

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0738

September Term, 2014

CITIZENS OF LINGANORE OPPOSED
TO GRIDLOCK, ET AL.

v.

BOARD OF COUNTY COMMISSIONERS OF
FREDERICK COUNTY, ET AL.

Hotten,
Berger,
Arthur,

JJ.

Opinion by Berger, J.

Filed: August 25, 2015

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland court as either precedent within the rule of *stare decisis* or as persuasive authority. Md. Rule 1-104.

This appeal arises from an opinion and order of the Circuit Court for Frederick County, affirming the decisions of the Frederick County Board of County Commissioners (“BOCC”). The appeal challenged two actions of the BOCC: (1) the BOCC’s approval of Ordinance No. 13-14-642 (the “Oakdale Ordinance”), which rezoned certain portions of the Eaglehead-on-the-Lakes Planned Unit Development (the “Oakdale PUD”), and (2) the BOCC’s approval of an Adequate Public Facilities Ordinance Letter of Understanding (the “APFO LOU”).

On appeal, Appellants¹ present four issues for our review, which we have consolidated and rephrased as three issues:²

¹ The Appellants are a community group, Citizens of Linganore Opposed to Gridlock, also referred to as “CLOG,” and ten individuals: Anne-Catherine Campinos, Saul El-Or, Ian Frank, John Hagerhorst, Stephanie Koziski, Michael J. Manos, Dale Ponce, Elaine Reinhold, Madeline Reinhold, and Linda-Carol Woody.

² The questions, as posed by Appellants, are:

1. Is rezoning ordinance No. 13-14-642 facially defective as a matter of law because it fails to make findings of fact and reach conclusions of law on issues contested before the BOCC necessitating a remand for the promulgation of a written agency decision supported by facts and legal conclusions?
2. Is the BOCC’s rezoning action is [sic] *ultra vires* and void because (1) the 2012 land use map provides no legal basis for this floating zone application; and (2) the rezoning cannot alternatively satisfy Maryland’s change/mistake statute?
3. Does the lack of a height limit in the underlying PUD zone violate Maryland’s uniformity requirement, thus

(continued...)

1. Whether the BOCC's approval of the revisions to Frederick County's Comprehensive Plan is valid.
2. Whether the BOCC's adoption of Ordinance No. 13-14-642 is valid.
3. Whether the BOCC's approval of the APFO LOU is valid.

As we shall explain, we shall affirm the judgment of the Circuit Court for Frederick County.

FACTUAL AND PROCEDURAL BACKGROUND

This appeal is but one dispute among many relating to proposed development in the Lake Linganore area of Frederick County. Appellee Oakdale Investments, LLC ("Oakdale") is the owner of approximately 1,354 acres of real property ("the Property") in the New

² (...continued)

invalidating the rezoning action which is predicated on the PUD zone?

4. Does the BOCC's failure to substantively assess population change under Maryland Land Use Code § 4-204(B)(1) render the rezoning approval invalid?
5. Is Appellee Oakdale's Traffic Impact Analysis ("TIA") so materially flawed that the BOCC's approval of the rezoning based on findings that it complied with the county's adequate public facilities ordinance was arbitrary, capricious, and unsupported by evidence in the record?

Although Appellants include a question presented about the BOCC's findings with respect to population change, Appellants include no actual discussion of the population change issue in their brief.

Market Planning Region of Frederick County.³ The Property constitutes the remaining undeveloped portion of the original Lake Linganore at Eaglehead Planned Unit Development (“the original PUD”), which was originally zoned as a Planned Unit Development (“PUD”) in the late 1960s. The original PUD was the first PUD in Frederick County, and the Property was zoned as a PUD from 1967 until 2008. Over 8,000 individuals reside in the Lake Linganore area today.

A brief history of the development and attempts at development in the Lake Linganore area is useful to provide context for the instant appeal. The original PUD was approved in July of 1968. It included approximately 2,200 acres with a development potential of approximately 7,500 to 9,800 dwellings. During the late 1960s and early 1970s, thousands of residential lots were recorded in the original PUD and millions of dollars were expended on infrastructure in the area. Due to the economic downturn in the mid-1970s, however, the marketability of lots in the PUD decreased, ultimately resulting in the original developers declaring bankruptcy. In the years since, various changes of ownership and partial development have occurred.

In 2008, the BOCC adopted a revised New Market Region Plan that downzoned significant portions of the original PUD by removing the Low Density Residential land use

³ The Property is located on the north side of Old National Pike, the west side of Maryland Route 75, the east side of Linganore Road, and the south side of Gas House Pike.

plan designation and PUD zoning. As a result, the developable density was reduced from more than 4,000 residential units to approximately 2,500 residential units.

In 2010, the BOCC downzoned additional portions of the original PUD through the enactment of Ordinance No. 10-05-540, entitled “Re: Comprehensive Zoning Map for Frederick County.” This downzoning was part of the enactment of the Frederick County 2010 Comprehensive Plan. As a result of the 2008 and 2010 actions by the BOCC, the Property was in large part rezoned agricultural, and therefore, was no longer eligible for PUD designation.⁴

In 2010, Oakdale filed suit against Frederick County, asserting that the 2008 and 2010 actions violated constitutionally protected vested and contractual rights established over multiple decades.⁵ Additionally, Oakdale attempted to work with the BOCC to restore the PUD zoning and to execute an APFO LOU and a separate Developer Rights and Responsibilities Agreement (“DRRA”).

⁴ In Frederick County, with exceptions not relevant here, a PUD “may only be established where the tract of land receiving the PUD District has a County Comprehensive Plan Land Use designation of Low Density Residential.” Frederick County Code § 1-19-500.2(A).

⁵ Oakdale filed this suit as successor to the rights of Land Stewards, L.C.E., the previous developer of the Lake Linganore project. Land Stewards filed bankruptcy as a result of the 2010 action after its loan was foreclosed upon due to reduced loan to equity value given the impact of the 2008 and 2010 actions. That case, Case No. 10-C-003604, is still pending in the circuit court and is stayed pending the outcome of this appeal and the outcome of a separate appeal related to the Developer Rights and Responsibilities Agreement (Case No. 1273, September Term 2014).

Oakdale’s current plan for development consists of nine “villages” with twenty different neighborhoods. Pursuant to Oakdale’s plan, residential density will not exceed 3,235 dwelling units, with an additional 200,000-400,000 square feet of commercial uses. Oakdale proposes to engage in significant infrastructure improvements, including a new I-70/Meadow Road Westbound on-ramp and reconstruction of a bridge over Linganore Creek. In total, Oakdale plans to expend \$148,000,000.00 on regional infrastructure improvements.

In 2012, a new BOCC was elected. The new BOCC undertook the 2012 Comprehensive Plan Review, under which property owners could submit requests to restore land use designations that had been in place prior to the 2010 Comprehensive Plan. The 2012 Countywide Comprehensive Plan and Zoning Review was approved on September 13, 2012, and Resolution No. 12-19 articulated that the 2012 Countywide Comprehensive Plan and Maps replaced any prior plan and maps.⁶ Oakdale submitted a filing regarding the Property, requesting that the low density residential designation be restored. The BOCC approved Oakdale’s request, restoring low density residential designation to the Property.

⁶ A separate citizens group challenged the 2012 revisions to the Frederick County Comprehensive Plan in a declaratory judgment action in the Circuit Court for Frederick County. Judge Theresa Adams issued a decision on November 20, 2013, rejecting the citizens group’s challenge to the 2012 Land Use Maps. That decision was appealed to this Court and is captioned *Friends of Frederick County, et al. v. County of Frederick, Maryland*, Case No. 2159, September 2013 Term (filed August 11, 2015). We shall discuss this case further in Part I.

In October 2012, after the low density residential designation was restored, Oakdale applied for PUD designation for the Property. A public hearing was held before the Frederick County Planning Commission on May 22, 2013, after which the Planning Commission recommended approval of the Oakdale PUD by a 6-1 vote. A public hearing was held before the BOCC on June 18, 2013, after which the BOCC voted 4-1 to approve the Oakdale PUD and the DRRA, including the APFO LOU. On July 11, 2013, the BOCC restored PUD zoning and Phase I PUD Plan approval to the Property by Ordinance No. 13-14-642 (“the Oakdale Ordinance”).

On August 9, 2013, Appellants filed a petition for judicial review of the BOCC’s administrative decisions with respect to the Oakdale Ordinance and the approval of the APFO LOU.⁷ The circuit court held a hearing on March 10, 2014 and thereafter issued its written opinion and order on March 27, 2014, affirming each of the BOCC’s decisions. This appeal followed.

Additional facts shall be included as necessitated by our discussion of the issues.

STANDARD OF REVIEW

In reviewing the decision of an agency, we “look[] through the circuit court’s . . . decision[], although applying the same standards of review, and evaluate[] the decision of

⁷ As referred to in footnote 5, Appellants separately challenged the DRRA for the Oakdale project. The circuit court rejected Appellants’ challenge, and this Court affirmed. *See Citizens of Linganore Opposed to Gridlock, et al. v. Board of County Commissioners of Frederick County, et al.*, Case No. 1273, September Term 2014 (filed July 15, 2015).

the agency.” *People’s Counsel v. Surina*, 400 Md. 662, 681 (2007). We are “limited to determining if there is substantial evidence in the record as a whole to support the agency’s findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law.” *Hamza Halici v. City of Gaithersburg*, 180 Md. App. 238, 248 (2008) (internal quotation marks and citations omitted).

The “substantial evidence” test is defined as “whether a reasoning mind reasonably could have reached the factual conclusion the agency reached.” *Layton v. Howard Cnty. Bd. of Appeals*, 399 Md. 36, 48-49 (2007) (internal quotation omitted). “In applying the substantial evidence test . . . [we] must review the agency’s decision in the light most favorable to the agency, since decisions of administrative agencies are *prima facie* correct and carry with them the presumption of validity.” *Pollock v. Patuxent Inst. Bd. of Review*, 374 Md. 463, 476-77 (2003). “Furthermore, not only is the province of the agency to resolve conflicting evidence, but where inconsistent inferences from the same evidence can be drawn, it is for the agency to draw the inferences.” *Id.* at 477 (internal quotations omitted).

“We are less deferential in our review, however, of the legal conclusions of the administrative body and may reverse those decisions where the legal conclusions reached by that body are based on an erroneous interpretation or application of the [applicable] statutes, regulations, and ordinances” *People’s Counsel, supra*, 400 Md. at 682 (internal quotations omitted). “When determining the validity of those legal conclusions reached by the [administrative] body, however, a degree of deference should often be accorded the

position of the administrative agency whose task it is to interpret the ordinances and regulations the agency itself promulgated.” *Id.* (internal quotation and citations omitted). Thus, “[e]ven though the decision of the Board of Appeals was based on the law, its expertise should be taken into consideration and its decision should be afforded appropriate deference in our analysis of whether it was ‘premised upon an erroneous conclusion of law.’” *Id.* at 682-83 (internal citations omitted). Finally, in an administrative appeal, the appellant bears the burden of establishing an error of law or that the agency’s final decision was not supported by substantial evidence. *Taylor v. Harford Cnty. Dep’t of Soc. Servs.*, 384 Md. 213, 222-23 (2004).

DISCUSSION

I. 2012 Comprehensive Plan

The first issue before us is Appellants’ challenge to the 2012 Comprehensive Plan and Zoning Map approved by the BOCC. Appellants contend that the BOCC’s adoption of the 2012 Comprehensive Plan and Zoning Maps is invalid. Oakdale responds that the 2012 matter was resolved in separate litigation and is not property before this Court in this appeal.

A separate citizens group presented a similar challenge to the BOCC’s 2012 action in the case of *Friends of Frederick County, et al. v. County of Frederick, Maryland*, Circuit Court for Frederick County Case No. 10-C-12-3707. In a written opinion issued November 30, 2013, Judge Theresa Adams rejected the citizens’ group’s challenge to the 2012 action. That case was appealed to this Court, and Judge Adams’s opinion was affirmed.

See Friends of Frederick County, supra, Case No. 2159, September 2013 Term (filed August 11, 2015).

In the present case, the circuit court -- although not bound by Judge Adams's earlier decision -- based its reasoning on Judge Adams's specific findings. The circuit court explained:

In regards to Petitioners' second argument, Judge Theresa M. Adams of this [c]ourt in Case No. 10-C-12-3707 published a nisi prius decision that, although not controlling, held that the BOCC engaged in comprehensive rezoning, and not piecemeal zoning, when adopting the 2012 Comprehensive Plan and Comprehensive Zoning Map. Judge Adams set forth a thoughtful and detailed opinion based upon a voluminous record, multiple memorand[a] of law, and lengthy argument by counsel. After reviewing the opinion in her case, Judge Adams found the following:

- The 2012 Plan process reviewed the entire unincorporated area of the County (exclusive of the incorporated municipalities) - a total of 384,924 acres or 601.44 square miles. *See* Def. Mem. Exhibit D.
- Each of the eight (8) planning regions was reviewed by various Frederick county government agencies, including the Community Development Division that prepared spreadsheets and summaries for Adamstown, Brunswick, Frederick, Middletown, New Market, Thurmont, Urbana and Walkersville, with staff comments. *See* Def. Mem. Exhibit D.
- In addition to taking into account "summaries for each planning region," the process reviewed areas both "outside" and "inside" the Community Growth areas. *See* Def. Mem. Exhibit B at p.1.

- The Planning Commission and BOCC held multiple workshops, and extensive public hearings on the proposed changes, including to consider the merits of changing the zoning for the entire unincorporated area of the County. *See* Def. Mem. Exhibit A at pp.1-2; Def. Mem. Exhibit B at pp. 1-2.
- The process ultimately resulted in changes for more than 200 properties covering 9,537 acres (for which the Comprehensive Plan land use designations changed) and 4,166 acres with Comprehensive Zoning Map changes. *See* Def. Mem. Exhibit D.
- The 2012 Comprehensive Plan Update process was available to the public, and involved changes in the Comprehensive Planning or Zoning designations of more than 200 properties covering nearly 4,000 acres throughout the entire county. *See* Complaint ¶¶ 15(B), 15(E), 15(G).

Case No. 10-C-12-3707, p. 13. Judge Adams found that the record supported a determination that comprehensive zoning was performed properly, and that the contention of piecemeal zoning was without merit. Likewise, in the case before this Court, the repeated contention of piecemeal zoning is without merit. If the record shows piecemeal zoning at all, it is the 2010 Comprehensive Plan as it rezoned a large portion of [the] property, which had been under development, in stages, since the 1960s.

The propriety of the 2012 rezoning process has been resolved in this Court’s affirmance of Judge Adams’s order. *Friends of Frederick County, supra*, Case No. 2159, September 2013 Term ((filed August 11, 2015). Judge Kehoe, writing for this Court, held that the 2012 comprehensive rezoning was not unlawful. *Id.* We further held that the BOCC “engaged in comprehensive rezoning” rather than piecemeal rezoning, *id.*, slip op. at 21-22,

and rejected a claim that the rezoning action was *ultra vires*. *Id.* at 22-23. The opinion further addressed the validity of the 2012 Comprehensive Plan and Map, commenting that “there is nothing in the Land Use [Article] that prohibits a legislative body from enacting a comprehensive zoning map at the same time that it amends the comprehensive plan to be consistent with the zoning map.” *Id.* at 27. The opinion further rejected arguments that the 2012 rezoning process was improper because new comprehensive surveys and studies were not undertaken. *Id.* at 30-31. In sum, our opinion, authored by Judge Kehoe, held that the opponents of the 2012 rezoning process had “at best identified procedural irregularities” which the Court concluded were “matters of form rather than substance” that did not “amount to clear and affirmative evidence that the Plan and Map are invalid.” *Id.* at 31-32 (internal quotation and citation omitted).

In the present case, the circuit court’s rejection of Appellants’ challenge to the 2012 rezoning process was based upon Judge Adams’s order in the *Friends of Frederick County Case*. As we have explained, Judge Adams’s order was affirmed. *See Friends of Frederick County, supra*, Case No. 2159, September 2013 Term (filed August 11, 2015). In this appeal, we adopt the reasoning set forth in our cogent opinion in *Friends of Frederick County, supra*. Accordingly, we reject Appellants’ challenge to the 2012 rezoning process.

II. Oakdale Ordinance and APFO LOU

We next turn our attention to the other two issues raised by Appellants: the BOCC’s adoption of the Oakdale Ordinance and approval of the APFO LOU.

A. The Oakdale Ordinance

Appellants contend that the findings of fact and conclusions of law contained in the Oakdale Ordinance do not provide a sufficient basis to support the BOCC’s action and that the BOCC’s action is “facially deficient as a matter of law.” Appellant’s further assert that the Oakdale PUD is invalid because the PUD regulations of the Frederick County Code are illegal. We are unpersuaded.

1. Findings of Fact and Conclusions of Law

With respect to BOCC’s findings of fact and conclusions of law, we observe that Appellants do not challenge any specific findings of fact and conclusions of law in the Oakdale Ordinance, but instead argue generally that the BOCC’s findings fail to sustain its conclusions.⁸

The record reflects that the BOCC considered the criteria and factors required by Frederick County Code §§ 1-19-3.110.4 and 1-19-10.500.3 and Md. Code (2012), § 4-204 of the Land Use Article (“LU”). Pursuant to LU § 4-204, the BOCC was required to “make findings of fact that address[ed]” the following factors when considering whether to grant Oakdale’s PUD request:

⁸ As we observed *supra*, in footnote 2, in their table of contents and “Issues on Appeal” section, Appellants present the question of whether the BOCC failed to substantively assess population change. In the body of their brief, however, Appellants present no argument on this issue. This issue was addressed by the circuit court, which concluded that “the BOCC made all the requisite findings as to population change.”

- (i) population change;
- (ii) the availability of public facilities;
- (iii) present and future transportation patterns;
- (iv) compatibility with existing and proposed development for the area;
- (v) the recommendation of the planning commission; and
- (vi) the relationship of the proposed amendment to the local jurisdiction's plan.

Section 1-19-3.110.4(A) Frederick County Code similarly requires the consideration of the following criteria by the Planning Commission and the BOCC prior to approving a zoning change:

- (1) Consistency with the comprehensive plan;
- (2) Availability of public facilities;
- (3) Adequacy of existing and future transportation systems;
- (4) Compatibility with existing and proposed development;
- (5) Population change; and
- (6) The timing of development and facilities.

With respect to the approval of a PUD, Frederick County Code § 1-19-10.500.3 provides the following:

The Board of County Commissioners may approve or disapprove a request for rezoning of property to a Planned Development District if persuaded that granting the request is appropriate and serves the public interest. The approval or

disapproval of a request for the application will be determined through evaluation of several criteria to establish whether the proposed project meets the purpose and intent of the zoning district. In addition to the requirements in § 1-19-3.110.4, the Planning Commission and Board of County Commissioners must find that the project adequately addresses the following criteria:

(A) The proposed development is compact, employing design principles that result in efficient consumption of land, efficient extension of public infrastructure, and efficient provision of public facilities;

(B) The proposed development design and building siting are in accordance with the County Comprehensive Plan, and any applicable community and corridor plans;

(C) The proposed development is compatible with existing or anticipated surrounding land uses with regard to size, building scale, intensity, setbacks, and landscaping, or the proposal provides for mitigation of differences in appearance or scale through such means as setbacks, screening, landscaping; or other design features in accordance with the County Comprehensive Plan, and any applicable community or corridor plans;

(D) The proposed development provides a safe and efficient arrangement of land use, buildings, infrastructure, and transportation circulation systems. Factors to be evaluated include: connections between existing and proposed community development patterns, extension of the street network; pedestrian connections to, from, and between buildings, parking areas, recreation, and open space;

(E) The transportation system is or will be made adequate to serve the proposed development in addition to existing uses in the area. Factors to be evaluated include: roadway capacity and level of service, on-street parking impacts, access requirements, neighborhood

impacts, projected construction schedule of planned improvements, pedestrian safety, and travel demand modeling;

(F) The proposed development provides design and building placement that optimizes walking, biking, and use of public transit. Factors to be evaluated include: extension of the street network; existing and proposed community development patterns; and pedestrian connections to, from, and between buildings, parking areas, recreation, and open space;

(G) Existing fire and emergency medical service facilities are or will be made adequate to serve the increased demand from the proposed development in addition to existing uses in the area. Factors to be evaluated include: response time, projected schedule of providing planned improvements, bridges, roads, and nature and type of available response apparatus;

(H) Natural features of the site have been adequately considered and utilized in the design of the proposed development. Factors to be evaluated include: the relationship of existing natural features to man-made features both on-site and in the immediate vicinity, natural features connectivity, energy efficient site design, use of environmental site design or low impact development techniques in accordance with Chapter 1-15.2 of the Frederick County Code;

(I) The proposed mixture of land uses is consistent with the purpose and intent of the underlying County Comprehensive Plan land use designation(s), and any applicable community or corridor plans;

(J) Planned developments shall be served adequately by public facilities and services. Additionally, increased demand for public facilities, services, and utilities created by the proposed development (including without limitation water, sewer, transportation, parks and

recreation, schools, fire and emergency services, libraries, and law enforcement) shall be evaluated as adequate or to be made adequate within established county standards.

The Oakdale Ordinance explicitly sets forth detailed findings with respect to each of the factors enumerated in Section 1-19-3.110.4 of the Frederick County Code. The BOCC found that the proposed project was consistent with the comprehensive plan, commenting that “[t]he areas being considered for Phase I PUD are located within the Linganore Community Growth Area, an area identified for public water and sewer service and for residential, commercial and employment growth and development as depicted and articulated in the County Comprehensive Plan.” The BOCC further found that “[t]he request is consistent with overall development principles of the 2010 County Comprehensive Plan such as encouraging higher densities, providing a mixture of land uses, requiring design that contributes to a distinctive community character, promoting accessibility and interconnectedness of a complete transportation network, and acknowledging the importance of our natural resource base in shaping the location and patterns of new development.” The BOCC found that the proposed project would utilize existing public facilities, including water and sewer, fire and emergency services, and public educational facilities. The BOCC noted that “[i]mprovements and expansions to public facilities and infrastructure will be made in order to serve this project.”

With respect to the adequacy of existing and future transportation systems, the Oakdale Ordinance provides that “[m]ultiple transportation infrastructure improvements and

their timing, extent, and location in the immediate project area and surrounding community, described in the APFO L.O.U. and DRRA, will address the adequacy of transportation systems and help mitigate the impact the project may have on roadways.” The BOCC found that the proposed project was compatible with existing and proposed development, observing that “[r]esidential land uses proposed in this Phase I request are similar to the adjacent residential uses -- single-family detached and attached units -- in the Linganore PUD and are thus compatible with the housing type in the immediate area.” With respect to population change, the BOCC estimated that, as a result of the proposed project, the current population of 5,991 would increase by 4,685 people. The BOCC commented that the “increase will occur within a Community Growth Area, an area targeted to accommodate population growth and the efficient provision of public infrastructure, facilities, and services.” The BOCC addressed the timing of development and facilities, noting that a 25-year DRRA and APFO LOU were filed concurrently and contained a detailed sequencing plan.

The Oakdale Ordinance further reflects that the BOCC considered the approval criteria for Planned Development Districts set forth in Frederick County Code § 1-19-10.500.3. The BOCC found that the proposed development was compact, with 1,735 dwellings proposed on 884 acres, resulting in a gross project density of 2.0 units per acre. The BOCC commented that “[t]he extension of public infrastructure and provision of public facilities will be addressed through the APFO LOU and DRRA and shall be in compliance with all current and applicable County regulations, policies, and ordinances.” The BOCC

observed that “[t]here is no Community or Corridor Plan for [the proposed development] area.” With respect to the proposed development’s compatibility with existing land uses, the BOCC found that the proposed development, which would contain both single-family attached and single-family detached units, “are compatible with the housing types . . . in the adjacent developed portions of the Lignanore PUD.”

The BOCC further considered whether the proposed development would provide a safe and efficient arrangements of land use, buildings, infrastructure, and transportation circulation systems, finding that the proposed project “proposes critical street network extensions” and open areas which “afford opportunities for critically needed pedestrian connections, through extensions of the existing community trail network, between and among existing and proposed development areas.” The BOCC’s findings were similarly detailed with respect for transportation, fire and emergency service facilities, natural features of the site, mixture of land uses, consistency with the County Comprehensive Plan, and public facilities and services.

We find no merit in Appellants’ contention that the Oakdale Ordinance is facially defective as a matter of law because it fails to make findings of fact and reach conclusions of law on contested issues. Our review of the Oakdale Ordinance indicates that the BOCC considered the requisite criteria when deciding to approve the rezoning. To be sure, judicial review of an administrative decision differs from appellate review of a trial court judgment. *Walker v. Dep’t of Hous. & Cmty. Dev.*, 422 Md. 80, 107 (2011) (quoting *United*

Steelworkers of America v. Bethlehem Steel Corp., 298 Md. 665, 679 (1984)). When reviewing a trial court’s decision, we will “search the record for evidence to support the judgment and will sustain the judgment for a reason plainly appearing on the record whether or not the reason was expressly relied upon by the trial court.” *Id.* When reviewing administrative actions, however, we “may not uphold the agency order unless it is sustainable on the agency’s findings and for the reasons stated by the agency.” *Id.*

Appellants contend that because the appellate court will not search the record for evidence to support the judgment, the BOCC was required to make specific findings with respect to contrary evidence presented. Appellants assert that they “raised a number of factual and legal arguments before the BOCC, none of which were addressed” in the Oakdale Ordinance. In support of this assertion, Appellants rely upon our decision in *Ocean Hideaway Condominium Ass’n v. Boardwalk Plaza Venture*, 68 Md. App. 650, 662 (1986). In that case, we addressed whether a local zoning board made the findings of fact that were required by a local zoning ordinance in approving a request to build a 17 story building at the Ocean City Boardwalk. *Id.* The relevant ordinance required the zoning board to “render a finding of fact on each of the nine (9) standards stated . . . above” and provided that the board may grant a special exception if “in its opinion . . . such exceptions will not substantially affect adversely the uses of the adjacent and neighboring property.” *Id.* at 655. We reversed the board’s decision, emphasizing that the board had “state[ed] its conclusions under each of the nine categories without any factual findings whatsoever.” *Id.* at 659. We commented

that each conclusion contained “nothing more than a positive statement of each of the conditions precedent to the approval by the Board of the special exception.” *Id.*

Appellants reliance upon *Ocean Hideaway* is misplaced. The detailed findings and conclusions set forth by the BOCC in the Oakdale Ordinance are aptly supported by factual findings. As discussed *supra*, the BOCC clearly explained its findings with respect to each criterion. The BOCC is not required to issue an ordinance that specifically discusses each and every factual or legal issue raised by any party in support or opposition to a rezoning. *See Critical Area Comm’n for the Chesapeake and Atlantic Coastal Bays v. Moreland, LLC*, 418 Md. 111, 128 (2011) (rejecting the contention that a Board of Appeals “must describe the evidentiary foundation for each of its findings, immediately following each finding, to enable meaningful judicial review”). Accordingly, the BOCC considered the requisite criteria and set forth the specific findings of fact required by Frederick County Code §§ 1-19.3.110.4 and 1-19-10.500.3 and LU § 4-204. We, therefore, reject Appellants’ contention that the Oakdale Ordinance is facially defective.

2. Height Limitations

Appellants’ next contention is based upon the alleged lack of building height or size limitations in the Oakdale PUD zone. Appellants assert that the lack of building height or size limitations in the Oakdale Ordinance violates the uniformity requirement set forth in § 4-201(b)(2)(i) of the Land Use Article and is an impermissible delegation of authority to the Planning Commission. Oakdale asserts that there are height limits for the Oakdale PUD

set forth within the project's DRRA. Oakdale further argues that the underlying PUD Ordinance does not violate the uniformity requirement based upon the inherently flexible nature of the PUD zone.⁹

Although framed as a challenge to the Oakdale Ordinance, Appellants' claim is actually an attack on the Planned Unit Development regulations of the Frederick County Code as applied to the present case. Section 1-19-10.500.6(H)(2) of the Frederick County Code delegates the authority to set height limits within PUDs to the Planning Commission as follows:

Setbacks and height shall be established by the Planning Commission at Phase II consistent with the general development standards as provided in § 1-19-10.500.9, reflecting the proposed development pattern and land use within the Phase I project concept plan or portion thereof, reflecting the location of the project within the county with consideration of the existing development pattern surrounding the proposed development, and consistent with the appropriate community and corridor plans.

⁹ Oakdale contends that Appellants' challenge of any height requirements is untimely, noting that the challenge is to the PUD Ordinance which was approved years ago. As a result, Oakdale asserts that the proper time to challenge the legality of that ordinance expired long ago. *See* Maryland Rule 7-203(a). We are unpersuaded by Oakdale that Appellants' challenge is untimely. *See Evans v. Prince George's County*, 185 Md. App. 251 (2009) (holding that a declaratory judgment challenge to a zoning text amendment was premature when plaintiffs had not exhausted administrative remedies by challenging the text amendment in a prospective administrative proceeding).

Appellants’ challenge is based upon § 4-201(b)(2)(i) of the Land Use Article, which provides that “zoning regulations shall be uniform for each class or kind of development throughout each district or zone.”

Our review of the record indicates that the DRRA approved by the BOCC simultaneously with the Oakdale Ordinance includes specific height limitations. With respect to maximum height, section 2.3(d) of the DRRA provides:

Setbacks, building size and other development standards shall be as approved by the Planning Commission in accordance with the Development Approvals and applicable sections of the County Code. The maximum height for residential units in the PUD shall be 50 feet for single family and 120 feet for multifamily structures. The maximum height for non-residential structures in the PUD shall be 120 feet.

These specific, clear height limitations are to be applied uniformly throughout the PUD zone.

Accordingly, we are unpersuaded by Appellants’ contention that the PUD is invalid because it violates the uniformity requirement of §4-201 of the Land Use Article.¹⁰

¹⁰ Furthermore, although we need not reach this issue because the particular PUD at issue in this case includes height restrictions in the associated DRRA, we note that it is far from clear that the uniformity requirement of LU § 4-201 applies to PUD zones. The Court of Appeals has commented that there is “limited case law on the uniformity requirement” in Maryland, and that the meaning of the uniformity requirement is not always clear. *Anderson House, LLC v. Mayor & City Council of Rockville*, 402 Md. 689, 717 (2008) (“It has been observed that courts appear to have been somewhat reluctant to elaborate on or supply judicial gloss to the meaning of the uniformity requirement, perhaps due to the original policy purpose for its inclusion.”). The Court explained that “the uniformity requirement springs less from pure legal necessity, but more from a policy desire to give notice to property owners that ad hoc zoning discriminations will not be tolerated by the law.” *Id.* at 714. The application of the uniformity requirement to PUD zones is indeed unique, given that PUD
(continued...)

B. The Adequate Public Facilities Ordinance Letter of Understanding (APFO LOU)

Appellants' final contention is that the BOCC's approval of the APFO LOU was improper. In support of their assertion, Appellants point to various alleged deficiencies in Oakdale's Traffic Impact Analysis ("TIA"). We are unpersuaded.

Section 1-20-31 of the Frederick County Code sets forth the requirements with which a developer must comply when undertaking a traffic impact analysis. Section 1-20-31(B) provides:

The TIA shall be prepared for the design hours, which are defined as the peak hours which will be most affected by the proposed development; i.e., any combination of a.m., mid-day, p.m., evening, weekend peak hour of the adjacent street, or peak hour of the generation by the land use as determined by the county. The TIA shall include, but not be limited to:

- (1) Vehicle trip generation by the proposed development and traffic expected to be generated by approved development in the study area as outlined in the guidelines and as determined by the

¹⁰ (...continued)

zones are inherently flexible devices that are, by definition, not uniform. *See Rockville Crushed Stone, Inc. v. Montgomery Cnty.*, 78 Md. App. 176, 182 (1989) (commenting that PUDs "are a device permitting the establishment of tracts or parcels of land in a specialized use category in accord with the comprehensive plan, without predetermining the exact location by leaving that decision to future needs and demands of a community as they are recognized from time to time."), *quoting* S. Abrams, *Guide to Maryland Zoning Decisions* 69 (2nd ed. 1975); Frederick County Code § 1-19-10.500.1 ("The Planned Development Districts (Planned Unit Development and Mixed Use Development) are floating zones established to provide for new development and redevelopment within identified growth areas that result in an integrated mixture of commercial, employment, residential, recreational, civic and/or cultural land uses as provided within the appropriate Frederick County Comprehensive, Community, or Corridor Plan.").

county. The latest edition of the ITE “Trip Generation Manual” shall be used unless specifically applicable rates are identified in or permitted by the guidelines;

(2) LOS capacity analysis of all required roadway corridors, intersections and links for existing conditions and specified intermediate and future conditions with and without the proposed development as delineated in the guidelines;

(3) In cases where traffic safety is identified as an issue by the county or SHA, reported traffic crashes for the last 3 years for which data is available;

(4) Transportation improvements currently fully funded for construction in the most recent CIP or CTP by or before the year of expected completion of the project or project phase, assuming the project buildout criteria in § 1-20-8;

(5) Other improvements approved and permitted by the county, state or a municipality, or under construction, with a certification by that agency that construction is likely to be completed concurrent with the opening of the development project; and

(6) Any other information that may reasonably be required by the county to effectively evaluate the road network or application.

Appellants contend that Oakdale’s traffic study failed to abide by the above requirements.

Specifically, Appellants contend that Oakdale’s TIA underestimated future traffic growth, failed to use proper ITE trip generation rates, assumed an incorrect pass-by trip rate, and used

a trip generation based upon a retail center with no grocery store.¹¹ In support of their assertions, Appellants point to testimony from their traffic expert, who concluded that Oakdale’s traffic expert significantly underestimated future growth.

Appellants’ arguments improperly ask this Court to evaluate the persuasiveness of Oakdale’s TIA, which was supported by expert testimony. This we will not endeavor to do. Our task is merely to “determin[e] if there is substantial evidence in the record as a whole to support” the BOCC’s approval of the APFO LOU. *Hamza Halici, supra*, 180 Md. App. at 248. Indeed, our “task on review is *not* to substitute [our] judgment for the expertise of those persons who constitute the administrative agency.” *Capital Commercial Properties, Inc. v. Montgomery Cnty. Planning Bd.*, 158 Md. App. 88, 95 (2004) (emphasis in original) (internal quotation and citation omitted).

Our review of the record demonstrates that there was substantial evidence to support the BOCC’s approval of the APFO LOU. Pursuant to the principal scope of review of the TIA, Oakdale’s traffic expert was responsible for completing the following tasks:

- Conduct field inspection to collect physical information concerning the nearby road system.
- Prepare traffic adjustments to reflect the potential addition of ramps at the I-70/Meadow Road interchange.

¹¹ Oakdale comments that “Appellants’ focus on a grocery store is curious because no grocery store has been approved or planned. Any grocery store that may be approved in the future would have to use trips approved and mitigated by the APFO for the PUD.”

- Projection of traffic to account for regional growth along the adjacent road network.
- Obtain information relative to other approved developments planned in the vicinity of the subject site.
- Conduct a Trip Generation and Trip Distribution Analysis for the other nearby developments.
- Conduct a Trip Generation and Trip Distribution Analysis for each of the section of the Eaglehead-On-The-Lakes PUD.
- Conduct Intersection Capacity Analyses to determine existing and projected level of services at each of the study area intersections.

The TIA concluded, based upon the above analyses, that “with the implementation of the improvements, the road network is capable of supporting the future traffic by regional growth, other approved developments, and Eaglehead-On-The-Lakes PUD.” In addition to the TIA, various written documents were provided to the BOCC addressing road adequacy.¹²

¹² Documents included, *inter alia*, the Oakdale/Linganore Zoning Map Amendment Application, 2030 AM Build peak Hour Volumes with Mead Road Ramps, SHA Letter to County Traffic Engineer dated 12-13-12, SHA turning Movement County Study, Final Scoping Proposal for Eaglehead, Boyers Mills Roundabout Plans dated February 2013, BOCC Staff Report dated 5-16-13 concerning the DRRA for Oakdale/Linganore PUD, Frederick County Planning Commission Staff Report dated 5-22-13 for the Planning Commission public hearing regarding the DRRA Findings and Consistency with Comprehensive Plan, BOCC Staff Report for 6-18-13 public hearing on Oakdale/Linganore PUD Rezoning, Overall Concept Plan for Oakdale/Linganore PUD, BOCC Staff Report for Oakdale/Linganore DRRA and APFO, Affidavit of Ronald T. Burns, Staff Traffic Engineer, signed 6-14-13, and the Oakdale/Linganore TIA.

Furthermore, various individuals testified with respect to the development's affect on transportation at the BOCC's June 18, 2013 hearing. Traffic engineer Joe Mehra testified on behalf of Appellants in opposition to the Oakdale project, raising various concerns regarding the TIA. Oakdale's traffic expert, Joe Calaggero, testified in response to the concerns raised by Mehra.

The BOCC is not required to summarize every piece of information presented before it. We have explained:

That the [administrative agency] did not address the testimony of [certain witnesses] in the [written decision] does not mean that the [agency] acted arbitrarily or capriciously. The [agency] was free to accept or reject any witness's testimony. Nor can we conclude from the mere failure of the [agency] to mention a witness's testimony that it did not consider that witness's testimony.

Mid-Atl. Power Supply Ass'n v. Maryland Pub. Serv. Comm'n, 143 Md. App. 419, 442 (2002). We cannot and will not assume that, because the BOCC failed to mention certain testimony or specifically resolve certain conflicts, that the BOCC did not consider the testimony presented. The BOCC was free to credit the testimony of Oakdale's traffic expert while rejecting the testimony of Appellants' traffic expert. The BOCC's failure to elucidate its reasoning more fully does not render its decision in any way arbitrary or capricious.

Section 1-20 of the Frederick County Code does not require the BOCC to make specific written findings. Rather, the Planning Commission is required to make a determination of the adequacy of roads. *See* Frederick County Code § 1-20-31. The APFO

LOU specifically “set[] forth the conditions and terms under which the BOCC deem[ed] the minimum necessary improvements dealing with roads, schools, water and sewer service that must be in place for the property . . . to be developed in compliance with Chapter 1-20 of the Frederick County Code.” The APFO LOU expressly identified the road improvements for which Oakdale is responsible in order to comply with County law. Based upon the APFO LOU, the BOCC determined that the roads within the Oakdale PUD will be adequate after Oakdale’s improvements were completed. We will not disturb the BOCC’s determination. Accordingly, we reject Appellants’ contention that the BOCC’s approval of the APFO LOU was improper.

III. Conclusion

With respect to Appellants’ challenge to the 2012 rezoning process, we adopt the analysis set forth in *Friends of Frederick County, supra*, Case No. 2159, September 2013 Term (filed August 11, 2015), and accordingly, we reject Appellants’ challenge. We further hold that the BOCC’s adoption of the Oakdale Ordinance and approval of the APFO LOU were proper. Accordingly, we affirm.

**JUDGMENTS OF THE CIRCUIT COURT FOR
FREDERICK COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANTS.**