

October 10, 2011

John McClurkin, Chair, Planning Commission, Frederick County
Richard Floyd, Vice-Chair, Planning Commission, Frederick County
Robert Lawrence, Secretary, Planning Commission, Frederick County
Catherine Forrence, Planning Commission, Frederick County
Robert White Jr., Planning Commission, Frederick County
Audrey Wolfe, Planning Commission, Frederick County

Re: Your Forthcoming Review of 194 Development Proposals Initiated By Property Owners,
Developers and Investors*

Dear Planning Commissioners:

We are writing in regard to your forthcoming review of 194 separate requests for land-use and zoning designations initiated by property owners, developers and investors. You reviewed and disapproved most of these proposed designations only 18 months ago based on the extensive evidence presented during your development of the 2010 Comprehensive Plan. You may not abruptly reverse these prior decisions without compelling explanations of how your actions comply with Maryland law. These explanations could not be offered here because the public record on which you based your prior decisions demonstrates that the approval of some or all of these 194 development requests would be contrary to the requirements of Article 66B. For these and other reasons, we urge that you affirm the land use classifications that you established in the 2010 Comprehensive Plan, as more fully discussed below.

Under Article 66B of the Maryland Code Annotated, the Planning Commission is responsible for making recommendations that will provide for a “safe, convenient, affordable and efficient transportation” system in Frederick County. These recommendations must also provide for public schools which are sufficient to accommodate the county’s current and projected student population. In addition, these recommendations must be based on integrated, inter-governmental policies, programs and agreements among local, state and federal officials for funding these projected infrastructure costs. (Under Maryland law, the Planning Commission may not risk compromising the county’s infrastructure by approving development designations without first confirming the availability of government funds for the public services and facilities that will be required.) Finally, the recommendations of the Planning Commission must also provide for the protection of sensitive areas from the adverse effects of development.

As part of the county’s 2008 Growth Management Initiative, the Planning Commission and the planning staff undertook the development of a county-wide comprehensive plan for Frederick County. A

*Analyses of the 194 proposals is based on information posted on Frederick County government website August 2011; at <http://www.frederickcountymd.gov/index.aspx?NID=4713>

key purpose of this Initiative was to “link the pace of residential growth with the county’s ability to provide adequate schools, public safety and other government services.” This Initiative was also intended to “preserve the rural, cultural and historic character of the county.” The county undertook this Initiative to address a rapid decline in the quality of its public services and facilities and the adverse effects of development on sensitive areas.

In the course of developing this comprehensive plan, over an 18 month period from March 2008 to August 2009, the Planning Commission received and considered voluminous written and oral reports, comment and testimony during 30 public workshops, one public hearing and two public work sessions. This information was presented by the county’s planning staff, state, regional and local agencies and officials, municipalities, landowners, developers, attorneys, consultants, traffic engineers, architects and public citizens and citizen associations. This information included, among other things, extensive traffic studies based on multiple development scenarios; projected costs for road improvements; detailed assessments of student populations, school capacities, school redistricting and the cost of new schools and school repairs; the availability of public funds for these purposes; and the adverse effects of development on sensitive areas in the county.

This public record confirmed that, even without further development, significant portions of the county’s road network are severely congested and unsafe; and that it would cost billions of dollars for highway improvements and new roads to provide for a “safe, convenient, affordable and efficient” transportation system in Frederick County. (See “The Effects of Residential Overbuilding on Our Roads”, attached.) It also confirmed that many of the county’s schools are overcrowded and in disrepair; and that it would cost hundreds of millions of dollars to construct new schools and renovate existing ones to accommodate today’s student population. (See “The Effects of Residential Overbuilding on Our Schools”, attached.)

In addition, the public record demonstrated that there was no integrated, inter-governmental program or agreement among local, state and federal officials for funding these projected infrastructure costs. There was no suggestion from any governmental body that even a small percentage of the public monies required for this purpose would be available within the county’s twenty year planning horizon.

The 194 development applications, initiated by private property owners, developers and investors, cover as much as 15,000 acres of farmland and open space, including land in or near sensitive areas. They contemplate the construction of approximately 24,000 residential units. (These 24,000 units would be in addition to the 36,264 residential units already authorized by the 2010 Comprehensive Plan. To clarify, that is 164 units plus the 36,100 residential units recommended by the Maryland Department of Planning.) We estimate that these developments would generate approximately 224,000 additional car trips per day that could only be accommodated through massive highway construction projects costing additional hundreds of millions, if not billions, of dollars. They would also yield well over 12,000 new students whose education would require 14 new county schools at a capital cost of at least \$540 million and annual operating costs of hundreds of millions of dollars more.

During the development of the 2010 Comprehensive Plan, the Planning Commission recognized that additional development on the scale contemplated by many of these 194 development applications would

be contrary to the mandate of Article 66 B. As noted, even without any further development, the county faces an enormous challenge in generating the public monies required to address the existing deficiencies in its public services and facilities. This challenge is compounded by the need also to fund the infrastructure required to accommodate the 36,264 new residential units authorized in the 2010 Comprehensive Plan. For these and other reasons, the Planning Commission concluded that any recommendation to add additional units to the county's residential pipeline would be contrary to its responsibilities under Article 66 B.

One obvious reason for this conclusion is the inability of the county's road network to absorb the traffic that would be generated by these additional 24,000 residential units. In this regard, we urge the Planning Commission to employ the capabilities of the county's validated regional travel demand model to project the traffic impacts of these 194 development applications. This model was implemented by the planning staff precisely for this purpose as part of the county's 2008 Growth Management Initiative. The only way for the Planning Commission to address the traffic impacts of these applications is, first, to analyze what those impacts could be.

Finally, with due respect, we question whether the review of these development applications constitutes comprehensive planning under Maryland law. For example, the President of the Board of County Commissioners has repeatedly stated that the sole purpose of this review is to reclassify and rezone properties whose owners were, in his view, "robbed" by the 2010 Comprehensive Plan. The process has clearly been conceived as a means of conveying wealth to a select number of property owners, developers and investors without regard to the best interests of the residents of Frederick County

Under Article 66 B, the Planning Commission may not, of course, weigh such matters as property values, profit margins, returns on investment, net worth, estate planning or retirement savings in the performance of its planning obligations. Its sole responsibility is to promote the general welfare.

In our experience, this proceeding is more akin to "piece-meal" zoning in the interest of individual property owners and not comprehensive planning on behalf of the public good. It is noteworthy in this regard that the preferred option of the Board of County Commissioners was, in fact, the piece-meal approach. However, the County Counsel advised that the prior decisions on these properties could not be reconsidered individually, on a piece-meal basis, because there had been no "change in circumstances" that would justify overturning these determinations. At this point, the Board decided that it would proceed — in the name of comprehensive planning and the general welfare — to promote the financial interests of a select few property owners.

For these reasons, we urge the Planning Commission to reaffirm the 2010 Comprehensive Plan, based on the thorough analysis conducted at that time. No new circumstances warrant a reversal of your earlier judgments, which promote now, as they did then, the best interests of the people of Frederick County.

Thank you for your consideration.

Sincerely,



Janice Wiles
Executive Director
Friends of Frederick County



FRIENDS *of* FREDERICK COUNTY

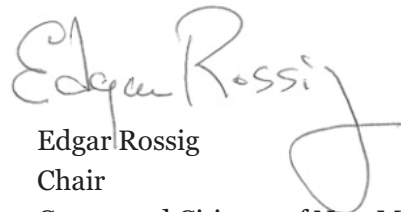


Caroline Taylor
Executive Director
Montgomery Countryside Alliance

Montgomery
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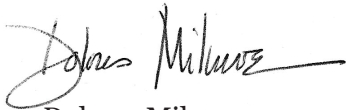
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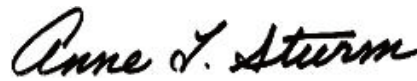
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cc:

Eric Soter, Division Director, Community Development Division, Frederick County
Jim Gugel, AICP, Chief Planner, Comprehensive Planning, Community Development
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Encl: Fact Sheet: The Effects of Residential Overbuilding on Our Roads
Fact Sheet: The Effects of Residential Overbuilding on Our Schools