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ZONING BOARD OF APPEALS  
OF THE COUNTY OF COOK

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SECRETARY

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**FINDINGS OF FACT AND RECOMMENDATIONS OF THE  
ZONING BOARD OF APPEALS TO THE  
COOK COUNTY BOARD OF COMMISSIONERS**

September 17, 2014

Re: **Chicago Title Land Trust Co. Trust  
Agreement 5/19/13 T#8002361908  
MA-14-02, SU-14-03, and V-14-08  
CC District #14**

**Applications:**

- 1) Map Amendment to rezone approximately 44 acres of the Subject Property from P-2 Open Land District to an R-6 General Residence District for a Planned Unit Development (PUD) of 137 residential units;
- 2) Special Use for a PUD in the R-6 General Residence District (if granted under companion MA-14-02) for twenty one (21) detached single family homes, seventeen (17) duplex containing thirty four (34) units and eighty two (82) multi-unit (townhouses) for a total of 137 residential units, and
- 3) Variation in R-6 General Residence District (if granted under companion MA-14-02 & SU-14-03) to reduce rear yard setback for duplex and townhome lots from minimum required 40' to 25'; reduce corner side yard setback for townhome lots from minimum required 21.5' to 20'; increase the F.A.R. for duplex lots from 0.5 to 0.66 and increase the F.A.R. for townhome lots from 0.6 to 0.73 in Section 18 of Northfield Township.

**RECOMMENDATION: Recommendation of Approval.**

**BACKGROUND SUMMARY**

The Subject Property consists of approximately 43.22 acres, located north of Techny Road and west of Western Avenue in Northbrook, in Northfield Township, Unincorporated Cook County, Illinois. The Subject Property address is 1677 W. Mission Hills, Northbrook, Illinois 60062. The PINs are 04-18-200-004-000, 004-18-200-020-0000 and 04-18-200-037-0000.



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Pursuant to due notice, a public hearing was originally set for July 9, 2014 at the Village of Northbrook Board Room, 1225 Cedar Lane, Northbrook, Illinois 60062 1:00 pm but, due to overflow from the unanticipated extraordinarily large number of residents who wished to attend the hearing, the public hearing was continued to July 21, 2014 at 1:00 PM at the Glenbrook North High School's Sheely Center for Performing Arts Auditorium, 2300 Shermer Road, Northbrook, Illinois, 60062.

In attendance for the applicant Attorneys James Banks, Nick Ftikas and Sara Barnes, Law Offices of Samuel V.P. Banks; Todd Fishbein, President of Applicant RSD Mission Hills, LLC; Mark Kurensky, Land Planner and Landscape Architect; Terrence O'Brien, Terrence O'Brien & Co.; Appraiser, Jeff Mulcrone, Architect, Director, BSB Design; Ron Adams, Civil Engineering w/ Pearson Brown; Luay Aboona, KLOA Traffic Consultant; Erik Doersching, Feasibility Analysis and Steve Hovany, Fiscal Impact Analysis.

Also present at the hearing were Thomas Boyle, Law Firm of Burke Warren Mackey, Serritella, Chris Leach, Bernard Citron, Law Office Thompson Coburn, Paul Kakuris, Environmental Consultant Mission Hills Open Land; Al Lever, Treasurer for T5 Condominium Association; Ron Gerber, President of Association, M2 Board of Directors; Iver Drazen, Marsha Marco resident and representing residents of building (Transcript p.16), Eileen Gamberdino, Secretary of Citation Lakes Conservation Fund Association (Transcript p.17); Karen Jump, Mission Hills Open Lands; Thomas Poupard, Village of Northbrook Board of Trustees, Director of Planning and Terry Graham, Representing Commissioner Greg Goslin's Office, 14<sup>th</sup> District.

In addition, testimony was heard from the following residents of the neighborhood: Ret. Judge Richard Curry, who resides at 1767 Mission Hills Rd., Northbrook, Illinois; Ms. Eileen Gamberdino, the Secretary of Citation Lake Owner's Association; Ms. Janet Zang, 1817 Western, Northbrook, Illinois; Ms. Sun Lee, 3837 Mission Hills, Northbrook, Illinois; Ms. Renee Dutchman, 1671 Mission Hills, Northbrook, Illinois; Ms. Sue Adams, 3514 Whirlway Drive, Northbrook, Illinois; Mr. Larry Reese, 1771 Mission Hills, Ms. Cherie Natenberg (no address provided); Mr. Al Lever, 1880 Mission Hills Lane, Northbrook, Illinois; Mr. Barry Frydberg, 1761 Mission Hills Rd., Northbrook, Illinois; Ms. Sally Suther, 1805 Central Ave., Northbrook, Illinois; Ms. Elena Golden, 3761 [Mission Hills], Northbrook, Illinois; Ms. Nora McAllister, 1924 Highland, Northbrook, Illinois; Mr. Merle Lichtenstein (no address provided); Ms. Marsha Marco, 1831 Mission Hills M-4, Northbrook, Illinois; Mr. Wallace Sweet, 3851 Mission Hills Rd., Northbrook, Illinois; Mr. Adam Levi, 1737 Mission Hills, Northbrook, Illinois; Ms. Sherry Fern, 1671 [Mission Hills], Northbrook, Illinois; Ms. Kathleen Breener, 3751 Mission Hills Rd., Northbrook, Illinois; Mr. Harvey Gordon, 1831 Mission Hills, Mr. Arnie Hoffman, 1671 Mission Hills, Northbrook, Illinois; Mr. Ron Malvin, 1740 Mission Hills Rd., Northbrook, Illinois; Mr. Mark Abernathy, 1781 Western, Northbrook, Illinois; Mr. Mark Staller, 3741 Mission Hills Rd., Northbrook, Illinois; Ms. Gayle Martinelli, 1671 Mission Hills, Northbrook, Illinois; Mr. Mike Delmore, 3831 Mission Hills, Northbrook, Illinois; Mr. Mark Bazin, 4001 Oak Avenue, Northbrook, Illinois; Ms. Karen Jump, Mission Hills Openlands, 1931 Mission Hills Lane, Northbrook IL; by counsel, Northbrook, Illinois; Mr. Gerry Numark, 3900 Mission Hills, Northbrook, Illinois and Clara Boren, 3741 Mission Hills, Northbrook, Illinois.



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**Applicant's Case in Chief – Direct Testimony**

Attorney James Banks of the Law Offices of Samuel V.P. Banks served as lead counsel for the Applicant.

**Todd Fishbein (Applicant)**

Mr. Bank's first witness was Todd Fishbein. Mr. Fishbein is the President of Red Seal Development Corp., which is the managing member of the Applicant. Mr. Fishbein is also a licensed attorney. Mr. Fishbein testified his office authorized Mr. Banks' office to send the required public notice mailings for the zoning applications to property owners located within 250' of the Subject Property, as well as neighboring municipalities and government officials per the Cook County Zoning Ordinance. Mr. Fishbein testified that he directed the public notice sign to be installed at the Subject Property.

Mr. Fishbein testified that the Applicant has a contract to purchase the Subject Property. He testified that he was familiar with the zoning history of the Subject Property and the Mission Hills Residential Community, and that based on his understanding of the prior approvals and general case law, it is his opinion that the Subject Property can be developed separate and apart from the Mission Hills Residential Community at this point in time. If the zoning relief is approved, the Applicant will develop the site with 137 residential units. No building will be larger than two-stories in height. Each unit will provide at least two (2) onsite dedicated parking spaces. The proposed residential units will include 21 single family homes, 34 duplex units, and 82 townhome units. The proposed development requires a Zoning Map Amendment from the underlying P-2 Open Land Zoning District to the R-6 General Residential Zoning District. If the zoning amendment is approved, the development plan also requires Special Use/Planned Unit Development approval. Applicant also requested approval for certain Variations. Mr. Fishbein testified that the Zoning Amendment and Special Use/Planned Unit Development approvals will permit the proposed density and unit count on the Subject Property. The resulting density will be set at 3.17 units to the acre. The companion Variations will allow the Applicant to establish zoning lots for the proposed buildings and maintain an open space and a landscaped buffer between the subject development and the existing improvements within the Mission Hills Residential Community. Mr. Fishbein testified that the proposed development will function via a proposed access point on Techny Road. The proposed self-contained development will always be separated from the existing condominium and town homes that are currently located on Mission Hills. This design will prevent access from the Subject Property to the Mission Hills Residential Community. It also prevents direct access from the Subject Property to the residential neighbor located across Western Avenue.

Mr. Fishbein next described and summarized the efforts he made with the Master Association of Condominium Unit Owners from the Mission Hills Residential Community (herein the "Master Association"). Mr. Fishbein represented that he had both met with and maintained an ongoing discourse with the leadership of the Master Association. Certain suggestions and plan edits offered by the Master Association were incorporated into the Applicant's development plan. Mr. Fishbein testified that the Applicant and Master Association had entered into a Development Agreement. Per the Development Agreement, if the zoning relief is obtained, the Applicant has committed to developing the Subject



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Property in accordance the development and site plan being presented to the Cook County Zoning Board of Appeals. The Applicant also agreed to make a \$125,000.00 contribution to the Master Association's Landscaping Fund to better ensure the Master Association's ability to maintain a landscape buffer on its side of the property line that abuts the Subject Property (Transcript p. 60). Lastly, per the Development Agreement, the current property of what will become the remaining 9-hole golf course property (herein "Mission Hills Golf Course") by way of a Restrictive Covenant, will maintain its portion of the remaining land as either a golf course or other open space indefinitely.

Chairman Kevin Freeman inquired of the price range of the units in the proposed development. Mr. Fishbein answered the intended price range would average at \$500,000 for townhomes, duplexes at \$600,000 and single-family residences from \$850,000 - \$1.2 million. The Chairman asked how many PUDs Red Seal has developed and Mr. Fishbein answered that over the years Red Seal has developed 35-60 PUDs in the Chicago Metro area and 23 residential developments in Northbrook alone.

Chairman Freeman inquired how Red Seal Development intends to finance such project if approved and Mr. Fishbein stated that the financing for the private equity component is committed and funded and that a few banks are prepared to move forward to finance the project (Transcript p. 69). The Chairman asked if the Cook County Board of Commissioners were to grant the request, approximately when would the break-ground take place. Mr. Fishbein responded Spring of 2015.

**Mark Kurensky (Landscape Architect)**

The second witness for the Applicant was Mark Kurensky. Mr. Kurensky is a licensed landscape architect and served as the Applicant's primary land planning consultant. Mr. Kurensky testified that he created the project plans, including the site plan and landscaping plan, for the proposed 137 unit residential development. Those plans were submitted with the pending zoning applications. He testified that Applicant is proposing 82 townhomes, 34 duplex units and 21 single family residences (SFRs).

Member Henry Oszakiewski inquired if with the proposed development, will there be a street connection to Mission Hills itself or only to Techny Road. Mr. Fishbein responded as per agreed upon in detail with the Master Association, vehicular access will be prohibited and that it will also be very difficult for even pedestrian access to cross between the two sites (Transcript p.71).

Mr. Kurensky testified that he situated the proposed single family home component closest to the existing single family homes located to the east, across Western Ave., as a function of compatibility. He testified that the duplex units were located across from the proposed single family homes as a way to transition from the single family plan to the multi-unit (townhomes) located along the south side of the subject site. Mr. Kurensky testified that no building would exceed two-stories in height. Mr. Kurensky described the primary access point to the subject development on Techny Road. He also described the emergency access points that were to be located on Techny Road and Western Avenue, respectively. Both emergency access points had been reviewed with the Northbrook Fire Department. Mr. Kurensky next described the perimeter landscaped buffer that will be implemented as part of the development plan. The landscape plan specifically calls for a combination of open green space, and use of both existing and



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newly planted trees in the areas located between the Subject Property and the Mission Hills Residential Community to the north and west, respectively. The plan maintains a 20' landscape buffer behind the proposed single family homes and Western Ave. to the east. Mr. Kurensky explained the study that was conducted regarding the health and sustainability of the existing trees on the property. He described the tree replacement program that will be implemented per the development plan. Mr. Kurensky testified that the landscape design was intended to keep the Subject Property separate and distinct from the other existing residential communities.

Mr. Kurensky next testified regarding his design of the individual zoning lots for the proposed residential buildings. As drawn, the site plan requires variations to the duplex and multi-unit lots. Those Variations include reducing the rear yard setback for the duplex and townhome lots from the required 40' to 25', reducing the corner side yard for the townhome lots from the required 21.5' to 20', increasing the allowable Floor Area Ratio for the duplex lots from 0.5 to 0.66, and increasing the allowable Floor Area Ratio for the townhome lots from 0.6 to 0.73 (Transcript p. 91). The requested variations were described as a product of Mr. Kurensky's plan to create smaller zoning lots in order to restrict or otherwise limit the building envelope on each lot. This design ultimately allows the Applicant to maintain a larger open land and green space area. That land will be maintained by the eventual homeowner's association separate and apart from any one individual home owner. Mr. Kurensky testified that the single family home lots were designed to provide a general building envelope for each lot. The eventual home owner would have some say and decision regarding the floor plan of his/her home, so long as the building remained located in the designated building envelope. The minimum lot setbacks on all lots will be consistent and in addition to the landscaped open space (Transcript p. 96).

In his conclusion, Mr. Kurensky testified that the proposed density of 3.17 to 1 acre was compatible with the other established residential uses in the immediate area. Mr. Kurensky testified regarding various standards of the Cook County Zoning Ordinance relating to the applications for a Zoning Amendment, Special Use/Planned Unit Development, and Variations. With respect to the zoning map amendment, Mr. Kurensky's testimony was that the proposed zoning map amendment will benefit public health, safety, and welfare with respect to the surrounding, that the Map Amendment is compatible and appropriate given the zoning classifications of the surrounding properties. He considered the suitability of the Subject Property for the use permitted under the existing zoning classification. The proposed zoning amendment is consistent with the trend of development in the immediate area, that there is a real benefit considering the length of time the Subject Property has been vacant as zoned, considering the context of land development in the surrounding area. He considered, and was of the opinion, that there is consistency with the Cook County Comprehensive Land Use and Policies Plan.

With respect to the Special Use request, Mr. Kurensky testified that it was his professional opinion that the establishment, maintenance, and operation of the Special Use will not be detrimental to or endanger public health, safety, or general welfare, that the establishment, maintenance, or operation of the Special Use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the uses already permitted, or impede the normal and orderly development and improvement of surrounding property for permitted uses. Mr. Kurensky further opined that the Special Use will be served by adequate utilities, access roads, drainage, and other necessary facilities, and that the establishment, maintenance,



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or operation of the Special Use otherwise conforms to all Cook County Ordinances, unless otherwise authorized by the Cook County Board of Commissioners.

With respect to the PUD request, Mr. Kurensky testified that the PUD, if approved, will conform to the planning objectives, policies, and maps of the County, as specified in the Cook County Comprehensive Land Use and Policies Plan in that the PUD: (a) was designed and laid out to preserve environmentally sensitive areas, natural resources, habitat and topographic features to the fullest extent possible; (b) was designed in conformity with the provisions of the Cook County Subdivision Manual or any successor subdivision document; (c) was designed to provide horizontal spacing between buildings, which takes into consideration the purpose and objectives of the applicable Ordinance article; and (d) will comply with the parking requirements enumerated in Article 11 of the Cook County Zoning Ordinance, that the PUD provides appropriate yards, setbacks, and buffers between the PUD and adjacent zoning lots, and that the PUD will be served by adequate utilities, access roads, drainage, and other necessary facilities. Mr. Kurensky further testified that it was his professional opinion that: (i) the establishment, maintenance, or operation of the proposed PUD will not be detrimental to or endanger public health, safety, or general welfare; (ii) the proposed PUD will not be injurious to the use and enjoyment of other property in the immediate vicinity for the uses already permitted; (iii) the proposed PUD will not impede the normal and orderly development and improvement of surrounding property for permitted uses; and (iv) the PUD will provide more open space than would be required in a standard subdivision, and that the PUD has been designed to connect to existing or planned pedestrian and bicycle systems in the immediate vicinity, as best as commercially or reasonably possible.

Lastly, with respect to the Variation requests, Mr. Kurensky testified that the physical surroundings, shape, or topographical condition of the property would result in a hardship upon the owner, as distinguished from an inconvenience, if the provisions of this Ordinance were followed, that the site conditions are unique to the Subject Property, and do they not exist or are they not applicable to other properties within the same zoning classification. The Variations are not sought exclusively upon the desire to make the property more profitable, that the hardship or alleged difficulty was caused by this Ordinance and not by any person presently having an interest in the Subject Property. If the Variations, were to be approved, they would not be detrimental to the public welfare or injurious to other properties or improvements in the neighborhood, or impair an adequate supply of light and air to adjacent properties, substantially increase congestion in the public streets, increase the danger of fire, cause increased flooding risk to adjacent property, endanger public safety, or substantially diminish or impair property values within adjacent neighborhoods.

Member Barrett Pederson asked if there will be 3.1 units per acre. Mr. Kurensky replied just over 4 units for 10,000 square feet. Member Peterson inquired as to why there is a proposal to remove the 351 existing trees. Mr. Kurensky testified that there will be an 833 new plantings and a removal of the Buckthorn, green ash and the like out of the tree equation (Transcript p. 106).



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**Jeff Mulcrone (Architect)**

The third witness for the Applicant was Jeff Mulcrone. Mr. Mulcrone is the Director of Design for BSB Design, the design and architectural firm that prepared the architectural plans for the proposed single family, duplex, and multi-family (townhome) units. Those plans were submitted with the pending zoning applications. Mr. Mulcrone testified and described the various floor plans and assemblage options for each of the residential products. The various floor plan and unit combinations were all designed to fit within the respective zoning lot for the corresponding building or unit type. He confirmed square footage and floor area totals for each of the residential products as being 0.4 FAR (maximum) for the single family homes, 2,347-4,324 sq. ft. for each duplex unit, and 2,606-3,522 sq. ft. for each townhome unit. Mr. Mulcrone described the proposed external building materials as a combination of masonry and hardy board siding. Mr. Mulcrone testified that the proposed residential product and exterior building materials were compatible and consistent with other residential developments in the north suburban communities.

**Ronald Adams (Engineer)**

The fourth witness for the Applicant was Ronald Adams. Mr. Adams is the President of Pearson, Brown and Associates, Inc. (herein "Pearson Brown"), a consulting engineering firm licensed by the State of Illinois. Mr. Adams testified that he personally has 41 years of experience in the industry. Pearson Brown prepared the civil engineering plans for the proposed residential development. Those plans were submitted with the pending zoning applications. Mr. Adams further testified that his firm was retained by the Applicant to ensure the project would work from an engineering standpoint. His professional analysis began with a review of the existing land topography, as well as a means of understanding the existing utilities located in the area. He worked directly with the Mission Brook Sanitary District (herein "Mission Brook") to confirm that the Mission Brook sanitary sewer and water system could support the proposed development. As part of that review, Pearson Brown completed a capacity study that Mission Brook's engineers accepted and referenced in order to confirm that the proposed 137 residential units would be within the Mission Brook's capacity. Mr. Adams confirmed that Mission Brook had subsequently approved the proposed development plan.

Mr. Adams further testified that he evaluated the onsite drainage, detention, and water runoff rates at the site. He testified that the existing detention areas were originally designed for approximately 191 additional residential units but that those units were never built. Even so, Mr. Adams opined that the current plan would improve the existing water detention by expanding the ponds and upgrading the systems to current standards. The current detention plan accounted for the proposed changes in impervious areas. It was engineered in accordance with the new Cook County Storm water Management Ordinance. Based on his analysis, Mr. Adams was of the opinion that the proposed development will be able to retain and control the release rate of the rainwater that falls on the subject site.

In addition to his work concerning sanitary service, water main, and onsite detention, Mr. Adams also testified that he interfaced with the Northbrook Fire Department to ensure adequate sized rights of way and turning radii on site. The public rights of way were designed to comply with Northfield Township standards. He worked with the Northbrook Fire Department concerning the emergency access points to



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the site, as well as the location of hydrants and the underground water lines. Based on those efforts and outreach, the Northbrook Fire Department had approved the proposed development plan (Transcript p.124).

In his conclusion, Mr. Adams testified regarding various standards of the Cook County Zoning Ordinance. He specifically testified that it was his professional opinion that the proposed Special Use and Planned Unit Development will be supported by adequate utilities, access roads, drainage, and other necessary facilities. With respect to the Variation Standards, Mr. Adams testified that it was his professional opinion that the proposed Variations will not impair an adequate supply of light and air to adjacent properties, nor increase congestion in the public streets, increase the danger of fire, cause increased flooding risk to adjacent properties, or endanger public safety. He testified from the onset, Mission Brooks Sanitary District is in control of both the sanitary sewers and water main within the area. There was a three month study conducted to determine the flow rates within the existing facility north on the Mission Hills Property as well as all the way to MWRD intersextors on Walters Avenue. Mr. Adams, testified that all the elevations were shot, located all the manholes, monitoring stations were established to determine whether any wet weather conditions, weather the sewers could still function properly and it was determined that they can (Transcript p. 128).

Attorney Banks submitted to Chairman Freeman approval letters from both Mission Brooks Sanitary District and Northbrook Fire Department as Applicant Exhibits 5 & 6 (Transcript p.127).

Chairman Freeman referred to Mr. Fishbein's testimony and stated when the ZBA initially approved the PUD at the site in 1971, it approved substantially more units that were ultimately constructed there.

**Luay Aboona (Traffic Consultant)**

The fifth witness for the Applicant was Luay Aboona. Mr. Aboona is a licensed professional engineer in the State of Illinois. He is a founding member of Kenig, Lindgren, O'Hara, Aboona, Inc. (herein "KLOA"), the consulting and engineering firm that prepared the written Traffic Report that was submitted with the proposed residential development. Mr. Aboona testified that KLOA's assignment in this case was to assess the current traffic conditions in the immediate area, and provide a projection as to how the proposed residential development might impact those current conditions. His analysis took into consideration the single proposed access point to the proposed development site on Techny Road. Based on the location of the development and the single proposed access point, KLOA charted a general study area comprised of the intersections located at Sanders and Techny Rd., Post and Techny Rd., Pensive and Techny Rd., and Landweir and Techny Rd. Based on the existing conditions and the projected increase in traffic generated by the proposed development. Mr. Aboona prepared a written traffic report and presented it to Chairman Freeman.

Mr. Aboona testified that there would be no change in the level of service and traffic volume. Mr. Aboona's professional opinion was that there is adequate capacity at each of the intersections to support the projected volume of new traffic. Mr. Aboona's projections were low so that there was no need to change any of the intersection signals.





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Notwithstanding the low impact that Mr. Aboona opines the proposed development will have on traffic, Mr. Aboona further testified that there is a proposed turn lane for traffic heading east exiting the subdivision and a widening of Techny Road as well. The benefit would be for the residents living on Pensive Lane south of Techny. The residents will get a left turn pocket to be able to turn safer than they do today.

Mr. Aboona concluded that the proposed development will not create a significant change in the traffic or usage rates in the immediate area. He then testified that, based on his analysis, it is his professional opinion that the Special Use and PUD will have adequate access roads to support it, and that all measures have been, or will be taken to provide ingress and egress designed to minimize traffic congestion in the public streets. With respect to the Variation application, it is Mr. Aboona's professional opinion that the requested Variations will not substantially increase congestion in the public streets.

**Erik Doersching (Real Estate Marketing Consultant)**

The sixth witness for the Applicant was Erik Doersching. Mr. Doersching is an executive vice president and managing partner of Tracy Cross and Associates (herein "Tracy Cross"). Tracy Cross is a real estate consulting and marketing firm that focuses on the residential real estate market and conditions. Tracy Cross prepared a written market study analysis that was submitted with the pending zoning applications. Mr. Doersching testified that his role in this case was to assess the current residential real estate market conditions in the subject area, and advise the Applicant on the projected absorption rates of the proposed development. Based on his market study report, Mr. Doersching concluded that there was low inventory of similar residential product in the immediate area. His general opinion was that the subject development would be in demand. The general area, school districts, public parks, and even proximity to shopping destinations were all considered factors of the high demand. Mr. Doersching testified that, in his professional opinion, the majority of the residential units should be sold within 36 months of production, with a smaller number of multi-unit (townhome) units to be sold shortly thereafter. Ultimately, Tracy Cross' report provided for 100% absorption.

Mr. Doersching testified to certain Zoning Standards. It is his professional opinion that the proposal is compatible with the trend of development in the area and that there is a need in the community for the proposed development. Similarly, in the context of the PUD Standards, it is Mr. Doersching's opinion that the PUD is of a type and character and contains uses that are needed in the area (Transcript p.150).

**Steve Hovany (Land Planning & Fiscal Impact Consultant)**

The seventh witness for the Applicant was Steve Hovany. Mr. Hovany is land planning consultant by trade, and President of Strategy Planning Associates. Strategy Planning Associates is a consulting firm that evaluates the fiscal impact a particular development will have on the local infrastructure and taxing bodies. Strategy Planning Associates prepared a written Fiscal Impact Report that was submitted with the pending zoning applications. Mr. Hovany testified that he assessed how the proposed development would impact the local school districts. His conclusion was that the proposed residential development will



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generate 19 students for District 31, and 8 students for District 225. In Mr. Hovany's opinion, in both instances, the new student count, when considered with property tax revenues generated by the project, will have a positive annual financial impact on the School Districts. Mr. Hovany projected an annual net surplus of \$323,000 to District 31, and an annual net surplus of \$273,000 to District 225. (PG 155) Mr. Hovany also evaluated the fiscal impact the proposed development would have on the Northbrook Fire Department. His conclusion and testimony was that the fiscal impact would be positive, with approximately \$58,000 of new surplus revenues being generated annually. Mr. Hovany assessed the impact the development will have on the municipal equivalent taxing bodies. The municipal equivalent taxing bodies include Cook County, Northfield Township Special Police District, Road and Bridge Northfield, General Assistance Northfield, Town of Northfield, Mission Brook Sanitary District, and Northbrook Rural Fire District. Mr. Hovany concluded that with respect to each body, the fiscal impact amounts to an annual gain each year. Collectively, that annual surplus to the municipal equivalent jurisdictions is projected at \$142,167. In summary, Mr. Hovany testified that the proposed development will have a positive fiscal impact on the local infrastructure and taxing bodies, net any costs attributable to the proposed development.

**Terrence O'Brien (Appraiser)**

The eighth witness for the Applicant was Terrence O'Brien. Mr. O'Brien is a certified MAI Appraiser in the State of Illinois. He is the President of Terrance O'Brien and Associates, a consulting and real estate appraisal firm. Mr. O'Brien prepared written appraisal reports as required by the Cook County Zoning Ordinance that were submitted with the pending zoning applications. Mr. O'Brien testified that the scope of his assignment in this case was to evaluate whether the requested Zoning Map Amendment, Special Use for a Planned Unit Development, and Variations would comply with the general criteria for that relief, as set forth in the Cook County Zoning Ordinance. Mr. O'Brien testified that he had visited and inspected the Subject Property, as well as neighboring properties and improvements. The character of the area was described as being predominately residential, with a residential neighborhood to the east of the Subject Property, the Mission Hills Residential Community to the north and west and another residential community located south of the Subject Property, across Techny Road. Mr. O'Brien testified that based on his inspection of the Subject Property and surrounding area, and his understanding and evaluation of the standards of the Cook County Zoning Ordinance, the proposed 137 unit residential development was appropriate and compatible at the Subject Property. Mr. O'Brien opined that the proposed residential development would constitute the highest and best use for the Subject Property.

Mr. O'Brien testified to various standards of the Cook County Zoning Ordinance. In particular, he testified that, in his professional opinion, the proposed Zoning Map Amendment will benefit public health, safety, and welfare with respect to the surrounding uses, that it is compatible and appropriate given the zoning classifications of the surrounding properties, that in forming his conclusions and opinions. He did consider the suitability of the Subject Property for the use permitted under the existing zoning classification, that the proposed zoning map amendment is consistent with the trend of development in the immediate area. He testified that there is a real benefit in amending the underlying zoning considering the length of time the Subject Property has been vacant as zoned, considering the context of land development in the surrounding as well as the extent to which property values are diminished by



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particular zoning restrictions. The proposed Zoning Map Amendment and corresponding residential development is consistent with the Cook County Comprehensive Land Use and Policies Plan.

Mr. O'Brien testified that under the Cook County Ordinance the Applicant should provide two appraisals: (1) one is a currently zoned which would be a P-2 designation and (2) the value of the Subject Property as proposed. Mr. O'Brien concluded that, as currently zoned P-2, the subject site is worth \$520,000, and if rezoned as residential and developed it would be \$8,220,000. Mr. O'Brien stated that a golf course does not have the same value as it would have in the event that it would be delivered to its highest and best use. There is market data contained in the Appraiser Report provided. He stated that studies show that the popularity of golfing is down substantially from what it used to be in the past (Transcript p.175).

With respect to the Special Use and PUD Standards, Mr. O'Brien testified that it was his professional opinion that the establishment, maintenance, or operation of the Special Use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the uses already permitted, nor diminish and impair property values within the neighborhood.

With respect to the Variation Standards, Mr. O'Brien testified that it was his professional opinion that the requested Variations will not be detrimental to the public welfare or injurious to other properties or improvements in the neighborhood, and that they will not substantially diminish or impair property values within the adjacent neighborhood.

**POSITION OF VILLAGES AND OTHERS:**

The Municipalities notified with respect to the hearing for this Application as being within 1-1/2 miles of the Subject Property are Villages of Northbrook, Glenview, Mount Prospect and Wheeling. There was a representative from the Village of Northbrook present at the July 21, 2014 hearing. There was no response from any municipality during the call of the villages. The Zoning Board of Appeals did receive a petition objecting to the proposed development from Mission Hills M-4 at the hearing.

**Public Testimony**

Ret. Judge Richard Curry, who resides at 1767 Mission Hills Rd., testified that the residential component of the Mission Hills Residential Community was indistinguishable from the Mission Hills Golf Course. He testified that the 144 acre site should remain consistent with the PUD terms approved in 1971. Mr. Curry opined that there is no need or general market demand for the proposed residential development. Mr. Curry spoke about the history of flooding at his property and the threat of more flooding due to the proposed residential development. Mr. Curry spoke about the potential for decreased property value, attributable to the loss of views and sightlines of the golf course property. Mr. Curry concluded that the project was not in the interest of public welfare.



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Ms. Eileen Gamberdino, the Secretary of Citation Lake Owner's Association, raised concerns associated with sewer and storm water maintenance, the potential for runoff that will reach Citation Lake, and the increased risk of flooding. Ms. Gamberdino also expressed concern regarding increased traffic.

Ms. Janet Zang, 1817 Western, spoke about her concerns of increased flooding and increased traffic.

Ms. Sun Lee, 3837 Mission Hills, spoke to the existing density of Mission Hills and her belief that increased density and traffic will be created by the proposed residential development. Ms. Lee also opined that there is a risk of decreased property values.

Ms. Renee Dutchman, 1671 Mission Hills, expressed concern about the risk of increased flooding, and questioned the ability to meet the increased demand for parking for visitors that will come to the Subject Property.

Ms. Sue Adams, 3514 Whirlway Drive, expressed concern about the risk of water runoff and flooding.

Mr. Larry Reese, 1771 Mission Hills, spoke in his individual capacity and opined that the proposed residential development will be to the detriment of Mission Hills residents. Mr. Reese also spoke to the standards of the Northbrook Zoning Ordinance, which Chairman Freeman explained are not applicable to land located within unincorporated Cook County.

Ms. Cherie Natenberg (no address provided), opined that the property value of residences bordering the subject site would decrease due to loss of views of the golf course property, as well as the negative impact of increased density.

Mr. Al Lever, 1880 Mission Hills Lane, spoke in his individual capacity, and opined that the (Master) Home Owner's Association was neutral to the proposal. Mr. Level then testified regarding the existing and proposed density, and opined that the PUD should be maintained.

Mr. Barry Frydberg, 1761 Mission Hills Rd., expressed concern about the potential decrease in property values.

Ms. Sally Suther, 1805 Central Ave., spoke about her concerns of preserving green space, limiting water runoff, and related flooding that the proposed development may cause.

Ms. Elena Golden, 3741 [Mission Hills], spoke concerning the destruction of open land and loss of natural spaces. Ms. Golden also expressed concern about decreased property values.

Ms. Nora McAllister, 1924 Highland, spoke concerning existing flooding conditions and the potential for increased flooding due to loss of green space.

Chairman Freeman polled the audience and concluded that the local residents were primarily concerned with increased density, decreased property values, and exacerbated flooding.



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Mr. Merle Lichtenstein (no address provided) spoke to a potential decrease in quality of life the proposed residential development will have on local residents.

Ms. Marsha Marco, 1831 Mission Hills M-4, spoke to the location of the fence that will be located and divide the Subject Property from the Mission Hills Residential Community property. Ms. Marco also spoke to the loss of living trees. Ms. Marco submitted a petition of approximately 500 signatures contesting the proposed zoning application[s].

Mr. Wallace Sweet, 3851 Mission Hills Rd., spoke concerning the prior developer's promise that there would be no more construction on the site. Mr. Sweet also spoke regarding the sustainability of the remaining 9-hole golf course.

Mr. Adam Levi, 1737 Mission Hills, spoke critically of the witness testimony provided during the Applicant's Case in Chief. Mr. Levi does not want Mission Hills changed.

Ms. Sherry Fern, 1671 [Mission Hills], expressed concern about increased noise, congestion, and traffic.

Ms. Kathleen Breener, 3751 Mission Hills Rd., spoke about existing flooding conditions and her concern that flooding will be worse if the proposed development was completed. Mr. Breener also spoke about the general lack of demand in the housing market.

Mr. Harvey Gordon, 1831 Mission Hills, spoke concerning the Master Association's perceived support for the proposed residential development.

Mr. Arnie Hoffman, 1671 Mission Hills, claimed the Applicant was shoehorning itself into the community.

Mr. Ron Malvin, 1740 Mission Hills Rd., spoke concerning his perception of a trend of increased traffic in the area.

Mr. Mark Abernathy, 1781 Western, spoke concerning the increased sewerage and storm water capacities. Mr. Abernathy is concerned about the amount of use the emergency access points to the new development will generate by the local Fire Department.

Mr. Mark Staller, 3741 Mission Hills Rd., suggested property values will decrease and questioned how the proposal will benefit anyone.

Ms. Gayle Martinelli, 1671 Mission Hills, spoke to the loss of the golf course property and raised concerns of flooding and sewage.

Mr. Mike Delmore, 3831 Mission Hills, spoke to his concern about decreased property values due to the loss of the golf course view, as well as flooding and density. Mr. Delmore also spoke to the character of the Mission Hills Golf Course.



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Mr. Mark Bazin, 4001 Oak Avenue, spoke to the shortage of power supply and cable services and questioned whether the existing utilities were adequate to support the proposed development.

Ms. Karen Jump, a resident who is also represented by counsel, questioned how the Applicant was able to apply for a Zoning Map Amendment on land that is open and part of the 42 year old PUD. Ms. Jump opined the application and hearing process was fast. She questioned the Master Association's decision to negotiate and enter into an Agreement with the Applicant. Ms. Jump questioned whether the arborist's tree survey would meet Northbrook's standards for the same type of study. She raised a concern about the current property owner drilling for water on the golf course property. Per Ms. Jump's statements, this led to a sewer line analysis conducted by one of the condo associations. A number of sewer lines were found to have collapsed and were subsequently replaced. Ms. Jump spoke to issues of collapsing sidewalks and ongoing road construction and repairs. Ms. Jump described a need for a better water study.

Mr. Gerry Numark, 3900 Mission Hills, spoke of his concerns about the loss of open space.

Clara Boren, 3741 Mission Hills, questioned why the Applicant was only a contract purchaser of the Subject Property and not the actual owner.

**Cook County Departments**

The ZBA received the following written comments from the various Cook County departments as indicated below:

***With respect to MA 14-02:***

**Planning & Development**

Economic Impact: "Amending the zoning from P-2 to R-6 would increase the value of the land and make it possible to improve it with residential units. This map amendment will have a positive economic impact and will increase the tax base for the area and well as the sales tax base, resulting from the population increase."

Trend of Development: "The proposed zoning would be the same as the current zoning for the residential district immediately abutting the site to the north, and so once improved, the new zoning would appear to be contiguous with the immediately surrounding zoning."

Demographics: "After the site is improved, the new residential development is projected to have over 300 new residents, including a mix of primarily empty nesters and families as well."



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Property Values: "The proposed map amendment will increase the underlying property values for the subject site, and it may have positive or negative effects for the surrounding existing development, at least in the short run. Part of the value for the existing property was gained from the view and proximity to the golf course. This amendment and its proposed improvements may have an adverse effect on the property values in the immediate vicinity, although this will likely subside and may result in a positive impact a few years after build out."

### **Environmental Control**

Noise and odor regulations: "There is no apparent odor issue changing from P-2 Open Land District to R-6 General Residence District for a Planned Unit Development of 137 residential units under the jurisdiction of Cook County Department of Environmental Control. Under Sec.30-465, Zone noise performance standards are listed for zone R1-R8 and C1-C5. This application is to request a change from P-2 to R-6. There is no additional compliance requirement of noise performance standards from P-2 to R-6 under the jurisdiction of Cook County Department of Environmental Control."

### **Highway**

Wetland mitigation and compensation: "Portions of the site contains wetland. The Highway Dept. requested that the Applicant provide sediment and erosion control protection."

Criteria from other regulatory agencies: "Applicant may need permits from Army Corp of Engineers, IEPA, IDNR, and MWRD. CCDOTH permit for any work in County R.O.W. and NPDES permit."

Erosion and sediment control requirements: "The Highway Dept. stated that the Applicant must provide an erosion and sediment control system during construction and until landscaping has been restored and established."

### **Public Health**

Public community well and septic or sewage systems: "Public sewer system and public water system are available to Subject Property."



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### **Building & Zoning**

Site plan review: "Approximately 44 acres of a total 86 acres are being sought for rezoning. The area has many mature trees that will be removed in order to develop the land and ultimately those trees will be replaced with new native planting as per the zoning ordinance."

Land use and permit review of properties in the vicinity of the proposed use: "The land use is predominantly residential in the surrounding area, so this new development will be in keeping with the uses that are around it. "

Lot size: "The rezoning for R-6 General Residence district will allow for a mixed residential use of Single family, Two Family and Multi Family units to be developed as a PUD. A density of 3.17 dwelling units per acre is being proposed."

Subdivision regulations: "The regulations were complied with in the layout of the subdivision. The street layout, ingress egress to the site, Parking were considered. Three different Homeowner Associations are being considered with separate covenants drafted for each. "

### ***With respect to SU-14-003:***

### **Planning & Development**

Economic Impact: "The improvement of this site as a PUD improved with a mix of townhouses, duplexes, and single family homes will have a positive economic impact, providing additional property tax revenues and related sales tax revenues from the residents who move into the new units."

Community Need: "There does not appear to be a need for new residential development in the area."

Trend of Development: "This type of development will be very similar to the residential development surrounding it to the north, east, and south, although it appears to be denser than the development to the east and south."

Demographics: "The new development will likely include a mix of new residents that will include a majority of empty-nesters with a relatively smaller proportion of school-aged youth. "





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Property Values: "While this will increase the property values for the subject site itself, the denser development may also affect the surrounding properties, given the proposed denser development for the subject site."

### **Environmental Control**

Noise and odor regulations: "Noise from the construction machines could become an issue during the different phases of development."

### **Highway**

Wetland mitigation and compensation: "Portions of site is wetland. Provide sediment and erosion control protection."

Drainage, utilities, road easements and dedications: "Drainage easements may be required alongside lot limits."

Criteria from other regulatory agencies: "Applicant may need permits from Army Corp of Engineers, IEPA, IDNR and MWRD. CCDOTH permit needed for work in County R.O.W. and NPDES permit is needed."

Erosion and sediment control requirements: "Must provide an erosion and sediment control system during construction and until landscaping has been restored and established."

### **Public Health**

Public community well and septic or sewage systems: "Public sewer system and public water system are available to Subject Property."

### **Building & Zoning**

Site plan review: "The site is part of an older Special Use for PUD (SU-71-23) on 144 acres for multifamily rental and condominium development with golf course. The new Special Use for a PUD is being applied for on 44 acres of land to build a mixed residential development of 137 homes."



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Land use and permit review of properties in the vicinity of the proposed use: "Land is mostly residential surrounded by the golf course."

Lot size: "21 detached single family homes, 17 duplexes containing 34 units & 82 multi units, a total of 137 residential units are being proposed."

Subdivision regulations: "A site plan is submitted showing the layout of the single family home sites and duplexes and Multi units townhomes."

**Objectors' Counsel's Cross Examination of Applicant and its Expert Witnesses**

Attorney Bernard Citron first cross-examined Mr. Todd Fishbein. Mr. Fishbein was asked whether views in real estate are important and could affect property values. Mr. Fishbein responded that it depends on the specific facts and circumstances and that it could be the case in some circumstances and the size of a particular unit may also affect that unit's fair market value.

Mr. Citron asked Mr. Fishbein about the legal description for the pending application. Mr. Fishbein replied that he was not the attorney on the case. Mr. Citron stated the legal description that was part of the original planned development was the same legal description that includes the property that the Applicant is purchasing (Transcript p. 274).

Mr. Citron next cross-examined Mark Kurensky. Mr. Kurensky opined that trees are a natural resource and that certain trees located within the interior of the development boundaries would be removed to allow for buildings to be constructed. Per Mr. Kurensky's landscape plan, the majority of perimeter trees would remain on the perimeter. The Applicant will work with the development plan, grading and engineering and stated that as a result there are no trees that are being preserved on the interior (Transcript p. 278). Mr. Kurensky added that the landscape plan calls for replacing a certain number of trees throughout the development site.

Mr. Citron and Mr. Kurensky disagreed as to whether the proposed plan preserved environmentally sensitive areas. Mr. Citron asked whether the site plan conforms to subdivision code as it pertains to cul-de-sacs. Mr. Kurensky responded that while observing the plan, emergency accesses were looked at and the jurisdictional Northbrook Fire Department looked at those accesses and indicated there would not be any cul-de-sac in excess than 500 hundred feet (Transcript p. 282).

Mr. Citron next questioned Mr. Kurensky regarding the percentages of dry open area and wet detention areas that Mr. Kurensky qualified as contributing to open space along Techny, north of the property. Mr. Kurensky was next asked about the option of reducing the total number of proposed buildings and units as a way to alleviate the Floor Area Ratio Variation request. Mr. Banks, and Mr. Citron then debated whether Variations were required as part of the PUD application. Lastly, Mr. Citron challenged Mr. Kurensky's ability to testify to the impact of the proposal on surrounding property values.



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Mr. Boyle then commenced his cross-examination of Mr. Kurensky. Mr. Fishbein was asked if the property that will be leased back to the golf course is on the southwest end of the development site. Mr. Fishbein confirmed that a portion of land would be leased back to the golf course property owner, with easements and use rights to be documented in the plat of subdivision. Mr. Fishbein spoke to the location of a fence between the portions of land that will be leased back to the golf course and the closest multi-unit building as per the request of the Master Hills Master Association. He stated on the plat of subdivision, the particular parcel (the third hole), will contain appropriate easements on the plat of subdivision which will allow guests, invitees, et cetera of the golf course to come and use that hole. That hole is one of the nine remaining holes that will be used even though it is on the property. Mr. Fishbein stated that appropriate easements will be put in place and a fence on that side of the golf hole so that maintenance can go through the gate and fence to maintain issues on the pond as opposed to golfers coming in and out of the gate. There is access through the fence for the residents. He also stated there are extraordinary topographical conditions and indicated that this is the lowest part of the area for storm water retention, and thus is functional to address concerns of flooding (Transcript p.293).

Mr. Citron next cross-examined Mr. Jeff Mulcrone about the appearance of the buildings intended to be constructed on the proposed development. Mr. Mulcrone stated he had not surveyed the building material of each residential building located within the Mission Hills Residential Community. Upon direct questioning from Chairman Freeman, Mr. Mulcrone stated that he believed the proposed building materials were consistent with the typical building materials found in similar construction throughout the North Shore communities.

Mr. Citron next cross-examined Mr. Ronald Adams. Mr. Adams opined that the onsite water flow was from east to west. Mr. Adams described how, in his professional opinion, the existing drainage systems did not meet the current standards for such systems. The proposed drainage systems that would be incorporated into the overall site if the residential development was approved and permitted would vastly improve onsite drainage and help alleviate the flooding that starts on the Subject Property and ultimately reaches neighboring properties in the surrounding area. He testified that Western Avenue and all the property east of Western Avenue is not a tributary to the golf course but rather is a tributary to the south, going to underneath Techny Road and then toward Citation Lake. The area to the east is flat with numerous low spots and is a storm sewer with a little curb and gutter. The drainage makes its way to the Citation Lake, but not on to the property. The proposed plan is to bring up the system to current storm water management standards. The plan also calls expanding and deepening the existing retention ponds onsite, which will have a positive overall affect on water control and flooding. Moreover, the control of release rates with newly installed restrictor equipment would keep the water onsite and not force it to the properties to the west.

Lastly, Mr. Adams responded to questions about increased volume due to the increase of impervious surfaces by explaining how the implementing new retention and detention systems will actually work to improve water flow and flooding onsite, and have a positive impact on neighboring properties.



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**Rebuttal Testimony**

Attorney Banks called Ronald Adams as his first rebuttal witness. Mr. Adams testified that the length of a cul-de-sac can be modified beyond 500 ft. per the Cook County Zoning Ordinance.

Attorney Banks called Terrence O'Brien as his second rebuttal witness. Mr. O'Brien opined that any current property owner within the Mission Hills Residential Community purchased his/her unit with the risk of their golf course view being changed at some point in the future. Mr. O'Brien specifically referenced the 20 year Restrictive Covenant, March 20, 1972 imposed by the Applicant in the Mission Hills' Planned Unit Development application and restrictions of August 8, 1973). It is Mr. O'Brien's opinion that the golf course view was only protected for a period of 20 years from the date the 1971 PUD application was approved by the Cook County Board. Mr. O'Brien testified that, in his professional opinion, replacing a golf course view with new residential units would not have a negative impact on the value of the Mission Hills' properties. Mr. O'Brien next testified that, in his professional opinion, the proposed 3-to-the-acre density of the proposed residential development was compatible with the density of the surrounding residential improvements. He testified that 137 units, with a density of 3.17 units per acre, that are proposed complement the existing land uses in the area. The Mission Hills development is of 57 acres, where the development is 13.7 units per acre. The development to the east of Western is 4.365 units per acre. The development to the south on Techny is 3.265 units per acre which is more intense then the proposed development (Transcript p. 319).

Mr. Citron re-cross-examined Mr. O'Brien. Mr. O'Brien agreed that the negative impact analysis was not a requirement of the written appraisal reports that were filed with the Applicant's PUD application. However, based on his analysis of the subject area, Mr. O'Brien felt knowledgeable and qualified to speak to the potential impact the development will have on surrounding property owners. Mr. O'Brien's analysis of existing property values did not distinguish between the Mission Hills properties with a golf course view and those properties without a golf course view.

Attorney Banks called Mr. Aboona as his third rebuttal witness. Mr. Aboona responded to follow-up questions regarding how the proposed development would impact or otherwise affect traffic conditions in the area. He testified the peak morning rush is between 7:45 AM to 8:45 AM and the afternoon is between 4:30 PM to 5:30 PM. Mr. Aboona concluded that, in his professional opinion, the proposal would not have a negative impact on traffic conditions in the immediate area.

Attorney Banks next called Mr. Todd Fishbein as his fourth rebuttal witness. Mr. Fishbein opined that, based on his experience in real estate development, the addition of new construction homes at a higher price point would actually increase the value of other homes located in the immediate area. Attorney Boyle re-cross-examined Mr. Fishbein, and asked whether Mr. Fishbein was aware of another example of an expired PUD. Mr. Fishbein stated that, based on his general knowledge of applicable case law, he understood that certain private agreements could affect the validity of a PUD.

Mr. O'Brien was recalled as a witness. Mr. O'Brien responded to follow-up questions regarding the impact on property values by stating that surrounding property values tend to rise, regardless of view,



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when new housing that is greater in value is added to a neighborhood. Mr. Citron re-cross-examined Mr. O'Brien. Mr. O'Brien testified that the Applicant, or any potential applicant, has the right to bring a zoning amendment case before the Cook County Zoning Board of Appeals seeking to amend zoning from a P-2 Zoning District. Mr. Citron and Mr. O'Brien disagreed with the presumption that if the golf course property is developed, all surrounding property values would go down. Mr. O'Brien has experienced the market values rise in neighborhoods surrounding development that whenever they have put in new developments, the surrounding property value rise regardless of view. When the new housing stock in the neighborhoods is greater in value than the old style neighborhood and thus raises the surrounding property values.

Mr. Erik Doersching was called as the fifth rebuttal witness. Mr. Doersching further described his analysis of the market conditions in the area, and compared and contrasted other residential projects in the general area. Mr. Doersching maintained his conclusion that the proposed 137 units would be in demand and absorbed within the time periods originally testified to.

Mr. Adams was recalled to speak to the sanitary sewer system, storm sewer, and water main. Mr. Adams added that he believed the various utility companies would make services available to the proposed residential development. Mr. Adams reaffirmed his position that the proposed development would cause the existing sewer, water retention, and water lines to be improved to 2014 standards, and that the overall impact on water retention, detention, and flooding would be positive. He testified that he personally interfaced with the Mission Brook Sanitary District, and obtained the District's approval for the proposed improvements.

Ms. Jung (member of general public) asked for the Applicant to further clarify whether there is a difference in value for units with [abutting] open space and units without open space. Chairman Freeman opined that the Applicant had testified to that point.

**Request for a Continuance for the Objectors to Present Witnesses**

Mr. Citron and Mr. Boyle joined in a motion for a continuance to allow each time to prepare a case in chief in objection to the proposed residential development. The Applicant gave notice on June 12, 2014 and came prepared to put their case on for July 9, 2014. Mr. Boyle and his clients received notice on June 12, 2014 and came to the hearing on July 9, 2014. Mr. Citron was retained after July 9 and requested to grant him a continuance to put on his case. The ZBA voted on the request and unanimously denied the motion for a continuance.

**Applicant's Petition for Map Amendment vs. Objectors' Position that Applicant Should be Seeking an Amendment to the Mission Hills P.U.D.**

Messrs. Citron and Boyle, the two attorneys representing some of the Objectors, made a joint motion to dismiss the Applicant's application on the grounds that Applicant has requested inappropriate relief. Specifically, the Objectors' counsel argued that the subject site is part of an existing P.U.D. and,



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accordingly, the Applicant should be seeking to amend the P.U.D. rather than requesting that the subject site be re-zoned and that a new P.U.D. be approved thereon.

Chairman Freeman stated that the ZBA has received preliminary advice from the State's Attorney's Office and it is that the Applicant's Application as submitted does comply with the Zoning Ordinance. The ZBA then granted Messrs. Citron and Boyle the opportunity to file briefs in support of their motion, and the Mr. Banks the opportunity to file a brief in opposition to the motion, by August 15, 2014. All three attorneys were also given a subsequent 2-week period to file reply briefs to one another's respective briefs. All such briefs were received and reviewed by the ZBA and also provided to the State's Attorney for review in conjunction with its assessment of the validity of the Objectors' motion.

The State's Attorney's advice, received after the hearing and set forth in the memorandum attached hereto, is that the P.U.D. that once covered the subject site has expired and, as a result, the Applicant requested appropriate relief: a Map Amendment to re-zone the subject site from P-2 open lands district to R-6 general residence district and a P.U.D. (together with special use and variances) thereon.

At the September 17, 2014 decision-making session the ZBA discussed the Objectors' motion in light of the various briefs received, together with the State's Attorney's memorandum, and voted unanimously to reject said motion.

***Please note that the State's Attorney's memorandum is subject to attorney-client privilege and should not be shared with any persons who are not: (a) Cook County employees or elected officials; and (b) have a need-to-know.***

**FINDINGS:**

**Pursuant to Article 13.7.9 of the Cook County Zoning Ordinance, the Board makes the following findings as to Applicant's application for a proposed Map Amendment:**

**1.) Uses of surrounding property:**

This standard requires a showing that the proposed use of the property is compatible with the use of the surrounding land. In this case, the surrounding land consists of the following: on the north, Mission Hills Country Club Community with an underlying zoning classification of R6 General Residence District/PUD and containing of a total of 781 dwelling units, consisting of 5-story, masonry, masonry, residential multi-unit (condominium) buildings, and 2-story brick and/or frame townhomes, club house facilities and a 9-hole portion of the Mission Hills golf course; on the east established single-family detached homes; on the south, established detached single-family homes; and on the west, across Sanders Road is a Cook County Forest Preserve. The Applicants' Site Plan proposes the construction of (21) twenty-one detached home, thirty-four (34) duplex units and eighty-two (82) townhome units. The proposed mixed of residential use of the Subject Property



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under the said Site Plan, though not identical to the surrounding land-use, is compatible with the character of the latter given the proposed development's residential character and the care taken in the Plan to match adjoining single-family detached land use to the east and south. *In sum, the record supports a finding that the proposed use of the Subject Property will not interfere with the use and enjoyment of the surrounding property.*

### **2.) Zoning classification of surrounding property:**

This standard requires a showing that the proposed R6 District rezoning of the Subject Property is compatible with the zoning classifications of the surrounding property. The existing zoning classification of the Subject Property is a P2 Open Land District. The zoning classifications of land surrounding the site are as follows: on the north, a County R6 General Residence and P2 Open Land District; on the east, County R5 Single-Family Residence District; on the south, County R4 Single-Family Residence District; and the west, County P1 Public Land District (Forest Preserve) to the west of Sanders Road. Again, as with a proposed land use, a proposed zoning classification does not have to be identical with the zoning classifications of the surrounding lands in order to be found compatible with the latter. The test of compatibility for the proposed zoning classification in a case such as this is whether the land uses allowed under the proposed R6 District conflict with the use and enjoyment of lands surrounding for purposes permitted under the existing zoning classification. Having this test in mind, we see no such conflict with the residential use under the proposed rezoning because, like the land use found in the adjoining zoning district to the north, the land use being proposed is a residential land use. *Accordingly, we find that the proposed R6 District rezoning of the Subject Property to be compatible with the zoning district classifications of surrounding lands.*

### **3.) Suitability of the Subject Property for the use permitted under the existing zoning classification:**

This standard requires a showing that the existing district zoning classification is unsuitable for the development of the Subject Property with land uses permitted thereunder. Under the prior approved PUD, this area was utilized as open space to reduce the density over the entire property. The 1976 zoning map identified the subject site as both a P-2 district, and re-zoned the neighboring Mission Hills site as an R-6 district. The test of the suitability of the Subject Property's zoning classifications in this case is whether those classifications have in fact given birth to development for purposes permitted under the said R6/P2 zoning districts. Today, the Subject Property is one of the very last tracts in the area still undeveloped in the area. This being so, we attribute the property's continued lack of development to the unsuitability of the existing zoning district. *Accordingly, we find that the existing P-2 zoning classification has been shown to be unsuitable for the development of the Subject Property.*

### **4.) Trend of development in the area:**

This standard requires a showing of a trend of development in the area which supports the proposed re-zoning of the Subject Property. The evidence in this case shows that the property to the north of



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the Subject Property has been rezoned to R6 zoning to allow for its development. *Accordingly, we find that a trend of development exists in the area of the Subject Property; that the said trend of development is toward the type of mixed-use residential proposed in this case; and that the proposed R6 rezoning of the Subject Property is required to align the Subject Property's zoning to that trend of development.*

**5.) Length of time the property has been vacant as zoned considered in the context of land development in the surrounding area:**

This standard requires a showing of the Subject Property has remained essentially vacant under the existing zoning when viewed in the context of the surrounding area's development. In this case, the historical record shows that the Subject Property was primarily zoned in the R3 district in the 1960's. In 1971 the Hills Golf Course, Inc. requested a zoning map amendment from the R3 to R5 to permit multi-family dwelling (condominium) development with a golf course and related club house facilities (Z.A. # A-71-63). A companion filing requested a Special Use in the R5 for a Planned unit Development granted as companion application (Z.A. # SU-71-23) both were granted on January 3, 1972. After, 1972 the County subsequently enacted two (2) new Zoning Ordinances in 1976 and 2001 which extended 1972 district zoning classification of the Subject Property. Given this set of facts, when we consider the change of the area from under-developed to developed, we conclude that the time for this land's development has now come given the transformation of the surrounding suburban character. *Accordingly, we find that the only likely result of the continued maintenance of the property's existing zoning would be its continued vacancy, a result at variance with both the principals of the Ordinance (and of the Cook County Comprehensive Land Plan) that zoning give birth to development in accordance with the development of lands occurring in the surrounding area.*

**6.) Extent to which property values are diminished by particular zoning restrictions:**

This standard requires a showing of the extent, if any, that the property's value is diminished by its existing zoning. In this case, the uncontested testimony was that the property's fair market value was substantially diminished in value under its present zoning classification below its value if developed as proposed, i.e., by \$7,700,000.00. The record also established that this diminution in market value bears no correspondence to public well-fare as the present zoning conflicted with the property's highest and best use. Further, the record also establishes that the diminution of the property's value via its existing zoning is unnecessary as the proposed development will not have any depreciative impact on the value of other properties in the area. *Accordingly, we find that the property's existing P2 zoning unreasonably and unnecessarily diminishes the value of the Subject Property.*

**7.) Need in the community for the proposed use:**

This standard requires a showing of a community need for the uses proposed by the proposed development. Oftentimes, this standard is met by showing a market demand for the uses proposed. In this case, the evidence is clear and convincing that the types of detached and attached housing area of a type, scale and character desired by the market and, therefore, are land uses likely to be readily absorbed by market demand. We found the market study and the testimony of the Applicant's





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appraiser convincing and credible in this regard. *Accordingly, we find that the proposed R6 development is in accordance with the identified community need for the uses proposed for the Subject Property.*

**8.) Consistency with the Cook County Comprehensive Land Use and Policies Plan:**

This standard requires a showing that the Subject Property's proposed re-zoning is consistent with that suggested in the County's Comprehensive Plan. That same Comprehensive Plan reflects on its Map a recommended land use "Townhome" of the Subject Property to accommodate single-family homes, duplex and townhomes use on the Subject Property. In this case, the Applicant has requested a re-zoning from the property's present P2 zoning to a new R6 zoning to allow for the proposed single-family, duplex and townhome uses of the property. *Accordingly, we find the proposed development's R6 mixed-residential zoning to be consistent with the type of zoning recommended for the property in the County's Comprehensive Plan.*

**Pursuant to § 13.8.9 of the Cook County Zoning Ordinance, the Board makes the following Findings of Fact as to the Special Use:**

**1.) Establishment, maintenance or operation of the Special Use will not be detrimental to or endanger public health, safety, or general welfare:**

The Applicant proposes to develop the said 43.22 acre property with 21 detached single-family houses, seventeen (17) duplex unit lots containing thirty-four (34) dwelling units, with eighty-two (82) multi-Unit (townhomes) for a total of one-hundred and thirty seven residential units. The proposed mixed-residential development is being designed to protect public health, safety and general welfare and it will comply with the County's Building, Subdivision and traffic design regulations and codes. (PUD filed)

**2.) Establishment, maintenance or operation of the Special use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the users already permitted, nor diminish and impair property values within the neighborhood:**

The proposed mixed-residential buildings types are being designed as a low-profile, 2-story buildings which will be compatible with the adjacent uses, residential single-family homes to the east and south; and the multi-story (5 stories) condos' and two-story townhouse development to the north (Mission Hills) of the Subject Property. The proposed development will be appropriately landscaped to enhance their appearance, as well as enhance the general appearance of the immediate neighborhood. The proposed development will not diminish or impair property values within the neighborhood.



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**3.) Establishment, maintenance or operation of the Special Use will not impede the normal and orderly development and improvement of surrounding property for permitted uses:**

The proposed one-hundred and thirty-seven (137) mixed-residential developments will not impede the normal and orderly development and improvement of surrounding properties. The surrounding neighborhood is substantially built-out. Any new development in the surrounding neighborhood will be to replace older or obsolete improvements. The building designs and uses of the proposed development will be compatible with the surrounding uses appearance and intensity of use.

**4.) Adequate utilities, access roads, drainage and other necessary facilities have been or are being provided:**

The Mission Brook Sanitary District will be providing water, sanitary and storm water sewers services. The development will be maintained and appropriately drainage facilities will be provided to comply with all County's Codes and Regulations.

**5.) Adequate measures have been, or will be, taken to provide ingress and egress to minimize traffic congestion in public streets:**

The Applicant has engaged a traffic engineering firm (KLOA) and was provided with design solutions which includes a principal ingress and egress which line-up with Pensive Lane located to the south of Techny Road. The traffic report presented at the Zoning Board hearing identified a number of improvements that they will be implemented that will effectively mitigate the traffic impact of this development on the surrounding roadway network.

**6.) Establishment, maintenance or operation of the Special Use shall in all other respects conform to all Cook County Ordinances, unless otherwise authorized by the Cook County Board of Commissioners pursuant to the Recommendation of the Zoning Board of Appeals:**

The Applicant intends to comply with all other Ordinances, Regulations and Rules of the County in the development of the subject site/property for the development of the 137 mixed residential units proposed at the site. The Applicant has also filed a map amendment and a PUD in conjunction with this Special Use.



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**Pursuant to Article 9.5.10 of the Cook County Zoning Ordinance, the Board makes the following findings as to Applicant's application for a proposed Planned Unit Development:**

- 1. PUD conforms with the planning objectives, policies and maps of the County as specified in the Cook County Comprehensive Land Use and Policies Plan.**

The PUD, if approved, will conform to the planning objectives, policies, and maps of the County, as specified in the Cook County Comprehensive Land Use and Policies Plan.

- 2. PUD is of a type and character and contains uses that are needed in the area.**

The PUD is of a type and character and contains uses that are needed in the area.

- 3. PUD is designed and laid out to preserve environmentally sensitive areas, natural resources, habitat and topographic features to the fullest extent possible.**

The PUD is designed and laid out to preserve environmentally sensitive areas, natural resources, habitat and topographic features to the fullest extent possible.

- 4. PUD is designed in conformity with the provisions of the Cook County Subdivision Manual or any successor subdivision document.**

The PUD is designed in conformity with the provisions of the Cook County Subdivision Manual or any successor subdivision document.

- 5. PUD is designed to provide horizontal spacing between buildings which takes into consideration the purpose and objectives of this article.**

The PUD is designed to provide horizontal spacing between buildings, which takes into consideration the purpose and objectives of this article.

- 6. PUD complies with the industrial performance standards enumerated in Article 6 of this ordinance if the PUD contains industrial uses.**

The PUD shall provide more open space than would be required in a standard subdivision.



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**7. PUD complies with the parking requirements enumerated in Article 11 of this Ordinance.**

The PUD will comply with the parking requirements enumerated in Article 11 of this Ordinance.

**8. PUD provides appropriate yards, setbacks and buffers between the PUD and adjacent zoning lots. The applicant shall specifically request, in writing, any variance from the required setbacks.**

The PUD provides appropriate yards, setbacks and buffers between the PUD and adjacent zoning lots.

**9. PUD has adequate utilities, access roads, drainage and other necessary facilities.**

The PUD will have adequate utilities, access roads, drainage, and other necessary facilities.

**10. PUD has ingress and egress designed to minimize traffic congestion in public streets.**

All measures have been, or will be taken to provide ingress and egress designed to minimize traffic congestion in the public streets.

**11. PUD and its maintenance and operation will not be detrimental to or endanger public health, safety or general welfare.**

The establishment, maintenance, or operation of the proposed PUD will not be detrimental to or endanger public health, safety, or general welfare.

**12. PUD and its maintenance and operation will not be injurious to the use and enjoyment of other property in the immediate vicinity for the uses already permitted, nor diminish and impair property values within the surrounding area.**

The establishment, maintenance, or operation of the proposed PUD be injurious to the use and enjoyment of other property in the immediate vicinity for the uses already permitted.

**13. PUD and its maintenance and operation will not impede the normal and orderly development and improvement of surrounding property.**

The establishment, maintenance, or operation of the proposed PUD will not impede the normal and orderly development and improvement of surrounding property for permitted uses.



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**14. PUD shall provide more open space than would be required in a standard subdivision.**

The PUD will provide more open space than would be required in a standard subdivision.

**15. PUD shall be designed to connect to existing or planned pedestrian and bicycle systems in the vicinity.**

The PUD been designed to connect to existing or planned pedestrian and bicycle systems in the immediate vicinity – note that per Mr. Kurensky's testimony, no other planned systems exist with which to connect.

**Pursuant to Article 13.6.3 of the Cook County Zoning Ordinance, the Board makes the following findings as to Applicant's application for a proposed Variation:**

**1) The physical surroundings, shape, or topographical condition of the property would result in a hardship upon the owner, as distinguished from a mere inconvenience, if the provisions of this Ordinance were followed:**

Physical surroundings, shape or topographical condition of the property would result in hardship upon the owner, as distinguished from a mere inconvenience, if the provisions of this ordinance were followed.

**2) The site conditions are unique to the Subject Property, and do they not exist or are they not applicable to other properties within the same zoning classification.**

Conditions which are unique to the property exist and are not applicable to other properties within the same zoning classification.

**3) The Variations are not sought based exclusively upon the desire to make the property more profitable.**

Variance sought is not based exclusively upon a desire to make the property more profitable.

**4) The hardship or alleged difficulty caused by this Ordinance and not by any person presently having an interest in the Subject Property.**

Hardship or alleged difficulty is caused by this ordinance and not by any person presently having an interest in the property.



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- 5) The Variations, if approved, would not be detrimental to the public welfare or injurious to other properties or improvements in the neighborhood.**

Variance will not be detrimental to the public welfare or injurious to other properties or improvements in the neighborhood.

- 6. The Variations, if approved, will not impair an adequate supply of light and air to adjacent properties, substantially increase congestion in the public streets, increase the danger of fire, cause increased flooding risk to adjacent property, endanger public safety, or substantially diminish or impair property values within adjacent neighborhoods.**

Variance will not impair an adequate supply of light and air to adjacent properties, substantially increase congestion in the public streets, increase the danger of fire, cause increased flooding risk to adjacent property, endanger public safety or substantially diminish or impair property values within adjacent neighborhoods.

**COMPREHENSIVE PLAN:**

The Cook County Comprehensive Plan designates the Subject Property P 2 Open Land Zoning.



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**RECOMMENDATION:**

Based on the foregoing Findings, the Zoning Board of Appeals **unanimously recommends approval** to the Cook County Board of Commissioners and that the Map Amendment as requested, MA-14-02, SU-14-03, and V-14-08:

- 1) Map Amendment to rezone approximately 44 acres of the Subject Property from P-2 Open Land District to an R-6 General Residence District for a Planned Unit Development (PUD) of 137 residential units; and
- 2) Special Use for a PUD in the R-6 General Residence District (if granted under companion MA-14-02) for twenty one (21) detached single family homes, seventeen (17) duplex containing thirty four (34) units and eighty two (82) multi-unit (townhouses) for a total of 137 residential units.
- 3) Variation in R-6 General Residence District (if granted under companion MA-14-02 & SU-14-03) to reduce rear yard setback for duplex and townhome lots from minimum required 40' to 25'; reduce corner side yard setback for townhome lots from minimum required 21.5' to 20'; increase the F.A.R for duplex lots from 0.5 to 0.66 and increase the F.A.R. for townhome lots from 0.6 to 0.73 in Section 18 of Northfield Township **granted**. If granted, all pertinent records, maps and the Comprehensive Plan shall be changed in accordance with this recommendation.

Respectfully submitted,  
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A handwritten signature in black ink, appearing to read "Kevin L. Freeman".

Kevin L. Freeman, Chairman

KLF/see