

**IN THE CIRCUIT COURT
FOR FREDERICK COUNTY, MARYLAND**

FRIENDS OF FREDERICK COUNTY
4 East Church Street
Frederick, Maryland 21701,

MARCEL AILLERY
3710 Tuck Avenue
Point of Rocks, Maryland 21777

MARY E. AMBROSE
7347 Sundays Lane
Frederick, Maryland 21702

KRISTINA BOSTICK
201-A E. 3rd Street
Frederick, Maryland 21701

ALISON R. CAIN
117 W. 4th Street
Frederick, Maryland 21701

KATHARINE M. CARTER
10696 Oakridge Court
New Market, Maryland 21774

KENNETH EIDEL
425 N. Market Street
Frederick, Maryland 21701

J. EDWIN HINDE
601 Magnolia Avenue
Frederick, Maryland 21701

JOAN T. HOFFMAN
2100 Dahlgren Road
Middletown, Maryland 21769

GILBERT B. KELBAUGH
7402 Sundays Lane
Frederick, Maryland 21702

Civil Case No. _____

**COMPLAINT
(DECLARATORY AND
INJUNCTIVE RELIEF)**

LARUE A. KELBAUGH :
7402 Sundays Lane :
Frederick, Maryland 21702 :
:
ELLEN KREIS :
1189-A Della Road :
Dickerson, Maryland 20842 :
:
FRANCOISE MAKON :
1802 Greyetis Ferry Court :
Point of Rocks, Maryland 21777 :
:
WILLIAM MORROW :
10720 Dern Road :
Emmitsburg, Maryland 21727 :
:
BEVERLY MOULDEN :
10 Mt. Olivet Boulevard :
Frederick, Maryland 21701 :
:
DOUGLAS MOULDEN :
10 Mt. Olivet Boulevard :
Frederick, Maryland 21701 :
:
KENT OZKUM :
10720 Dern Road :
Emmitsburg, Maryland 21727 :
:
JANE SACHS :
16172 Eylers Valley Road :
Thurmont, Maryland 21788 :
:
AARON VALENTINO :
412 N. Market Street, Apt. 12 :
Frederick, Maryland 21701 :
:
EMILEE VAN NORDEN :
412 N. Market Street, Apt. 12 :
Frederick, Maryland 21701 :
:
JANICE S. WILES :
22 Clarke Place :
Frederick, Maryland 21701 :
:
:

with in all planning and zoning actions taken by governmental entities. Friends actively participated in proceedings held by the City of Frederick related to the Crum and Thatcher annexations which are the subject of this complaint. Friends has an office in the City of Frederick at 4 East Church Street, Frederick, MD 21701.

2. Plaintiffs Alison R. Cain, J. Edwin Hinde, Beverly Moulden, Douglas Moulden, Janice S. Wiles and Richard Wiles are residents of the City of Frederick, own property in the the City of Frederick and pay taxes to the City of Frederick and the County of Frederick. The unlawful actions of the defendant City of Frederick alleged in this complaint will likely result in each of the plaintiffs paying increased taxes.

3. Plaintiffs Kristina Bostick, Kenneth E. Eidel, Emilee Van Norden and Aaron Valentino are residents of the City of Frederick and pay taxes to the City of Frederick and the County of Frederick. The unlawful actions of the defendant City of Frederick alleged in this complaint will likely result in each of the plaintiffs paying increased taxes.

4. Plaintiffs Marcel Aillery, Katharine M. Carter, Joan T. Hoffman, Ellen Kreis, Francoise Makon, William Morrow, Kent Ozkum and Jane Sachs are residents of the County of Frederick residing in an area not within the defendant City of Frederick. Each plaintiff owns property in the County of Frederick and pays taxes to the County of Frederick. The unlawful actions of the defendant City of Frederick alleged in this complaint will likely result in each of the plaintiffs listed below paying increased taxes.

5. Plaintiffs Mary E. Ambrose, Gilbert B. Kelbaugh and LaRue A. Kelbaugh reside in the County Frederick, pay taxes to the County of Frederick and own property in sight and sound of land which the complaint alleges that defendant City of Frederick

unlawfully annexed. The unlawful actions of defendant City of Frederick will likely result in each of these plaintiffs paying higher taxes. The unlawful actions will adversely affect each of these plaintiffs' use and enjoyment of his or her property.

6. Defendant, the City of Frederick ("defendant City") is a municipal corporation existing under the constitution and laws of the state of Maryland and is located in Frederick County.

JURISDICTION AND VENUE

7. This Court has jurisdiction pursuant to Courts and Judicial Proceedings, Md. Code Ann. §1-501 and §§3-401 to 3-415. Venue is proper in this Court under Courts and Judicial Proceedings, Md. Code Ann. §6-201(a).

NATURE OF THE ACTION

8. This is an action to declare illegal defendant City's annexing and changing the zoning classification of land known as the Crum property, to declare illegal defendant City's annexing and changing the zoning classification of land known as the COPT/Thatcher property ("Thatcher") and to enjoin any implementation of such annexations and classifications.

FACTS

9. On September 4, 2009, defendant City adopted Resolution 09-18, annexing into the defendant City's corporate boundaries land in the County of Frederick known as the Crum property. The Crum property consists of approximately 285 acres of land to the north of the boundaries of defendant City, as the boundaries existed before the annexation.

10. Prior to its annexation, the Crum property was zoned by the County of Frederick for agricultural use.

11. Annexation Resolution 09-18 changed the zoning classification of the annexed land from agricultural use to the defendant City's MU-1 classification, which allows substantial mixed-used development of considerable density, including dwelling units, stores, offices and employment uses. City of Frederick Land Management Code, §§401, 417 and Table 404-1.

12. Resolution 09-18 states in paragraph 6,

Subject to all appropriate laws and administrative requirements, and simultaneously with its annexation into the corporate boundaries of the City, the Property is hereby classified in the City's MU-1 (Mixed-Use) zone...not to exceed 1,200 dwelling units and 1,300,000 s.f. of non-residential uses (the Maximum Development"). The City hereby finds that the development of the Maximum Development in the MU-1 zone is not consistent with the existing zoning classification in Frederick County, and the City will cooperate with Petitioners...to seek the express consent and approval by the Board of County Commissions of Frederick County, Maryland of the inconsistency pursuant to Article 23A, Section 9(c) of the Annotated Code of Maryland....

13. Also on September 4, 2009, the defendant City adopted Resolution 09-19, annexing into defendant City's corporate boundaries land in the County of Frederick known as the Thatcher property. The Thatcher property consists of approximately 151 acres of land to the north of the boundaries of the defendant City, as the boundaries existed before the Crum and Thatcher annexations.

14. Prior to its annexation, the Thatcher property was zoned by the County of Frederick for agricultural use.

15. Resolution of Annexation 09-19 changed this zoning classification of the annexed land from agricultural use to the defendant City's MO classification, which allows substantial development of considerable density including industrial, office and hotel uses. City of Frederick Land Management Code, §§401, 405 and Table 404-1.

16. Resolution 09-19 states in paragraph 6,

Subject to all appropriate laws and administrative requirements, the Property is hereby zoned by the adoption of this Resolution, and simultaneously with its annexation into the corporate boundaries of the City, as MO, Manufacturing/Office. The City hereby finds that the MO, Manufacturing/Office zoning classification for the Property does permit a land use substantially different from the use for the Property as currently zoned by Frederick County and the City will cooperate with Petitioner...to seek the express consent and approval by the Board of County Commissioners of Frederick County, Maryland to such zoning classification for the property pursuant to Article 23A, §9(c) of the Annotated Code of Maryland.

17. Frederick County did not consent to the new zoning of the Crum property or the Thatcher property. Commissioner Gardner testified on behalf of the Commission in opposition to both annexations. The County Commissioners informed the City in a September 2, 2009 letter that the County opposed the annexations.

FIRST CAUSE OF ACTION

(The Annexations Fail to Meet the Requirements of State Law)

18. Plaintiffs incorporate by reference and re-allege each of the allegations in paragraphs 1 through 17 above.

19. The annexations of the Crum property and the Thatcher property began before October 1, 2009.

20. The annexations of the Crum property and the Thatcher property fail to satisfy the requirements of the law of the State of Maryland, Article 23A, §19 (2009, Supp.). These requirements include:

A. Under Article 23A, §19(o)(1), the defendant City is required to adopt an annexation plan for each area proposed to be annexed, separate and apart from any resolution of annexation. The defendant City did not adopt the required annexation plan for either the Crum or the Thatcher properties.

B. Under Article 23A, §19(o)(2), the defendant City is required to conduct a public hearing at which the annexation plan was open for public review and discussion. No such public hearing complying with this requirement was held regarding the annexation of the Crum or Thatcher properties.

C. Under Article 23A, §19(o)(3)(i), the defendant City is required to provide a copy to the Commissioners of the County of Frederick, at least 30 days prior to a public hearing, of annexation plans for the Crum and Thatcher properties. The defendant City failed to comply with this requirement.

D. Under Article 23A, §19(o)(3)(ii), the defendant City is required to adopt an annexation plan which contain a description of the land use patterns proposed for the area to be annexed. This requirement has not been satisfied as there is no description of the specific location of specified land uses.

E. Under Article 23A, §19(o)(3)(ii), the defendant City is required to adopt an annexation plan identifying public facilities considered reasonably to be necessitated by the proposed use, such as school sites, water or sewage treatment facilities, libraries, recreation, fire or police. The defendant City has not complied with

this requirement as it has failed to identify all public facilities reasonably necessary to service the uses proposed in the areas to be annexed.

F. Under Article 23A, §19(o)(3)(ii), the defendant City is required to adopt an annexation plan demonstrating the available land for all public facilities that may be considered reasonably to be necessitated by the proposed use. The City of Frederick has not complied with this requirement.

G. Under Article 23A, §19(o)(3)(ii), the defendant City is required to adopt an annexation plan containing a schedule for extending to the area to be annexed each municipal service performed within the City of Frederick at the time of annexation. The City of Frederick has not met this requirement.

H. Under Article 23A, §19(o)(3)(ii), the defendant City is required to adopt an annexation plan stating the general methods by which the defendant City anticipates financing the extension of these municipal services into the areas to be annexed. The defendant City has not complied with this requirement.

21. The defendant City's failure to meet the requirements of state law governing annexation renders the Crum and Thatcher annexations unlawful and void.

22. The failure of the defendant City to comply with state law in passing its resolutions annexing the Crum and the Thatcher properties, including the failure to have a required annexation plan, failure to identify all public facilities needed due to the annexation and all their proposed locations, and failure to provide a schedule for the extension of municipal services to the annexation areas with an analysis of the method of payment for such extension of services into the area to be annexed will likely result in the tax payers in the City and in the County of Frederick paying more taxes.

23. As set forth in the second cause of action, ¶24 through ¶30, the change of zoning classification in each annexation resolution is unlawful and therefore the Crum and Thatcher annexation resolutions are unlawful and void.

**SECOND CAUSE OF ACTION
(The Change of Zoning Classifications
Fails to Meet the Requirements of State Law)**

24. Plaintiffs incorporate by reference and re-allege each of the allegations in paragraphs 1 through 23 above.

25. Simultaneously with defendant City's adoption of its Resolutions annexing the Crum and Thatcher properties, it placed its own zoning classifications on the annexed properties. Resolution 9-18, ¶6; Resolution 9-19, ¶6.

26. For the Crum property, MU-1 (mixed use) zoning classification was placed on the property, which classification provides for up to 1,300,000 square feet of non-residential use and up to 1,200 dwelling units. Resolution 9-18, ¶6. This zoning classification replaced the County of Frederick's agricultural use zoning classification. The defendant City's zoning classification provided for development of a substantially different use and of a density more than 50% greater than allowed under the County of Frederick's agricultural zoning classification.

27. For the Thatcher property, the defendant City's MO (manufacturing/office) zoning classification was placed on the property, which classification provides for industrial, office and hotel use. Resolution 09-19, ¶6. This zoning classification replaced the County of Frederick's agricultural use zoning classification. The defendant City's zoning classification provided for development of a

substantially different use and of a density more than 50% greater than than allowed under the County of Frederick's agricultural zone.

28. The defendant City resolutions annexing the Crum and the Thatcher properties are unlawful and void for failure to comply with State law. The zoning classifications placed upon the annexed properties by these resolutions are therefore also unlawful and void.

29. Under State law, Article 23A, §9(c)(1)(2009, Supp.) for a period of five years following annexation, absent the County's consent, a municipality may not change the use of the annexed land to a substantially different use or to a density more than 50% greater than the County's prior authorized density. The County of Frederick has not given its consent. The defendant City's change of zoning classification on the annexed properties to substantially different uses and at a higher density within five years of annexation is unlawful and void.

30. Under State law, Article 66B § 4.05(a) and Article 23A §9(c)(2) (2009, Supp.), the defendant City's change of zoning classification of the Crum and Thatcher annexed properties without the consent of the County of Frederick is also unlawful and void.

THIRD CAUSE OF ACTION
(The Charter Amendments Fail to Meet the Requirements of State Law)

31. Plaintiffs incorporate by reference and re-allege each of the allegations in paragraphs 1 through 30 above.

32. State law requires that a Charter amendment state how the Charter section being amended would read after amendment, and that no Charter section may be amended by reference to its title or section only. Art. 23A §13(b) Md. Code Ann. The

resolutions passed by the City of Frederick purported to amend the Charter, without meeting these requirements. They do not state how the Charter section would read after amendment. They amend the Charter by reference to title and section only.

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Declare that the annexations approved in Resolutions 09-18 and 09-19 do not comply with the requirements of Art. 23A §19 and are unlawful and void.

2. Issue a permanent injunction enjoining defendant City from taking any action implementing these annexations.

3. Declare that the changes in zoning classifications approved in Resolutions 09-18 and 09-19 do not comply with the requirements of Art. 23A §9 and Art. 66B and are unlawful and void.

4. Issue a permanent injunction enjoining defendant City from taking any action implementing these changes in zoning classifications.

5. Declare that Resolutions 09-18 and 09-19 amending the defendant City's Charter to annex the Crum and Thatcher properties do not comply with the requirements of Art. 23A §13(b) and are unlawful and void.

6. Issue a permanent injunction enjoining defendants from taking any action implementing these Resolutions.

7. Award plaintiffs costs and reasonable attorneys fees.

8. Grant such other and further relief as this Court deems just and proper.

Respectfully submitted,



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