



## FRIENDS OF FREDERICK COUNTY

*preserving our land, our water and our quality of life*

July 26, 2010

Jenny King  
Planner  
Maryland Department of Planning  
301 West Preston Street  
Suite 1101  
Baltimore, MD 21201

Re: Preliminary Comments on the Draft  
New Market Municipal Growth Element

Dear Ms. King:

Please find enclosed our preliminary comments on the Draft New Market Municipal Growth Element (draft "MGE"). We understand that this document has been submitted to the Maryland Department of Planning and is currently under review by your office. We respectfully request that our comments be considered in the course of this review.

### **The Annexations**

The draft Growth Element proposes to annex the Delaplaine, Ganley and Smith/Cline farms. These annexations would more than double the size of the Town from about 434 acres to about 890 acres. (MGE, p. 13.) The 925 residential units proposed for Smith/Cline alone will almost triple the population of the Town by adding approximately 2,451 people and increasing the number of residents from 1443 residents (at full build-out of existing subdivisions) to 3,894 residents. (MGE, pp. 14-15.) The locations of these farms are shown in purple cross-hatching on the land use map (pp 38 of the document at:

[http://www.mdp.state.md.us/PDF/OurWork/CompPlans/Frederick/NewMarket/10\\_Draft\\_MGE\\_New\\_Market.pdf](http://www.mdp.state.md.us/PDF/OurWork/CompPlans/Frederick/NewMarket/10_Draft_MGE_New_Market.pdf)).

These proposed annexations are contiguous or very near to the Meadows, the Orchards, Brinkley Manor, Royal Oaks, Sponseller's Addition, New Market West and New Market Farms. They are also contiguous or very near to municipal recreational facilities, parks and open space; and an Audubon Bird Sanctuary.

*Delaplaine (134 acres) and Ganley (56 acres)*

The Town proposes that Delaplaine and Ganley be developed for commercial and industrial purposes which, under the Town's development regulations, include heavy manufacturing,

4 E. Church Street, Frederick MD 21701 <http://www.friendsoffrederickcounty.org> 240 529 1655

heavy vehicle repair, truck stops, public heliports, recycling and storage, public works yard/garage, warehouses, fast food drive-thru restaurants, motels, commercial parking lots and gasoline stations, among other uses. (See New Market Land Development Ordinance, Article IV, § 2.0, Table of Uses.) The heavy traffic, air pollution, noise, dust, glare, smoke, toxic chemicals and visual impacts associated with these uses would severely impact the surrounding communities, recreational facilities, parks, open space, bird sanctuary as well as the rural and historic character of New Market.

### *Smith/Cline (266 acres)*

The Town proposes to build 925 residential units on the Smith/Cline farms. The Town itself concedes, however, that 925 units would greatly exceed -- by 822 -- the number of homes required to accommodate the 103 additional residents the Department of Planning projects for New Market in the next 20 years. (MGE, p. 15).

Additionally, the 925 residential units proposed for Smith/Cline would generate about 9,000 additional car trips per day, greatly worsen traffic on Boyers Mill Road, increase "cut-through" traffic in adjoining neighborhoods, and exacerbate traffic congestion and safety hazards on narrow, winding road segments and local intersections.

Finally, the Smith/Cline development would yield 583 pupils. As a result, Smith/Cline would severely exacerbate school overcrowding in the area and require the construction of at least one new elementary school, at a net capital cost of \$10 Million to county taxpayers. MGE, p.20-22. State and county taxpayers would also have to cover over \$ 7 Million in annual operating costs, according to estimates by the Frederick County Public School System ( i.e. \$12,093 per student per year.) For these and other reasons, the Frederick County Board of County Commissioners recently classified and zoned these properties for agricultural use only and designated both of them as "NPS" (i.e. No Planned Service for Water and Sewer) in its 2010 Comprehensive Plan and Zoning Map.

### **The Commuter Expressway**

The Town proposes a commuter expressway from Boyers Mill Road to Old New Market Road (Route 874) that would run alongside municipal parkland, the Audubon Bird Sanctuary and Royal Oaks. This commuter expressway would channel thousands of cars each day onto Old New Market Road ( Route 874), just south of Brinkley Manor. It would also generate noise, pollution and traffic congestion. The expressway's proposed route can be seen on the aerial photograph, pp 36 of the draft Growth Element.

The Town's own analysis indicates that this expressway would not reduce traffic or safety hazards on Main Street in future years. At most, it would only limit those traffic increases that will occur by a small amount, if at all.

## **Requirements of HB1141**

HB 1141 (amending Article 66B of the Maryland Code Annotated) requires that every municipality in Maryland adopt a municipal growth element which, among other things, depicts "anticipated future municipal growth areas outside the existing corporate limits of the municipal corporation." Section 3.05(a)(4)(x)(1). A municipality may not annex a property unless it is first included in the municipal growth area established under this requirement. See Article 23A, § 19 (o)(3)(iii).

A primary purpose of the municipal growth element is to fully disclose the potential impacts of proposed annexations on public services and facilities, such as roads, schools, water and sewerage facilities, and public safety (including emergency medical response). Section 3.05(a)(4)(x)(5).

In the past, these impacts of municipal annexations have largely been ignored and resulted in both a severe decline in the adequacy of public services and facilities and dramatic increases in the tax burden on county residents. To ensure that these "hidden costs" of annexations are no longer overlooked, state law now requires "a far more detailed and quantitative analysis of future growth" and an "examination of the effects of growth on infrastructure [both] within and adjacent to the present municipality and on future growth areas that may be annexed." (Maryland Department of Planning, "Managing Maryland's Growth: Writing the Municipal Growth Element to the Comprehensive Plan", May 2007, p.1.) It also requires municipalities to "identify the infrastructure needed to serve future growth" and the "costs associated" with providing it. ( Id. at p.18 and "MDP Municipal Growth Element Checklist"). The municipal growth element must also describe the "financing mechanisms" that will be employed to pay for these costs. See Section 3.05(a)(4)(x)(6).

Finally, the municipal growth element must provide for the "protection of sensitive areas" that could be "impacted by development within the proposed municipal growth area". Section 3.05(a)(4)(x)(6).

## **Comments on the Draft Municipal Growth Element**

### *The Draft Growth Element Fails to Delineate a "Municipal Growth Area" as Required by Section 3.05(a)(4)(x)(1)*

The Town has attached a map to its draft Municipal Growth Element which is labeled "New Market: Proposed Land Use." This map depicts what is called a "planning area". This planning area includes the Town itself, a huge swath of surrounding properties, and three "annexation areas" i.e. the Smith/Cline, Delaplaine and Ganley properties. MGE, p. 15.

Inexplicably, the Town declines to characterize the "planning area" ,or any portion thereof, as a "municipal growth area." On the contrary, its draft Municipal Growth Element states that the planning area "is not a projected 'Growth Area' " but rather "a collection of properties" and "a layer of geography" only. MGE at p.14.

If these statements are accepted at face value, the Town's draft Municipal Growth Element fails fundamentally to meet the requirements of Maryland law. The "anticipated future municipal

growth areas" required by Section 3.05(a)(4)(x)(1) are the lynchpin of a municipal growth element. Until such growth areas are delineated, there is no basis for conducting the required analysis of public service and facility impacts and the costs associated with mitigating them. Without a valid municipal growth area, moreover, the Town would have no legal basis for annexation. Article 23A, § 19 (o)(3)(iii).

*Even Assuming That The Three "Annexation Areas" May Be Regarded As "Anticipated Future Municipal Growth Areas", the draft Municipal Growth Element Fails Adequately to Assess Public Service and Facility Impacts, "Associated Costs" and "Financing Mechanisms", as Required by Section 3.05(a)(4)(x).*

### *Roads*

As noted, the 925 residential units proposed for Smith/Cline would generate approximately 9,000 car trips per day. Similarly, commercial and industrial development on Ganley and Delaplaine would generate thousands of additional vehicle trips per day, many of which may involve heavy trucks and manufacturing equipment. The draft Growth Element makes no effort to assess the impacts of this additional traffic on the streets, roads, highways and intersections in the area. Nor does it address the costs of mitigating these impacts or what financial mechanisms might be employed to cover these costs.

### *Schools*

As noted, the draft Growth Element recognizes the school capacity issues in the area and concedes that the pupil yield from Smith/Cline will make matters much worse. It further concedes that the pupil yield from Smith/Cline will require the construction of at least one additional public school whose cost would exceed by \$10 Million the revenues generated by developer impact fees. Finally, based on cost estimates employed by the Frederick County Public School System, the total cost to the state and county of educating these pupils would be nearly \$7 Million per year.

It is apparent that Frederick County does not have the resources to cover these costs. We question whether a proposed annexation and development can be included in a municipal growth area in these circumstances.

### *Water and Sewerage Facilities*

The Town of New Market has no capability to provide water and sewerage facilities. In its 2010 Comprehensive Plan and Zoning Map, the Board of County Commissioners classified and zoned Delaplaine and Ganley as "agricultural" and designated both properties as "No Planned Service for Water and Sewer." We question whether properties may be included in a municipal growth area in these circumstances.

*The Draft Growth Element Fails to Assess the Impacts of Its Proposed Annexations and Developments on " Sensitive Areas," as Required by Section 3.05(a)(4)(x)(6).*

The entrance to the Audubon Bird Sanctuary on Boyers Mill road is across the street from Smith/Cline. Delaplaine is immediately to the east of, and at points contiguous to, the Sanctuary. The proposed commuter expressway would run alongside the southern border of the Sanctuary.

Taken together, these massive annexations and developments would severely impair the environment of the Bird Sanctuary and threaten its viability as a sanctuary for bird life. Yet, the draft Growth Element makes no effort to assess the impacts of these developments on the Bird Sanctuary.

### **Conclusion**

In conclusion, and for the reasons set forth above, we believe that the Town of New Market's proposed annexations and developments are contrary to sound planning. We further believe that the Town's draft Growth Element fails to meet the requirements of HB 1141.

Thank you for your consideration.

Sincerely,

Janice Wiles  
Executive Director  
Friends of Frederick County

cc: Winslow Burhans III, Mayor of New Market

Frederick County Board of County Commissioners

Jim Gugel, Chief, Comprehensive Planning, Frederick County Division of Planning