

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' REPLY TO DEFENDANT'S RESPONSE TO
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 reply to defendant's response to plaintiffs motion for extension of time to respond to defendant's motion for summary judgment.

1. In our motion for extension of time plaintiffs requested that this matter be addressed at the scheduled status conference on December 21, 2011. At that conference, the parties and the Court could explore the merits of plaintiffs' position, that it would be appropriate and more efficient to respond to a motion for summary judgment taking into consideration the amendment/replacement of the Plan which is the subject of the lawsuit.

2. In the defendant's response, received December 15, 2011, defendant opposes the request and asks that the Court set December 20, 2011 as the deadline for responding to the summary judgment motion. This, of course, provides plaintiffs with insufficient time to so respond, and is based upon two problematic understandings.

3. First, in paragraph 4 of the defendant's response, defendant states that the Court may "consider the issue of compliance with State law based upon the comprehensive plan in effect at the time of the Court's decision". Defendant goes on to state that it would be "anomalous for the Court to apply the Maryland statute to a previous version of the plan". Assuming the correctness of this position, it is precisely for this reason that the time for answering the motion for summary judgment needs to be deferred. By the time summary judgment motion is fully briefed, argued, and decided there is a likelihood that the plan which is the subject of those pleadings will have been changed and the Court would have rely on the new plan – which of course the pleadings would not have addressed. Also, it would be a waste of the parties time and effort, as well as the Court's, if this Court ruled upon a plan that is then superseded.

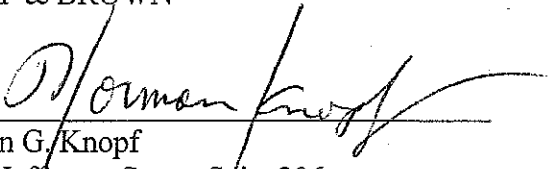
4. With regard to the timing of when the current plan might be amended or superseded, the information supplied by, and actions of, the Town of New Market, fully support the understanding in the community that the plan may be changed within sixty (60) days. See Exhibit 1 attached, which is an email from the Town of New Market Clerk to Council, Debora Butler advising that the "draft of the New Market Master Plan 2012 [the plan that would supersede the 2011 plan which is the subject of this lawsuit] is available online for comment". The Clerk to Council further notes that "the public hearing is tentatively planned for February 2012". See Exhibit 2 attached, which is an email from David Cotton, of the Maryland Department of Planning, to Janice Wiles, Executive Director of Friends of Frederick, advising that the proposed New Market 2012 Master Plan had been submitted to the Maryland Department of Planning for its comment [as required by law, Article 66B, §3.07(c)(2)] and that

the "comments are due to the Town on January 13, 2012. The Town has yet to schedule a public hearing, but are planning on a possible February date."

WHEREFORE, for the above-stated reasons, as well as the reasons set forth in our motion, 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.

Respectfully submitted,

KNOPF & BROWN

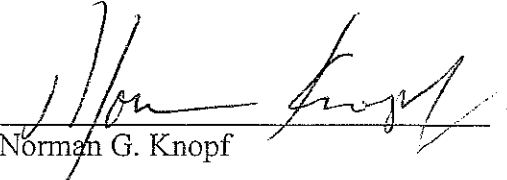
By: 
Norman G. Knopf
401 E. Jefferson Street, Suite 206
Rockville, Maryland 20850
(301) 545-6100
Attorneys for Plaintiffs

December 15, 2011

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this 15th day of December 2011, a copy of the foregoing Plaintiffs' Reply to Defendant's Response to Plaintiffs' Motion for Extension of Time to Respond to Defendant's Motion for Summary Judgment was mailed, postage pre-paid, first class mail to:

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


Norman G. Knopf

Norman G. Knopf

From: Janice Wiles [jwiles@friendsoffrederickcounty.org]
Sent: Wednesday, October 12, 2011 12:33 PM
To: Norman G. Knopf
Subject: Fwd: FW: Draft 2012 Master Plan

FYI

----- Forwarded message -----

From: Debra Butler <debtownofnewmarket@gmail.com>
Date: Tue, Oct 11, 2011 at 2:04 PM
Subject: Draft 2012 Master Plan
To:

Good afternoon,

The draft of the New Market Master Plan 2012 is available online for comment. You may access the draft including all maps and appendices on the following page: <http://www.townofnewmarket.org/government/reports> (under "New Market Master Plans - 2012").

Please send comments to the Town. The public hearing is tentatively planned for February 2012.

—
Debra Butler
Clerk to Council
New Market, MD
[301.865.5544](tel:301.865.5544)

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Janice Wiles
Executive Director
Friends of Frederick County
<http://www.friendsoffrederickcounty.org>
Join Friends of Frederick County on Facebook!
240 529 1655 (office)
240 626 5209 (cell)
301 668 8928 (home office)

EXHIBIT 1

Norman G. Knopf

From: Janice Wiles [jwiles@friendsoffrederickcounty.org]
Sent: Tuesday, December 06, 2011 4:20 PM
To: Norman G. Knopf
Subject: Fwd: question about New Market's 2012 Master Plan

----- Forwarded message -----

From: David Cotton <DCotton@mdp.state.md.us>
Date: Tue, Nov 29, 2011 at 12:16 PM
Subject: RE: question about New Market's 2012 Master Plan
To: Janice Wiles <jwiles@friendsoffrederickcounty.org>
Cc: Peter Conrad <PConrad@mdp.state.md.us>

Good Afternoon Janice,

The New Market 2012 Plan has been submitted to MDP and should be uploaded to the website shortly. The 60 Day Clearinghouse comments are due to my office by January 9, 2011. Per the 60 Day Clearinghouse, comments are due to the Town on January 13, 2011. The Town has yet to schedule a Public Hearing, but are planning on a possible February date.

Thanks,

Dave

David V. Cotton, Regional Planner

Maryland Department of Planning

Western Maryland Regional Office

113 Baltimore Street, Suite 302

Cumberland, Maryland 21502

Office: 301.777.2161

<http://planning.maryland.gov/>

EXHIBIT 2