

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

FRIENDS OF FREDERICK COUNTY, <i>et al.</i>	:	
	:	
Plaintiffs,	:	
	:	Civil Case No. 10-C-11-000410
v.	:	
	:	
TOWN OF NEW MARKET,	:	
	:	
Defendant.	:	
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**PLAINTIFFS’ MOTION FOR EXTENSION OF TIME
TO RESPOND TO DEFENDANT’S MOTION FOR SUMMARY JUDGMENT**

Plaintiffs, Friends of Frederick County, *et al.*, through undersigned counsel, request an extension of time to respond to defendant’s motion for summary judgment to a date to be determined at the December 21, 2011 Scheduling Conference. The reasons for the request are set forth below.

1. On November 23, 2011, the day before Thanksgiving, defendant mailed its motion for summary judgment, which undersigned counsel received on November 28, 2011. The response is due December 12, 2011.

2. On February 14, 2011 plaintiffs filed their complaint seeking a judgment to declare invalid the New Market Master Plan of 2005, as amended, for failure of its Municipal Growth Element (“MGE”) to satisfy requirements of State law. The MGE was added to the 2005 Master Plan by amendment dated November 17, 2010.

3. On September 21, 2011, this Court held a Scheduling Conference for the purpose of setting schedules for discovery and trial. At that conference, it was disclosed that at least in

part due to plaintiffs' pending complaint, the Town of New Market was in the process of amending the MGE. Plaintiffs contended that it would be a waste of time and effort for the parties to proceed with discovery and other trial preparation involving a Master Plan which appeared likely to be amended shortly. These amendments to the Master Plan could result in plaintiffs' dismissing or amending their complaint. Discovery and trial dates would be better scheduled after the amendments were adopted. The Court agreed based on the assumption that adoption would occur shortly. The Court ordered the parties to appear at a conference on December 21, 2011 to advise the Court as to the status of adoption of any amendments to the 2005 Master Plan.

4. Since the September Scheduling Conference, the Town of New Market has adopted a 2011 Supplement to the 2005 New Market Master Plan, including Addendum 1 and Addendum 2 to the 2011 Supplement. The Supplement and its Addendums note that these documents address comments received by State agencies and allegations in plaintiffs' complaint relating to deficiencies in the MGE.

5. Defendant's motion for summary judgment addresses not the Master Plan which is the subject of the complaint, but the Master Plan as amended since the filing of the complaint. In support of its motion, defendant submitted the 2011 Supplement and the two Addendums. In the interest of judicial efficiency in resolving this case, however, we believe the next appropriate step would be for plaintiffs to evaluate the amendments to the Master Plan and move to dismiss the complaint if the changes cure all the claimed deficiencies, or file an amended the complaint addressed to deficiencies in the Master Plan as amended. In the later event, resolution of deficiency claims through the summary judgment process might well be appropriate. It would, at

the least, obviate wasted resources of the Court and the parties in litigation over Master Plan provisions rendered moot by amendment.

6. However, even this reasonable accommodation to judicial efficiency is not appropriate. ***Defendant's motion for summary judgment fails to note that defendant has prepared a draft 2012 Master Plan which if adopted, apparently will entirely replace the 2005 Master Plan as amended, the subject of plaintiffs' complaint.*** This draft has been submitted to State agencies for comment and we believe this new plan, or some version of it, could be adopted as soon as January or February 2012.

7. Under these circumstances, we submit it would be a waste of the parties' time and effort, as well as the Court's, to respond to and have this Court rule upon a motion for summary judgment on a Master Plan likely to be replaced imminently. Accordingly, we request an extension of time to respond to the pending motion for summary judgment to a date which is to be determined at the December 21, 2011 Scheduling Conference when the status and timing of adopting a successor 2012 Master Plan can be confirmed.

WHEREFORE, plaintiffs request an extension of time to respond to defendant's motion for summary judgment to a date to be determined at the December 21, 2011 scheduling conference. A proposed order is attached.

Respectfully submitted,

KNOPF & BROWN

By: _____
Norman G. Knopf
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Attorneys for Plaintiffs

December 8, 2011

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this 8th day of December 2011, a copy of the foregoing Plaintiffs' Motion for Extension of Time to Respond to Defendant's Motion for Summary Judgment and proposed Order were mailed, postage pre-paid, first class mail to:

William C. Wantz, Esq.
123 West Washington Street
Hagerstown, Maryland 21740-4709

Norman G. Knopf