

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

FRIENDS OF FREDERICK
COUNTY, *et al.*

Plaintiffs

v.

THE TOWN OF NEW MARKET

Defendant

Case No. C-11-000410

OPINION AND ORDER

This matter came before this Court on June 15, 2011, on Defendant Town of New Market (“New Market”)’s Motion to Dismiss. After reviewing the briefs filed by both parties, the applicable case law, and the oral arguments at the June 15 hearing, this Court grants the Motion in part, and denies it in part.

BACKGROUND

New Market is a municipal corporation located in Frederick County, Maryland. On November 17, 2010, New Market amended its 2005 Master Plan by adding a Municipal Growth Element (“MGE”). The Plaintiffs in this case are several individuals who own land that may be affected by the rezoning proposed in the MGE as well as two civic groups – first, the Friends of Frederick County (“Friends”), a civic association comprised of Frederick County property owners and residents, and second, the Audubon Society of Central Maryland, Inc. (“Audubon”), a non-profit corporation that owns the Fred Archibald Audubon Sanctuary, a 140 acre bird sanctuary that adjoins land designated by the MGE as an annexation area.

The Plaintiffs filed their Complaint on February 14, 2011, seeking injunctive and declaratory relief and claiming that New Market's MGE should be declared invalid because it does not sufficiently address a number of the requirements of Md. Ann. Code art. 66B, §3.05(a)(4)(x).¹ The Plaintiffs further claim that, because the MGE is invalid, the proposed changes in zoning classifications and proposed annexations are illegal and void. As such, the Plaintiffs requested an injunction enjoining New Market from implementing any Annexation Resolution until it adopts a compliant MGE.

In response, New Market filed a Motion to Dismiss on March 25, 2011 with four major claims discussed in detail below. This Court heard oral argument by both parties on New Market's motion on June 15, 2011, and took the matter under advisement.

ANALYSIS

In its Motion to Dismiss, New Market raises four issues for this Court to review, each of which is discussed below.

1. The Complaint Fails to State a Claim Upon Which Relief Can Be Granted

New Market argues that, since a MGE is a legislative policy decision and not an ordinance or statute, this Court lacks subject matter jurisdiction over it. New Market claims that because a plan (like the MGE) is a non-regulatory statement of policy, it cannot be declared invalid under §3-406 of the Declaratory Judgment Act, and so the Plaintiffs' request for this Court to determine the validity of the MGE is outside the Court's purview. However, in its Response to Plaintiff's Opposition to Preliminary Motion as well as its oral argument in front of this Court, New Market concedes that the Court may properly determine whether the MGE adequately considers the planning

¹ Specifically, the Plaintiffs claim that the MGE fails to adequately address anticipated growth areas as well as the services and infrastructures that would be necessary to meet the potential additional growth (e.g., public safety, fire and emergency response, public schools, and water and sewage facilities).

matters enumerated in Md. Ann. Code art. 66B, §3.05. This Court is certainly able to review the MGE to ensure that it appropriately conforms to the statutory requirements, which is what the Plaintiffs have requested in their Complaint. This part of New Market's Motion to Dismiss is denied.

2. The Friends Lack Standing

New Market claims that Friends is a civic association with an undisclosed membership, and that the Complaint fails to allege with any specificity any property ownership by Friends or other sufficient basis of standing to sue. Specifically, the Complaint states that Friends' membership "consists primarily of property owners and residents in the County of Frederick, including the Town of New Market."

As the Plaintiffs note in their Opposition to Defendant's Preliminary Motion to Dismiss, New Market has not challenged the standing of any of the other fourteen named plaintiffs. The Court of Appeals has stated that, "[w]here there exists a party having standing to bring an action or take an appeal, we shall not ordinarily inquire as to whether another party on the same side also has standing." Board of License Comm'rs v. Haberlin, 320 Md. 399, 404 (1990). Because the standing of all other Plaintiffs is uncontested, this Court will not inquire further as to Friends' standing. The Motion to Dismiss for lack of standing is denied.

3. Attorney's Fees

Regarding attorney's fees, Maryland courts generally adhere to the "American rule," under which each party is responsible for its own legal fees. Henriquez v. Henriquez, 413 Md. 287, 294 (2010). The only recognized exceptions to this in Maryland have

involved contractual provisions, statutes, or rules. Friolo v. Frankel, 403 Md. 443, 456 (2008); see also Bausch & Lomb Inc. v. Utica Mut. Ins. Co., 355 Md. 566, 592 (1999).

New Market notes that the Plaintiffs did not allege the existence of any contract, statute or any other reason in their Complaint that would give rise to an award of attorney's fees. At the June 15 hearing, the Plaintiffs said that their request for attorney's fees was merely pro forma language, and that they did not object to it being dismissed without prejudice. Based on the case law and the statements of Plaintiffs' counsel, this issue of New Market's Motion to Dismiss is granted, and Plaintiff's request for attorney's fees is dismissed without prejudice.

4. Plaintiffs' Failure to Join All Necessary Parties

In their Complaint, the Plaintiffs allege that all properties within sight or sound of the land to be annexed in the MGE could be adversely affected by that annexation. New Market's Motion to Dismiss argues that all people who use, own, or enjoy those properties have interests that will be affected by the case, and therefore, those people must be joined as parties in order to protect those interests. In support of its claim, New Market cites the Declaratory Judgment Act, which says in relevant part: "If declaratory relief is sought, a person who has or claims any interest which would be affected by the declaration shall be made a party." Md. Ann. Code, Cts. & Jud. Proc. §3-405(a)(1).

While 3-405(a) does contain a compulsory joinder provision, the Court of Appeals has stated that it (and the similar Maryland Rule 2-211) only protect certain kinds of interests, and that "viewing a proposed public improvement [such as public roads] as a benefit is not the kind of an interest with which Rule 2-211 and CJ §3-405(a)(1) are concerned." Gardner v. Board of County Comm'rs, 320 Md. 63, 81 (1990). In the

Gardner case, several taxpayers sued the Board of County Commissioners of St. Mary's County to void a tax ordinance. The Board sought to dismiss the taxpayers' suit using an argument similar to New Market's argument in this case – that numerous additional nearby landowners needed to be joined, or else their rights could be impaired or impeded. The Court of Appeals rejected that argument in the Gardner case, and this Court rejects it in the present case. Because this issue can be resolved without joining every potential affected party, the Motion to Dismiss for failure to join necessary parties is denied.

CONCLUSION

Upon consideration of the foregoing, it is this 4th day of August, 2011, by the Circuit Court for Frederick County, Maryland, **ORDERED**, that New Market's Motion to Dismiss is granted in part and denied in part as outlined above; and it is further **ORDERED**, that the Assignment Office set a scheduling hearing in this matter.

/s/
Julie Stevenson Solt
Judge

TRUE COPY TEST:

Sandra K. Dalton, CLERK

FILED
2011 AUG -8 A 9:08
SANDRA K. DALTON
CLERK
BY _____