saying be a little more liberal if you
12 think that you can use this technology and it won't affect
13 health and safety. So, what we're coming down to is, the box
14 the Chairman's referring to. Okay, septic is a limiting
15 device. Where we don't have problems with septic, then we
16 get into the Thompson Farm Case, which I reversed myself on
17 twice and reluctantly voted for, because it was where things
18 could perk, and I didn't see how we could deal with the
19 cluster issue. I think the cluster issue is Board policy it
20 can be done. It was not, it was septic. That's right, it's
21 completely [inaudible] 100% septic. So, I don't know, I
22 think that there's a threshold issue here, where you're
23 going to say no sand mounds period, or we're going to look
24 at both paragraphs in that box, and we're going to say when