

IN THE CIRCUIT COURT FOR FREDERICK COUNTY, MARYLAND

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IN THE MATTER OF  
GLOBAL MISSION CHURCH OF  
GREATER WASHINGTON SBC

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Case No. 10-C-08-003362

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OPINION

This Petition for Writ of Administrative Mandamus flows from the Frederick County Planning Commission's (hereinafter "FCPC") decision to deny an application for an amendment to the Frederick County Master Water and Sewerage Plan. The Plaintiff, Global Mission Church (hereinafter "GMC"), appeals the FCPC's conclusion that their requested dispensation be denied because it is inconsistent with the Frederick County Comprehensive Plan and the Urbana Regional Plan. Based upon the Court's review of the pleadings, oral arguments, entire record and applicable law, the decision of the FCPC must be affirmed.

STATEMENT OF FACTS

The Plaintiff, a Maryland Corporation with its principal place of business in Montgomery County, owns an approximately 110-acre parcel of real property located mainly in Frederick County but extending across the Montgomery County border. (Comp. at 1.) The Frederick County portion consists of a 78.87-acre parcel located north of MD 109 and adjacent to the south side of I-270, referenced on Tax Map 105 as Parcel 109 (the "Property"). (Comp. at 3.) The area is currently zoned as agricultural pursuant to the

Frederick County Zoning Map and Zoning Ordinance. (Id.) It also bears a land-use designation of "agricultural/rural" on the Frederick County Comprehensive Plan and the Urbana Regional Plan (hereinafter consolidated as "Comprehensive Plan," as the Urbana Regional Plan is the portion of the Frederick County Comprehensive Plan pertaining to the Urbana Region). (Id.)

GMC desires to erect a new church on the Property in two phases. (Id.) Phase 1, originally scheduled for 2010, envisions the construction of a sanctuary containing 1,200 seats. (Id.) Phase 2 projects the tentative addition of another 800 seats around the year 2020, culminating in a grand total of 2,000 sanctuary seats. (Id.)

The Property is not served by public water or sewer, nor is it scheduled to receive those services under the current Frederick County Master Water and Sewerage Plan (hereinafter "W/S Plan"). (Id. at 4.) Indeed, the W/S Plan designates the Property as "No Planned Service" (hereinafter "NPS"). (Id.) It is permissible to install water and septic systems on such land without seeking permits provided that the maximum capacity of each is below 5,000 gallons per day (hereinafter "GPD"). (Frederick County W/S Plan, Dec. 2008 at 1-3.)

GMC seeks to install water and septic systems far exceeding that 5,000 GPD limit. Therefore, it began pursuing the necessary permits and approvals to establish a large private well and sand mount septic system to serve the Property. The W/S Plan defines these respective systems as such:

"Multi-Use Sewerage System" for the purposes of the Plan, means a system serving a single lot or institution. Multi-use

Sewerage Systems may have a treatment capacity in excess of 5,000 GPD, and include the collection and disposal of sewage or industrial wastes of a liquid nature and various devices for the treatment of such wastes.

"Multi-Use Water System" for the purpose of the Plan, means a system serving a single lot or institution. Multi-use Water Systems may have a capacity in excess of 5,000 GPD, and include piping, pumps, tanks, or other facilities utilizing a source of ground or surface water.

(Frederick County W/S Plan, Dec. 2008 at 1-3.) As evinced, the W/S Plan definitions mandate that dispensation be awarded in order to establish water and wastewater systems with greater than 5,000 GPD capacity, but do not prescribe a maximum capacity for either upon approval.

Under Maryland law, any revision sought to the County W/S Plan - including dispensation requests for high-capacity multiuse water and sewerage systems - must be presented to the local planning agency for a determination of consistency with the County's Comprehensive Plan. (Ann. Code of Maryland, Environment, §9-501 et seq.) If the requested amendment is found inconsistent with the Comprehensive Plan it does not advance to a final approval hearing conducted by the local governing body, i.e., the Board of County Commissioners. (*Id.* at §9-506(a)(1)).

#### **PROCEDURAL HISTORY**

Plaintiff GMC authored a W/S Plan amendment request and justification statement (hereinafter "Application") which was accepted by the Frederick County Planning Division on 28 July 2008. (¶ Memo at 4.) On 19 August 2008, the Planning Division issued a report recommending that GMC's W/S Plan amendment is consistent with the Comprehensive Plan.

The FCPC's meeting to review all W&S Plan amendments proposed during the summer of 2008 was held on 17 September 2008. The Plaintiff appeared before the FCPC and presented its Application. After considering the testimony and reports presented at that hearing, the FCPC determined that the Application is inconsistent with the Comprehensive Plan by a 4 to 2 vote. As a result, GMC's Application was removed from the list to be considered by the Board of County Commissioners.

One month later, on 17 October 2008, GMC filed its original Complaint, to be followed by an Amended Complaint and Petition for Writ of Administrative Mandamus on 19 February 2009. Oral argument was heard before the Circuit Court for Frederick County, Maryland, on the afternoon of Wednesday, 16 June 2010.

#### **QUESTIONS PRESENTED**

I. DID THE FCPC'S CONSIDERATION AND DENIAL OF GMC'S APPLICATION EXCEED THE SCOPE OF ITS STATUTORY POWERS?

II. IF NOT, IS THERE SUFFICIENT EVIDENCE IN THE RECORD TO AFFIRM THE FCPC DECISION THAT GMC'S DISPENSATION APPLICATION IS INCONSISTENT WITH THE COMPREHENSIVE PLAN?

III. DID COMMISSION MEMBERS PREJUDICE THE APPLICATION BY ASSERTING THEIR PREDETERMINED CONCLUSIONS AT THE HEARING?

#### **STANDARD OF REVIEW**

Administrative mandamus is used to secure a circuit court's review of an administrative agency's adjudicatory decision where no code or other law provides for such review. Bowen v. City of Annapolis, 402 Md. 587, 937 A.2d 242 (2007). In the instant case, the law does not provide for any other review of the FCPC's

determination that the Plaintiff's application is inconsistent with the Comprehensive Plan. Thus, an action for administrative mandamus is appropriate.

Courts have an inherent power through the writ of mandamus to correct abuses of discretion and arbitrary, illegal, capricious, or unreasonable acts of an administrative agency. Harvey v. Marshall, 389 Md. 243, 275, 884 A.2d 1171, 1190 (2005); Criminal Injuries Compensation Bd. v. Gould, 273 Md. 486, 500-01, 331 A.2d 55, 64-65 (1974). The origin of administrative mandamus can be "trace[d] . . . to our duty to ensure that neither the Legislature nor the Executive branch of State government deprives the Judiciary of the ability to correct decisions premised on unreasonable findings of fact or flawed conclusions of law." Harvey, 389 Md. at 280, 884 A.2d at 1193; Dickinson-Tidewater, Inc. v. Supervisor of Assessments, 273 Md. 245, 256, 329 A.2d 18, 25 (1974).

Administrative mandamus is now governed by the Maryland Rules of Civil Procedure, specifically Rules 7-401, 7-402 and 7-403. The aforementioned Rules "govern actions for judicial review of a quasi-judicial order or action of an administrative agency where review is expressly not authorized by law." Md. Rule 7-401(a). The term "administrative agency" is defined to include "any agency, board, department, district, commission, authority, Commissioner, official or other unit of the State or of a political subdivision of the State." Md. Rule 7-401(b). The FCPC is an "administrative agency" within the definition of Md. Rule 7-401(b) as it is a commission of Frederick County.

Pursuant to Md. Rule 7-403, the Court may:

[I]ssue an order denying the writ of mandamus, or may issue the writ (1) remanding the case for further proceedings, or (2) reversing or modifying the decision if any substantial right of the plaintiff may have been prejudiced because a finding, conclusion or decision of the agency:

- (A) is unconstitutional;
- (B) exceeds the statutory authority or jurisdiction of the agency;
- (C) results from an unlawful procedure;
- (D) is affected by any error of law;
- (E) is unsupported by competent, material, and substantial evidence in light of the entire record as submitted;
- (F) is arbitrary or capricious; or
- (G) is an abuse of its discretion.

The substantial evidence test is used to determine whether the agency's factual findings or the inferences made from those findings are reasonably supported by the administrative record. Maryland Aviation Admin. v. Noland, 386 Md. 556, 571, 873 A.2d 1145, 1154 (2005). The substantial evidence standard is described as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Bulluck v. Pelham Wood Apts., 283 Md. 505, 512, 390 A.2d 1119, 1123 (1978) (citing Snowden v. Mayor & C.C. of Baltimore, 224 Md. 443, 448, 168 A.2d 390 (1961)). Thus, the substantial evidence test requires a reviewing court to decide only "whether a reasoning mind could have reached the factual conclusion the agency reached." (Id.) This is a narrow standard of review, and the burden is on those who seek to reverse the agency's decision to show by clear evidence that illegality or unreasonableness exists. Office of People's Counsel v. Maryland Public Service Comm'n, 355 Md. 1, 32, 733 A.2d 996 (1999) (citing Baltimore Gas & Electric Co. v. McQuaid, 220 Md. 373, 387, 152 A.2d 825, 832 (1959)).

## DISCUSSION

### I. THE PLANNING COMMISSION ACTED WITHIN THE SCOPE OF ITS STATUTORY POWERS IN CONSIDERING AND DENYING THE PLAINTIFF'S APPLICATION.

Md. Code Ann., Environment, § 9-506(a) sets forth specific procedures for county governments to follow when considering the approval of amendments to county water and sewer plans. In pertinent part, it reads:

(a) Review by official planning agencies.-

1. Except as provided in paragraphs (2) and (3) of this subsection, before a county governing body may adopt a county plan or a revision or amendment to the county plan:

(i) The county governing body shall submit the county plan, revision, or amendment to each official planning agency that has jurisdiction in the county, including any comprehensive planning agency with area wide jurisdiction, for review and comment within a 30-day period for consistency with planning programs for the area; and

(ii) The county planning agency shall certify that the plan, revision, or amendment is consistent with the county comprehensive plan prepared under Article 66B, § 3.05; Article 25A, § 5(X); or Article 25B, § 13 of the Code.

(Id.) Frederick County's specific procedure for complying with §9-506(a) is as follows. First, the Division of Planning reviews an application to amend the W&S Plan and makes a recommendation to the FCPC with regard to whether the application is consistent with the Comprehensive Plan. Next, in accordance with §9-506(a)(1)(ii), the FCPC considers and certifies whether the amendment is consistent with the Comprehensive Plan (the scope of that inquiry is the subject of this appeal, as it was at this stage that GMC's Application was denied). If approved, the application then goes before the Board of County Commissioners for a final decision whether to award dispensation.

The Division of Planning accepted GMC's Application on 28 July 2008. Based upon a review limited to considering whether the proposed use, a church, is permitted under the zoning rules (Tr. at 38), the staff prepared a report containing a brief summary of the applicant's request, identified the parcel of land affected, and referenced its zoning designation. As Frederick County permits the establishment of churches on agricultural lands, the Division of Planning recommended a finding of consistency with the Comprehensive Plan.

The Division of Planning staff presented GMC's application at the 17 September 2008 FCPC meeting and explained their understanding of the FCPC's role in reviewing the application. Timothy Goodfellow, Frederick County Planner, opined that "[t]he Planning Commission's role in the Water and Sewer amendment process is somewhat limited in the fact that the FCPC's role is to find consistency with the Comprehensive Plan." (Tr. at 3.) Soon thereafter, Deputy County Attorney Wendy Kearney also advised the FCPC of her understanding of its role in determining whether GMC's application is consistent with the Comprehensive Plan:

[T]he Planning Commission's role is solely to determine consistency with the Comprehensive Plan of the proposed application, which in this case is to have a, essentially a private system of whatever type that MDE would approve. The wisdom of whether or not to approve this is, that decision is left to the Board of County Commissioners, they make the decision as to all of the status . . . Whether or not to allow this proposal to occur in the County would be the ultimate decision of the Board of County Commissioners. (Tr. at 10-11.)

GMC highlights these quotations as evidence of the scope of the FCPC's legitimate inquiry. However, the comments of county planners or party counsel do not determine the scope of the FCPC's

administrative powers; that authority is derived from statute. The FCPC receives a broad grant of power under Md. Ann. Code art. 66B, "Land Use Planning Commission Generally." That Article clearly demonstrates that the planning commissions, including the FCPC, possess extensive authority to create, promote, amend, execute and protect their respective Comprehensive Plans.

At the outset, it is the role of a planning commission to make and approve a comprehensive plan which the commission itself commends to the local legislative body for adoption. Id. at §3.05(a)(1). The Court of Appeals defines the comprehensive plan as:

[A] general plan to control and direct the use of land and buildings by dividing the governmental area into use districts according to present and planned future conditions, so as to accomplish, as far as possible, the most appropriate uses of land consistent with the public interest and the safeguarding of the interests of the individual property owners.

Huff v. Board of Zoning Appeals, 214 Md. 48, 58, 133 A.2d 83, 89 (1956), citing Rathkopf, The Law of Zoning and Planning, 3<sup>rd</sup> Ed. at 107. The planning commission is charged with the duty to design the best possible comprehensive plan for the county. Washington County Taxpayers Ass'n v. Board of County Comm'rs, 269 Md. 454, 464, 306 A.2d 539, 544 (1973). The plan must include a water resources element that identifies drinking water resources, as well as suitable receiving areas for storm water management and wastewater treatment. § 3.05(a)(4)(vi)(1)&(2).

Once written, the planning commission shall promote public interest in and understanding of the plan, and shall consult with the necessary officials, agencies, companies, organizations and

citizens about "protecting or executing" the plan. Md. Ann. Code art. 66B, § 3.05(d)(1)&(2). To those ends, the planning commission may recommend adoption of any amendment to the plan. § 3.07(a)(3). Importantly, Art. 66B § 3.04 enumerates powers, including that "[a] planning commission shall have the powers necessary to enable it to fulfill its functions, promote planning, and execute the purposes of this article." *Id.* at § 3.04(a)(4) (emphasis added).

GMC asserts that despite the generous grants of authority and the broad mandate of the "necessary powers" clause in § 3.04(a)(4), the FCPC erroneously exceeded its powers by considering the wider implications of the proposed multiuse systems, i.e., the density of the construction it would be serving. GMC is offended that several FCPC members raised concerns about the scale of the projected building construction, access to the Property, traffic issues, the view from I-270, impact upon future tax revenue, and the construction of an expansive bridge over Little Bennett Creek, rather than focusing exclusively on water and septic capacity guidelines. (¶ Memo at 14.)

However, GMC's amendment request seeking special dispensation for multiuse water and wastewater system designations necessitated this inquiry, as it desires to develop the Property more intensely than could be accomplished without the multiuse designations. As the Division of Planning staff indicated, GMC's proposal was "unusual" because "most of the churches that have been developed in the Ag[ricultural] zone [have been] developed well below these limits that just have them on basic well and septic systems. You know, this one in that sense is a much larger scale than we

typically see." (Tr. at 15.) Importantly, less intensive development such as a smaller building would not require water and wastewater system capacity in excess of 5,000 GPD, thereby not triggering such scrutiny. As posited by FCPC Commissioner Brown, "the reality in the vote is then, if we say yes, they can build a big church. If we say no, they're going to have to down-size the church to accommodate less than 5,000 per day?" (Tr. at 16.)

Indeed, the FCPC debated its own role at the hearing, ultimately adopting a reasonable interpretation of what constitutes its proper scope of consideration vis-à-vis the Comprehensive Plan. (Tr. at 9-13.) In response to an apparently narrow description of the FCPC's role, Commissioner White asserted a wider scope of inquiry in the following exchange:

Mr. White: I'm saying that what you're saying makes this either a rubber stamp body or one that's not allowed to use its brains. And I'm sorry, that's not what we're up here for.  
Ms. Forrence: But we're just making a recommendation, right?  
So . . .  
Mr. White: We are making a determination.

(Tr. at 11.) Commissioner White goes on to state that:

The merits go to the consistency. I'm sorry, that's the, there's no way you can get around that . . . I mean I think that there has to be, if there's not a reason for us to be looking at this from a standpoint of using some kind of intellect to judge something, it doesn't make any sense whatsoever that it ever come before us. Just leave it with the Board of County Commissioners.

(Tr. at 12.) The entire FCPC ratified this assessment when the hearing concluded with a vote, and this Court concludes that the FCPC acted within its statutory authority in conducting that poll. Article 66B grants the FCPC generous ability to police the Comprehensive Plan, including amendments thereto. In fact, the FCPC "shall have the powers necessary to enable it to fulfill its

functions, promote planning, and execute the purposes of this article" which specifically include creating (§3.05(a)(1)), promoting (§ 3.05(d)(1)), amending (§ 3.07(a)(3)), executing (§ 3.05(d)(2)) and protecting (Id.) the Comprehensive Plan. GMC's attorney uttered an understatement when it conceded that the FCPC's decision-making power regarding consistency with the Comprehensive Plan must include something more analytical "than looking on a [zoning] map." (Tr. at 21.) The FCPC committed no error in considering the developmental issues and environmental impacts directly related to the massive size of GMC's proposed water and septic systems.

II. THE PLAINTIFF FAILED TO PERSUADE THE FCPC THAT ITS AMENDMENT REQUEST IS CONSISTENT WITH THE COMPREHENSIVE PLAN, AND THERE IS SUFFICIENT EVIDENCE IN THE RECORD TO AFFIRM THAT DECISION.

Having concluded that the FCPC committed no procedural error, the issue that follows regards whether the record contains adequate substantive evidence to affirm the FCPC's ultimate decision. The record contains the amendment application itself as well as an attached justification statement, the transcript of the September 2008 hearing, and a copy of the Urbana Regional Plan. Upon review, there is sufficient evidence to affirm the FCPC decision.

A. Amendment Application and Justification Statement

GMC attached a justification statement proposing that its Property be used to construct a church with seating for 2,000 parishioners to its W&S Plan amendment application. The

justification statement averred that two wells had been drilled and that a Maryland Department of the Environment (hereinafter "MDE") Ground Water Permit would be "released upon approval of Water & Sewerage Amendment Plan." It also referenced a traffic impact study being developed with the State Highway Administration, and reported that a requisite bridge over Bennett Creek was being coordinated with MDE and Montgomery County. Furthermore, the justification statement indicated that a percolation test was performed and a sand mount system was approved for the site with a flow equalization tank to average out the discharge of the "higher than 5,000 GPD" maximum daily sewage flow.

However, with respect to the issue to be addressed by the FCPC - whether the amendment application was consistent with the Comprehensive Plan - the justification statement stated only the following:

The subject site is not served by public water and/or sewer and is not planned for service under the Master Plan for Water & Sanitary sewer. Based on the lack of existing or planner (sic) water & sewer service, the permitted use of the proposed church applicable to this site, approved perc[olation] testing of adequate area for the projected sewage flows for both Phase 1 & 2, available ground water supply for the projected water demand, our request for Master Plan text amendment is well justified.

The authors of this statement deduce that because the Property is not served by public water or sewer, but appears to have available ground water, dispensation is "well justified." No reference is made to any provision of the Comprehensive Plan which would support the notion that GMC's request to install unusually large water and sewer septic systems at this location - or the

construction it would enable - is consistent with the goals and policies of the Comprehensive Plan.

B. Testimony During the September 2008 Hearing Regarding the Water and Sewer Dispensation Request

GMC provided insufficient testimony and evidence to demonstrate that its amendment request is consistent with the Comprehensive Plan during the FCPC hearing. Plaintiff's attorney testified about Health Department percolation test approvals and proffered that a groundwater withdrawal permit seeking 7,500 GPD withdrawal had been applied for. (Tr. at 20-21.) GMC also volunteered through testimony that its maximum daily use was estimated at 11,600 GPD (Tr. at 39), but reserved that there was no upper limit. (Tr. at 40-41.)

Though they did not realize it, GMC's presentation demonstrated and emphasized that the large scale and high intensity of its proposed development of the Property was, in fact, inconsistent with the Comprehensive Plan's stated goals of protecting the agricultural and rural nature of the area, protecting the streams valleys, and enhancing the woodlands and forest buffers. (See App. at A-3, A-5, A-6.) Discussion ensued as to whether the County would be able to put a cap on the size of the multiuse water or wastewater systems to, in effect, retain some control over the intensity of the development on the Property. The FCPC also expressed deep concerns about the treatment of that much affluent before its release into the riverine ecosystem. (Tr. at 8-9.) The FCPC members were clearly disturbed by the possibility that there would be no County

controlled limits on the size of the proposed water and wastewater systems if the multiuse designations were approved, and therefore "the property could be massively developed." (Tr. at 41.) They concluded that the capacity of the water and wastewater systems to be constructed on the Property would be determined by the MDE, not by the FCPC or Board of County Commissioners (Tr. at 38-39), effectively divesting Frederick County authorities of any ability to manage the development of the Property or protect its rich ecosystem. (Tr. at 50-53.)

C. The Urbana Region Comprehensive Plan Clearly Seeks to Avoid Development West of I-270

The Comprehensive Plan codifies a policy that the west side of I-270 is to remain agricultural in nature and use:

LAND USE POLICIES AND RECOMMENDATIONS

The following policy statements will provide guidance to the County for land use and zoning decisions in the Urbana Region  
. . . .

Maintain the area west of I-270 for conservation and rural/agricultural uses to protect Sugarloaf Mountain, the Bennett Creek corridor and other natural resources in the area.

(App. at A-6.) The Comprehensive Plan specifies that development should be discouraged in agricultural areas, and that floodplains, wetlands and adjacent woodlands along stream valleys should be protected with specific mention of Bennett Creek. (App. at A-5, A-6.)

GMC's attorney characterized the Comprehensive Plan's designation I-270 as being akin to "the Great Wall of China, and it says several places that development shall not go to the other

side, the west or south side . . ." (Tr. at 21.) Plaintiff's counsel also recalled FCPC Commissioner Brown "saying several times during the Urbana plan [that] [t]here is no development plan[ned] on the other side." (Id.)

It is clear from the transcript that the FCPC members were aware of the Comprehensive Plan goals and policies for the Urbana Region, and that the applicant's proposal to develop at an intensity which required a W&S Plan amendment for multiuse water and wastewater systems was inconsistent with those objectives. In addition to being disturbed by the footprints of the water and sewer systems, and the potential for unrestricted development of the Property, the FCPC was shocked by GMC's plans for a massive 300' long, 24' wide, and 15' high bridge needed to span Bennett Creek in order to provide access to the proposed buildings. (Tr. at 23-28.) They concluded that these large structures suggest an intent to pursue massive development, resource consumption and sewage discharge inconsistent with the stated plan goals of protecting and enhancing the floodplain, wetlands and forest. (App. at A-5, A-6.)

Discussion focused upon the agricultural/rural and undeveloped character of the Property, the environmental sensitivity of Bennett Creek which flows through the property and converges with the Monocacy River, and the scale of the proposed development and expansion potential. (Tr. at 34-37; 50-51.) The Commissioners need not to have read word-for-word from the Comprehensive Plan on the record in order to reference it because, as discussed supra, the FCPC created and maintains control of the

Comprehensive Plan. Upon a thorough presentation of GMC's proposal, the FCPC decided that the water and sewerage dispensation sought by GMC would enable development beyond the limits prescribed by the Comprehensive Plan. As there is no evidence of unreasonableness or illegality on the part of the FCPC, that decision cannot be overturned on this appeal.

III. COMMISSION MEMBERS DID NOT PREJUDICE THE APPLICATION BY ASSERTING PREDETERMINED CONCLUSIONS AT THE HEARING.

Finally, the record does not support GMC's accusation that FCPC members prejudged the Application before the hearing began. GMC points to the discussion over the size of the water and wastewater systems, citing pointed questions from the FCPC Commissioners as evidence of prejudgment.

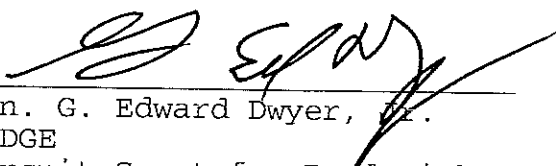
The Division of Planning staff report provided to the FCPC members did not indicate the specific type of multiuse systems that GMC had proposed for the Property. In that context, the Commissioners asked tough questions and proposed alternatives for discussion. Commissioner White asked about the County's policy on what are known as "package" systems. (Tr. at 4.) Planning staff quickly clarified the issue, and Commissioner White was satisfied. (Tr. at 4-5.) Also being knowledgeable about various treatment system options, Commissioner Floyd asked whether spray irrigation or wetlands systems were considered, and again clarification was provided. (Tr. at 6.) There are, in fact, several different types of multiuse systems deployed throughout Frederick County. (Id.)

While GMC considers such direct questioning prejudicial, they neglect to note that one of the accused Commissioners -

Commissioner White - made the initial (though unsuccessful) motion to find GMC's application consistent with the Comprehensive Plan, stating "I think that there are a number of questions that will probably come up in site plan but as far as this is concerned it does meet consistency and so I will move to find this application consistent with the Urbana Comprehensive Plan." (Tr. at 41.) This assertion clearly demonstrates that Commissioner White kept an open mind throughout the proceeding. Nothing in the record supports GMC's accusation that he or any other Commissioner prejudged or prejudiced the Application.

**CONCLUSION**

For the reasons set forth herein and based upon a complete review of (i) the entire record, (ii) the memoranda filed by the parties, (iii) the oral arguments, and (iv) the applicable law, it is decided this 23rd day of JULY, 2010, by the Circuit Court for Frederick County, Maryland, that the decision of the FCPC is **AFFIRMED.**

  
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Hon. G. Edward Dwyer, Jr.  
JUDGE  
Circuit Court for Frederick County

**FILED**  
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