IN RE: **PLANNED UNIT DEVELOPMENT** 4th Election District 4th Council District **(10630 Red Run Blvd. fka** **10700 Red Run Blvd.)** **RED RUN STATION - LOT 1** Owings Mills Investment Properties, II, LLC, *Owner* Enterprise Housing Corporation, *Developer*	* * * * * *	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS FOR BALTIMORE COUNTY **CASE NO. 04-0670**

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ADMINISTRATIVE LAW JUDGE'S OPINION AND ORDER ON PLANNED UNIT DEVELOPMENT (PUD)

This matter comes before the Office of Administrative Hearings (OAH) for a hearing pursuant to § 32-4-245 of the Baltimore County Code (B.C.C.), which governs planned unit developments ("PUD"). Owings Mills Investment Properties, II, LLC, *Owner*, and Enterprise Housing Corporation, *Developer/Applicant* (herein known as "Developer") seeks approval of a Development Plan (the "Plan") prepared by Colbert Matz Rosenfelt, Inc., for Red Run Station – Lot 1 (the "subject property"). The proposed development is more particularly described on the seven (7) sheet redlined Plan submitted into evidence and marked as Developer's Exhibit 1.

On July 6, 2015, the Baltimore County Council approved Resolution No. 56-15 (Developer's Exhibit 7, pp. 4-5) finding that the Red Run Station PUD is eligible for Baltimore County review in accordance with § 32-4-241 of the B.C.C. The site is 2.85 acres, more or less, within the Urban Rural Demarcation Line (URDL) and zoned ML-IM. The proposal is to construct a 72-unit, multi-family development on the subject property.

A Development Plan Conference (DPC) was held between the Developer's consultants and various Baltimore County agencies, to consider the project. In this case, the DPC was held on March 30, 2016. At the DPC, the Baltimore County agencies responsible for the review of the

Development Plan submit written comments regarding the compliance of the Development Plan with the various Baltimore County regulations governing land development in the County. The Hearing Officer's Hearings were held on April 22, 2016, June 9, 2016, June 10, 2016 and June 29, 2016.

The property was posted with the Notice of Hearing on March 25, 2016 for 20 working days prior to the hearing, in order to inform all interested citizens of the date and location of the hearing. Appearing at the public hearings on behalf of the Developer was Michael Bainum, with Enterprise Homes, Robert S. Rosenfelt and Stuart Darley, both with Colbert Matz Rosenfelt, Inc., the engineering firm that prepared the Plan, Jeff Paxson, with Pax-Edwards, LLC, Esra Soytutan, with Bradley Site Design, Mickey Cornelius, P.E. with the Traffic Group, Michael Staiano with Staiano Engineering, Inc., and Nancy Liebrecht, AIA, with Marks-Thomas Architects. Jason T. Vettori, Esquire and David K. Gildea, Esquire with Smith, Gildea & Schmidt, LLC, appeared on behalf of the Developer. Several members of the community as well as members of the Owings Mills Corporate Roundtable attended the hearing in opposition and were represented by J. Carroll Holzer, Esquire.

Representatives of the various Baltimore County agencies who reviewed the Plan attended the hearing, including the following individuals from the Department of Permits, Approvals and Inspections (PAI): Darryl D. Putty, Project Manager; Dennis A. Kennedy, Development Plans Review (DPR); Jun Fernando, Office of Zoning Review, and LaChelle Imwiko, Real Estate Compliance. Also appearing on behalf of the County were Jenifer Nugent, Department of Planning (DOP), and Steve Ford and Robert Wood, both with the Department of Environmental Protection and Sustainability (DEPS).

Agency Witnesses

The first County agency reviewer to testify was Jun Fernando, from the Office of Zoning Review. Mr. Fernando testified that he reviewed the redlined Development Plan and recommended approval of same, provided the Modifications of Standards were approved by the Administrative Law Judge (ALJ).

Dennis Kennedy from DPR was the next County witness to testify. Mr. Kennedy indicated that the Developer had satisfied all of his agency's Development Plan Conference comments, and he too recommended approval of the Plan. Mr. Kennedy noted that a "suitable outfall" is shown on the Plan, which drains onto the adjacent State Highway Administration (SHA) property. Mr. Kennedy noted that the stormwater management outfall was approved in a prior development case involving this property. Finally, Mr. Kennedy testified the Developer conducted noise assessments, and it was determined that the ambient noise will not be above the County's threshold.

LaChelle Imwiko, from Real Estate Compliance, explained that she ensures that existing and proposed rights-of-way are properly labeled and conveyed to Baltimore County. Ms. Imwiko indicated that the redlined plan addressed all concerns raised by her agency, and she recommended approval of same.

Jean Tansey, the County's Landscape Architect, testified that a schematic landscape has been approved for the project, which was marked as Developer's Exhibit 3B. Ms. Tansey also explained that the Developer received a waiver of Local Open Space requirements, and that the fee in lieu of providing the required open space was $0, pursuant to Resolution 90-15. County Exhibit 1.

Steve Ford indicated he appeared at the hearing as a representative of the Stormwater Management, Groundwater Management, and Environmental Impact Review sections of DEPS. Mr. Ford testified that all three (3) reviewing sections recommended approval of the PUD Development Plan.

The final agency reviewer was Jenifer Nugent from the DOP. Ms. Nugent testified the DOP reviewed and approved the Pattern Book (Developer's Exhibit 7) and that Developer satisfied all Baltimore County requirements. As such, the DOP recommended approval of the Plan.

Developer's Case

The first witness in Developer's case was Michael Bainum, a senior development manager with Enterprise Homes. Mr. Bainum explained his role in this project, and indicated that Enterprise was attracted to the site given its convenient location near roadways and employment opportunities. Mr. Bainum testified that Enterprise has a successful track record with over ten (10) completed projects in Baltimore County, and he believes the project would be developed to the full extent of the Plan. In response to questions on cross-examination, Mr. Bainum described other projects in the Baltimore County area constructed by Enterprise Homes, which he believed were similar in size and scope to the Red Run Station project. In response to questions concerning noise from adjacent roadways and an SHA equipment yard, Mr. Bainum indicated the Developer studied that issue and determined that the topography of the land (specifically, a berm on the east side of the property) mitigates those concerns.

The next witness in Developer's case was Robert S. Rosenfelt, a professional engineer accepted as an expert. Mr. Rosenfelt described in general the layout of the development, and he reviewed the redline changes shown on the Plan and the Modification of Standards contained in the Pattern Book. Mr. Rosenfelt opined that the Plan satisfies all requirements set forth in the

Baltimore County Zoning Regulations (B.C.Z.R.) and B.C.C. In response to questions from Mr. Holzer, the witness opined the site was "underutilized" even though a hotel is apparently being proposed on the adjacent parcel. Mr. Rosenfelt conceded this is not a "spacious" site, which drove the need for the requested Modifications of Standards.

Protestants' Case

Several members of the adjoining business and residential communities testified in opposition to the project. Area residents complained that they were never provided proper notification of prior meetings in this case, and generally expressed concern with low income housing being situated in the area. They each also identified traffic and safety concerns associated with Red Run Boulevard, which they described as a five-lane roadway with a large volume of traffic traveling at high rates of speed (i.e., well above the posted speed limit).

Loralea Sanderson who is employed by Centric Business Systems, Inc., a nearby company with 200 employees, testified she was strongly opposed to the project. Ms. Sanderson explained that after meeting with the County's Economic Development office, her business decided to relocate here five (5) years ago, given the convenient location and presence of corporate neighbors like T-Rowe Price and CareFirst. Ms. Sanderson explained that she does not believe a residential use is proper for the subject property, and she expressed concern with property values and security issues which could confront area businesses.

Brenda Crabbs, Executive Director of the Owings Mills Corporate Roundtable, was the next witness in Protestants' case. Ms. Crabbs testified she has held this post since 1994 and prior to that time worked for Baltimore County. Ms. Crabbs believes this is the wrong location for the project, and she testified area businesses were encouraged to locate in the Red Run corridor and did so in reliance upon plans shown to them by Baltimore County. Ms. Crabbs testified Owings

Mills has an abundance of multi-family projects and that workforce housing is not needed at this location. She is also concerned with the loss of manufacturing zoning, which is of great value to the business corridor. In response to questions on cross-examination, Ms. Crabbs testified her organization does not consider the Soldiers Delight PUD project (Developer's Exhibit 12), which also involves single family dwellings constructed in a manufacturing zone, to be within the Red Run employment corridor.

Nick Mangione was the next witness in Protestants' case. Mr. Mangione explained he has been in the hotel business since 1995, and operates Hilton Garden and Hampton Inn Hotels in the Owings Mills area, which employ approximately 100 people. Mr. Mangione testified he has invested approximately $20 million in constructing these hotels in Owings Mills and the vast majority of his hotel clientele comes from business travel generated by corporations located in this area. The witness stated that in his opinion it was not common to have a hotel located next to apartments, and he explained that the Red Run employment corridor is an economic engine for this region, and that the proposed apartments would do nothing to stimulate growth in the area.

The next witness was James S. Patton, a professional engineer accepted as an expert witness. Mr. Patton explained he became involved in this case in approximately November, 2015, and advised that he reviewed the plans and other pertinent documents in the case. Mr. Patton provided numerous opinions concerning this project, as follows:

- As shown on Protestants' Exhibit 6, Mr. Patton opined the subject property is a panhandle lot, and that Developer has provided no documentation to prove that it has the legal right to cross Lot 2 and gain access to Lot 1 (i.e., the subject property).

- With respect to the requested Modifications of Standards, the witness opined those were self-imposed, and the witness also testified that the subject property is not unique in any way, which should result in the denial of the requested modifications.
- Although the Red Run Station PUD Development Plan indicates that a landscape easement was to be abandoned, the plat for the property (marked as Protestants' Exhibit 6) does not indicate that a landscape easement was ever created on the lot.
- The witness opined that the DOP incorrectly interpreted Master Plan 2020, citing page 66 thereof which emphasizes the need to preserve manufacturing parcels for continued growth of businesses in the region.
- Mr. Patton also opined the Developer provided the wrong address for this project, such that the community could have been misled as to the proposed location for the multi-family housing project. In fact, Protestants made this argument in a Motion to Dismiss at the conclusion of the Developer's case, although that Motion was denied by the undersigned. As explained at the hearing, the PUD application and related materials (Developer's Exhibit 24) included the correct tax identification number and parcel information for the property, such that proper location and address information was available to the public.

Next was Kenneth Moreland, the Chief Financial Officer of T. Rowe Price Group, Inc., and the Chairman of the Owings Mills Corporate Roundtable. Mr. Moreland testified that T. Rowe Price owns approximately 1.2 million sq. ft. of office space in the Owings Mills area, and that the

current proposal conflicts with Master Plan 2020, which designates the area as an employment corridor. Mr. Moreland testified that T. Rowe Price located in this area in reliance upon the Master Plan, and the witness feared that if this "small development" was permitted, it would have a "domino effect" resulting in the loss of valuable manufacturing zoned lands. In response to questions on cross-examination, Mr. Moreland testified he could not recall which members were in attendance when the Roundtable voted to oppose this project, although he was sure that a majority or quorum was present. In addition, with respect to other approved residential developments in the Owings Mills area located on manufacturing zoned property, the witness stated that those were not of particular concern since they were located on the fringe of the employment district, not within the heart of the employment corridor on Red Run Boulevard.

Mary Ellen Morrison, the Executive Director of the Reisterstown-Owings Mills-Glyndon Chamber of Commerce ("Chamber"), testified that her organization was also opposed to this project. She testified that the Chamber is a strong supporter of the Master Plan and the Red Run Boulevard employment corridor, and does not believe that this project is consistent with Master Plan 2020.

The Protestants presented testimony from two additional expert witnesses, the first of whom was Christopher Jakubiak, a land use planner. Mr. Jakubiak testified he reviewed the plans, Pattern Book, and all agency comments in connection with this project. The witness opined that Master Plan 2020 is "direct and clear" in its declaration that the Red Run corridor should be used for commercial development, not housing. The witness did not believe that the property's T-5 transect designation undermines this opinion, given the transect does not set aside the zoning and is subsidiary to the Master Plan's specific recommendation for employment in this corridor. In fact, the witness testified that on page 62 of Master Plan 2020 (Protestants' Exhibit 7) the County

recognized that during the recent economic downturn industrial land had been used for residential projects, and that a "course correction" was required to avoid making the same mistakes in the future. Mr. Jakubiak was also critical of the DOP's finding that the project was consistent with the Master Plan, and he felt that agency's analysis was "very light." The witness also noted the project would have a 17 ft. rear yard setback, and could be located within 20 to 25 ft. of a road leading to a State Highway Administration (SHA) maintenance shop, factors he believed caused the project to be inconsistent with the general welfare and the standards of B.C.Z.R. § 502.1, which are incorporated into the PUD regulations.

On cross-examination, the witness was questioned further concerning the property's T-5 transect designation. Mr. Jakubiak testified that the project as proposed was not consistent with the principles of the T-5 transect, which would dictate that the proposed building should be close to the roadway, not tucked into the rear of a cul-de-sac in an industrial park. The witness was directed to pages 42-43 of Master Plan 2020 concerning workforce housing. Mr. Jakubiak acknowledged that there exists a need for such housing, but he stressed that Master Plan 2020 emphasizes that low income units should be included within any overall housing project being built, and that such housing should be located within a walkable and accessible area near parks and other open spaces, not isolated near a highway. In short, the witness opined that workforce housing "ought to be integrated into the community fabric," and he noted it would be quite dangerous for children to attempt to cross Red Run Boulevard to reach the nature trail described in the Pattern Book.

The final witness in the Protestants' case was John Hentschel, a real estate broker and appraiser accepted as an expert witness. Mr. Hentschel provided an analysis of the project from the perspective of a real estate investor, and he noted the danger of residential projects encroaching

onto employment lands. Mr. Hentschel testified that industrial zoned land is cheaper than other land, and that converting industrial properties to residential use would greatly increase the return for an investor. The witness also testified that industrial uses are often 24/7 operations that frequently generate a great deal of noise and truck traffic. He explained these inherent characteristics of industrial operations will elicit complaints from residential users, and that once residential uses emerge in manufacturing zones the "rules have changed." In summary, the witness opined that the PUD procedure is an ad hoc process that causes unintended consequences; i.e., the incursion of residential uses will drive industrial users elsewhere.

Developer's Rebuttal Case

The Developer presented additional testimony from professional engineer Robert Rosenfelt to rebut the expert opinions provided by James Patton, P.E. Mr. Rosenfelt first testified Developer has documented legal access to the site, as shown on the reciprocal easement agreement and plat identified as Developer's Exhibit Nos. 25 and 26. According to Mr. Rosenfelt, these documents provide the Developer with access to the site from Red Run Boulevard.

Next, the witness stated that Mr. Patton was in error, and that a request for modification under the PUD regulations does not require the Developer to satisfy the requirements of B.C.Z.R. § 307.1 and the case law interpreting that provision. The witness also testified that in his opinion the decisions in this case approving the schematic landscape plan and a local open space waiver were "operative events" which could have been appealed to the County Board of Appeals. The witness testified no such appeals were filed in this case, and he opined the issues were now moot.

The witness also testified that the Developer submitted a revised pattern book on or about September 3, 2015 (marked as Developer's Exhibit 27), and Mr. Rosenfelt noted that the original pattern book referenced the incorrect statute in evaluating project compatibility. The witness noted

the correct standards are set forth at B.C.C. § 32-4-402.1, since the PUD is located in a T-5 transect overlay, a community enhancement area and is adjacent to an interstate highway. Compare Developer's Exhibit 7 (pattern book dated December 30, 2015) with Developer's Exhibit 27 (pattern book dated September 3, 2015). Finally, with regard to the address of the site, the witness testified Developer's Exhibit 14, a site plan to accompany the PUD application, provided the correct tax account, parcel and deed reference for the site. As such, Mr. Rosenfelt opined that the project and property was correctly identified in both the PUD application and all subsequent notices and documents pertaining to the project.

Developer's final witness was Uri Avin, an urban and city planner accepted as an expert witness. After describing his extensive background and experience, Mr. Avin testified the transect concept used in Master Plan 2020 has "primacy" and supersedes other sections of that plan and County policy. The witness stated that while Baltimore County is a mature and successful political subdivision whose economic goals have been met, the region's housing goals have not been. As such, the witness opined Mr. Jakubiak was "precisely wrong" in asserting that the transect overlay does not trump the Master Plan consistency analysis. The witness noted the site is situated in a T-5 transect which allows apartments, and though it is zoned Manufacturing, Light (M.L.) the surrounding properties are used for office and retail. The witness emphasized Master Plan 2010 was more concerned with the County's economic development, while Master Plan 2020 focuses upon vibrant communities and revitalization.

Mr. Avin also opined that the Red Run corridor was in fact a good area for workforce housing. The witness noted that most workforce housing in the County is located within marginal areas, while the proposed project would be located in a higher performing locale. The witness also testified the "site has a long view towards green edges," which he also believed was an appropriate

setting for the proposed housing project. In addition, the site has no frontage on Red Run Boulevard, which caused the witness to opine it would not be a good candidate for an office or retail use. In conclusion, Mr. Avin opined the Developer satisfied both the PUD compatibility requirements and the special exception standards set forth at B.C.Z.R. § 502.1.

Legal Issues

At the conclusion of the hearing the parties filed simultaneously memorandums addressing certain legal issues. Each of the substantive legal arguments is addressed below.

A. Master Plan 2020

Throughout the hearing numerous witnesses provided testimony concerning whether in their opinion the plan was in conformity with Master Plan 2020. Of course, experts for the Developer opined the plan was consistent with Master Plan 2020 while Protestants' expert opined to the contrary. For the most part, the crucial issue focused on whether the transect designation supersedes other references in the plan (as Mr. Avin opined) or whether, as Mr. Jakubiak opined, the project would contravene the "direct and clear" preference in the plan for commercial uses. This appears to be a novel issue, but I do not believe it is one that must be decided in this case based on the text of the County Code.

In fact, the County Code does not require a PUD development plan to conform to the Master Plan. While such conformity is required in "regular" development plan cases per B.C.C. § 32-4-102, a specific rule is provided for PUD cases. In such matters, the plan must conform with the goals and recommendations of "one or more of the following: the Master Plan, area plans, or the Department of Planning." B.C.C. § 32-4-245(c)(5). And under long-established principles of statutory construction, a specific statute controls over the more general provision. Len Stoler, Inc. v. Wisner, 223 Md. App. 218, 235 (2015). It is undisputed the DOP reviewed and approved the

pattern book and recommended this project be approved. That is all that was required under the County Code.

B. Community Benefit

Protestants' contend the community benefit of $20,000 is "woefully inadequate." And it might be, given it is just .03 percent of the value of this project, assuming Protestants' math is correct. In any event, the $20,000 amount was set forth in the PUD resolution and the ALJ may not "alter the community benefit." B.C.C. § 32-4-245(b)(4).

C. Modifications of Standards

Protestants' contend the requested Modifications of Standards should be denied, and they presented expert testimony to the effect the requests should be "treated the same as variances" and denied because they were self-imposed. However, the applicant in a PUD case is not required to satisfy a variance standard in seeking exceptions to zoning regulation requirements, which is a defining feature of a PUD. Instead, the correct standard is contained in B.C.C. § 32-4-245, which permits the ALJ to modify underlying zoning requirements "upon a finding that they are necessary to achieve the intent and purpose of this section."

The Code also requires the ALJ to state how any approved modification of standards would impact surrounding uses and promote the public interest. B.C.C. § 32-4-245(a)(3). In this case only four modifications are requested: two pertain to parking at the site, one concerns a rear yard setback and the final request pertains to the height of the building. Developer proposes to provide approximately 90% of the required parking spaces, and seeks to permit 14 spaces (in lieu of 12) without a landscape island. These are in my opinion de minimis requests that are internal to the site. As such, I do not believe they will impact surrounding uses. The building would be 60 ft. in height in lieu of the maximum 50 ft., which would not be out of place or context in this area, which

features hotels and office complexes of a similar size. As such, I do not believe this modification would have a negative impact upon surrounding uses.

The rear yard setback of 17 ft. would be less than 50% of the 40 ft. required. But that setback adjoins the SHA maintenance facility to the north of the site. While I agree with Mr. Jakubiak this is not an ideal backdrop for a residential use, I at the same time do not believe the reduced setback will have any impact upon the SHA facility or other surrounding uses. The modifications are necessary and in the public interest in that they will facilitate the development of workforce housing on an underutilized site.

D. Economic Development Issue

Protestants presented testimony from appraiser John Hentschel, as detailed earlier in this order. Mr. Hentschel's testimony was interesting and informative, but not particularly germane to the issues which must be resolved in this case. The witness provided convincing testimony that allowing residential development on employment lands was a bad policy choice from an economic perspective. And that approving such uses through an ad-hoc procedure (i.e., the PUD process) would prove damaging to industrial users, who would be driven elsewhere.

Though he was a credible and persuasive witness, Mr. Hentschel's testimony spoke to broader policy issues rather than the specific factors by which a PUD is evaluated under B.C.C. § 32-4-245(c). His testimony dovetails to some extent with Protestants' argument regarding the lack of master plan consistency (i.e., specific language therein discouraging residential uses intruding upon the Red Run employment corridor) but as noted earlier a PUD plan need not conform to the Master Plan.

E. Delegation of Legislative Power

In connection with their Master Plan conflict argument Protestants also contend Council Bill 5-10 delegated to the DOP the authority to make recommendations for PUD approval without providing standards to guide that agency's decision making process. That may be the case, but I will not decide that issue at this time.

While I understand Protestants need to present and preserve such issues for appellate review, the long-standing preference is for courts and agencies to avoid constitutional issues when possible. VNA Hospice v. Dept. of Health and Mental Hygiene, 406 Md. 584, 604-05 (2008). Council Bill 5-10 was enacted nearly 7 years ago, and a challenge could well be time barred. In addition, under Maryland law a government official/agency is presumed to have performed her duties in a lawful manner and courts give "considerable weight" to the testimony of agency representatives. Caldes v. Elm Street Dev., 415 Md. 122, 143 (2010); Md. Securities Comm'r v. U.S. Securities Corp., 122 Md. App. 574, 588 (1998).

As such, Protestants may have an uphill battle in attempting to challenge the constitutionality of Council Bill 5-10. In any event, this complex issue was only briefed by Protestants and without the benefit of further guidance on this point I will not address this issue.

County Code Requirements

The Hearing Officer can approve a PUD Development Plan only upon finding:

(1) The proposed development meets the intent, purpose, conditions, and standards of this section;

(2) The proposed development will conform with § 502.1.A, B, C, D, E and F of the Baltimore County Zoning Regulations and will constitute a good design, use, and layout of the proposed site;

(3) There is a reasonable expectation that the proposed development, including development schedules contained in the PUD development plan, will be developed to the full extent of the plan;

(4) Subject to the provisions of § 32-4-242(c)(2), the development is in compliance with § 430 of the Baltimore County Zoning Regulations; and

(5) The PUD development plan is in conformance with the goals, objectives, and recommendations of the Master Plan, area plans, or the Department of Planning.

B.C.C. § 32-4-245(c)(1)-(5).

In this case, the Developer presented evidence which, when coupled with the findings of agency witnesses, establishes each of these elements. The DOP indicated in its final report dated March 30, 2016 that the PUD Development Plan was in conformance with Master Plan 2020 and the compatibility requirements of B.C.C. § 32-4-402.1. The DOP ultimately recommended the plan be approved, which means the plan "is in conformance with the goals, objectives, and recommendations" of that agency per B.C.C. § 32-4-245(c)(5). Mr. Rosenfelt testified the Developer satisfied all requirements of the County Code and complied with B.C.Z.R. § 430. Mr. Bainum described the Developer's completed projects in Baltimore County, and opined the development would be completed to the full extent of the Plan, so B.C.C. § 32-4-245(c)(3) is satisfied. Mr. Avin opined Developer satisfied the special exception standards contained in B.C.Z.R. § 502.1. In light of this testimony, and the positive recommendation of all County reviewing agencies, the PUD Development Plan shall be approved.

The participation and opposition of the business community is somewhat unprecedented in a residential development case. But the concerns raised by business leaders (and the community)

are understandable. They chose this location in reliance upon the zoning and the Master Plan's designation as an employment corridor. They believe the PUD is an ad-hoc process which undermines their long-range planning and substantial capital investments in the Red Run corridor.

The testimony on these points was substantial and convincing, but cannot justify denial of the PUD. The PUD is, by definition, an ad hoc procedure which when approved by the County Council "grants a variety of uses within a development that would otherwise not be permitted under the pre-existing … zoning regulations." Maryland Overpak Corp. v. Balto. City, 395 Md. 16, 22 n. 4 (2006). The Resolution authorizing this PUD stated the underlying zoning "uses permitted should be amended or modified to allow apartments." Developer's Exhibit 7, p. 4. Under the County Code, the ALJ may not alter the amendments or modifications imposed by the County Council." B.C.C. § 32-4-245(b)(4).

There is authority for the proposition that a PUD should be designed to facilitate a variety of uses on a large tract of land. In the leading treatise on zoning and land use law, a PUD is described as "an instrument of land use control which … permits a mixture of land uses on the same tract." 5 Rathkopf's Law of Zoning and Planning, § 63.01, at 63-4. The treatise, which is frequently cited by Maryland courts, notes the PUD "is a zoning technique that encompasses a variety of residential uses, and ancillary commercial, and … industrial uses." Rouse Ltd. Partnership v. Prince George's Co., 138 Md. App. 589, 623-24 (2001), citing Rathkopf's. The designation of a 2.85 acre site proposing only one use would seem to contravene these principles, but the hearing officer is bound by the Council's determination the "proposed site … is eligible for County review." Developer's Exhibit 7, p.5

THEREFORE, IT IS ORDERED by this Hearing Officer/Administrative Law Judge this **14th** day of **September, 2016**, that the seven (7) sheet redlined Development Plan known as **"RED RUN STATION – LOT 1"** (Developer's Exhibit 1), be and is hereby **APPROVED.**

Any appeal of this Order shall be taken in accordance with Baltimore County Code, § 32-4-281.

____Signed_____
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/dlw