



Frederick Regional **ACTION NETWORK**

FRAN News October 10, 2005

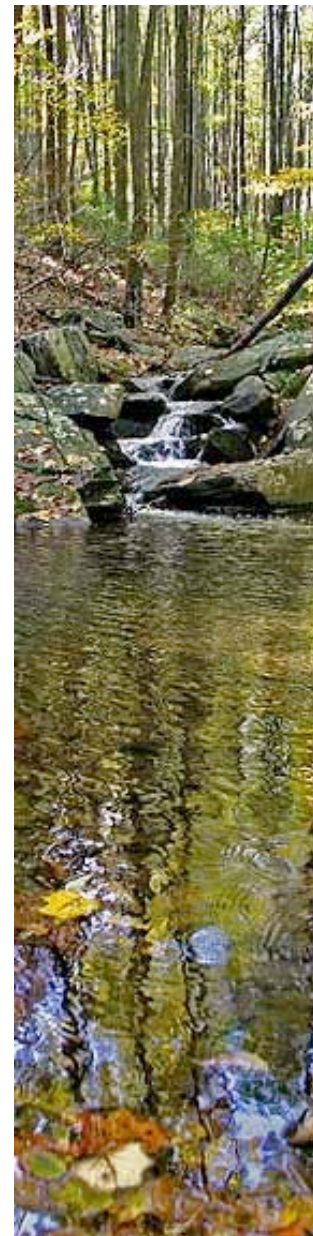
(click on headings to go to content below)

1) NEW MARKET REGION PLAN Update Process

- **BOCC Worksession Notes**
- **Upcoming New Market Region Plan
Worksessions: Monday, October 24th and
Monday, October 31st**
- **Letter to Commissioner Thompson from
Patricia Goucher, Dir. of Local Planning at
the MD Dept. of Planning, with comments
on the current draft of the New Market
Region Plan, and a link to the
accompanying "Estimating Residential
Development Capacity Guidebook"**
- **Letter from Stephanie Parrish to the
Board of County Commissioners, and
response letters from Commissioners
Gardner and Thompson**
- **Download the current Planning
Commission Recommended Draft Plan**

2) Dealing with Developers 101 from Commissioner Lennie Thompson

3) FRAN Links



1) **NEW MARKET REGION PLAN Update Process**

Currently, the Board of County Commissioners is engaging and discussing the plan through a series of public worksessions devoted to some of the critical nuts and bolts concerns, such as schools, roads, water and sewer, fire and rescue, parks and so on.

For many months, throughout the time the plan was in the hands of the Planning Commission and through the first public hearings with the Board of County Commissioners, a great many individuals and a few organizations have tried to ensure that the county apply conscientious common sense and comply with the Frederick County Comprehensive Plan and Maryland state law by gathering and utilizing good and detailed information.

Over the course of the last four worksessions (since the initial BOCC Public Hearings on the draft plan in August and September) **we have seen the emergence of a serious and long overdue effort to include credible information and projections in the discussions about traffic and transportation, schools, water and sewer, parks, fire and rescue services and other nuts and bolts issues** that will reflect and affect the quality of life for current and new residents in the New Market planning region.

Among other things, the nascent effort has clearly revealed that the current plan was developed with very little good information to support it.

It may seem hard for some to believe that the county would plan such dramatic growth (and so much of it ill-advised in nature) without a very thorough effort to gather good information and more fully consider the serious impacts on the lives of those in the area (and other effects on everyone in the county).

But that is what happened.

It may still be what happens, if we do not maintain – and expand – the public pressure that is largely responsible for the recent progress.

It should be noted that, due to back surgery, Commissioner Reeder has not been in attendance at the last four worksessions. His absence has likely affected the recent discussions, and his return could possibly have an even bigger effect on the decision-making dynamics as the process moves forward (there haven't been three votes to block the expanding discussions described above).

BOCC worksessions are usually dominated by "suits" who are paid to be there by the developers they represent. A weekday session is not good timing for many of you, of course. But, for those of you who could attend, **please consider investing an hour or two in the process by attending one or both of the upcoming sessions.**

Although these are not public hearings, worksessions are open to the public (and anyone can have three minutes to speak at the end of the session).

Whether you speak or not, however, **your presence will speak for itself as an expression of public awareness and concern** about this process and the draft plan.

The next two scheduled worksessions are important.

**Frederick County Board of County Commissioners
Upcoming WORKSESSIONS on the New Market Region Plan**

Monday, October 24th and Monday, October 31st

WHEN: 9:00 a.m.

LOCATION: Third Floor Hearing Room, Winchester Hall.
12 East Church Street, Frederick, Maryland

The Frederick County webpage for the **New Market Region Plan:**
<http://www.co.frederick.md.us/planning/CompPlan/NewMarket/NMRegionPlan.htm>

*For further information, please contact Tim Goodfellow, Principal Planner
at 301-694-2508 or tgoodfellow@fredco-md.net*

If you are unable to attend the upcoming worksessions (or even if you are), please consider taking a few minutes to express your concerns directly to the members of the Frederick County Board of County Commissioners.

John L. Thompson, Jr. (President): lthompson@fredco-md.net
Sharon Hale (Executive Assistant): shale@fredco-md.net
Phone: 301-694-1028

Michael L. Cady (Vice President): mcady@fredco-md.net
Belinda Teague Levy (Executive Assistant): bteague-levy@fredco-md.net
Phone: 301-694-1104

Jan H. Gardner: jgardner@fredco-md.net
Lori Follmer (Executive Assistant): lfollmer@fredco-md.net
Phone: 301-631-3190

John R. Lovell, Jr.: jlovell@fredco-md.net
Fayne Lebherz (Executive Assistant): flebherz@fredco-md.net
Phone: 301-694-1303

Bruce L. Reeder: breeder@fredco-md.net
Mary Alice Marks (Executive Assistant): mmarks@fredco-md.net
Phone: 301-694-1092

You can read more about the draft plan and the hearings by visiting the related page on our website:

<http://www.frederickaction.org/action/newmarketregionplan.html>

October 3, 2005

The Honorable John L Thompson
President
Frederick County Board of County Commissioners
12 E. Church Street
Frederick, Maryland 21701

Dear Mr. Thompson:

Thank you for the opportunity to comment on the Planning Commission's Recommended Plan for the New Market Planning Region. We understand the Commission is considering revisions to the earlier Staff Draft and the Maryland Department of Planning has taken this opportunity to amend its earlier comments on the Staff Draft New Market Region Plan to reflect the changes now being considered.

Many of the re-zonings proposed by the Planning Commission for land outside Priority Funding Areas (PFAs) contradict County Visions and policies for growth and development established in the 1998 Frederick County Comprehensive Plan. They are not consistent with State Planning Policy as conveyed in the Maryland Economic Growth, Resource Protection, and Planning Act of 1992 or guidelines for State funding for infrastructure as mandated in the Smart Growth and Neighborhood Conservation Act of 1997. The re- zonings suggest a reversal in the longstanding support for rural land preservation demonstrated by Frederick County through their protective rural zoning and land use management practices.

Although confined at present to the New Market Region, The proposed changes are of great concern to the Maryland Department of Planning. They suggest a shift in County policy that will weaken County commitment to shared State/County goals to concentrate growth in planned areas served by infrastructure and to protect rural resource land. We are also concerned that the County will extend the rationale for these sorts of re-zonings to other areas in future regional planning efforts. Specific concerns relating to, rural land conservation water resources, etc. are attached. Specific comments pertaining to transportation will be forwarded to the Council on October 7, 2005.

Thank you for the opportunity to comments on this Plan. If you have any questions concerning these comments, please contact me at 410-767-4620 or La Verne Gray at 410-767-4574.

Sincerely,

Patricia Goucher
Director,
Local Planning

c.c. J. Steven Kaii- Ziegler
Tim Goodfellow

**Comments on the Planning Commission's Recommended
New Market Region Plan
Submitted by the Maryland Department of Planning
October 3, 2005**

PLANNING FRAMEWORK (page 5)

The Recommended New Market Region Plan, as required by Article 66B, includes the Planning Act of 1992 and Maryland's Smart Growth Initiatives. The Eight Visions found in the Planning Act serve to guide local governments to minimize sprawl development. The following discussion focus on the Visions.

1. Development is Concentrated in Suitable Areas

The Planning Act envisioned suitable areas as places where the necessary infrastructure is in place or could be provided, and where sensitive environmental features can be protected. The Green Valley area is not a growth area therefore we are concerned that the Plan supports expanding low density residential development over 552 acres of land that is currently designated for agricultural uses.

The Rural Neighborhoods designation given to the 552 acres is assumed to be of an infill nature. Infill development is a term that is frequently associated with the development of vacant, abandoned, passed over or underutilized land within build-up areas of existing communities, where infrastructure is already in place. The advantage of infill development is that it uses existing infrastructure. The open land in the Green Valley would require additional infrastructure and resources including roads, schools, and water supply to support future developments.

It is our belief that this area does not have the characteristics of a suitable place for development.

2. Environmentally sensitive areas are protected

The environmentally sensitive feature that we feel needs to be protected is the ground water supply. The *Report on Nutrient Synoptic Surveys in the Lower Monocacy River Watershed, Frederick County, Maryland, April 2003 as part of the Watershed Restoration Action Strategy* published by the Maryland Department of Natural Resources in November 2003 provided a discussion on the nitrate concentrations in the watershed. The publication states: "The nitrate/nitrite contribution from septic system leach fields is also part of the source and could be significant in areas that have concentrated small lot development on well and septic (page 3). This statement opens a window on the potential degradation of ground water in the Green Valley area. An additional 277 dwelling units (based on an assumed average density of 1 unit per 2.5 acres) scattered over 552 acres adds to the concentration of small lot development on well and septic.

The final report of the Lower Monocacy River Watershed Restoration Action Strategy (May, 2004) notes that the Bush Creek Watershed is heavily impacted by

development pressures as it adjoins the Linganore Creek Watershed to the south and includes the developed areas to the south of Mount Airy and New Market among others.

The Green Valley is south of New Market. In order to provide a realistic approach to land use management the potential water quality impacts must be considered.

3. In Rural Areas, Growth Is Directed To Existing Population Centers And Resource Areas Are Protected.

The Recommended Plan identifies two Regional Communities (Linganore and New Market) and two District Communities (New Market and Spring Ridge) as communities where growth will be centered so that facilities can be located in an efficient and effective manner. (On page 58, the Recommended Plan provides a section entitled ANALYSIS OF AVAILABLE PLANNED AND ZONED RESIDENTIAL LANDS WITH REFERENCE TO ADOPTED COUNTYWIDE PLAN POLICIES. There it states: "...there is an estimated 20+ year supply of residentially planned land currently available." From this statement, we can deduct that currently there is ample land for development to support the twenty-year land use plan contained in the Recommended Plan and that there is no need to extend development in rural areas.

Based on the information found in the Plan there is additional evidence of opportunity for low-density development in existing growth areas. On page 59 the plan identifies approximately 237 acres of undeveloped land designated Rural Neighborhood within the existing growth area boundary of the Mount Airy Regional Community. The future build out of the Mount Airy Regional Community will result in approximately 180 additional well and septic residential lots. Other Growth Areas, discussed on page 66, provide an estimated build out will result in over 2,000 additional residential lots.

Earlier we pointed out that water is an environment resource whose quality needs to be protected. In addition it is also evident that that the quantity of water available must be protected. The possible lack of lack of water, as during times of drought is also a point of concern.

CULTURAL AND SCENIC RESOURCES

Agricultural Preservation (page 32)

Since most of the land in the New Market Region is agricultural, the Environmental and Cultural Resource Policies and Recommendations on page 34 should include a component for agricultural land preservation. We recommend the following considerations and actions:

1. The plan should include a preservation acreage goal and the reasons for it (e.g., to preserve existing resource-based industries, create greenbelts around communities, provide links to agricultural preservation areas in neighboring Counties, etc.),
2. Existing clusters of easements in the area should be enlarged
3. The Plan should state that the County will establish easement acquisitions priorities in the region. An effort should be made to convert the existing

Maryland Agricultural Land Preservation Foundation (MALF) districts to easements.

4. From a regional perspective, the land bordering the agricultural zones in adjacent counties should also be considered for agriculture zoning.
5. Since Montgomery and Carroll Counties have highly successful farmland preservation programs, the land bordering in the New Market Region that borders the agricultural zones in those Counties should be zoned for agriculture. Much of the land is already zoned for agriculture, but parcels that are zoned residential should be considered for rezoning to agricultural

DEVELOPMENT CAPACITY ANALYSIS

The following comments address the land supply vs. demand issue. In the context of planning for development, it is important to strive for a balance between land supply and demand for future growth.

- Provide too little land for development (be it on greenfields, redevelopment, or infill), and the land cost will become too high or development may spill over to adjacent jurisdictions.
- Provide too much land for development and it will tend to be used inefficiently. In addition, plans and growth controls will be marginalized because there are an abundance of locational options for each new development.

MDP routinely analyzes the relationship between land supply and demand. We have used our development capacity analysis (i.e., build out) for many programmatic and technical assistance functions over the years. The 1997 Priority Funding Areas Act requires MDP to review county Priority Funding Areas (PFAs) in light of several growth and location factors, including the relationship between development, land supply and demand. There is no magic formula for exactly how much land supply or capacity a jurisdiction should have in light of its projected demand. However, we use the twenty-year projection as a benchmark for adequate supply. In other words, our general policy is that a county's PFA should not have more development capacity than is necessary to accommodate its twenty-year growth projection in new homes. We feel this provides adequate supply for growth, realizing that twenty years is a long time and that not all growth locates in the PFAs. This benchmark is a general rule of thumb in the planning profession.

Frederick County did a version of a development capacity analysis but it appears that the analysis was done at an extremely general level. It does not appear to follow the guidelines and methods approved by the Development Capacity Task Force.

The Development Capacity Analysis Local Government MOU (signed by Maryland Municipal League and Maryland Association of Counties in August, 2004) and the Development Capacity Analysis Executive Order (signed by Governor Ehrlich in August, 2004) commit local governments, with MDP assistance as needed, to include development capacity analysis in planning efforts in Maryland.

These agreements were commitments to implement the recommendations for the Development Capacity Task Force, which are outlined in their July, 2004 report (available at: http://www.mdp.state.md.us/develop_cap.htm). We are attaching the recently published models and guidelines "Estimating Residential Development

Capacity: A Guidebook for Analysis and Implementation in Maryland". The key conclusion and commitment from the Task Force was that all local governments would include a development capacity analysis in their comprehensive plan updates. It is worth noting that the City of Frederick was one of ten pilot study jurisdictions of this task force. They included a detailed development capacity analysis in their most recent adopted Comprehensive Plan.

The following are highlights of MDP's development capacity analysis for the Region. See the reports mentioned above for a full description of the analysis' methodology and its caveats. MDP's analysis, while not perfect, was endorsed by the Development Capacity Task Force and many local governments. This analysis produces estimates of the number of dwelling units built and acreage consumed by build-out based on existing zoning, land use, parcel data, sewer service, and information about un-buildable lands. This analysis does not account for school, road, or sewer capacity. The estimates are thus focused on the capacity of the land to accommodate future growth based on zoning and other information.

LAND SUPPLY IN THE NEW MARKET REGION

- According to the analysis presented in the draft New Market Region Plan, the residential development capacity of the region is over 12,000 dwelling units. It seems that the analysis done in the plan is extremely general in that it uses generalized densities for generalized land use categories and does not appear to take zoning impacts into account. The analysis also does not follow the methodology that is presented in detail in the "Final Report of the Development Capacity Task Force" (website mentioned above) or the above-mentioned models and guidelines.
- MDP staff would like to work with the County to come up with a more realistic estimate for residential development capacity in the Region. It seems that the County's assumptions for allowable density in certain areas (mainly the urban areas) are very different than what MDP currently has in its database.

It is excellent that the County came up with a generalized non-residential capacity number for the region. MDP would like to work with the County to integrate this type of analysis into its model, as well as to assist the County in improving its methodology.

Attached to the letter and comments above was a 27 page document entitled:

Estimating Residential Development Capacity A Guidebook for Analysis and Implementation in Maryland

You can [download a 308KB pdf file of this document](http://www.mdp.state.md.us/pdf/dev_cap/Final_Guidebook.pdf) from the Maryland Department of Planning website: http://www.mdp.state.md.us/pdf/dev_cap/Final_Guidebook.pdf

From: Stephanie Parrish [mailto:birdherd@mindspring.com]
Sent: Saturday, October 08, 2005
To: Thompson, Lennie; Reeder, Bruce; Gardner, Jan; Cady, Mike; Lovell, John
Subject: New Market Regional Plan

Dear Commissioners:

I hope you have been listening carefully to the many people who have taken the time to speak to you about the New Market Regional Plan.

I hope you have noticed, as I have, that overwhelmingly, the people of this County are asking you to stop rampant overdevelopment of our farms, our forests, our waterways and our neighborhoods.

As you've heard from so many before me, our roads and schools are already filled beyond capacity and our water tables are barely sustaining the current population in many cases.

The current New Market Regional Plan proposes to worsen all of these problems and create additional burdens that existing and future infrastructure simply cannot handle.

I am particularly dismayed by the amount of agricultural property that the New Market Regional Plan proposes to rezone and turn into sprawling developments.

Agriculture has always been at the very heart of Frederick County. Given the importance of our farms, not only historically in this County, but in our future ability to feed ourselves with fresh, delicious, locally-grown food that does not require high-priced petroleum resources to get it here, I do not understand the County's willingness to convert so much of our precious farmland into residential development.

As planning staff has noted, we have not fully developed land already zoned for residential development in the New Market region. Therefore, it is wasteful and reckless to rezone additional land for development at this time at the expense of our valuable green spaces.

I've heard a couple of rationales put forth to you for rezoning agricultural land that I believe are poor rationales, and I'd like to point these out to you.

The first is that because a farm is not tillable, or readily able to be plowed, means that it is not good land for farming. This is a myth. I don't believe that because a farm contains mostly trees and pasture, and is not very tillable means that it is poor farmland and should be destroyed as such. In fact, many farms that raise healthy food such as animals grazed on pasture require just such farmland to produce their product. So please don't accept the myth that only tillable farmland is worth preserving.

The second thing I've heard development interests say to you is that a particular farmer is nearing retirement and can no longer farm his or her land, therefore we should rezone it to residential. If every farmer did this, we would have no farmland

left in the County. Obviously, we can't allow this to happen.

There are two properties in particular that I strongly oppose your rezoning from Agricultural to R1. These are numbers 2004-40 and 2004-41. They are adjacent to my family's 25-acre farm in the Ijamsville area. These two properties comprise a beautiful, fertile, 200-acre farm with tillable land, pastures, and forestland. The southern property, #40, is not even within the growth region for the New Market Region. So, you're being asked not only to rezone this property from Agricultural to Residential, but also to pull it from the non- growth area into the growth region. It would be a crime to turn this beautiful old farm into a high-end executive development, as proposed. Considering that most property in the County is already priced beyond the means of most of our residents, it would seem that we don't have an urgent need for the 100 or so \$3-5 million dollar homes that would take the place of this outstanding farm. The only people that stand to benefit are the developers – not the people of Frederick County, not the people of the New Market Region.

In summary, the New Market Regional Plan, as proposed, is frightening. It threatens the very qualities that have always embodied what's best about Frederick County. This plan proposes to do away with much of our agricultural land, wide open spaces, beautiful viewscapes, fresh air and clean water, and trade it all in for hideous sprawl, overcrowded roads and schools, pollution of our air and water, inadequate public services and increased taxes.

This is obviously not in the best interest of Frederick County residents and it is certainly not what the residents of the New Market region want. I think that the residents have spoken very clearly on this matter. Now,... I can only hope you have been listening.

Thank you.

Stephanie Parrish
Frederick, MD

Responses from Commissioners Jan Gardner and "Lennie" Thompson are included below.

From: JGardner@fredco-md.net
Subject: RE: New Market Regional Plan
Date: October 8, 2005 12:58:43 PM EDT
To: Stephanie Parrish, LThompson@fredco-md.net, BReeder@fredco-md.net, MCady@fredco-md.net, JLovell@fredco-md.net

Stephanie,

I agree with many of your sentiments.

The New Market Region Plan as presented by the planning commission presents an overwhelming amount of growth for the region which cannot be reasonably supported with infrastructure and services. Traffic is a big concern and gridlock seems inevitable without a major change in direction. It is clear that nothing further should be rezoned and the original staff recommendation was essentially that. It is my opinion that the commissioners should go back to the staff recommendation.

In fact, the county would probably be well advised to finish the Lake Linganore PUD, which already has a certain level of completion and approvals, focus on making this project happen well, and not allow anything else to proceed at this point in time. The lots already zoned in the Linganore PUD will provide adequate inventory of housing for the next 15 years if you assume the same average pace of development experienced over the past 15 years. I have no understanding of why the basic idea of finishing what you have already started before starting anything else makes no sense to my colleagues. Truly, the only conclusion that can be drawn is that property owners and developer interests are driving the plan at the expense of the community and general public good. The community should wonder if developer campaign money is more important than citizen votes to those who support this plan. It seems some commissioners are hoping the community does not take notice of their actions. This board will take the blame for school overcrowding, gridlock, public safety challenges, environmental impacts and the need to raise taxes if this plan continues in the same direction. I am not pleased to be a part of it. I am embarrassed that some of my peers do not even wish to spend the time to thoroughly evaluate transportation needs and do it right.

The worst part of the plan is the agriculture sprawl development proposed in the Monrovia area. This is "dumb" growth no matter how you look at it. It will cost the taxpayers a fortune to support with services and infrastructure - particularly public safety services and water/sewer if there is major water or septic issues in the future. The proposed rezonings outside a growth area and outside Priority Funding Areas have raised the ire of the State. Never before has a plan been criticized so firmly by the Maryland Dept. of Planning. We have already been told that the State will not fund the MD 75 improvements because of Priority Funding Issues and the county's choice to violate land use policy. This means local residents will pay either by increased taxes to improve a state road or by failure to address the road issues causing increased congestion and unsafe road conditions. The State is sending us a clear message and I hope the commissioners will pay attention to message. If not, existing residents will suffer the consequences.

Thank you for participating in this process.

Regards,
Jan Gardner

From: LThompson@fredco-md.net
Subject: RE: New Market Regional Plan
Date: October 8, 2005 12:24:28 PM EDT
To: Stephanie Parrish, BReeder@fredco-md.net, JGardner@fredco-md.net, MCady@fredco-md.net, JLovell@fredco-md.net
Cc: JSKaii-Ziegler@fredco-md.net, TGoodfellow@fredco-md.net, ESoter@fredco-md.net, JGugel@fredco-md.net, DBrowning@fredco-md.net, SHale@fredco-md.net

Stephanie:

Thanks for your e-mail. I have the following comments with regard to the blanket reclassification of ag land:

- Few things are more amusing than watching the \$250 per hour lawyers and lobbyists for the developers, in their \$1,000 suits, who wouldn't know which end of a cow the feed goes into or the milk comes out of, make conclusory, self-serving statements that their client's land is no longer suitable for farming.

- Small parcels of ag land did not just get there. Either the present owners or their predecessors in title carved larger parcels up into smaller ones. If done by existing owners, they obviously have little room to complain. If done by their predecessors in title, and assuming no one twisted the existing owner's arm to buy the place, they too have little room to complain.

- I am in agreement with your observation that if every farmer had an absolute right to have their farm rezoned in order to maximize its sale price to provide the farmer with a substantial retirement, there would no be any farms in Frederick County.

Lennie

**NEW MARKET REGION PLAN
PLANNING COMMISSION
RECOMMENDED PLAN
April 2005**



**PREPARED BY THE
FREDERICK COUNTY DIVISION OF PLANNING**

In order to make it easier to find and/or obtain and/or distribute, we've converted the entire (90+ pages) New Market Region Plan (Planning Commission, Recommended Plan, April 2005) into a PDF file (860kb).

You can download it here.

<http://www.frederickaction.org/issues/regionplans/newmarket/NewMarketFcPCplanAPRIL2005.pdf>

2) Dealing with Developers 101 from Commissioner "Lennie" Thompson

Intro to Dealing with Developers 101

Familiarize yourselves with the following:

Maryland Open Meetings Act

Codified at §10-501 et seq. of the State Government Article of the Annotated Code of Maryland. Applies to all "public bodies." County and municipal legislative bodies and planning commissions are subject to the Open Meetings Act. In general, public bodies must conduct public business in public. There are some exceptions. Developers don't like to discuss their business in public. Making them do so provides you guys with a tactical advantage.

Maryland Public Information Act

Codified at §10-611 et seq. of the State Government Article of the Annotated Code of Maryland. Nearly all "public records" are subject to public inspection and copying at reasonable times and at a reasonable fee. In connection with land use issues, there is almost no such thing as a "confidential" document.

Maryland Annexation Statutes

If the developer you're dealing with is requesting the land in question be annexed into a municipality, chances are the developer is doing so for the following reasons:

- . to avoid the county's Adequate Public Facilities Ordinance ("APFO"); and
- . to avoid the "change or mistake" rule applicable to most piecemeal rezonings.

Annexations are governed by two (2) provisions of Article 23A of the Annotated Code of Maryland. They are:

§9(c); and
§19.

Familiarize yourselves with these provisions. You may have an opportunity to:

- get enough signatures to put the proposed annexation to referendum; and
- defeat the annexation at referendum, even though the municipal legislative body approved it.

The county commissioners cannot stop annexations and have very little practical input into the process.

Campaign Finance Laws

In Frederick County, those involved in the development and sale of land are by far the heaviest contributors to the campaigns of elected officials. While there is nothing inherently wrong with an elected official's favorable vote on a matter concerning a campaign contributor, it is often a source of embarrassment if the public's attention is

called to it via news accounts or letters to the editor. Campaign contributions are public record. It takes a little effort but it is possible to identify the individuals who make campaign contributions (either directly or through corporations, partnerships, limited liability companies, etc.) and the business those contributors have before your elected officials. It is fair game to point out that an officeholder voted favorably on a matter concerning a campaign contributor.

Developer Representations:

In nearly all cases the only entity that can make binding representations concerning the future development of land is the owner (or the owner's authorized agent) of the land at the time the representation is made.

Who is the Owner of the land in question?

A simple question that doesn't have a simple answer. The starting point to find out who owns a piece of undeveloped land is to identify the property on one of the tax maps kept by the State Department of Assessments and Taxation ("MDAT"). Once you have the Map # and the Parcel #, look up the property on the MDAT Real Property System for Frederick County. Go to MDAT's website at:

<http://www.dat.state.md.us/>

click on "Real Property Data Search"

select "Frederick County"

click on "Map/Parcel Reference"

Enter the Map# & Parcel #. If the land is within a municipality, you will also need to enter the Town code (Emmitsburg's code is "003).

Click "Search"

This should give you MDAT's information on the property. This is only the starting point. Note the "Deed reference #". You will want to visit the Courthouse land records to get a copy of the deed. If the owner is an artificial entity (corporation, limited liability company, limited partnership, etc.) you will want to order copies of their filing with MDAT.

Authorized Representatives

If the individual making the representation is not the owner, request assurances that the individual is authorized to speak on behalf of the owner and bind the owner. Developers often attempt to have it both ways when they have someone speak and negotiate for them. If they get a good deal, they take it. If they get a bad deal, they attempt to get out of it by claiming the representative "had no authority" to make the deal.

Whether a person has the requisite authority to speak for and bind another person is determined by the law of agency. Just because someone says they are an agent for another does not make it so. Even if a person is authorized to act as an agent for someone on a particular matter does not necessarily mean the can act as an agent for other matters. The burden of proving an agency relationship lies with the person relying on the representation: "[T]he law does not presume the existence of either authority or agency and thus the person depending upon the existence of the

authority or agency...must sustain the burden of proof." REUSCHLEIN & GREGORY, AGENCY AND PARTNERSHIP §11B at 28 (2nd ed. 1990). The best evidence of an agency relationship is a written and notarized power of attorney that sets forth the agent's specific power and authority to act on behalf of the principal.

Relying on Developer Representations

The only time you can rely on statements made by developers is when:

1. The statement is made in written form and is signed by the developer or the developer's authorized agent.
2. The statement is precise as to WHAT the developer will do.
3. The statement is precise as to WHEN the developer will do it.
4. If the developer is not a natural person (most "developers" are actually corporations, limited liability companies, limited partnerships, or limited liability partnerships with hardly any net assets), ask the human beings who are involved to personally guarantee the performance of all of the developer's representations. If they resist, use the response made by bankers since time immemorial to businessmen who don't want to guarantee their company's obligations: "If you don't have any faith in your venture, why should we?"
5. The statement meets the legal requirements of a covenant that "runs with the land" and will bind the current owner and the owner's successors (much like the usual homeowners' association covenants). This aspect of real property law is very archaic and dates back to the Middle Ages. Good lawyers will sometimes disagree on whether a particular covenant will run with the land.
6. Make sure the covenants are contractual in nature and not simply declarative covenants. A declarative covenant can be released anytime all property owners subject to the covenants agree to release them.

Example: Dan Developer owns and wants to develop Blackacre. The applicable zoning classification would allow 500 homes to be built on Blackacre. In order to mollify community opposition to the proposed development, Dan records a declarative covenant whereby he promises not to build more than 100 houses on Blackacre. The covenants cause opposition to wither away and eventually disappear. Dan subsequently records a release that nullifies the covenants. Dan is now free to proceed with a 500 home development.

To make the covenants contractual, try to have one or more entities that you can depend on to enforce the covenants made parties to the covenants or otherwise have the right and an incentive to enforce them. You also need to make sure the entity "can't be bought."

Example: Dan Developer owns Blackacre, which contains 500 acres of residentially zoned land. In order to assuage opposition the development of Blackacre, Dan promises to only develop 100 acres. Dan records a covenant not to develop the remaining 400 acres and gives the Songbird Wildlife Trust a conservation easement on the remaining 400 acres. This causes opposition to wither away. Later, Dan offers to make a large donation to the Songbird Wildlife Trust if they will agree to a release

of the covenant and the conservation easement. The Trust agrees and records the releases. Dan is now free to develop the remaining 400 acres.

7. Entities that have an interest in the land superior to the developer have consented to the covenants (existing owners, contract purchasers, mortgagees and holders of deeds of trust are the most common).

8. The statement is recorded in the land records.

9. If the statement is one that obligates the developer to perform an act and the cost of performing the act can be reasonably quantified, the developer's obligation is secured by cash or a letter of credit.

Here's an example of a verbal statement made by someone purporting to be acting on behalf of a developer:

"The developer will pay all costs associated with providing sewer to the property."

The statement in that form is not reliable because:

- The individual may later deny making the statement. As an evidentiary matter, it will be harder to prove that someone made a verbal statement than a written statement.
- Even if you can prove the person made the statement, the developer may deny that the person had the authority to make the statement on the developer's behalf.
- If the developer doesn't own the land, the owner and the owners' successors are not bound by the statement.
- Even if the developer does own the land, the verbal promise does not comply with the Statute of Frauds, which requires most promises concerning an interest in land to be in writing.
- The statement is not recorded in the land records, leaving to developer free to sell the land to someone else who will not be bound by the statement
- The statement does not say when the developer will pay.
- The developer's promise is unsecured and can therefore be discharged in a bankruptcy proceeding.
- The market for new homes may change, leaving the developer with no incentive to pay.

Letters to the Editor:

Us politicians read the letters to the editor like ducks take to water. Sending your concerns to your local government is fine but don't stop there. Share your comments with everyone else in the community via letters to the editor of your local paper, the Gazette and the Frederick Post.

3) Selected **LINKS** to our website:

The **Frederick Regional Action Network** home page:
<http://www.frederickaction.org/>

Current News

<http://www.frederickaction.org/news/current.html>

Election News

<http://www.frederickaction.org/news/current/elections.html>

FRAN News Archive

<http://www.frederickaction.org/franmail.html>

Save INDIAN CAVE PARK (at Lake Linganore)

<http://www.frederickaction.org/action/indiancavepark.html>

Public Comments by some who have signed the petition to save INDIAN CAVE PARK

<http://www.frederickaction.org/action/indiancavepark/comments.html>

Urbana "Loop" Transmission Line

<http://www.frederickaction.org/action/urbanaloop.html>

Journey Through Hallowed Ground:

News and links:

<http://www.frederickaction.org/news/current/journey.html>

Links to more than a dozen Local Organizations:

<http://www.frederickaction.org/links/localorgs.html>

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The "Letters to the Editor" section is one of the most read sections in any newspaper. Having a letter to the editor published is a way to share your concerns with hundreds or thousands of people. Many elected officials pay attention to the letters in local papers. Even when a letter is not published, submitting it can have an impact, as editors gauge how their readers feel about an issue by the number letters they receive about a certain issue. Find helpful advice about composing and submitting an effective letter, as well as contact and submission information for area newspapers

<http://www.frederickaction.org/news/letters.html>

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