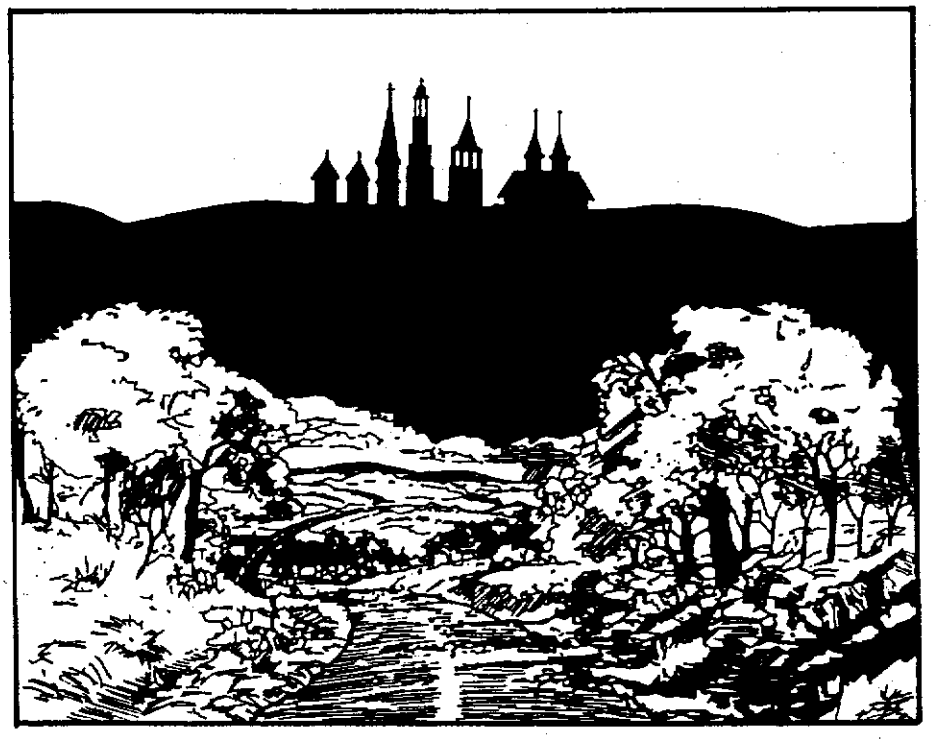
REPORT:

CITY - COUNTY COMPREHENSIVE PLAN AND ANNEXATION STUDY COMMITTEE



JUNE 1988

Frederick City - Frederick County Joint

Comprehensive Plan Coordination and Annexation Limits

Study Committee

Report

June, 1988

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SUMMARY

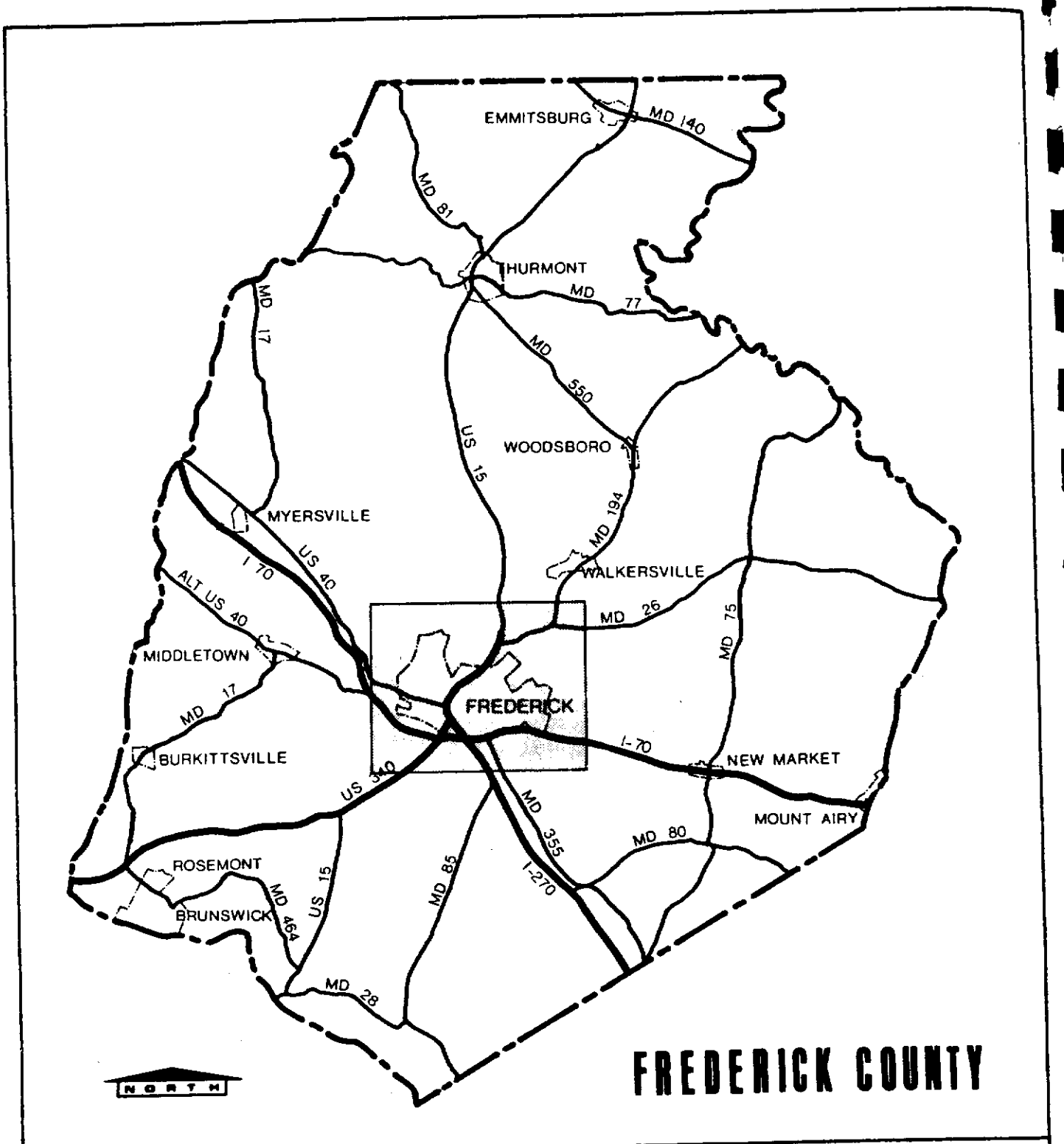
The Frederick City - Frederick County Joint Comprehensive Plan Coordination and Annexation Limits Study Committee was formed in the fall of 1987 by the elected officials of Frederick City and County. The principle purpose of the Committee has been to review the respective Comprehensive Plans for each jurisdiction and identify conflicts or bring into focus issues raised by the two planning documents. Specifically considered were land use, community facilities and highway plan proposals. As a related task, the Committee has reviewed past and present procedures for handling annexations. These procedures were reviewed towards the purpose of reaching mutual understandings about where and under what circumstances annexations should be considered in the future, and to propose orderly processes for reviewing development plans by each jurisdiction.

The product of the Committee is the following Report. The Report is divided into two parts: I) The Comprehensive Plans, and II) Annexation and Development Policies.

Regarding the Comprehensive Plans, conflicts are identified as to the proposals for new highway alignments and functional classifications, the number and location of planned community facilities such as schools, parks, water and sewer services, and, the type and intensity of future land use in the Frederick City area. Recommendations are presented for each of these areas which will serve as a basis for the next updates of the Frederick City Comprehensive Plan and the Frederick County Comprehensive Plan, both scheduled to begin in 1988.

Regarding annexations, the Report recommends a corporate limit line to define areas of future annexations around the City. The corporate limit line, which is based primarily on Comprehensive Plan proposals and the location of utilities and highways, is planned to be annually reviewed and updated by mutual agreement based on changing circumstances and updates of Comprehensive Plan proposals. Also, the Report makes recommendations on what the individual and mutual responsibilities of the jurisdictions in the review and approval of new development generally in the Frederick City area.

It is intended by the Committee that the recommendations in the Report serve as the framework for future cooperation in the management of growth in the Frederick City vicinity. In the future, it is anticipated that these recommendations will be refined, supplemented or amended in order to be certain they respond to concerns and issues present at that time.



STUDY AREA

FREDERICK CITY – COUNTY JOINT COMPREHENSIVE PLAN
COODINATION AND ANNEXATION LIMITS STUDY COMMITTEE

INTRODUCTION

Growth, transition, change - facts of life for Frederick County. The last 28 years, since 1960, have brought significant increases in home construction, new commercial development, new industry, new schools, roads and other public facilities. This new growth has resulted in many changes. These changes include new opportunities for residents and businesses, increases and expansion of government services, changes in lifestyle, and concerns about the future.

Nowhere have these changes been more evident then in the Frederick City area. In 1960, Frederick City was a community of 21,744 persons; on a day to day basis quite removed from the growth taking place in and around Washington D.C. and the Baltimore metropolitan areas. Since 1960, the tremendous residential and business expansion which has occured in the metropolitan areas (especially in Montgomery County), combined with the completion of the interstate highways, rising land development costs in the metropolitan areas, an attractive local setting and lifestyle, a healthy economy, and available water and sewer services, have made both population and business growth inevitable. In 1988, Frederick City has grown to become a small city of 36,325 persons, with major expansions to commercial and industrial areas both within the City and in its surrounding vicinity. Today, Frederick City and County are intimately connected with the larger Baltimore and Washington economies with approximately 1/3 of the labor force commuting to these area for employment. These connections have brought pressures for development which must be a basic concern when planning for the future.

New growth and development increase demands for efficient and responsive local government able to meet the challenges of changing issues and circumstances. Cooperation and open communication between municipal, county,

state and federal governments is necessary if we are to meet the challenges. In no area of government is this more important than in long range planning.

Toward this end, a special committee was formed by the County Commissioners and Mayor & Alderman in Sept. 1987 to discuss matters of common interest related to long range development in the Frederick City vicinity. This committee has examined existing and planned development and identified conflicts and inconsistences between the 1979 City Comprehensive Plan and 1984 County Comprehensive Plan. While primarily focusing on future land use concerns, associated issues related to future road alignments, future school and other community facilities, and water and sewer services were also addressed. The product of the Committee is this report which contains a set of recommendations to the Planning Commissions and elected officials of both the City and County concerning future growth around the City. Included are suggestions for resolution of conflicts between comprehensive plans (Part I) and policies concerning future annexations (Part II). These annexation policies address issues related to provision of public facilities, timing of development and the geographic limits to municipal boundaries.

These proposals are not a new set of regulations or ordinances. They do not make changes to any existing laws. They are simply proposed agreements which are intended to facilitate communication and establish common understandings about where and under what circumstances growth will take place around Frederick City in the future.

It is the Committee's belief that the recommendations contained in this Report, if adopted, will faster more efficient development in the Frederick City area, permit better planning and more economical delivery of services in both jurisdictions. It will further provide property owners, developers and builders with important information on the future direction and management of growth in this part of the County.

Following review by the City and County Planning Commissions and elected officials, it is hoped that these proposals and recommendations may serve as the basis for updates of both the City and County Comprehensive Plans and as a framework for reviewing any annexations which may be presented in the future.

PART I: THE COMPREHENSIVE PLANS

A. Summary of the County and City Comprehensive Plans

The Frederick County Comprehensive Plan was last completed in July, 1984. It represented the first plan update since 1972, and only the third plan adopted by the County since 1959. The Plan contained a number of background studies on the natural environment, population and housing, land use, transportation, and community facilities and services. It further contained goals and objectives for the future as well as proposals for implementation of the recommendations.

The land use pattern recommended for Frederick County in the Plan is based upon a "Community Concept" of development. Under this concept, residential, commercial and industrial development is intended to be directed into designated compact growth areas, encouraging identifiable communities and avoiding uncontrolled suburban sprawl. By minimizing sprawl, the Community Concept development pattern also supports the conservation of rural open space and prime agricultural land, and minimizes costs of construction and maintenance of utilities, roads and water and sewerage systems.

The Plan divided the County into eight "Planning Regions". One of these eight Regions is the "Frederick Region". This Region includes the area immediately surrounding Frederick City as well as lands north to Lewistown, east to the Monocacy, south to Ballenger Creek and west to the Braddock Heights community. The County Comprehensive Plan identifies Frederick City as the "Regional Center" for new housing construction and commercial and industrial development. As the Regional Center, Frederick City is to be the focus of new development based on the existing network of roads which serve the area, the location of existing community facilities and the presence of utilities to serve new development. The County Plan supports continued low density residential growth (1-4 dwelling units per acre) west and north of the City,

employment development east of the present City limits, and medium density housing (5-10 dwelling units per acre) south of the City. South of the City additional areas are also shown for commercial and industrial employment uses.

The principal method for implementing the land use proposals found in the County Plan is through zoning. In general, the existing County zoning of properties around the City reflects what is proposed in the County's land use plan map. There are, however, inconsistencies between the land use plan proposals and actual zoning in certain locations, and these are discussed later in this report. The County Plan also proposes new road alignments and classifies all roads in a functional classification system to accommodate expected traffic volumes and to regulate access and setbacks. Finally, the number and location of future schools, libraries and parks were identified based on County Comprehensive Plan proposals and anticipated population increases.

The County Comprehensive Plan is expected to begin the update process beginning in 1988 towards the goal of completion in 1989.

The current Frederick City Comprehensive Plan was adopted in 1979. It represents an update of a Plan approved in 1964. The City Comprehensive Plan, like the County Plan, includes a number of background studies on natural features, community facilities, housing, the municipal economy, and land use and development trends.

The City Plan contains a number of Goals, Objectives and Policies, in seven separate categories ranging from "Intergovernmental Relations" to "Land Use". In general, the Plan proposes the concentration of employment uses in the eastern half of the City, major residential uses to the west, south and north, and commercial activities clustered along US40 and other major City streets, including downtown. Parks and open space areas are designated along the stream

valleys through the City. The Plan also sets forth desirable standards for housing type mix, community facilities, and economic development.

Finally, the City Plan also contains a map which displays an "Area of Possible Annexation". This map, identifies large areas for future annexation west, south and north of the City in recognition of the City Plan's proposals for expansion of existing municipal services and facilities.

This Plan is currently in the process of being updated by the City Planning Department staff with the expectation it will be completed in 1989.

B. Transportation

Both the City and County Comprehensive Plans contain future transportation and highway proposals in the form of Master Highway Plan maps and recommendations in the text itself. Each Plan establishes a "functional" classification for roads in the public system, new alignments for proposed or existing roads, as well as goals and policies for the highway network.

Both Plans also present proposals related to public transportation services.

The Frederick County Master Highway Plan proposes that the radial highway network of interstate and state primary highways which converge at Frederick City serve as the primary facilities for countywide access. Complementing this inter-county system are local Regional connections including arterial highway links to major routes between communities. The County's Plan classifies all roads in a functional hierarchy to regulate right-of-way widths, setbacks, access, intersection locations, construction standards, as well as to define the role they play within the highway system. Specific classifications include the following:

- Freeway/Expressway
- Major Arterial
- Minor Arterial
- Collector
- Local Street

The 1984 County Comprehensive Plan used the Frederick City Plan as a basis for its inter-regional proposals, and so many of the proposals found in both Plans are the same. As with the County Plan, the City Plan utilized the existing State and Interstate highways as the framework for the future highway network. U.S. 15, I-70 and I-270 are the major facilities in this respect. East Street, U.S.40, and Old Camp Road are also intended as major carriers of

future traffic. Like the County Plan, the City Plan classified all roads into a system of roads which include the following:

- Major Arterial
- Minor Arterial
- Collector
- Local Street

The Study Committee's review of the Highway Plans for both the City and County revealed several differences between the functional classifications and proposed alignments established by each jurisdiction. A summary of these issues would include the following:

1) Differences in functional classifications exist between a number of roads in the two Plans. Specific roads which are in this category include:

   - Butterfly Lane (County-Collector, City-Minor Arterial)
   - Shookstown Road (County-Collector, City-Minor Arterial)
   - Rocky Springs Road (County-Local, City-Collector)
   - Yellow Springs Road (County-Major Arterial, City-Minor Arterial)
   - Poole Jones Road (County-Collector, City-Major Arterial)

   It is important that the functional classification remain consistent between jurisdictions in order to maintain similar rights-of-way, setbacks and other design features.

2) Certain road relocations or new alignments were shown on one Plan and not the other. Situations where this was the case include the following:

   - Southeast loop - The City Plan proposed a new road connecting Evergreen Point with the Tulip Hill vicinity; this was not shown on the County Plan.

- Hayward Road Interchange - The County Plan shows a new interchange along with connecting roads to the west; this is not shown on the City Plans.
- Trading Lane/Waterside Drive - The City Plan does not show these proposed roads; the County does and has them incorporated into the development plans of several subdivisions.
- Mt. Phillip Road - The City Plan shows a relocation of this road to line up across from Old Camp Road, north of Butterfly Lane. The City Plan also shows a new alignment of Mt. Phillip Road south of I-70. This is not shown on the County Plan.

3) Since adoption of the City and County Comprehensive Plans, several events have taken place which warrant changes to both Plans to reflect the present day situation. This would include the following:
   - I-70 Improvements - Since 1984 the State Highway Administration has approved funding of major interchange improvements along I-70, south of Frederick City.
   - Rosenstock Farm Annexation - The annexation of this farm, along with the proposed road improvements, are not reflected on either plan at this time. Anticipated traffic volumes from this property need to be properly accommodated by a planned road network.
   - Old Camp Road/Western loop - Both Plans showa new road utilizing Kemp Lane and properties connected with Fort Detrick. During discussions with Fort Detrick officials, the Committee learned this particular alignment may not be possible or may require some modification.

Recommendations

1) As part of any future Comprehensive Plan Update, a coordinated network of highways should be planned to serve the Region with agreed upon alignments

and functional classifications, with particular attention paid to those arterial roads where inconsistencies between Plans have been noted.

2) Design standards for the different functional classifications should be reviewed for consistency between jurisdictions. Minimum standards for pavement widths, setbacks and access control should be coordinated.

3) Both City and County Plans should reflect the latest State Highway Proposals for improvements to I-70 between East Patrick Street and Mt. Phillip Road.

4) New road alignments included as part of any recent annexation resolutions, such as the Rosenstock Farm, should be included in future Plan updates.

5) A new planned interchange near Hayward Road, along with the accompanying street connections, should be reflected on both Plans.

6) Coordination should immediately begin with officials of Fort Detrict to resolve any conflicts between local highway plans and plans for the Fort and associated government agencies.

C. Community Facilities

Both the City and County Comprehensive Plans make proposals for providing new community facilities to serve the needs of a growing community. These community facilities include schools, libraries, parks, water and sewerage, fire and police services, and health facilities. In addition to these, the County Plan includes a discussion of solid waste management while the City Plan includes discussions about governmental buildings, underground wiring and flood control. Within the framework of each of these individual facility types, the plans differ as to where future facilities should be located and the extent of new facilities needed.

Schools - The Frederick City Comprehensive Plan includes discussions of the school enrollment conditions existing in the late 1970's. At that time, there were 5 elementary schools located within the City limits along with two middle schools and two high schools. In 1976, these schools were serving a total of 7,591 students.

In order to serve the anticipated growth in the City and surrounding County, the City Plan calls for new elementary schools in 3 locations:

1. Between US 40 and Butterfly Lane
2. Antietam Village along Taney Avenue
3. Bartonsville

Based on planned industrial and airport development, the plan also calls for the phasing out of East Frederick Elementary.

The City Plan also called for three new secondary schools; two middle and one high school. One of the new middle school sites would be located at the intersection of Butterfly Lane and MD 180. A new high school site is proposed to be located in the Ballenger Creek area between Ballenger Creek Pike and US 340. The plans for the location of these facilities were consistent with the Board of Education plans current at the time.

The 1984 County Plan for community facilities differed from the 1979 City Plan. The County Comprehensive Plan reflected updated plans for a new elementary school in the Butterfly Lane vicinity and in the Oppossumtown Pike vicinity, and a new middle school in Ballenger Creek. The County Comprehensive Plan did not propose a new high school in the Frederick vicinity unless the area developed to a greater extent within the 20 year time frame of the Plan than the population projections indicated.

Since 1984, progress has been made in school construction and site acquisition. A summary of recent events would include the following:

- Construction of the new Hillcrest Elementary school in conformance with both the City and County Comprehensive Plans,
- Construction of the new Paces/Changes Facility on Taney Avenue, a site anticipated to be used as a standard elementary school in the City Plan,
- Approval for construction of the new Monocacy Elementary School on Hayward Road, in accordance with the County Plan,
- Approval for planning of a new middle school in the Ballenger Creek area, in accordance with the County Plan.

Finally, sites have been reserved in several locations for future schools in Ballenger Creek.

Park Facilities - Both the City and County Comprehensive Plans call for the provision of various types of parks in the future. Based on the differences in function, size, area and population served, future proposed parks are classified as either neighborhood, community or district parks. The Plans also speak to the need to provide future recreation facilities as part of the municipal and County park systems.

The 1984 Frederick County Plan recommended that the County, in conjunction with the municipalities, should seek to acquire a total of 15 acres per 1000

population of local parkland acreage. The Plan included definitions for the various types of parks as well as standards for size, location and types of facilities needed. It was noted in 1984 the County and municipalities provided 13.8 acres of parkland per 1000 population countywide in 45 Neighborhood Parks, 55 school and Community Park facilities, 3 District Parks and 11 Special Use Parks. Based on projected population and growth patterns in the Frederick City area, the 1984 County Plan proposes future acquisition of a District Park in the Tuscarora vicinity north of Frederick City, acquisition of a District Park site in Ballenger Creek and acquisition of a Community Park in Yellow Springs. In addition, the stream valley along Ballenger Creek is proposed to be dedicated to the County to provide a pedestrian link between residential developments in the vicinity.

The Frederick City Plan proposes a park system focused on the stream valleys which run through town. In all, the City Plan proposes a goal of providing 8 acres per 1000 population of park facilities; 5 acres per 1000 of Community Parks and 3 acres per 1000 of Neighborhood Parks. Specific City Plans include the development of Carroll/Rock Creek stream valleys between Fredericktown Mall and the Monocacy, and along streambeds from Rose Hill Manor and Monocacy Village Park to the River. Intensively developed community parks were proposed for 4 locations; at the confluence of Carroll Creek and the Monocacy, at a site along the west side of Baughmans Lane south of Rock Creek, in the Butterfly Lane and US40 vicinity, and in the northwest City area between Shookstown and Yellow Springs Roads.

Since the adoption of the City and County Plans, the County has acquired and begun development of the Ballenger Creek District Park. Sites have been investigated in the Yellow Springs area but none have been acquired to date. None of the sites proposed for acquisition by the City has yet been acquired. However, development of a new Community Park on the Loats farm property on

South Market Street has begun along with improvements to several existing parks, including a new pool in Baker Park.

Water and Sewer Services - There are two major sewerage systems in the Frederick City area. The County's Ballenger Creek Sewage Treatment system is located south of Frederick City and serves most of the areas between U.S. 340 and I-270. The second system is owned by Frederick City and serves all the properties within the municipal limits as well as the Town of Walkersville and properties in the County north of the City.

The Frederick City Comprehensive Plan does not specifically address where extensions to existing water or sewer lines should take place. Policies set forth in the Plan, however, state that any extensions must be consistent with the Plan and take place within the City Limits. Of major concern at the time was the quality of discharge from the sewage treatment facility. Plans call for upgrading the plant to meet EPA water quality standards. The Plan further calls for increased cooperation between the City and the Metropolitan Commission (now the County Commissioners) to coordinate where and how service should be extended.

The County Comprehensive Plan, like the City plan, summarizes the existing situation with respect to existing sewer and water service in the area. It notes that the City sewage treatment plant is in the process of being upgraded to handle 7 million gallons per day of effluent and that the County Ballenger Creek Plant was operating well below its 2 million gallon per day capacity. Regarding water service, the Plan noted proposals were currently under study to connect the Ballenger Creek Area to the Potomac River in order to provide a more reliable source in the future.

Since these plans were adopted, numerous changes have taken place in the water and sewer services in the Frederick City area. The City's sewage service

has been improved with a new sewage treatment plant located at Gas House Pike and the Monocacy. In addition, the City has completed Water & Sewerage plans for their systems which set forth where new lines could be extended beyond the City limits based on drainage patterns, pressure zones and other natural features. For its part, the County is in the process of connecting the Ballenger Creek Water System to the Potomac, increasing future supply to at least 8 million gallons per day. Finally, the City and County have reached a long range agreement on how sewer service will be provided in the future in the Frederick City Region. This interjurisdictional report, "The Monocacy Wastewater Treatment Alternatives Study" recommends inter-connections between the City STP and County STP, as well as construction of an outfall to the Potomac River to allow effluent discharge at that point.

Other Public Facilities - Both the City and County plan for future protective service facilities, libraries and health care facilities.

Regarding fire stations, the City Plan anticipated no more than four companies would be needed to serve the City in the future. What was considered desirable, however, was the eventual relocation of at least 2 of the downtown companies to the City's developing areas. The Plan calls for relocating the Independents Hose Company to the new Baughmans Lane property and purchase of a new station on the east side of the City near the airport. The County Comprehensive Plan, like the City Plan, sets forth standards for future fire station locations. Based on these standards, the Plan called for new fire and ambulance stations in the Ballenger Creek vicinity, Evergreen Point, Yellow Springs and Long Branch/Linganore vicinity.

Since these plans were developed, the Independents Hose Company has relocated from West Church Street to Baughmans Lane. In addition, a future fire station site has been reserved along Ballenger Creek Pike in the Farmbrook

vicinity, at Rt. 85 and Crestwood Blvd., and in the Long Branch P.U.D. near Bartonsville. An all paid ambulance crew is also being installed on a new site at Grove Road and US40. Finally, the City and County, along with the Frederick County Volunteer Fire and Rescue Association, have formed a Task Force to review the current issues with regard to Fire Service in the County. This Task Force, whose proposals are still being discussed, has recommended several new station locations in the Frederick City area as well as changes in the financing and organization of the fire services in the Region.

Regarding library services, the City Plan proposed relocation of the library from its then facility on West Second Street to a new facility downtown. This is in keeping with its general policy to locate all governmental related buildings in the historic business area. The County Comprehensive Plan also supported the location of a library headquarters downtown and proposed a branch in the Ballenger Creek vicinity.

Since adoption of these plans, the County has relocated the new library headquarters to a new building on East Patrick Street. In addition, within a proposed new development on New Design Road, a potential library site is planned to be set aside.

With respect to community facilities generally, the committee identified a number of issues:

- The City and County Plans were inconsistent as to where school facilities should be located and what standards should be used.
- Both the City and County Plans use outdated growth projections when calculating the need for future facilities. Especially for school facilities, neither plan accurately reflects the potential need for facilities based on the ultimate land use plan.
- Little direction exists in the Plans as to who is to provide sewer and water service in the future in undeveloped areas adjoining the City limits.

- The location and number of future fire stations is not consistent between the City and County Plans.

Recommendations

- The City and County should cooperatively identify the number and location of future school sites in the Frederick City area. These sites should be based on the latest BOE proposals, IAC standards and local land use plans. The number of sites should be based on the ultimate development potential of an area, rather than on the population projections for the limited planning period.
- Areas requiring special consideration for future school sites include the northern and western city environs, where a significant amount of development is proposed and where there are no sites presently reserved.
- Both the County and City should incorporate the recommendations of the Fire and Rescue Task force as to future station locations in the Frederick City area.
- Park sites shown for future acquisition in one Plan should be recognized in the other. Special attention should be given to providing access along the Monocacy River.
- Sewer service interconnections should be provided in accordance with the proposals found in the Monocacy Wastewater Treatment Alternatives Study. Extension of future water and sewer lines should take place based on whether properties are located within the future corporate limit line described in Part II of this Report. Areas which will be served by City services will be provided such services only following annexation, unless otherwise agreed to by the City and County.

Land Use:

Both the Frederick City and County Master Plans attempt to direct new construction and development with a future land use plan. The land use plan identifies both the type of use to be developed in particular areas of the City and County as well as the intensity of such uses.

As part of the Frederick City Comprehensive Plan, future land use is broken down into four basic categories: (1) Residential, (2) Commercial, (3) Employment, and (4) Parks/Open Space. The Residential category is further broken down into 3 sub-categories: low, medium and high density. Low density is defined as 1-5 dwelling units per acre, medium density as 5-11 dwelling units per acre, and high density as 11-30 dwelling units per acre. The Commercial and Employment categories are generalized and can represent a wide range of future uses. The Open Space category is intended to identify land which should be preserved from all development or strictly regulated; areas such as floodplains and parks.

The City's land use map illustrates the City's intended land use plan through the year 2000. This map, like the County's Comprehensive Plan map, serves as the basis for the City's zoning map, the primary tool for implementation of the land use plan. The basic scheme to the 1979 City Plan map is similar to that established by the City's 1964 Comprehensive Plan map. Major employment areas are concentrated in the eastern half of the City, major residential areas to the west, north and south, with commercial activities clustered along US 40 and other major City streets, at major intersections, and in the downtown area. Parks and open space areas are established in floodplain areas and other locations indicated by symbols on the map. In total, the Plan map displays 8,896 acres; 54% of which is designated Residential, 24% Commercial and Industrial, 11% Open Space and 11% public. It was anticipated when the residential acreage is fully developed, the City population would range between 70-80,000 persons.

The Frederick County Comprehensive Plan for the Frederick Region makes proposals for future land uses outside the City between Ballenger Creek and Lewistown. Like the City Plan, the County Plan designates areas for high, medium and low density residential. Low density is defined as 1-4 dwelling units per acre, medium density is defined as 5-10 dwelling units per acre, and high density is defined as 11-16 dwelling units per acre. Unlike the City Plan, however, the County Plan creates sub-categories for both commercial and employment uses. Commercial uses are broken down between general commercial and highway service commercial. General commercial areas are intended to identify areas where a full range of commercial activities, such as retail and personal services, are intended to be found to serve the local community. Highway Service commercial uses are shown along major highways and are intended to limit uses to those necessary to serve the motoring public. Employment uses are broken down between Office/Light Industrial, Industrial and Mineral Mining. Mineral Mining designations reflect the existence of gravel and limestone mining operations south of the City. Industrial uses are intended to reflect areas where a wide range of manufacturing, warehousing, wholesaling and other uses may be located and where the impact of such development on residential neighborhoods is minimized. Office/Light Industrial uses are shown along major highways which have high visibility and access. The purpose of this designation was to identify areas where development would be limited to those uses of primarily an office park orientation.

In addition to these designations, the County Comprehensive Plan designates much of the Frederick Region as either Agricultural/Rural or Conservation. The purpose of the Agricultural/Rural designation is to identify areas where the County wishes to preserve and protect continued agricultural use of farmland and areas where more intensive development is not proposed. Conservation areas

reflect the steep slopes along Catoctin Mountain and the floodplain of the Monocacy River and its major tributaries.

The County Plan has shown low density residential uses extending west of the City in the Yellow Springs, Rocky Springs and Bowers Road area, areas where similar development has already occurred or where City utilities can be extended. South of the City, a combination of Medium Density Residential and Industrial uses is shown in the Ballenger Creek vicinity reflecting approved subdivisions and the availability of County water/sewer system. Areas east of the City are shown for industrial uses in the vicinity of the airport and south of I-70 along Reichs Ford Road. Additional areas are shown for industrial areas northeast of the City in the Wormans Mill vicinity.

Recommendations

A major part of the study committee's efforts went into the review of the planned land use proposals of both jurisdictions. The committee, in reviewing each Plan and comparing the proposals each Plan contains, considered a number of issues. These include; existing land use, existing zoning, location of utilities, access to major roads, the physical characteristics of the property, the location of public facilities and services, and so on. After review, the Committee has formulated both specific and general land use recommendations. The specific recommendations include proposals for particular land use designations on the perimeter of the City limits. (Shown on the following maps.) These recommendations are intended to resolve conflicts and inconsistencies between the City and County Plans. General proposals are also made to more closely coordinate the definition and purpose of the different Plan designations.

A major part of the study committee's efforts went into the review of the planned land use proposals of both jurisdictions.

General Land Use Plan Recommendations:

1. The City Comprehensive Plan should differentiate between general industrial and office/light industrial uses in order to direct the different types of employment uses to the appropriate locations. In general, light industrial and office development should be the preferred uses along major highways in high visibility locations.
2. Both the City and County Plans should as closely as possible identify floodplain locations along the Monocacy and its tributaries. Both Plans should identify these areas as Conservation.
3. The City Plan should identify where low density residential uses are planned distinquishing there use from and where areas are anticipated to remain in agricultural use.
4. Where possible, land use plan classifications should be defined so as to be more similar between jurisdictions.

MAP #1

LOCATION: North side of Gas House Pike, west of Monocacy River

COUNTY PLAN: Industrial Employment

COUNTY ZONING: LI along road
R-5 to rear
C along river

CITY PLAN: Rural

CITY ZONING: (adjoining) R-3 Monocacy Village
R-4 Fredericktown Village
M-2 Clorox
M-1 Rewn Farm

ISSUES:

1. Potential for conflict: Industrial uses and existing dwellings in Monocacy Village.

2. Potential for conflict: New houses and new runway flight path.

3. Conflict: Present R-5 zoning does not support County Plan.

4. City Plan out-of-date.

5. Gas House Pike substandard.

6. Monocacy Boulevard relocation with Rosenstock annexation is proposed.

7. County Plan shows Conservation designation larger than what is zoned.

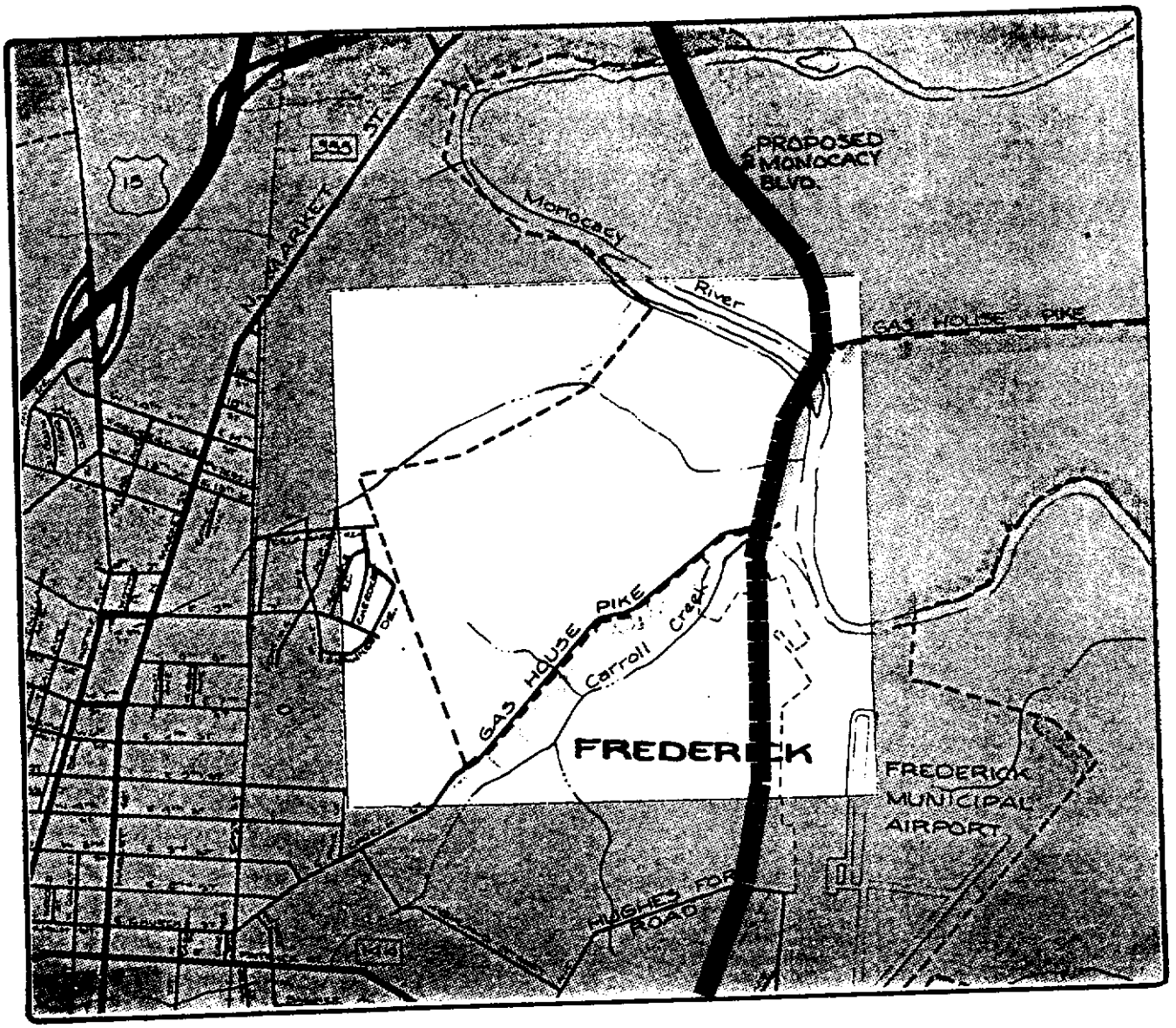
RECOMMENDATION:

Recommend the property outside the historic or 100 year floodplain be designed OLI on County Plan and equivalent designation on City Plan for the following reasons:

1. The location of the proposed airport runway makes residential development inappropriate.

2. While access is presently poor, long term proposals call for the extension of Monocacy Boulevard from East Patrick Street, thereby improving access. The airport itself makes office type uses a more attractive opportunity.

3. Given the existing residential uses adjoining, the more restrictive nature of OLI plan designation and its zoning equivalent would seem most appropriate.


15
355
N. MARKET ST.
PROPOSED
MONOCACY
BLVD.
Monocacy
River
GAS HOUSE PIKE
GAS HOUSE PIKE
Carroll Creek
FREDERICK
FREDERICK
MUNICIPAL
AIRPORT
HUGHES FOR
ROAD
144

MAP #2

LOCATION: Rosenstock Farm, north and south sides of Gas House Pike

COUNTY PLAN: Agricultural/Rural; Conservation

COUNTY ZONING: Agricultural/Conservation

CITY PLAN: Rural

CITY ZONING: R-1 south side
M-1 proposed for north side

ISSUES:

1. North side proposed M-1 zoning is not reflected by either plan.

2. Monocacy Boulevard relocation to MD 26 at Trading Lane is not proposed on City or County Plans.

3. City golf course proposed on south farm.

4. Size of conservation area differs between City and County Plans.

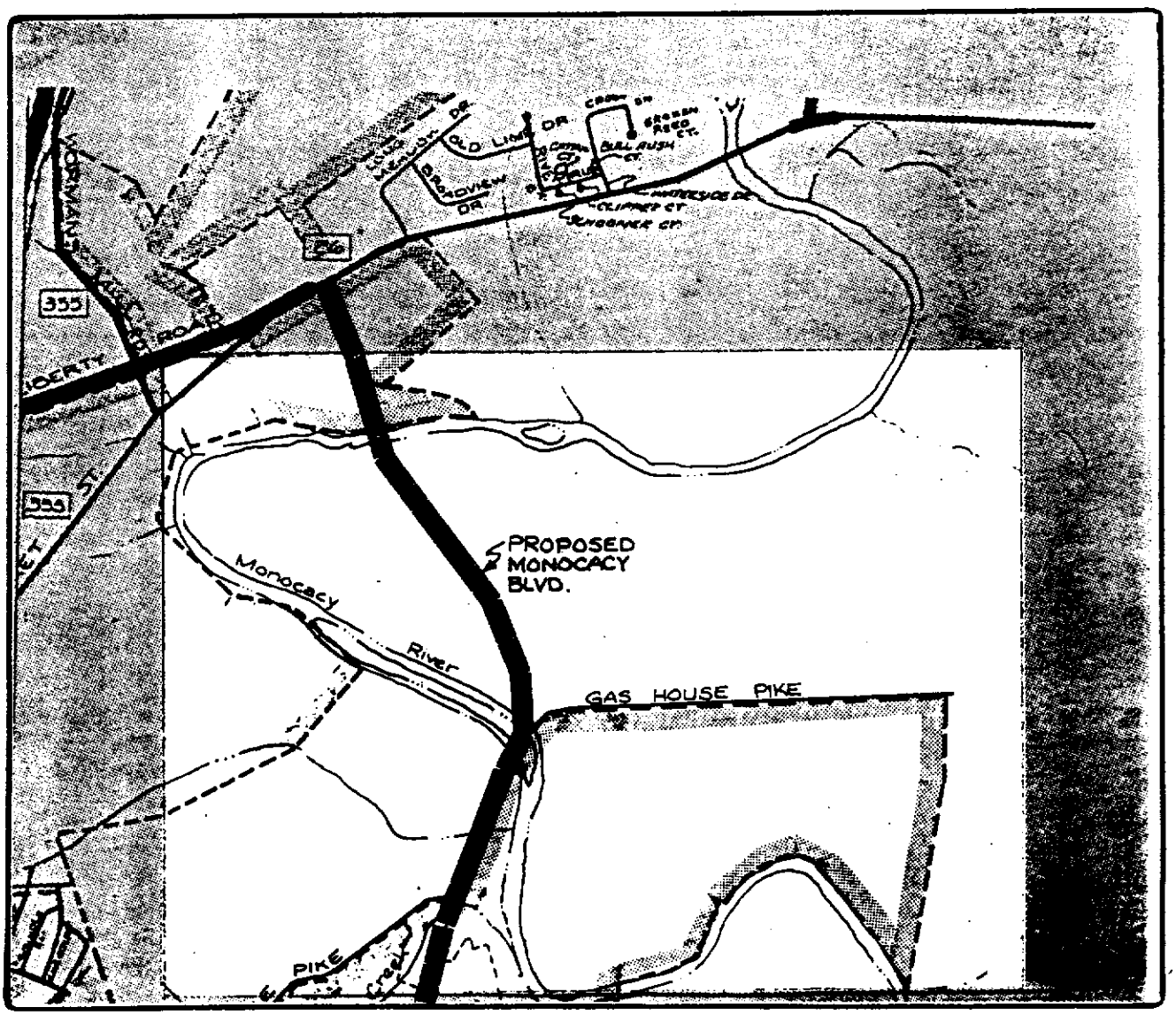
RECOMMENDATION:

Recommend those properties outside the historic or 100 year floodplain be designated "General Employment" on City Master Plan and "Industrial Employment" on the County Plan to reflect existing City zoning on the north side of Gas House Pike and annexations which have occurred in the past. Other staff comments are as follows:

1. The R-1 zoning on the south side of Gas House Pike is inappropriate following northern farm annexation and proximity to the airport.

2. Planned land uses further east from properties annexed should be discussed as part of the Plan update process.

3. Road classifications should be reconsidered based on increased traffic from development on those properties recently annexed and revised arterial crossing of Monocacy to MD 26.


PROPOSED
MONOCACY
BLVD.
Monocacy
River
GAS HOUSE PIKE
PIKE
355
355
BROADVIEW DR.
OLD LINE DR.
BULL RUSH CT.
CLIPPER CT.
SCHOONER CT.

MAP #3

LOCATION: East side of airport to Monocacy River near MD 144 & I-70

COUNTY PLAN: Industrial Employment

COUNTY ZONING: Agricultural/Conservation

CITY PLAN: Employment/Commercial (near I-70)

CITY ZONING: M-1 adjacent

ISSUE:

1. City has acquired one farm (still in County) and two other farms in the City.

2. Neither plan reflects airport Master Plan land requirements.

3. Neither plan reflects "ring road" on Airport Master Plan.

4. Access from I-70 difficult.

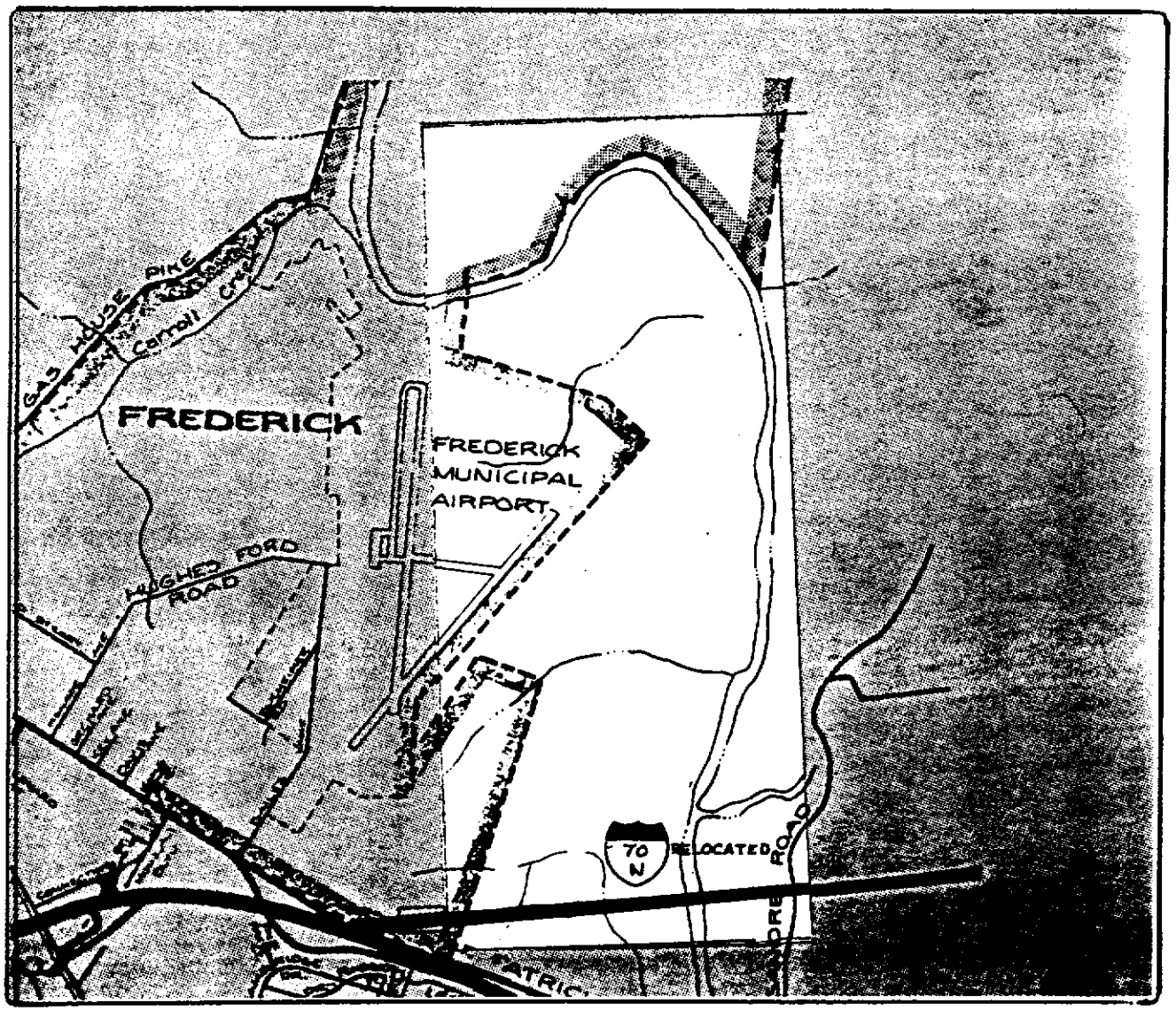
RECOMMENDATION:

Recommend the properties outside the historic or 100 year floodplain be designated OLI on County Plan and equivalent designation on the City Plan. Staff comments are as follows:

1. The property is highly visible from Interstate 70 and should be reserved for high value manufacturing or office uses which are compatible with the Municipal Airport Master Plan.

2. High volume truck traffic may be considered inappropriate considering the current poor access to the interstate highway. Improved access to this employment area is necessary for future development.

3. An option may include placing a general employment designation on properties to the north of this area which are less visible, depending upon how access is provided.


GAS HOUSE PIKE
Carroll Creek
FREDERICK
FREDERICK MUNICIPAL AIRPORT
HOUGHES FORD ROAD
70 N
RELOCATED
MOORE ROAD
PATRIC

MAP #4

LOCATION: Tulip Hill and Reich's Ford Road area

COUNTY PLAN: Low Density Residential/Industrial

COUNTY ZONING: LI/GI

CITY PLAN: Medium Density Residential/Employment

CITY ZONING: M-O, M-1, M-2 proposed on Ausherman/Willard property

ISSUES:

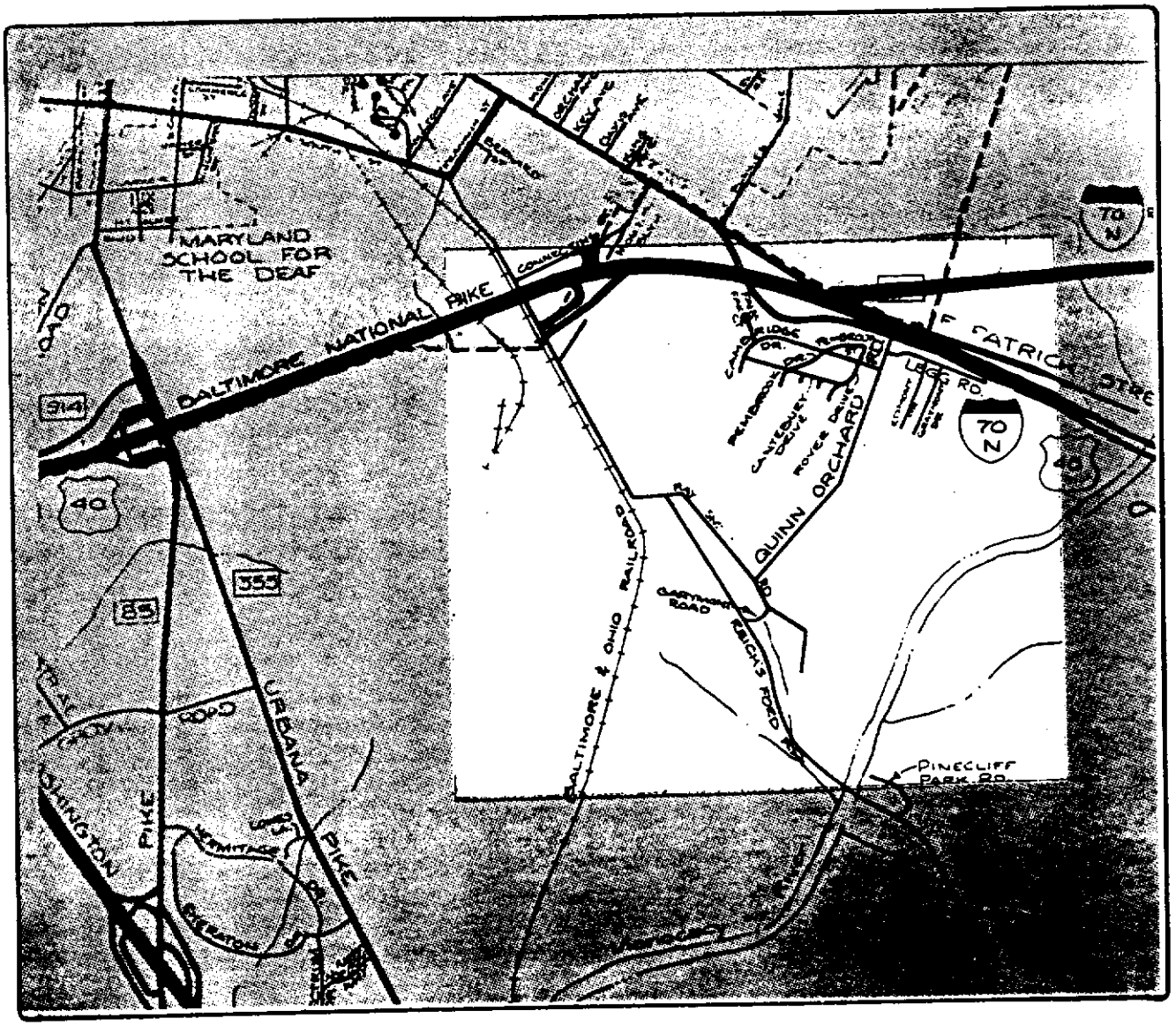
1. City and County Plans don't coincide in shape of employment area.

2. County Highway Plan does not show southeast ring road from MD 144 to MD 85/MD 355 shown in the City Comprehensive Plan.

3. County proposed Low Density Residential, City Medium Density Residential for land along Quinn Orchard Road.

RECOMMENDATION:

Both the City and County Plans should be changed to reflect the zoning approved as part of the annexation on the Ausherman/Willard properties. Also, those properties between relocated I-70 and Rt. 144 now in the County should be designated OLI reflecting their high visibility location. The City's commercial designation here should be changed. Properties south of Rt. 144, east of Tulip Hill, should be designated Low Density Residential. The City's Medium Density Residential classification should be changed.


MARYLAND SCHOOL FOR THE DEAF
BALTIMORE NATIONAL PIKE
F PATRICK STREET
LEGG RD.
70 N
70 N
914
40
355
85
URBANA PIKE
PIKE
HERMITAGE
QUINN ORCHARD
BALTIMORE & OHIO RAILROAD
GARYMONT ROAD
PINECLIFF PARK RD.

MAP #5

LOCATION: South side of I-70 (King Farm - Ballenger Creek, Evergreen Point Area)

COUNTY PLAN: ORI, High Density Residential, Low Density Residential, Commercial/Industrial, Employment, Mineral Mining

COUNTY ZONING: LI, GC, PUD, R-8, R-12, R-16

CITY PLAN: Employment/Medium Density Residential

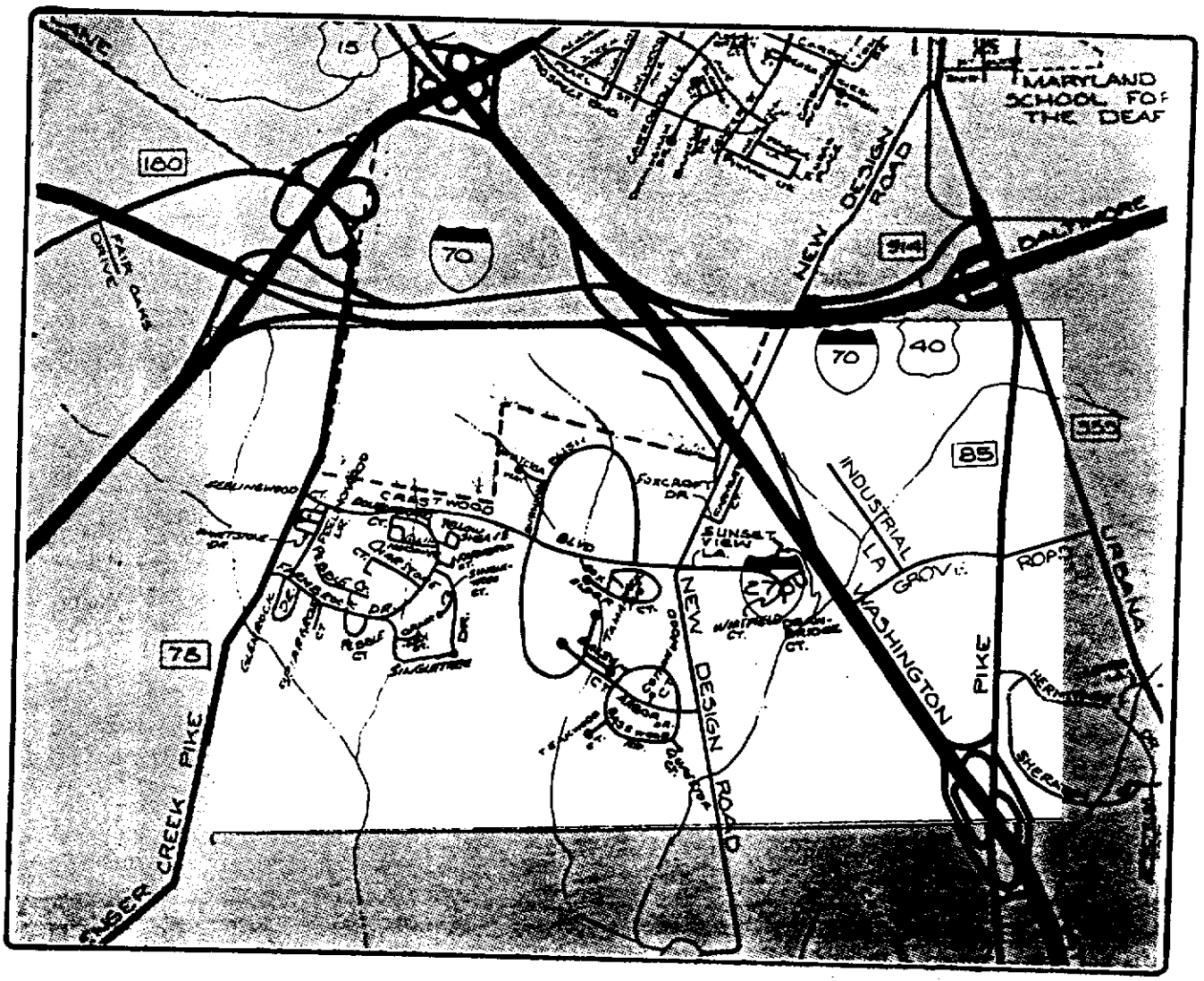
CITY ZONING: M-O King Farm

ISSUES:

1. Potential for conflict: M-O King Farm and existing dwellings in PUD.
2. County Plan and County zoning higher density than City Plan proposes.
3. County Plan conflicts with Westview development.
4. County Plan (commercial on MD 355/MD 85) conflicts with City Plan Employment).
5. Neither plan reflects most recent State Highway Administration decisions on ramps, etc.

RECOMMENDATION:

The City Plan should be changed to reflect office/manufacturing development planned for the King Farm, south of I-70. The City Plan should also be changed to reflect the existing commercial development along Rt. 85 in Evergreen Point. The County Plan also needs to be changed to reflect the amount of ORI zoning recently approved. Both Plans should be changed to reflect planned highway improvements to I-70.


MARYLAND
SCHOOL FOR
THE DEAF
15
180
70
FAIR OAKS DRIVE
NEW DESIGN ROAD
914
BALTIMORE
70
40
85
355
INDUSTRIAL
LA
GROVE
ROAD
WASHINGTON
PIKE
URBANA
CRESTWOOD
BLVD
SUNSET VIEW LA.
FOXCROFT DR.
NEW DESIGN ROAD
78
CREEK PIKE

MAP #6

LOCATION: Northwest side U.S. 340, from I-70 south of Feagaville

COUNTY PLAN: Agricultural/Rural, Commercial, ORI

COUNTY ZONING: R-1, Agricultural, LI, HS, GC

CITY PLAN: Rural

CITY ZONING: N/A

ISSUES:

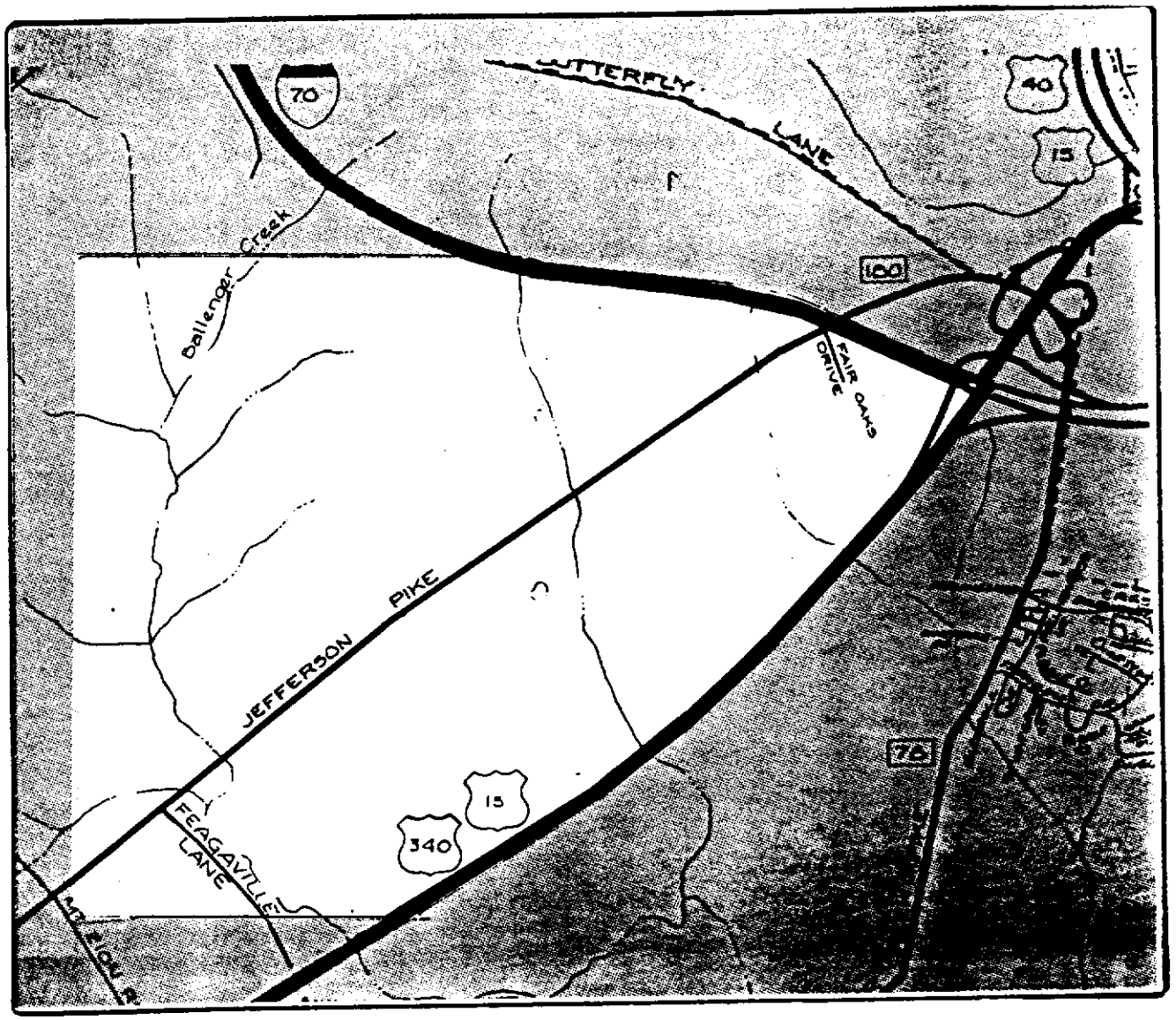
1. County R-1 zoning north of U.S. 340 is contrary to Agricultural/Rural Plan (held over from old one mile belt around City).

2. Sewer from Ballenger Creek is possible if passed under U.S. 340. However, no supporting development is planned except ORI at I-70.

3. City Plan proposes new Arterial (Mt. Phillip Road extended), County Plan does not.

RECOMMENDATION:

R-1 zoning in the County should be changed to reflect planned Agricultural/Rural and OLI land use County designations. However, water and sewer service should be extended to this area before development takes place. This needs to be coordinated with interchange improvements at Rt. 340 and I-70 and expansion of the Ballenger Creek Sewage Treatment Plant.


70
BUTTERFLY
LANE
40
15
Ballenger Creek
100
FAIR OAKS
DRIVE
JEFFERSON
PIKE
76
15
340
FEAGAVILLE
LANE
MT. ZION RD

MAP #7

LOCATION: South side of Butterfly Lane

COUNTY PLAN: Low Density Residential, ORI

COUNTY ZONING: R-1, R-3

CITY PLAN: Rural

CITY ZONING: R-3 adjacent
R-4 Wogan PND

ISSUES:

1. Sewer requires pumping into City system or long extension of Ballenger Creek.

2. County water and sewer plan identifies existing homes as sewer problem area.

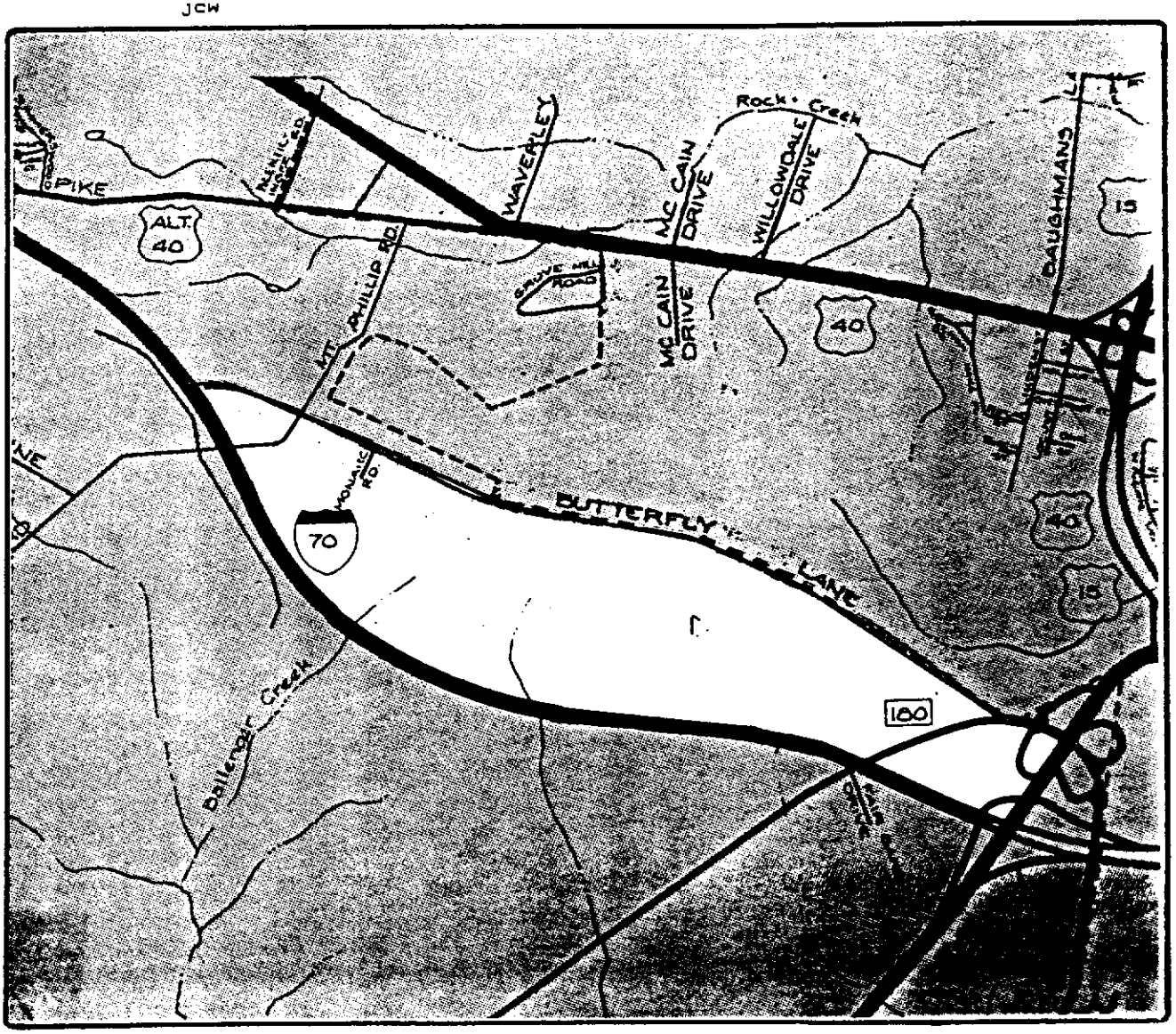
3. City Plan (Minor Arterial) conflicts with County Plan (Collector) road classification.

4. Is ORI compatible with Prospect Hall and Wogan PUD across Butterfly Lane?

RECOMMENDATION:

The City Plan should be changed to reflect the Low Density Residential found in the County Comprehensive Plan and the recent Barry Farm annexation. Office research uses should generally be considered compatible with residential development. The extent of OLI should be examined in the future to take into consideration the physical characteristics of the property and traffic concerns.

JCW


PIKE
ALT. 40
WAVERLEY
MC CAIN DRIVE
MC CAIN DRIVE
WILLOWDALE DRIVE
Rock Creek
BAUGHMANS
15
40
MT. PHILLIP RD.
GROVE HILL ROAD
MONAIC RD.
70
BUTTERFLY LANE
40
15
180
Ballenger Creek

MAP #8

LOCATION: VFW, WFMD, Grove Hill Road east of Mt. Phillip Road

COUNTY PLAN: Low Density Residential

COUNTY ZONING: R-1

CITY PLAN: Medium Density Residential

CITY ZONING: R-3 adjacent

ISSUES:

1. Sewer has recently been extended through golf course to new Golf View subdivision.

2. Grove Hill Road properties on well and septic.

3. City Plan and County Plan do not agree as to land use density.

4. City Plan proposes relocation of Mt. Phillip Road to connect with Old Camp Road. County Plan does not.

5. City Plan shows Mt. Phillip Road as a Major Arterial, County Plan shows it as a Minor Arterial.

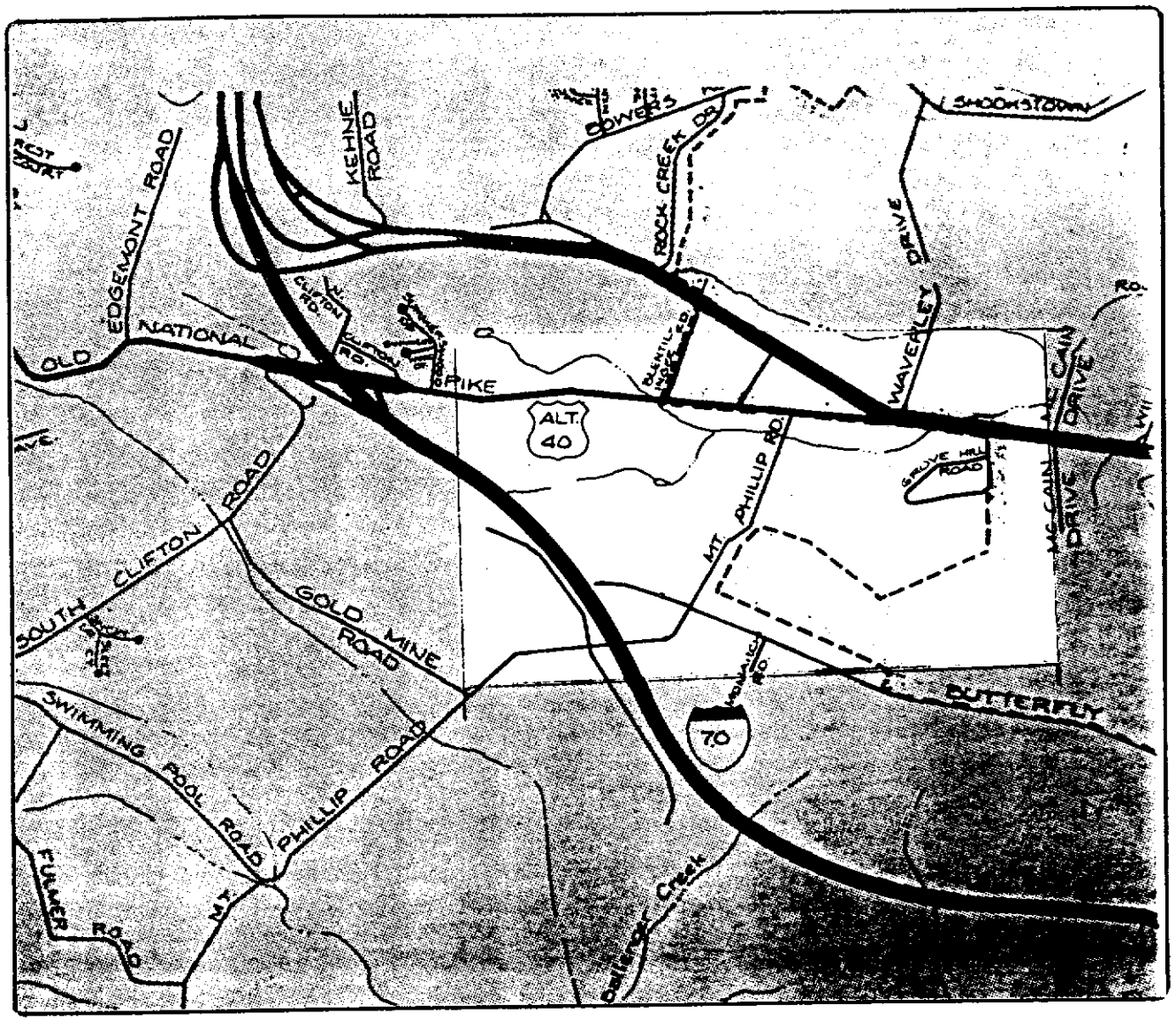
RECOMMENDATION:

Golf course property west along the south side of Rt. 40A should be designated Low Density Residential in both the City and County Master Plans. Other comments are as follows:

1. The intensity of development should decrease as you become further removed from U.S. Rt. 15.

2. Future development needs to be generally in character with existing development in the County on Grove Hill Road.

3. Neither the City or County Plan supports strip commercial west on the south side of Rt. 40 to Rt. 40A.



EDGEMONT ROAD
KEHNE ROAD
BOWERS
ROCK CREEK DR.
SHOOKSTOWN
WAVERLEY DRIVE
OLD NATIONAL PIKE
CLIFTON RD.
ALT. 40
MT. PHILLIP RD.
GROVE HILL ROAD
MC CAIN DRIVE
SOUTH CLIFTON ROAD
GOLD MINE ROAD
BUTTERFLY
70
SWIMMING POOL ROAD
MT. PHILLIP ROAD
FULMER ROAD
Ballenger Creek

MAP #9

LOCATION: West side from I-70 to Yellow Springs Road including Old Braddock, Bowers Road, Shookstown Road, Rocky Springs Road, and Indian Springs Road

COUNTY PLAN: Low Density Residential

COUNTY ZONING: R-1, GC along U.S 40 & at Shookstown Road

CITY PLAN: Rural

CITY ZONING: N/A

ISSUES:

1. Conflict between City Plan (LDR) and City zoning (B-3) for Weis Market and vacant adjacent land.

2. County plans commercial along U.S. 40, not supported by City Plan.

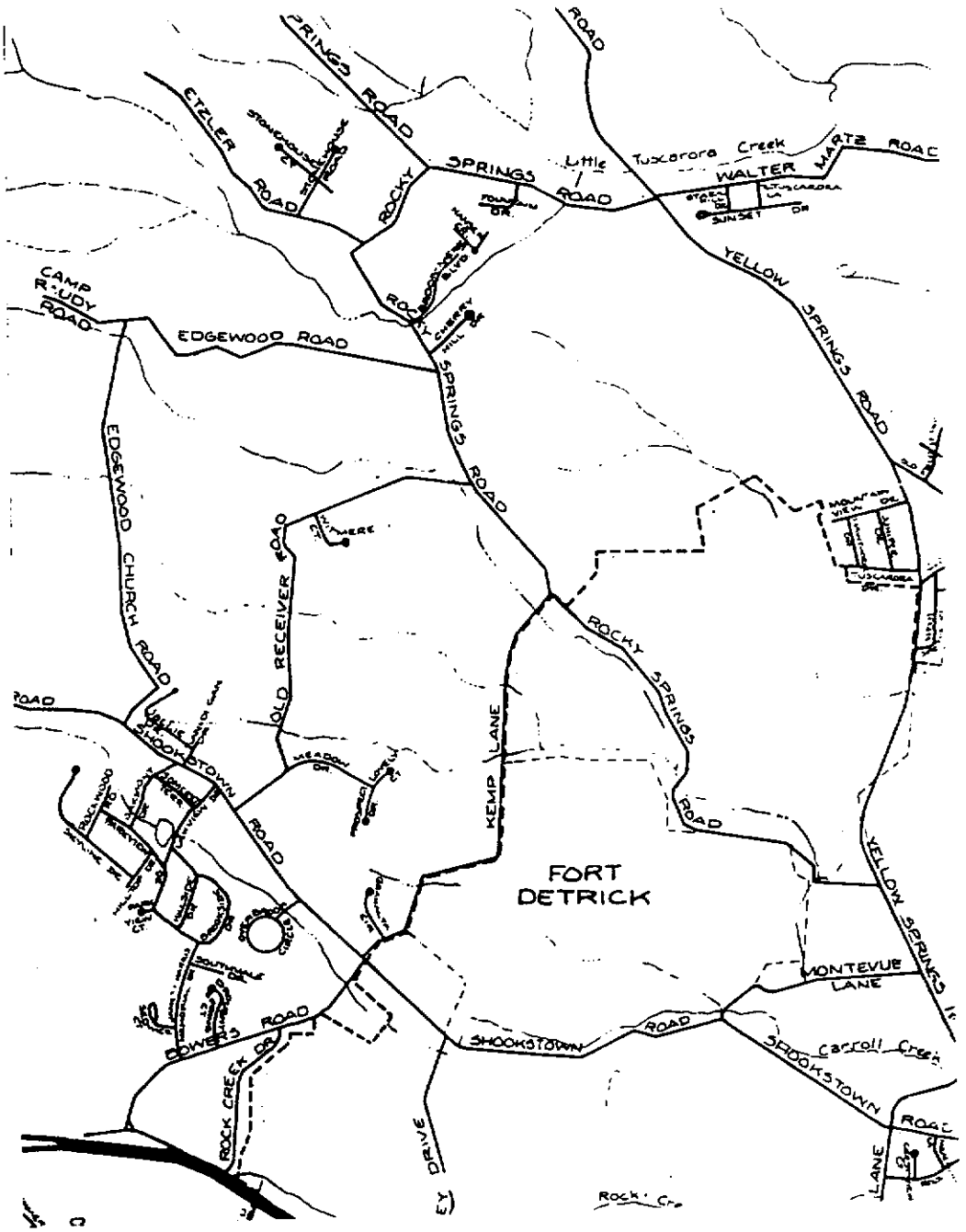
3. Both plans propose a Major Arterial loop road. Jurisdiction and uniform design needs agreement.

4. Water plan calls for water facilities based on elevation outside City limits.

5. Potential for City sewer and water extensions, included in west Monocacy Waste Water Treatment Alternatives study area.

RECOMMENDATION:

The City Plan should be revised to reflect the Low Density Residential designation on the County Comprehensive Plan. The extend of Low Density Residential should be limited to showing existing development or what can be extended from existing water and sewer lines. Substantial areas of well and septic development should not be encouraged here. Also, the City Plan should be changed to reflect the Weis Market and adjoining B-3 zoning.


FORT DETRICK
ETZLER ROAD
ROCKY SPRINGS ROAD
Little Tuscarora Creek
WALTER MARTZ ROAD
YELLOW SPRINGS ROAD
CAMP RUDY ROAD
EDGEWOOD ROAD
EDGEWOOD CHURCH ROAD
OLD RECEIVER ROAD
SHOOKSTOWN ROAD
KEMP LANE
MONTEVUE LANE
DOWERS ROAD
ROCK CREEK DR
Carroll Creek
Rock Cr

MAP #10

LOCATION: North and northwest of Clover Hill, Poole Jones Road, Crum Farm, and Hayward Road

COUNTY PLAN: Low Density Residential, ORI

COUNTY ZONING: R-1, R-3, R-5

CITY PLAN: Rural, Medium Density Residential, Employment

CITY ZONING: M-O Crum Farm, R-2, R-4, M-1

ISSUES:

1. Potential for County sewer if capacity becomes available.

2. No County water.

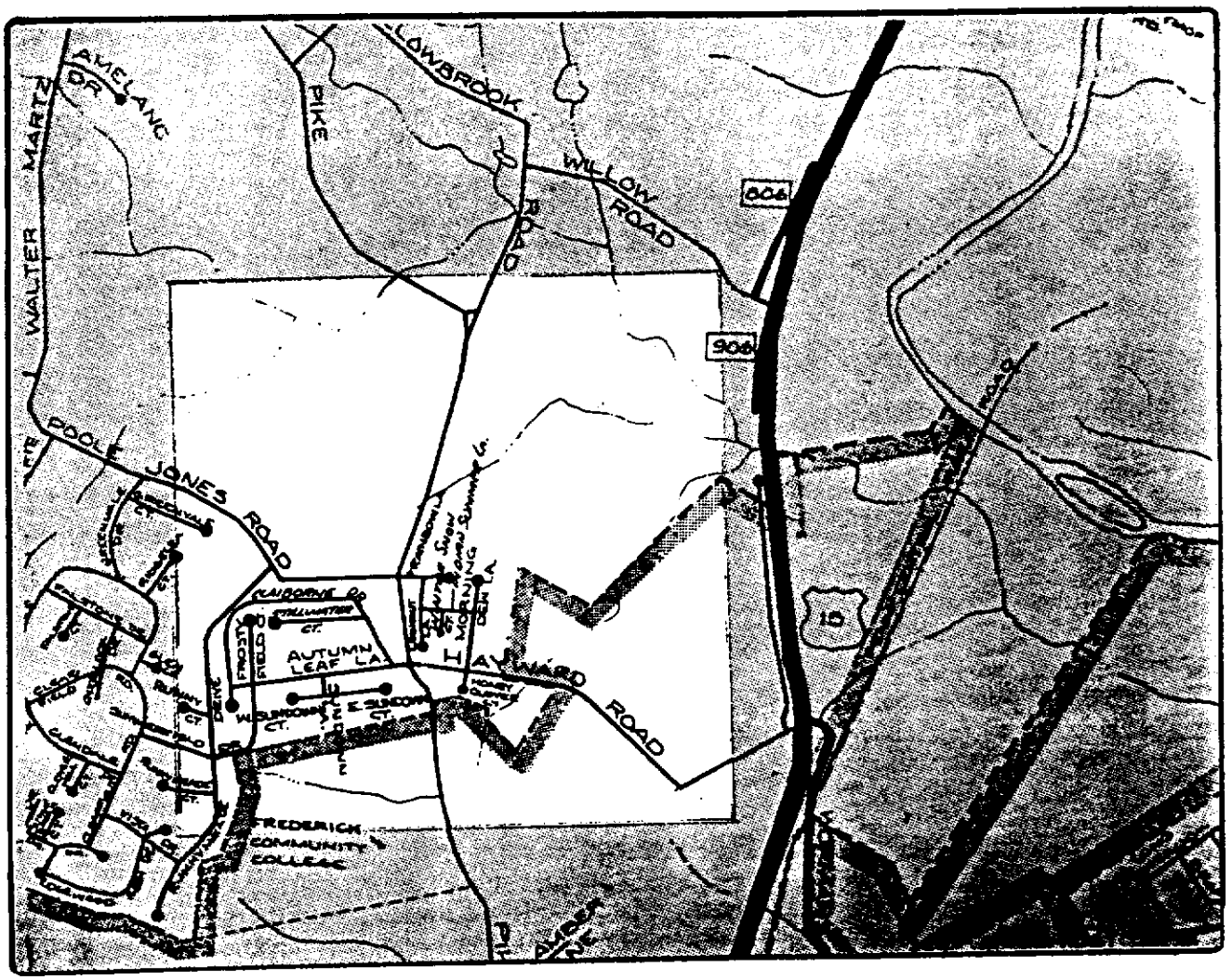
3. Crum Farm extends beyond City 1979 Plan.

4. South side Hayward Road: City Medium Density Residential, County Low Density Residential.

5. Road alignment or classification conflicts:
City Minor Arterial, County Major Arterial for Yellow Springs Road and Oppossumtown Pike.
City Minor Arterial for Rocky Springs Road, County relocation proposed.
City Plan does not extend north to show Minor Arterial on Crum farm.

RECOMMENDATION:

The City and County Plans should be changed to reflect zoning on the Crum property, including the M-O zoning on the eastern half of the property. Office Research designation should be reflected between the Crum farm and U.S. Rt. 15. The City Plan should reflect the Low Density Residential development pattern now present in the Clover Hill developments.


AMELANG DR.
WALTER MARTZ
PIKE
WILLOW ROAD
806
906
POOLE JONES ROAD
AUTUMN LEAF LA.
HAYWARD ROAD
15
FREDERICK COMMUNITY COLLEGE

MAP #11

LOCATION: U.S. 15 both sides of proposed new interchange north of Hayward Road

COUNTY PLAN: ORI

COUNTY ZONING: N/A

CITY PLAN: Employment, Rural

CITY ZONING: M-1

ISSUES:

1. County has questioned if M-1 fulfills intent of ORI designation on County Plan.

2. City Plan does not extend this far nor show proposed interchange.

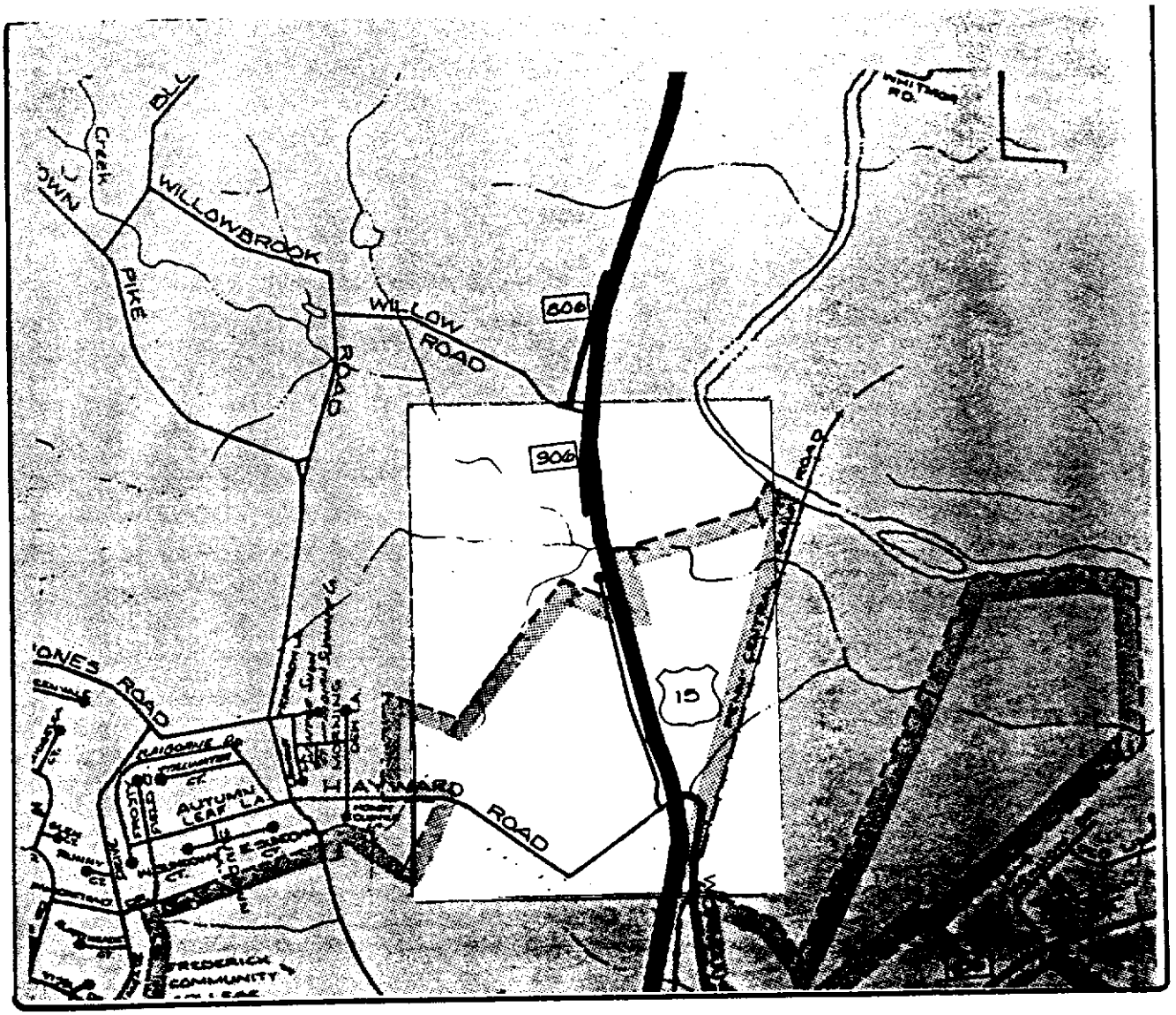
3. County sewer used, City water.

4. Trading Lane goes through both jurisdictions. Nathan - City, Bowers - County, Wormald - City and County, coordinate design and maintenance.

5. Possible conflict M-1 use in City and Arrowhead residential development in County.

RECOMMENDATIONS:

The City Master Plan should be changed to reflect the proposed new interchange at U.S. Rt. 15, north of Hayward Road, and the road pattern between Rt. 15 and MD 26. In light of City M-1 zoning on Mercer and Plantronics, Office Research zoning and plan designation may not be possible or practical.


WILLOWBROOK
PIKE
WILLOW
ROAD
806
906
15
HAYWARD
ROAD
AUTUMN
LEAF LA.
FREDERICK
COMMUNITY

MAP #12

LOCATION: C. Richard Bowers property

COUNTY PLAN: ORI, Medium Density Residential, Conservation

COUNTY ZONING: Agricultural, Conservation

CITY PLAN: Employment, Rural

CITY ZONING: Nathan - M-1
Wormald - PND

ISSUES:

1. County Plan proposes residential, City Plan does not.

2. County Plan ORI area larger than City Plan Employment.

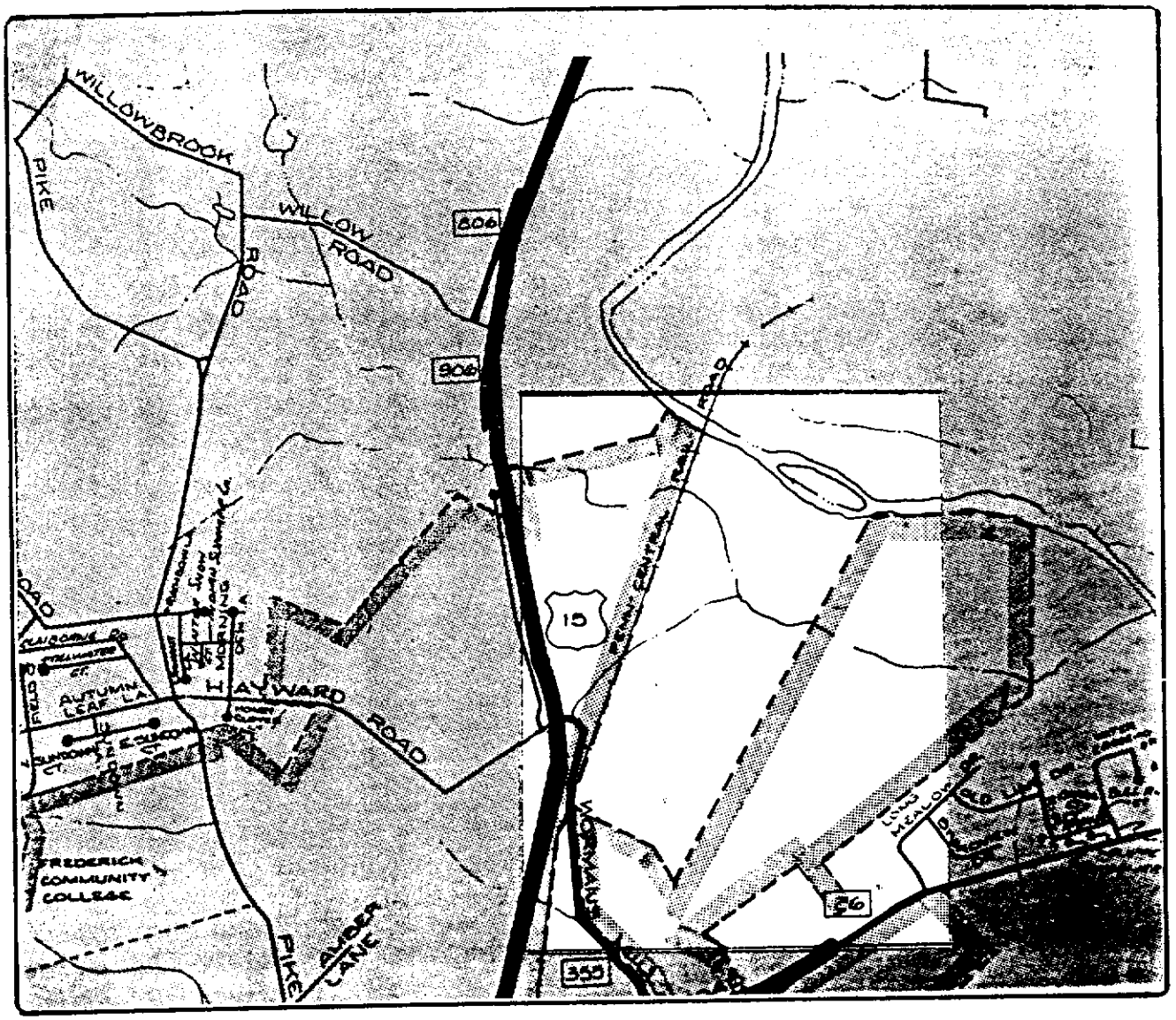
3. Location of Major Arterial differs.

4. County's Conservation Plan designation larger than Conservation zoning or actual floodplain.

5. Potential conflict between M-1 on Nathan and Medium Density Residential on Bowers property.

RECOMMENDATION:

The City Plan should be changed to reflect the division of land uses generally designated on the County Comprehensive Plan, Medium Density Residential on east side of Trading Lane, employment uses on the west side. Uses which generate heavy truck and commercial traffic are not desirable here given the existing and proposed residential uses found in Harmony Grove and on the Wormald property. For this reason, Office/Research uses may be more appropriate.


WILLOWBROOK
PIKE
WILLOW
ROAD
ROAD
806
906
15
HAYWARD
ROAD
AUTUMN
LEAF LA.
FREDERICK
COMMUNITY
COLLEGE
PIKE
AMBER
LANE
355
56

MAP #13

LOCATION: MD 355 North Market Street extended to Harmony Grove

COUNTY PLAN: ORI, Commercial at Trading Lane

COUNTY ZONING: GC, LI

CITY PLAN: Commercial at MD 26, Employment west of relocated MD 355, Rural west

CITY ZONING: M-1 Bowers, M-1 Wormald

ISSUES:

1. County shows a commercial designation on Frederick Trading. City's commercial designation on vacant land in northeast quarter of MD 355/MD 26.

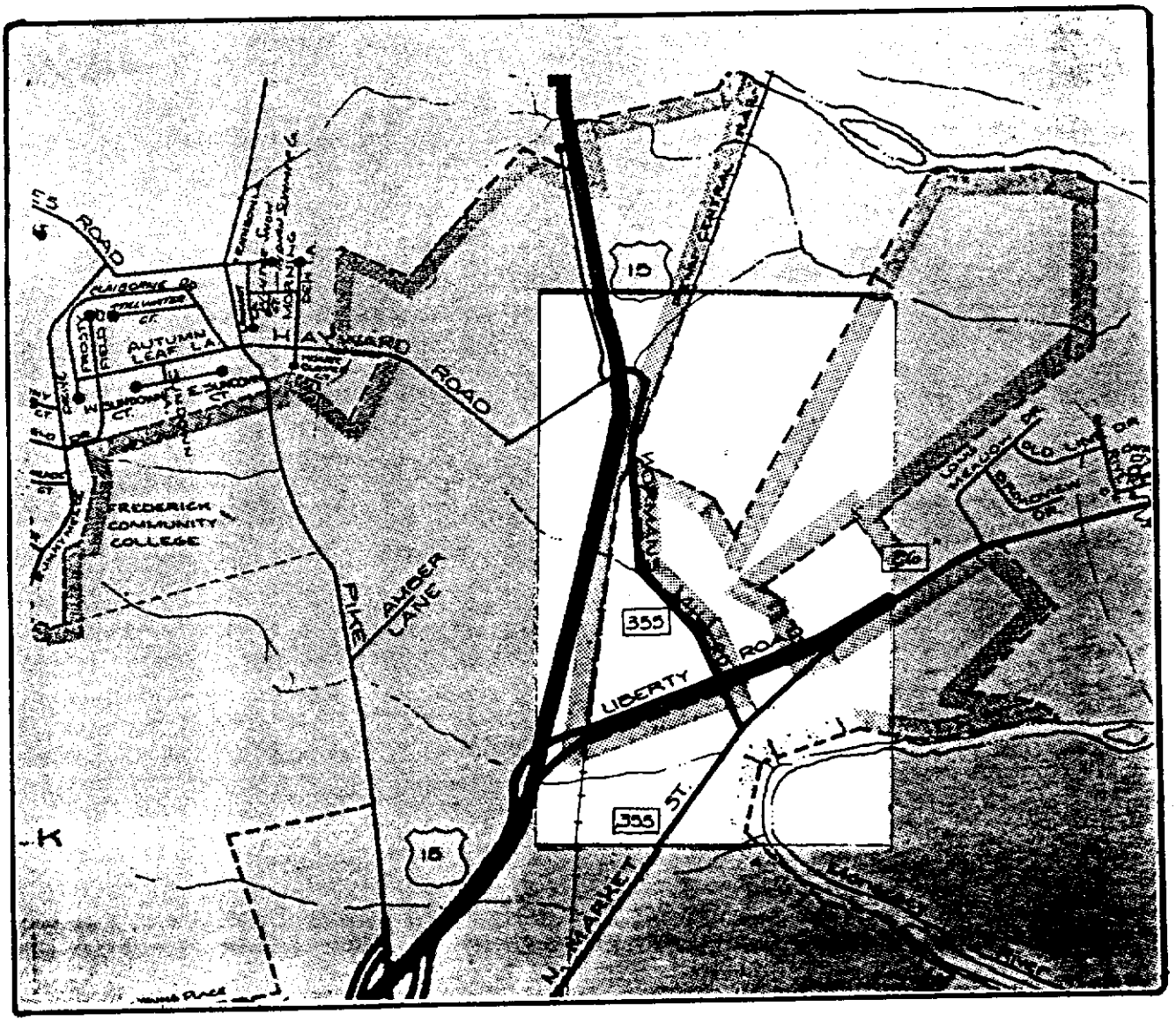
2. Road relocation shown on City Plan, not shown on County Highway Plan.

3. Potential for conflict: Employment or ORI and existing dwellings in Harmony Grove.

4. City zoning (M-1 for Bowers property) not reflected by City Plan.

RECOMMENDATION:

The City Plan should be brought up-to-date to reflect location of commercial on Frederick Trading properties and existing commercial designation deleted from Rt. 355 and MD 26 intersection. City Plan should also be brought up-to-date to reflect the annexation of the Bowers property along MD 26.


ROAD
AUTUMN LEAF LA.
HAYWARD ROAD
FREDERICK COMMUNITY COLLEGE
PIKE
AMBER LANE
15
355
LIBERTY ROAD
N. MARKET ST.
K

MAP #14

LOCATION: South side of MD 26 City Limits to Monocacy River

COUNTY PLAN: Rural/Agricultural

COUNTY ZONING: Agricultural, Conservation

CITY PLAN: Rural

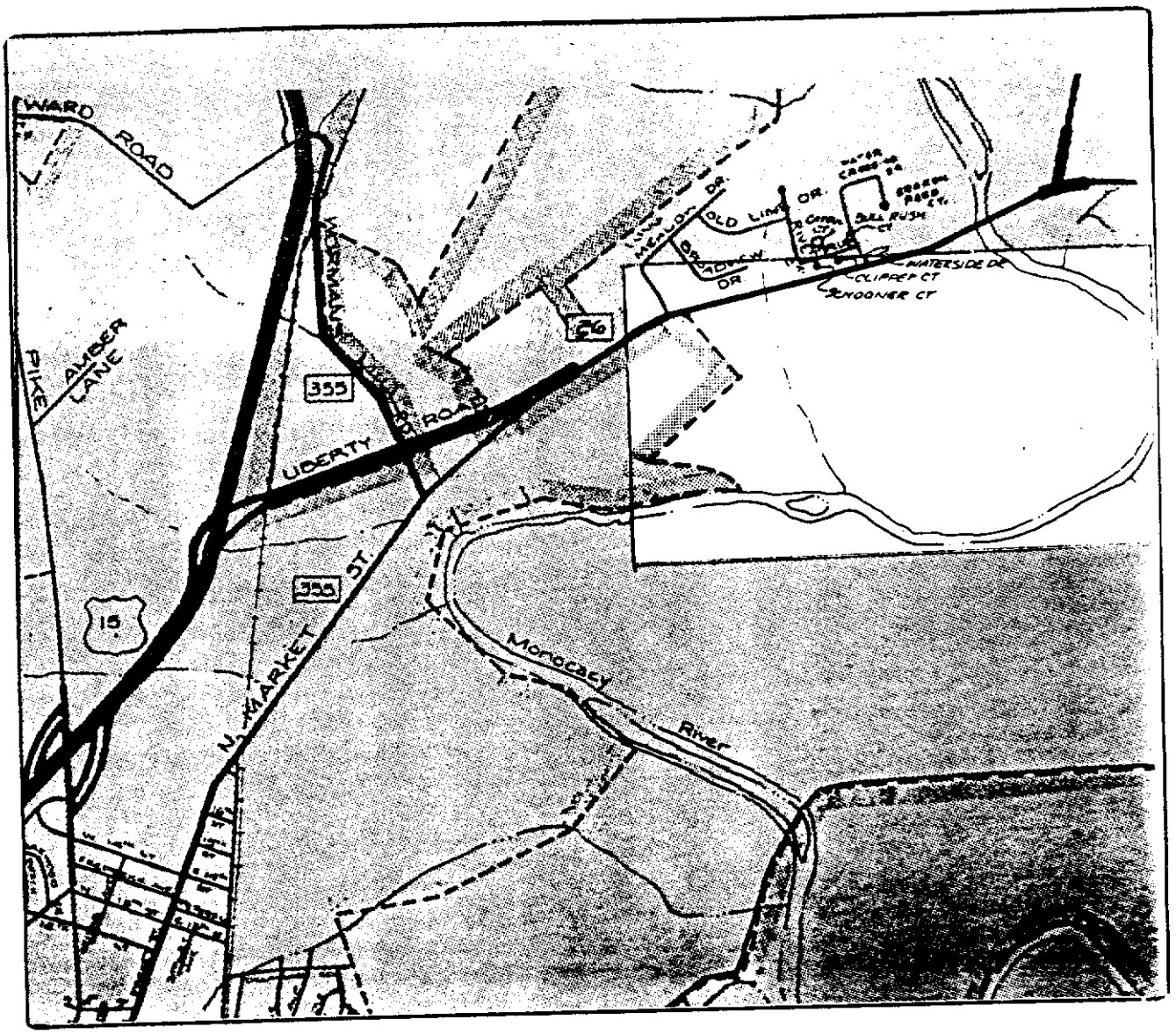
CITY ZONING: R-1 on Main & Bowers/Nathan

ISSUES:

1. Conservation on County Plan is larger than Conservation zoning.
2. City development on County sewer lines.
3. Potential for conflict Employment use across Monocacy on Rosenstock property.
4. Impact of Monocacy Boulevard crossing Monocacy River.

RECOMMENDATION:

The Committee recommends that all the properties annexed by the City south of MD 26, outside the historic or 100 year floodplain, be designated Low Density Residential. Consideration of a different designation or a higher density residential designation should be considered as part of the City and County Plan updates. Those properties currently shown Ag/Rural in the County Comprehensive Plan should be reconsidered as part of the County Comprehensive Plan update. The right-of-way for MD 26 project should be reserved and dedicated as part of any development plans.


WARD ROAD
WORMAN
PIKE
AMBER LANE
355
LIBERTY ROAD
355
15
N. MARKET ST.
Monocacy River
26
OLD LINE DR.
BROADVIEW DR.
WATERSIDE DR
CLIPPER CT
SCHOONER CT

MAP #15

LOCATION: Waterside/Wormald properties

COUNTY PLAN: Medium Density Residential, Low Density Residential

COUNTY ZONING: R-5, R-8, GC, Agricultural

CITY PLAN: Rural

CITY ZONING: Wormald PND

ISSUES:

1. There is R-1 (part of Waterside tract) across floodplain accessible only through city Wormald PND.

2. Waterside property net densities exceed Low Density Residential, gross density in line with plan.

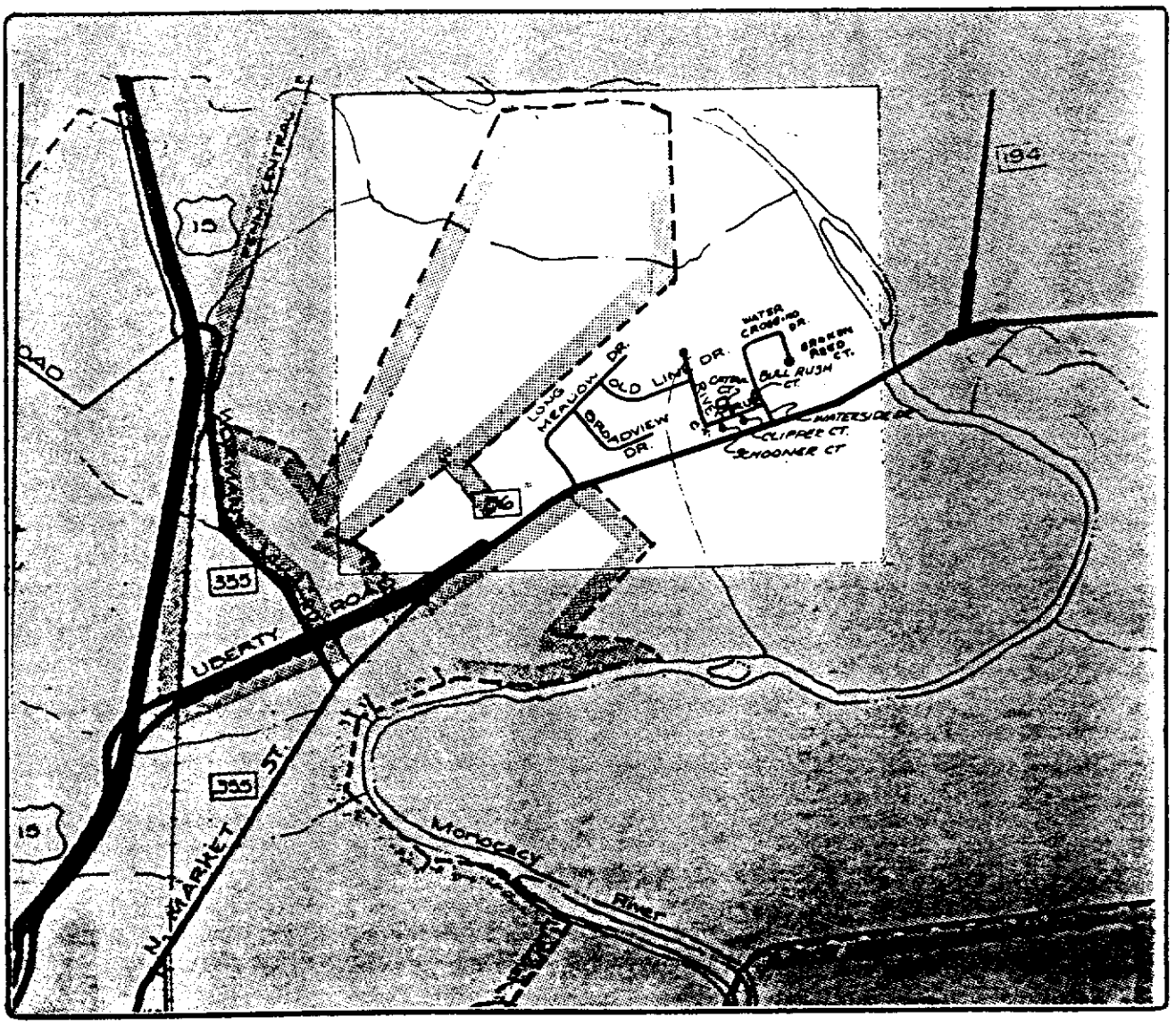
3. Wormald tract net density exceeds County Plan, gross density also exceeds County Plan. Density "carry over" from County R-8 zoning prior to annexation.

4. City development using County sewer lines.

RECOMMENDATION:

Both the City and County Plans should be revised to reflect existing development plans for the Wormald PND and Waterside.

An equitable method of measuring City sewerage flow into County lines must be developed to monitor the County's allocation into Frederick's Waste Water Treatment Plant.


194
15
355
LIBERTY
ROAD
355
15
N. MARKET ST.
Monocacy
River
LONG MEADOW DR.
OLD LINE DR.
BROADVIEW DR.
WATER CROSSING DR.
BROKEN REED CT.
BULL RUSH CT.
WATERSIDE DR.
CLIPPER CT.
SCHOONER CT

II. ANNEXATION & DEVELOPMENT POLICIES

A. Annexations - Authority and Procedures

Annexation is the process by which contiguous territory is added to an existing municipality. Within the State of Maryland, 224 annexations took place between 1980 and 1985 involving 54 municipalities. Throughout the United States, State laws spelling out annexation methods and procedures vary widely. In Maryland, Article 23A Section 19 of the Annotated Code sets forth the circumstances and requirements necessary to approve the annexation of land in Frederick County and the other 23 Counties of the State. Specifically detailed are; who can initiate an annexation, what hearing procedures are necessary for consideration of an annexation, and how an annexation may be appealed.

The initiation of an annexation may be accomplished in two ways, either by the legislative body (the City) or by a petitioner (private property owner or owners). In either case, State law requires that the annexation proposal be accompanied by the signed approval of 25% of the registered voters in the area to be annexed and the signed approval from the owners of 25% of total assessed valuation of the real property located in the area to be annexed. The annexation petition furthermore should contain a survey of the area to be annexed and detailed provisions as to the conditions and circumstances applicable to the change in bounderies.

After introduction of the annexation petition and the proposed resolution at a meeting of the Mayor and Alderman, the Mayor causes a public notice to be published at least four times, in weekly intervals, in

a local newspaper prior to apublic hearing on the matter. The advertising contains not only the location of the annexation, but what conditions and special provisions will apply to the properties following annexation.

In addition to, but not as part of the annexation petition, an "Outline for Extension of Services and Public Facilities" must be developed and made available to the County and any regional or State planning agencies at least 30 days prior to the public hearing. The outline has to contain a description of the proposed land use pattern for the area, what public services and facilities may be necessitated and provided by the municipality along with a schedule for providing these services, and a general statement as to how these facilities will be financed.

If the petition for annexation is approved by the Mayor and Council following a public hearing, the annexation becomes effective in 45 days. Within this 45 day time frame, the approval may be "appealed" by three methods. All of these methods involve petitions for referendum in which a vote is made of the proposal by the registered voters affected. These three methods are as follows:

1. Petition for referendum by residents of area to be annexed - In this case, if 20% of the registered voters who reside in the area to be annexed wish to take the matter to referendum, the effective date of the annexation is suspended. A vote is scheduled at which time a majority vote of those residing within the area to be annexed may defeat the annexation.

(1) Petition for referendum by residents of the municipality - In this case, if 20% of the registered voters of the municipality wish to take the matter to referendum, then the effective date of the annexation is suspended. A vote is scheduled at which time a majority vote of the registered voters residing within the municipality may defeat the annexation.

(3) Petition for referendum by county governing body - In this situation, the Board of County Commissioners, by a 2/3 vote, may require a referendum. A vote is scheduled by the municipality at which time a majority vote of the registered voters residing within the area to be annexed may defeat the annexation.

Beyond what has been noted, the County Commissioners have certain other limited power to control development following annexation of a property into a municipality. As set forth in Article 23A, Section 9 of the Annotated Code "... no municipality annexing land may for a period of five years following annexation place that land in a zoning classification which permits a land use substantially different from the use for the land specified in the current and duly adopted (County) master plan...without the express approval of the Board of County Commissioners". The determination as to whether or not a proposed annexation is "consistent" is generally made by the County Commissioners within the 60 day time frame between introduction of the annexation petition and the public hearing held on the matter by the municipality.

B. History of Annexations to Frederick City

1988 - Bowers Farm - Wormans Mill - 225 acres (Pending)

1988 - Cecil Farm - Rt. 26 - 311 acres (Pending)

1988 - VFW Golf Course - Rt. 40A - 55 acres (Pending)

1988 - Monocacy Elementary - Yayward Rd. - 15 acres (Pending)

1988 - Offut Farm - Rocky Springs Rd. - 257 acres

1988 - Barry Farm - Butterfly Lane - 67 acres

1988 Clark Farm - Reichs Ford Road - 146 acres

1988 Barry Farm - Butterfly Lane - 66 acres

1988 North Rosenstock - 254 acres

1987 Crum Farm - 111 acres

1986 Wormold Property - 251 acres

1985 South Rosenstock - 322 acres

1985 Mercer Farm - 166 acres

1985 Bowers, Nalin - 49 acres

1984 Northeastern Annexation - 248 acres

1983 Northern Annexation, Ft. Detrick, NCI, FCC, BOE Annex and residential property on Opposumtown Pike - 1,015 acres

1982 Frederick Alliance Church - So. of Ft. Detrick, North of Thomas Johnson Drive - 2.48 acres

1981 Frederick Co. Products - East Patrick St. at Monocacy Blvd. - 1.435 acres

1980 Gulf Oil Corp - US 40 West just west of Grove Hill Rd - 3.9 acres

1975 Odd Fellows - 8.460 acres

1973 Frederick Business Properties, Hayward Road - 47.415 acres

1972 Humm Farm, Better Built Homes, and B-P Oil Co. - 133.83 acres

1972 Clem Farm - 107.03 acres

1972 Zeigler - 42.29 acres

1971 Lease Farm - 77.399 acres

1968 Western Annexation - 2,498.39 acres

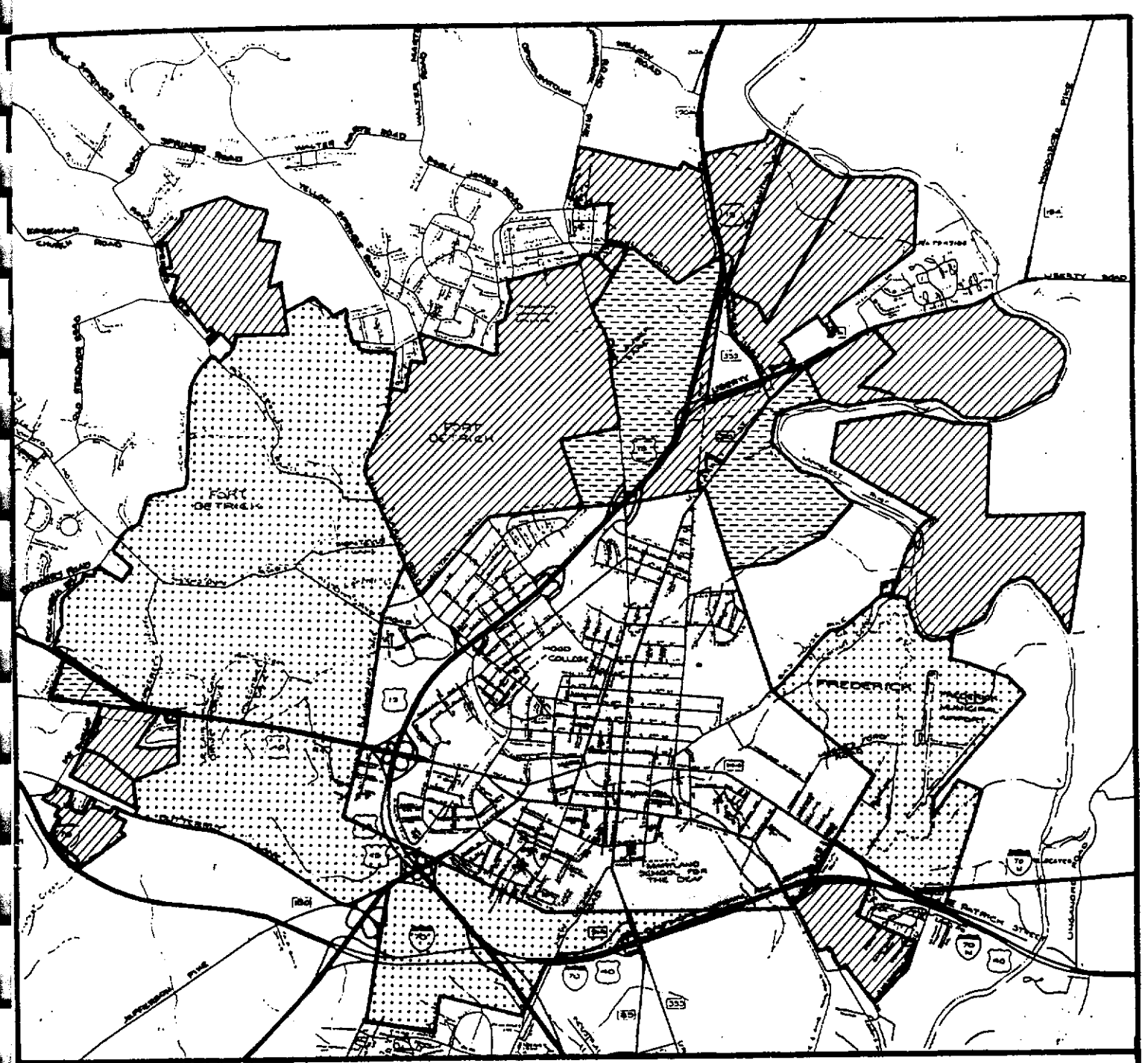
1967 Airport and Gas House Pike - 834.00 acres

1966 Peters, Bowers, Ft. Detrick, & City Water Plant - 322.55 acres

1965 King Farm - 325.44 acres

1964 Brosius/Lewis Farm - 182.85 acres

1963 Ausherman/Wyngate - 67.84 acres



FREDERICK CITY ANNEXATIONS

Pre-1960

1970's

1960's

1980's*

*INCLUDES PROPERTIES NOW PENDING ANNEXATION

C. Goals and Policies Regarding Development and Annexation

In recognition of the past residential, commercial and industrial development within and surrounding Frederick City, and in anticipation of similar development in the future, the Mayor and Alderman and Board of County Commissioners have agreed that the coordination of long range planning for land use, roads, public facilities and other infrastructure is a desirable objective. Towards this end, it is recommended both parties agree to a common set of policies which set forth the responsibilities of each jurisdiction in managing development. The purpose of these policies is to increase communication, standardize procedures and minimize the potential for conflict. As recommended by the Committee, these policies are broken down into two sections: (1) The Joint Process on Development Review and (2) Policies Regarding Annexation.

1. Joint Process on Development Review

Frederick City Responsibilities: Within 30 days of receipt of requests for subdivision of land, site plans, zoning or subdivision text changes, rezonings or amendments to Master Plans or petitions for annexations, copies will be forwarded to the County for its information and comment.

County Responsibilities: Within 30 days of receipt of requests for subdivision, rezonings or site plans within one mile of the corporate limits of Frederick City, copies will be forwarded to the City for information and comment. On any draft Master Plan or revision of Master Plans affecting any areas within one (1) mile of the City corporate limits, copies will be made available at least 30 days prior to the hearing on the matter.

Joint Responsibilities: In any hearing on the above matters, the City or the County shall be afforded the right to present its opinions as a first item of public comment. Any comments received by the City or the County shall be given due consideration in its final deliberations. Any decision pertaining to rezonings, annexation, text amendments or a master plan which may be contrary to recommendations made by the City or the County shall be continued for 30 days to allow an opportunity for an official joint meeting to further discuss the concerns or recommendations previously made.

With the expiration of 30 days or at such time as the facts and circumstances have been reviewed jointly by both parties, a decision may be made by the jurisdiction which has the prime responsibility for approving the applications.

2. Policies and Procedures Regarding Annexation

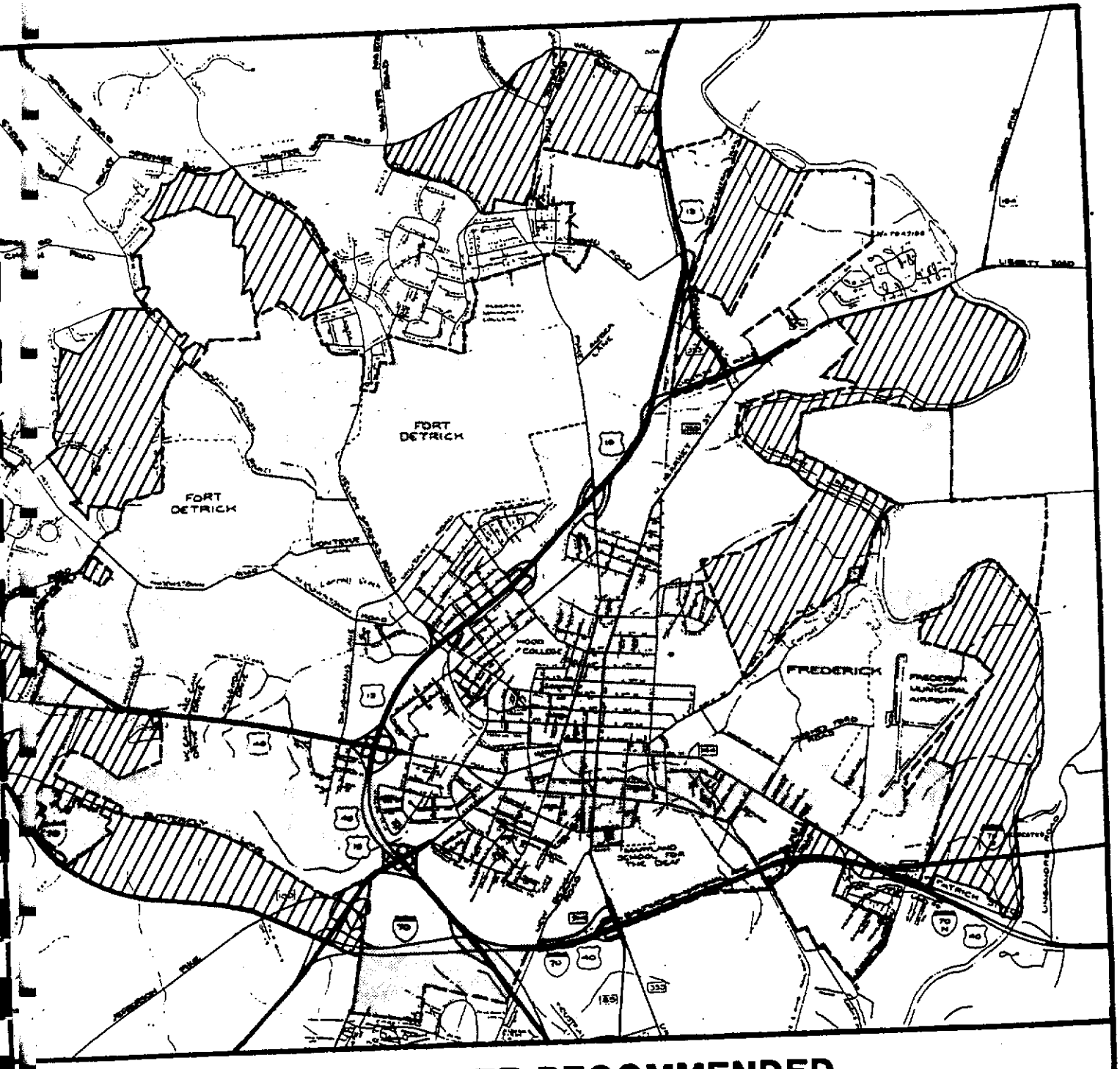
It is accepted that the City and the County agree that the public health, safety, and welfare will best be served by cooperation between the City and County with respect to coordinated responsibility for those areas which logically should become a part of the City. For the purpose of establishing continuity of services as well as preserving the effectiveness of planning functions, it is recommended the City and the County establish the following annexation policies. These policies are not intended to restrict the legislative powers of either the City or the County.

General Development Policy for Frederick City Area: As a general principle, it is accepted that Frederick City has, and should remain in the

future, the focus of future development in central Frederick County. It is preferred that this development occur within the City limits in order that a higher level of public services; such as police, recreation, trash collection, street maintenance, etc., can be provided and financially supported by new residents and businesses. Development outside the City limits which will require such services in the future should not be permitted by the County. Where such development has occured in the past outside the City limits and where future annexation is not anticipated, such as Ballenger Creek, it is recommended further study and consideration be given to requiring residents, both commercial and residential, to pay special fees to provide such services. This can be accomplished through special taxing districts, contracting for City Services outside municipal boundaries, or some other means.

Future Corporate Limit Line - It is recommended the City and County jointly agree upon and designate a future corporate limit line which is intended to be reviewed periodically and which may be amended from time to time. In this context, it is the City's position that any areas on the fringe of the existing City limits which are to be developed in an urban manner should be annexed, regardless of how it is now shown on the corporate limit line map. The corporate limit line shall take into consideration the following characteristics:

- The land use proposals reflected in both City and County Comprehensive Plans.
- The location of undeveloped properties in the County to which municipal services may be economically extended.
- Natural or man-made features which sharply limit road access from existing municipal areas.



COMMITTEE RECOMMENDED FUTURE ANNEXATION AREAS

JUNE , 1988

EXISTING CORPORATE LIMIT LINE

PROPOSED CORPORATE LIMIT LINE

- Areas which municipal water and sewerage services should be extended based on natural or man made features.
- The location of existing homes and businesses or County utilities in unincorporated areas.

Development of Property Within Future Corporate Limit Lines - When land is proposed for development within the future corporate limit line, to the extent legally possible, it is recommended the County require that land to be annexed to the City prior to development occurring. The City will agree to accept the annexation of land within the future corporate limit line.

Development Procedures - The County agrees that it will not approve any zoning which will permit development within the corporate limit line unless provision is made for annexation to the City. The City agrees that it will not approve an annexation unless the type and density of development is reflected in the most recent County Comprehensive Plan or if the County Commissioners agree that the proposal for annexation is in the interest of the public even if not consistent with the County Comprehensive Plan. The County further agrees not to rezone property on the outside perimeter or adjacent to the corporate limit line unless the proposal is consistent with the County Comprehensive Plan. The City and County will seek the advice and guidance of each other during the course of the development process.

Already Developed Land - The City and County concur in the objective that already developed land within the designated future corporate limit line should be annexed to the City and services and facilities extended in the future.

Undeveloped Land With Existing Zoning - It is recognized that rezonings have occured in the past which will permit a significant amount of future development on the outside boundry of the corporate limit line. Such developments, in particular Long Branch Estates, may have development plans already approved by the County towards this purpose. The County Commissioners should make a determination as to whether the development which has been proposed should be served with municipal services and facilities or continue to develop under County jurisdication.

Community Facilities in Annexation Area

- The City and County agree to require community facilities land dedication, to the extent possible as part of the annexation or subsequent development review process. This includes land for schools, fire stations, parks and other facilities where the need for such facilities has been identified in the City or County Comprehensive Plans.

- The agreement to require dedication of land for community facilities may be waived by the County or City if a specific finding is made that the proposed location is not appropriate or no longer needed.

Water & Sewerage Services in Annexation Areas

- The City and County agree that new development within the future Corporate limit line should be served by public water and sewerage. Public services extended by the City should be accompanied by

annexation. Major developments outside the future Corporate limit line should not be allowed to develop on well & septic systems.

- Service may be provided by either the City or County. The question of who should provide service should take into consideration:

  - The location of the nearest lines sized to serve the site.
  - The capacity of the system to serve the site.
  - Which sewerage system can serve the property by gravity, limiting the need for pump stations.
  - The location of the property relative to natural or man made physical features which may constrain or make costly the extension of service.
  - The Monocacy Wastewater Treatment Alternatives Study recommendations.

- Nothing shall prevent a property from being jointly served by the City and County where possible and cost effective.

Public Roads in Annexation Areas:

- Generally, all public roads which shall serve as principal access for the property to be annexed shall become part of the municipal street system for the entire frontage of the property or to some other point agreed to by the City and County.

- The City shall incorporate the County Master Highway Plan proposals within the annexation area as part of development of the property,

including proposals for future alignments and road relocations unless jointly agreed otherwise.

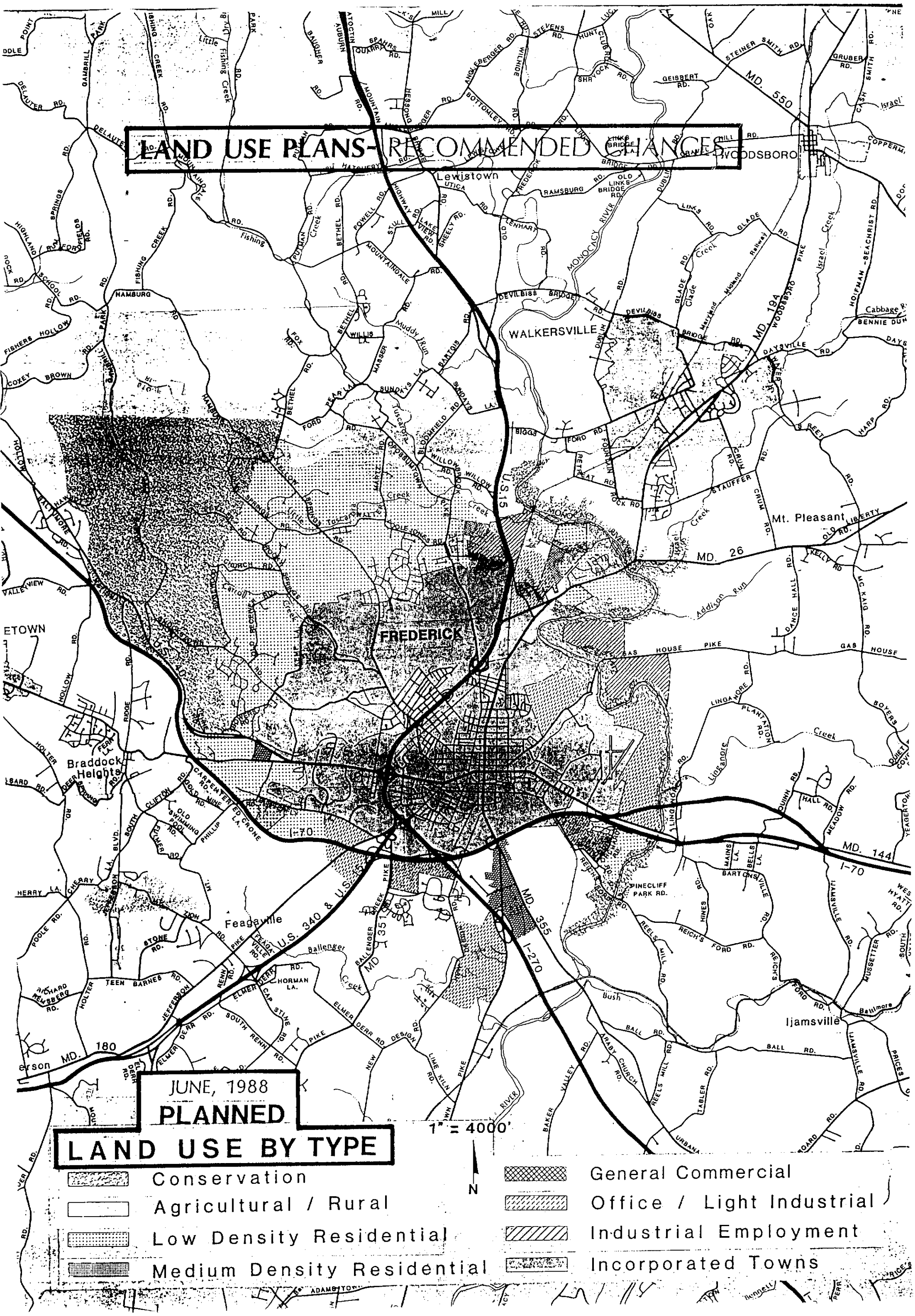
- The functional classification of a road (arterial, collector, local street) in the County shall become the equivalent classification in the City following annexation unless jointly agreed otherwise. Setbacks, access control, design criteria shall be required accordingly.
- Transfer of a public road from County to City in connection with an annexation may not take place if a specific finding is made by the County that the road in question should be left in the County street system.

Timing of Development in Annexation Areas:

The City and County should develop a joint policy with regard to the phasing of development so as not to overburden existing facilities, such as schools and roads and to provide for their timely upgrading.

Review

These policies and procedures shall be subject to annual review and renewal. At the time of review, findings will be made as to the progress made in implementing the recommendations found in this Report. Based on these findings, project goals may be set for the coming year. Carrying out these goals will be coordinated by the City and County Planning Department or other agencies as necessary. The procedures and the corporate limit line may be modified from time to time upon the mutual understanding of the two parties.


LAND USE PLANS- RECOMMENDED CHANGES
JUNE, 1988
PLANNED
LAND USE BY TYPE
Conservation
Agricultural / Rural
Low Density Residential
Medium Density Residential
General Commercial
Office / Light Industrial
Industrial Employment
Incorporated Towns
1" = 4000'
N
FREDERICK
WALKERSVILLE
Mt. Pleasant
Lewistown
Braddock Heights
Feagaville
Ijamsville
WOODSBORO
MD. 550
MD. 194
MD. 26
MD. 144
MD. 355
MD. 180
I-70
I-270
U.S. 340 & U.S. 15
U.S. 40

MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION ET AL. v. CITY OF ROCKVILLE ET AL.

[No. 310, September Term, 1972.]

Decided June 5, 1973.

DECLARATORY JUDGMENTS — *The Question Whether Rezoning Of A Tract Annexed By A Municipality Was In Violation Of Chapter 116 Of The Laws Of 1971 (Maryland Code, Article 23A, § 9(c)) Presented An Issue For Judicial Determination By Declaratory Judgment Or Other Relief Rather Than For Administrative Determination.* pp. 246-249

LACHES — *Where There Was No Substantial Delay In Filing Suit And Bill Of Complaint Showed No Prejudice To Defendants By Any Delay, There Were No Laches In The Usual Equity Sense Appearing On The Face Of The Bill.* p. 249

R. H.

Appeal from the Circuit Court for Montgomery County (SHURE, C. J.).

Bill by Maryland-National Capital Park and Planning Commission and Montgomery County, Maryland against Mayor and Council of Rockville, HMC Enterprises, Inc., and Ronald Creamer and David M. Blum, Trustees, seeking a declaratory judgment and injunctive relief. From an order sustaining defendants' demurrer to the bill of complaint without leave to amend, plaintiffs appeal.

Order reversed and case remanded for further proceedings; costs to be paid one-half by appellee Mayor and Council of Rockville and one-half by appellee HMC Enterprises, Inc.

The cause was argued before BARNES, MCWILLIAMS, SINGLEY, SMITH and LEVINE, JJ.

Sanford E. Wool, Deputy General Counsel, with whom were *Robert H. Levan, General Counsel,* and *James W. Tavel, Assistant General Counsel,* on the brief, for appellant Maryland-National Capital Park and Planning Commission.

Stephen P. Johnson, Assistant County Attorney, with whom were *Richard S. McKernon, County Attorney, Alfred H. Carter, Deputy County Attorney,* and *Stephen J. Orens, Assistant County Attorney,* on the brief, for appellant Montgomery County, Maryland.

Roger W. Titus, City Attorney, for appellee Mayor and Council of Rockville. *David E. Betts* for appellees HMC Enterprises, Inc., et al.

BARNES, J., delivered the opinion of the Court.

This appeal comes to us from the order of the Circuit Court for Montgomery County, in Equity (Shure, C. J.), sustaining the demurrers of the appellees and defendants below, Mayor and Council of Rockville, Maryland (Rockville) and HMC Enterprises, Inc. and Ronald Creamer and David M. Blum, Trustees (collectively, HMC), to the bill of complaint filed by the appellants and plaintiffs below, The Maryland-National Capital Park and Planning Commission (the Commission) and Montgomery County, Maryland (the County). The appellants sought declaratory relief pursuant to the Uniform Declaratory Judgments Act in regard to the construction of Chapter 116 of the Laws of 1971, as amended, with respect to the authority of Rockville to rezone certain annexed land, or any part of it, to a zoning classification substantially different from that of the Master Plan of the County. The appellants also prayed for injunctive and other relief.

We have concluded that the lower court erred in sustaining the demurrers so that its order will be reversed and the case remanded for the filing of answers and further proceedings in regular course.

The allegations of the bill of complaint identify the parties as follows: The County is a municipal corporation with a charter form of government under the provisions of Article XI-A of the Maryland Constitution; the Commission is a corporation, public and politic, which by Chapter 780 of the Laws of 1959, as amended (Chapter 780), has planning jurisdiction over that part of the Regional District located in

both the County and Prince George's County; Rockville is a municipal corporation organized and existing under the provisions of Article XI-E of the Maryland Constitution; HMC is the owner of a tract of land containing 174.8176 acres which was annexed and rezoned by Rockville on January 25, 1972 (Creamer and Blum are Trustees under a purchase money mortgage upon the land in question).

The petition, with its accompanying exhibits, alleges that Rockville adopted a series of resolutions on January 25, 1972, which infringe on the appellants' planning and zoning jurisdiction. Exhibit A is a copy of Resolution No. 5-72 of Rockville, which provides for the annexation of the 174.8176 acre tract. The tract is generally described as being located west of Great Falls Road, south of proposed Ritchie Parkway and generally west and south of existing corporate boundaries and formerly known as the Scott Farm (the subject property). The amendment to the Charter of Rockville to provide for the annexation of the subject property gives an elaborate metes and bounds description of that property, subject to certain easements, and to all other easements, rights-of-way or covenants of record. Section II of the Resolution is, in relevant part, as follows:

> "That all of the territory hereby annexed to the City of Rockville and the persons residing thereon, shall, after the effective date of this resolution be subject to all the laws, ordinances and regulations of said City and annexation of the territory shall be subject to the following conditions:
>
> "(a) The tract be developed only as a planned residential unit and that no other type of development be permitted; and
>
> "(b) That the total number of dwelling units in the development not exceed five hundred eighty-three (583). For the purposes of this subsection, the term 'dwelling unit' shall be defined on the date of the passage of this Resolution by Section 6-2.04(35) of the Laws of Rockville."

The bill of complaint further alleges that by Resolution No. 4-72 (Exhibit B), the Mayor of Rockville was authorized

to execute a contract on behalf of Rockville with the owners of the subject property concerning the manner of development and the number of units to be developed within the subject property. An agreement, dated January 21, 1972, between HMC Enterprises, Inc. and Rockville that the subject property would be developed in accordance with the Planned Unit provisions of the Rockville Zoning Ordinance was filed as Exhibit C. Ordinance No. 2-72 of Rockville, also passed, placed the subject property in a zone classification under the Rockville Zoning Ordinance with an appropriate map (Exhibits D and E). Resolution No. 6-72 (Exhibit F) approved a Planned Residential Unit Development in the nature of a special exception for the subject property in accordance with "Plan A." Plan A proposed "the construction of 583 dwelling units in a subdivision consisting of 140 sale townhouse units, 64 rental townhouse units, 130 rental apartment units, and 249 single family units, and such recreational and other amenities as are in keeping with the planned residential unit concept . . . ." A copy of the minutes of the City Council of Rockville of January 25, 1972, authorizing these various actions was filed as Exhibit G.

The bill of complaint then alleges that immediately prior to the annexation of the subject property within the Regional District of the County, that property "was subject to the planning jurisdiction of the Commission and the District Council and subject to the zoning jurisdiction of the District Council."

Paragraph 16 is as follows:

> "That on January 25, 1972, there was in effect a Master Plan for the Vicinity of Rockville, Part 1, duly adopted by the Commission on April 26, 1961 and a Master Plan for Potomac-Travilah and Vicinity duly approved by the District Council for Montgomery County, Maryland and duly adopted by the Commission on January 25, 1967; that such plans recommended the zoning classifications of R-R, Rural Residential and R-150, Density Control Development, one-family, detached, restricted residential for all the subject property, part of which is within the Potomac-Travilah Planning

Area, as shown on Exhibit H attached hereto and made a part hereof, and part of which is within the Rockville Planning Area as shown on Exhibit I attached hereto and made a part hereof."

Copies of the Regulations for the R-R zone and for the R-150 zone are attached as Exhibits J and K.

It is alleged in Paragaph 19:

"That the General Assembly of Maryland, by Chapter 116, Laws of Maryland 1971, amended Article 23A, Annotated Code of Maryland, Section 9(c) effective April 23, 1971 as an emergency measure; that such law provides that no municipality subject to the provisions of XI-E of the Maryland Constitution annexing land 'may for a period of five years following its annexation, place such land in a zoning classification which permits a land use substantially different from the use for such land specified in the current and duly adopted Master Plan or plan of the County or agency having planning and zoning jurisdiction over such land prior to its annexation.' Exhibit L."

It is then alleged that the subject property was given zoning classifications resulting in "land use substantially different from that permitted in either the R-R or R-150 zoning classifications recommended" in the Master Plans, making the action of the City of Rockville "contrary to law and therefore invalid."

This violation of law is alleged to result in "immediate, substantial and irreparable injury to the Plaintiffs, in the performance of their governmental responsibilities."

It is then alleged that the suit is filed pursuant to the Uniform Declaratory Judgments Act for the construction of Chapter 116 of the Laws of 1971, as amended; and six prayers for relief are set forth:

1. That the rezoning of the subject property by Ordinance No. 2-72 and Resolution No. 6-72 by Rockville "are each null and void as contrary to law";

2. That Rockville may not exercise zoning jurisdiction contrary to Chapter 116 and contrary to Art. 23A, § 9 (c);

3. That a preliminary injunction be issued restraining Rockville and its employees from issuing building permits or permitting development of the subject property in the R-90 zone or pursuant to the Planned Residential Unit Development;

4. That a preliminary injunction be issued restraining HMC from obtaining permits or proceeding with work for any use other than as permitted by R-150 zoning under the County Regional District Zoning Ordinance;

5. That a permanent injunction be issued restraining HMC from obtaining permits or developing the subject property for land use in the R-90 zone and to prohibit any land use for five years on the subject property except as permitted in the R-150 zoning classification under the County Regional District Zoning Ordinance;

6. That the plaintiffs have other and further relief.

The demurrers of both Rockville and HMC are quite similar and state as principal grounds the following:

1. No cause of action in equity is stated.

2. The plaintiffs have an adequate remedy at law by way of administrative appeal provided in Chapter 1100, Subtitle B of the Maryland Rules and Art. 66B, § 4.04 of the Maryland Code.

3. None of the plaintiffs allege or have sufficient interest in the actions of Rockville under the challenge to bring the action for declaratory judgment under Art. 31A, § 2.

4. No declaratory judgment under Art. 31A, §§ 1-16, the Uniform Declaratory Judgments Act, may be obtained by the plaintiffs inasmuch as neither the Commission nor the District Council "has any governmental responsibility or authority as to land located within the corporate limits" of Rockville.

5. The plaintiffs are guilty of laches.

The chancellor on November 30, 1972, filed a written opinion and an order that the demurrers be sustained without leave to amend, being of the opinion that the plaintiffs had an adequate remedy at law by way of the administrative procedures in Rule B 1 a of the Maryland Rules and Art. 66B, § 4.08 of the Code, the case being a

zoning matter; that the plaintiffs had no standing to sue and that the plaintiffs, having "slept on their rights," are guilty of laches.

We will first discuss the question of the alleged adequacy of the legal remedy by way of an appeal under Art. 66B, § 4.08 and the Subtitle B Rules.

As we have indicated, the chancellor viewed the case as a "zoning case" and concluded that the established administrative procedures for the decision of zoning cases were applicable. He concluded that, inasmuch as the plaintiffs did not avail themselves of those procedures, they could not, after the statutory period of 30 days for notice of an administrative review of a zoning case had expired, proceed in equity for a declaratory judgment. The chancellor's error here was in concluding that the case was a "zoning case" rather than a case to vindicate and sustain the mandatory provisions of Art. 23A, § 9 (c). This law prohibits Rockville, as a municipality subject to Article XI-E of the Maryland Constitution, from annexing and placing land (for a period of five years following the annexation) in a zoning classification which permits a land use substantially different from that of the Master Plan of the County or agency having jurisdiction over the land prior to annexation. This presents an issue for judicial determination by declaratory judgment or other relief, rather than for administrative determination. The case presents issues in regard to the interpretation of Chapter 116 of the Laws of 1971 and the validity, *vel non*, of various ordinances and resolutions of Rockville as being in conflict with the mandatory provisions of Chapter 116. These are classic issues for resolution by declaratory judgment when an actual controversy exists, as in the present case. Article 31A, § 6 provides in relevant part:

> 'Relief by declaratory judgment or decree may be granted in all civil cases in which an actual controversy exists between contending parties, or in which the court is satisfied that antagonistic claims are present between the parties involved which indicate imminent and inevitable litigation, or when in any such case the court is satisfied that a party asserts a legal relation, status, right, or privilege in which he has a concrete interest and that there is a challenge or denial of such asserted relation, status, right, or privilege by an adversary party who also has or asserts a concrete interest therein, and the court is satisfied also that a declaratory judgment or decree shall serve to terminate the uncertainty or controversy giving rise to the proceedings."

Neither the Commission nor the County would have any remedy under Art. 66B, § 4.08 or Rule B 1 a. It is clear that Rule B 1 a is applicable *only* when an appeal is provided by statute. Article 23A, § 9 (c), as amended, *does not provide* for a statutory appeal for a review by the courts of a violation of that section. Hence, Chapter 1100, Subtitle B of the Maryland Rules does not apply to Art. 23A, § 9 (c) — *see Urbana Civic Association v. Urbana Mobile Village, Inc.*, 260 Md. 458, 272 A. 2d 628 (1971) — and the Commission and the County were required to seek relief in equity as they did in the instant case. *See England v. Mayor & Council of Rockville*, 230 Md. 43, 185 A. 2d 378 (1962); *Congressional School of Aeronautics v. State Roads Commission*, 218 Md. 236, 146 A. 2d 558 (1958). We did state in *Prince George's County v. Laurel*, 262 Md. 171, 183-84, 277 A. 2d 262, 268-69 (1971) that when considering the rezoning of newly annexed land, Articles 66B and 23A should be *read* together. This did not mean, however, that these two Articles are *merged* and that provisions for administrative determinations of zoning cases in Art. 66B become available for determinations under Art. 23A. We observed in *Urbana* that, although Art. 66B provides for an administrative appeal in its zoning provisions, there is no provision in Art. 66B for an appeal in its planning and subdivision sections. We concluded in *Urbana* that, inasmuch as there was no provision for an appeal authorized by statute, the plaintiffs in that case could seek appropriate relief in equity in an original suit in order to resolve the status of the subdivision plat approval involved in that case.

Nor would either the Commission or the County be an "aggrieved party" for the purposes of administrative review.

In *Bryniarski v. Montgomery County Board of Appeals*, 247 Md. 137, 144, 230 A. 2d 289, 294 (1967), we defined a "person aggrieved" as:

> "... One whose personal or property rights are adversely affected by a decision of the board. The decision must not only affect a matter in which the protestant has a specific interest or property right but his interest therein must be such that he is personally and specially affected in a way different from that suffered by the public generally."

See also White v. Major Realty, Inc., 251 Md. 63, 64, 246 A. 2d 249, 251 (1968), citing *Bryniarski* with approval and following it.

Neither the Commission nor the County owns any property located within sight or sound of the subject property and have no special interest or damage to give either of them the status of an "aggrieved party," necessary to present an appeal from any action by Rockville, even if otherwise available.

We are of the opinion that the Commission and the County have standing to sue in the present case in order to insulate the Master Plan from impairment by the action of Rockville, contrary to the provisions of Art. 23A, § 9 (c), as amended, as we stated in *Maryland-National Capital Park & Planning Commission v. McCaw*, 246 Md. 662, 670, 229 A. 2d 584, 588 (1967):

> "Under explicit statutory provisions, the Commission is a representative of the public in matters such as are here involved. It is empowered to make general plans for the physical development of the District and in doing so, is expressly made a representative of the State."

We deem our decision in *Prince George's County v. Laurel, supra*, to be controlling on this issue. In *Laurel*, the parties were Prince George's County (including its County Council), the Commission and the City of Laurel. It too was a suit in equity for declaratory relief under the Uniform Declaratory

Judgments Act filed by Laurel to determine the respective rights and jurisdictions of each of the governing agencies. Although Chapter 116 of the Laws of 1971 was adopted *subsequent* to our decision in *Laurel*, the test for standing to sue is the same. In the *Laurel* case, we held that the Commission had sufficient interest and standing to sue. This holding applies, *a fortiori*, to the County.

Finally, in regard to "laches," it is clear that there was no substantial delay in filing the suit in the present case, which, indeed, was filed quite promptly, *i.e.*, on April 4, 1972, the annexation having become final on March 10, 1972, when the annexation action of January 25, 1972, was no longer subject to referendum. Nor did the bill of complaint show any prejudice to the defendants by any "delay," so that there were no laches, in the usual equity sense, appearing on the face of the bill of complaint. *See Niner v. Hanson*, 217 Md. 298, 309, 142 A. 2d 798, 803 (1958); *Boehm v. Boehm*, 182 Md. 254, 269-70, 34 A. 2d 447, 454 (1943); *Kaliopulus v. Lumm*, 155 Md. 30, 141 A. 440 (1928).

If the chancellor meant by "laches" the failure of the Commission and the County to avail themselves of administrative review within 30 days under Art. 66B, § 4.08 and Chapter 1100, Subtitle B of the Maryland Rules, we have already disposed of this issue, *supra*.

Order of November 30, 1972, sustaining the demurrers to the bill of complaint without leave to amend, reversed and the case is remanded to the Circuit Court for Montgomery County for further proceedings in regular course, one-half the costs to be paid by the Mayor and Council of Rockville, Maryland, one of the appellees, the remaining one-half of the costs to be paid by HMC Enterprises, Inc., another appellee.

Annexation Memo.

1) Provisions of case law & statute & agreement -
   - County's role in annexation process
   - substantially different zoning
2) Provisions & goals of Comp plans
3) "Substantially different" -
   precedent
   Lateral
   Schley

- No impact on County Commissioners

- Rand
   - we've heard you
   APFO for schools
   - R2 is ok
   - will not fight County
   - County Plan says 1-4 units
   - issue is whether water & sewer
   - City doesn't favor large lot developments because not efficient use of land
   (PND & will get 4 units per acre)

his pockets turned inside out, had reasonable cause to believe a robbery—a felony, *Hollohan v. State,* 32 Md. 399, 400—had been committed and, when appellant ran away when asked to come talk to the officer who was kneeling by the victim, he had reasonable cause to believe that the evasive one had committed the felony, and lawfully could have arrested him. "Flight, though not conclusive, is usually evidence of guilt." *Price v. State,* 227 Md. 28, 33; *Tasco v. State,* 223 Md. 503, *cert. den.* 365 U. S. 885.

There can be no real doubt that the evidence was sufficient to permit the conclusions the jury reached. Officer Rowzee identified the appellant in a line-up and at the trial as the man who had stolen his pistol and fired it at him at almost point-blank range. There was corroboration as to identity in the testimony of the restaurant owner. Appellant's mother offered the alibi that he was sleeping at her house when the crimes occurred but the credibility of Officer Rowzee's positive identification and of the restaurant owner's corroboration, as compared to the alibi testimony of the mother, was for the jury to weigh and determine, and the appellant cannot justly complain that the jury did not believe his mother. *Hursey, Jr. v. State,* 233 Md. 243; *Booker v. State,* 225 Md. 183; *Booth v. State,* 225 Md. 71; *Daniels v. State,* 213 Md. 90.

Judgments affirmed.

BESHORE, ET AL. v. TOWN OF BEL AIR, ET AL.

[No. 114, September Term, 1964.]

PUBLIC POLICY—*Existence Of A Conflicting Private, Pecuniary Interest On The Part Of A Person Involved In Passing An Ordinance In Town Of Bel Air Held Not Supported By The Evidence Here.* In the instant case the appellants contended that "as a matter of public policy" Ordinance No. 157, adopted by the Town Commissioners of Bel Air was void because of the participation of a person in its passage who had a conflicting private pecuniary

interest. However, it was *held* that this contention was not supported by the evidence. The Court stated that there was no intimation in the evidence that the person in question influenced the proceedings or the result with respect to the ordinance. Rather, the passage of the ordinance seems to have been dictated by the necessities of the situation then facing the town, and the form of the enactment was suggested by independent counsel. "Whether, in a particular case, a disqualifying interest exists, is a factual question and is governed by the circumstances of that case, and the enunciation of a definitive rule is not possible."

pp. 407-409

ZONING—*Was Properly Includable In A Resolution Providing For Annexation Here.* In the case at bar the Court stated that they saw no logical reason to hold that zoning was not a proper "condition and circumstance" of annexation within the meaning of Code (1957), Art. 23A, sec. 19(b), and, thus, they *held* that the fixing of zoning classifications for newly annexed property is properly includable in a resolution providing for annexation by a municipality which has an authorized planning and zoning commission and where, as here, such municipality has otherwise complied with the requirements of Articles 23A and 66B of the 1957 Code. pp. 409-411

STATUTES—*Rule Against Enlargement By Implication Was Not Violated By Bel Air Ordinance Providing For Both The Annexation And Zoning Of Land.* The appellants in the instant case contended that Resolution No. 20 adopted by the Town Commissioners of Bel Air, which provided for both the annexation and zoning of four tracts of land, was invalid because it violated the "rules against enlarging by implication statutes in derogation of common law and requiring strict application of all delegated powers." They argued that since neither Art. 23A nor Art. 66B of the 1957 Code provides for the combining of annexation and zoning in one proceeding, Resolution No. 20 is void. The Court thought otherwise. They stated that basically, no enlargement of the powers delegated by the two statutes is effected by exercising the powers together. Although it is true that neither statute specifically provides for such a combination, the manner

in which the Court interpreted Art. 23A, sec. 19(b), earlier in the opinion in regard to "conditions and circumstances" makes the combination permissible. pp. 411-412

CONSTITUTIONAL LAW—*Statutes—To Embrace But One Subject, Described In Title—Rules As To Sufficiency Of Title—Bel Air Resolution No. 20 Properly Included Zoning Although Zoning Not Specifically Referred To In Title.* The appellants contended that Resolution No. 20, adopted by the Town Commissioners of Bel Air, violated Art. III, sec. 29, of the Maryland Constitution, made applicable to municipal charter amendments by Code (1964 Supp.), Art. 23A, sec. 13(c), on the grounds that it embraces more than one subject (annexation and zoning) and its title does not mention zoning. The Court noted that Maryland has given a liberal interpretation to the constitutional requirement. They then stated the basic principle that "if several sections of the law refer to and are *germane* to the same subject matter, which is described in its title, it is considered as embracing but a single subject, and as satisfying the requirements of the Constitution in this respect. * * *" It was held earlier in the opinion that the fixing of zoning classifications for newly annexed land is a proper condition and circumstance of annexation, and thus it is germane to the subject. Therefore, the Court *held* that its inclusion in Resolution No. 20, without specific reference to it in the title, was proper. pp. 412-413

PUBLIC POLICY—*Resolutions—Proper Public Notice—Claim Of Lack Of, Held Without Merit.* In the instant case the appellant's contention that Resolution No. 20 was invalid because no proper public notice of the R-2 zoning classification of a particular tract of land was contained in the resolution, was *held* to be without merit. pp. 413-414

ZONING—*Within Town Of Bel Air Not Regulated By Harford County Master Plan—Zoning Classification Of Land Here Held Not Unreasonable Considering Character Of Adjoining Land.* It was *held* in the instant case that the Harford County Master Plan does not "regulate" zoning within the town of Bel Air, so

that construction of a shopping center which was prohibited while the land remained in Harford County under the county's Master Plan, would not necessarily be prohibited once the town of Bel Air annexed the land. The Court further *held* that as the situation stands today, they did not think that the zoning of the land in question as B-3 by the town was unreasonable considering the character of the land adjoining it in the county. pp. 414-415

ZONING—*By Contract—Rule Against, Not Violated Here—No Showing Of Special Interest Legislation—Right of Property Owners To Withdraw Consent To Annexation Prior To Completion.* The appellants in the instant case contended that both Ordinance No. 157 and Resolution No. 20, adopted by the Town Commissioners of Bel Air, were invalid because they were based on contracts and were special interest legislation, and further, because the property owners reserved the right to withdraw their consent to annexation during the pendency of the proceedings. The Court *held* that assuming without deciding that the rule against zoning by contract is applicable to initial zoning of newly annexed property, they did not feel that the circumstances in this case demonstrated such an illegality. There was no evidence that the property owners and the town of Bel Air entered into any agreement in regard to the zoning of their respective properties. Ordinance No. 157 makes no reference to any agreement and cannot be termed special interest legislation since it applies to any property which is proposed to be annexed. Nor does Resolution No. 20 make any reference to any agreement, or state any conditions to the annexation or zoning. The Court stated that there was no problem of zoning by contract here, since the legislative body of Bel Air has made no provision in Ordinance No. 157 or Resolution No. 20 conditioning their action in zoning on annexation upon any acts of the property owners. In addition, although the petition for annexation did contain a provision that the property owners could withdraw their consent to annexation prior to its completion, the Court stated that it would seem that this right would be theirs regardless of such a provision. pp. 415-416

H. C.

Decided February 4, 1965.

Motion for rehearing filed March 1, 1965, denied March 2, 1965.

Appeal from the Circuit Court for Harford County (DYER, J.).

Suit to declare two ordinances adopted by the Town Commissioners of Bel Air invalid and for an injunction by Linwood L. Beshore, and others, citizens and taxpayers of Harford County and of Bel Air, against the Town of Bel Air, and others. From a decree upholding the validity of the ordinances and denying the injunction, the complainants appeal.

Decree affirmed; appellants to pay the costs.

The cause was argued before HAMMOND, HORNEY, MARBURY, SYBERT and OPPENHEIMER, JJ.

Michael P. Crocker, with whom were *Morton P. Fisher, Jr.* and *Piper & Marbury* on the brief, for appellants.

Albert P. Close and *William H. Gorman, II,* for appellees.

SYBERT, J., delivered the opinion of the Court.

In this suit the appellants, who are citizens and taxpayers of Harford County and of Bel Air, its county seat, challenged the validity of two ordinances adopted by the Town Commissioners of Bel Air—Resolution No. 20, which annexed and zoned four properties adjacent to the perimeter of the town, and Ordinance No. 157, passed earlier, which amended the town's zoning ordinance so as to permit the fixing of zoning classifications for newly annexed property in the annexation proceedings. The appellees, who were defendants below, are the Town of Bel Air, its five Town Commissioners, and its Superintendent of Public Works. After a hearing, Judge Dyer in the Circuit Court for Harford County passed a decree upholding the validity of the two legislative enactments and denying an injunction to prohibit the issuance of building permits for the annexed property. The complainants then appealed.

The four tracts annexed to the town by Ordinance No. 20 are contiguous and aggregate nearly 68 acres. They front on the east side of U.S. Route No. 1, on the south edge of Bel Air. The

largest, known as the Durham-Julio tract, consists of 44.76 acres, unimproved, zoned in the county as B-3 (General Business District), except for a small portion zoned A-1 (Agricultural District). The next largest tract, known as the Pons-Kunkel property, also unimproved, contains 20.35 acres and was zoned in the county as R-2 (Urban Residence District, permitting single family dwellings). The two remaining parcels, one containing 1.48 acres owned by one Tucker, and the other containing 1.33 acres owned by one Smith, are improved business properties and each was zoned in the county as B-3 (General Business District).

Ordinance No. 157 and Resolution No. 20 were adopted by the Town Commissioners after the owners of the Durham-Julio tract, which was then outside the Bel Air town limits, failed early in 1961 to obtain from Harford County a permit for the construction of a shopping center. Their application, which was awaiting a public hearing before the County Commissioners after it had been approved by the Harford County Planning and Zoning Commission, was "checkmated" by a decision of the Circuit Court for Harford County in an unrelated case involving a property known as the "Worthington Farm", several blocks distant from the Durham-Julio tract but also adjacent to and outside the town limits. The court held that no shopping center could be erected in the county near Bel Air, but only "at or near" one of the six areas designated for business service centers on the Harford County Land Use (or Master) Plan adopted by the County Commissioners in 1957. The nearest of such areas is approximately three miles distant from Bel Air. After the court's decision, no further steps were taken on the Julio's application to the county.

The Durham-Julio tract was part of a farm owned by W. Edgar Durham, who had contracted to sell the 44.76 acres in question to Grove Point, Inc., a family corporation owned by three real estate developers named Julio. Before the circuit court ruling just mentioned, the Julios had approached the Bel Air Town Commissioners relative to the furnishing of sewer service to the proposed shopping center, since no such county service was available. The Town Commissioners, following their established policy, had replied that the shopping center could

be connected with the town sewer system if the property were annexed to the town and arrangements were made for a suitable division of the costs.

Several days after the circuit court decision in the Worthington case, the Town Commissioners of Bel Air, a representative of Whitman, Requardt and Associates, the town's consulting engineers, and officials of the State and County Health Departments held a meeting on April 6, 1961, at which it was reported that the Town had several requests for the sewering of properties outside the corporate limits, and expected more, and that the town's boundaries would expand. It was suggested that the Worthington and Durham properties could be sewered without overloading the town's facilities.

In view of the fact that all previous annexations to the town had involved areas zoned non-commercial in the county (as pointed out by the appellees in their brief and argument), and of the further fact that some of the properties now considered for possible annexation held commercial classifications in the county, the Town Planning Commission at a meeting held on May 3, 1961, decided that sec. 4.6 of the Town Zoning Ordinance (No. 149), which provided that annexed territory should automatically be classified as R-1 (permitting single-family residences) until otherwise classified, should be revised and that independent legal opinion be sought to determine how this could be accomplished. At a special meeting of the Planning Commission held on May 10, 1961, a legal opinion of a Baltimore law firm was submitted which suggested that sec. 4.6 be amended to read as follows:

> "4.6 In all cases where territory has not been specifically included within a district, such territory shall automatically be classified as R-1 District until otherwise classified, but in cases of annexation of territory where the annexation proceeding provides a zoning classification for the territory to be annexed, such territory shall be so classified upon incorporation into the Town of Bel Air."

Adoption of the amendment in the language of the legal opinion was recommended to the Town Commissioners who, at a

meeting on the same day, discussed and approved the recommendation as submitted. After two notices by publication, a public hearing was held on June 14, 1961, and on August 14, 1961, the Town Commissioners adopted Ordinance No. 157, embodying the amendment. Apparently all requirements of Article 17 of the town's Zoning Ordinance (relating to amendments) and of Code (1957), Art. 66B (Zoning and Planning), were complied with in adopting the amendment. On August 14 the Town Commissioners requested the Planning Commission to study adjoining areas and to make recommendations as to the proper zoning thereof, "with particular reference to the Worthington and Durham properties".

On August 17, 1961, W. Edgar Durham filed a petition with the town of Bel Air requesting the annexation of the 44.76 acre Durham-Julio tract. The petition was referred to the Planning Commission for its recommendations as to zoning in conjunction with the proposed annexation. The Commission held a public hearing on the recommendation of its planning consultant, Julian Tarrant, that the property be zoned B-3 (General Business), except for a small strip suggested for a residential classification, and then recommended to the Town Commissioners that, if annexed, the Durham-Julio property be zoned as suggested by Mr. Tarrant. The Town Commissioners introduced a resolution for the annexation of the tract, including the zoning as recommended, and published a notice of a public hearing for December 4, 1961. Before that date, the public hearing and the annexation proceeding were cancelled because of (according to the appellants) certain procedural imperfections.

Then the owners of the Durham-Julio, Pons-Kunkel, Tucker and Smith properties filed with the Town Commissioners a joint petition, dated January 13, 1962, requesting that their properties be annexed by the town and that they retain the zoning classifications which they had in Harford County or be assigned similar zoning classifications under the town's Zoning Ordinance. The Town Commissioners requested the Bel Air Planning Commission to study the petition and make recommendations in regard to zoning classifications. In turn, the Planning Commission directed Mr. Tarrant, the planning consultant, to recommend zoning classifications for the area to be

annexed. Mr. Tarrant later recommended that upon annexation the Durham-Julio tract should be classified as B-3 (General Business) except for a small portion which he suggested for R-1 (Single-Family Residence). As mentioned earlier, these two parts of the Durham-Julio property were zoned B-3 (General Business) and A-1 (Agricultural) in Harford County. Tarrant recommended that the Pons-Kunkel property be classified R-1 (Single-Family Residence). In the county this property was zoned R-2 (which permitted single-family dwellings). As to the Tucker and Smith properties he recommended that they be zoned B-3, the same classification as they had in the County.

The Town Planning Commission on February 21, 1962, approved the new zoning classifications as suggested by Tarrant and, after the publication of notices on March 1 and 8, a public hearing on zoning was held by the Planning Commission on March 14, 1962. At the hearing counsel for the owners of the Pons-Kunkel property stated that the owners desired their property to be classified as R-2 (General Residence) upon annexation rather than R-1 as advertised in the notices of the hearing. On March 20 the Planning Commission recommended to the Town Commissioners that the zoning classifications for the properties to be annexed be as Tarrant recommended except that the Pons-Kunkel property should be zoned R-2 rather than R-1. On June 18 a charter amendment, Resolution No. 20, providing for the annexation and zoning of the land in question (with the classifications recommended by the Planning Commission) was introduced at a meeting of the Town Commissioners. After the publication of four weekly notices, a public hearing was held on July 31, 1962, and on August 20, Resolution No. 20 was adopted by the Town Commissioners.

On November 3, 1962, the appellants filed a bill of complaint in the Circuit Court for Harford County seeking a declaratory judgment. However, on March 22, 1963, an amended bill based on the general equity jurisdiction of the circuit court was filed praying that Ordinance No. 157 and Resolution No. 20 be declared invalid, that the Town, the Town Commissioners and the town's Superintendent of Public Works be enjoined from

issuing permits to any person for the erection of a shopping center on the Durham-Julio tract, and for general relief. On January 31, 1964, the circuit court decreed, after a trial on the merits, that the Ordinance and the Resolution were valid and denied the relief prayed.

I

The appellants' first contention is that "as a matter of public policy" Ordinance No. 157, permitting annexation and zoning to be effected in one proceeding, is void because of the participation of a person in its passage who had a conflicting private pecuniary interest. The person referred to is Adolph A. Pons, Jr., who at the time of the enactment of Ordinance No. 157 was one of the Town Commissioners of Bel Air and the Commissioners' representative as a member of the town's Planning Commission. At the time in question, Pons' wife and two of her relatives were the owners of the 20.35 acre tract referred to as the Pons-Kunkel property. Pons participated in deliberations and votes of the two town bodies leading to the adoption of the ordinance.

In an effort to show that Pons had a private pecuniary interest in the passage of Ordinance No. 157, the appellants assert that at least since 1960 the owners of the unimproved Pons-Kunkel property desired to build apartments thereon but were prevented by two obstacles—the use was not permitted under the property's zoning classification in the county, and the tract lacked sewer service, which would be available only if it were annexed to Bel Air. They claim that the amendment of sec. 4.6 of the town's Zoning Ordinance was the first step in a scheme on Pons' part to bring his wife's property into the town with a zoning classification permitting apartments and to induce the Julios to consent to annexation of their larger tract with the same business classification it bore in the county, thereby rendering the extension of the town's sewer system to both properties economically feasible.

The difficulty with the appellants' argument is that it is not supported by the evidence. A diligent search of the record has failed to reveal any clear evidence that the owners of the Pons-Kunkel tract desired or intended, at the time of the adoption of Ordinance No. 157, to build apartments on their property.

When the ordinance was adopted on August 14, 1961, no petition for annexation had been presented to the Town Commissioners, and there is nothing in the record to show that Pons had ever had any contact with the Julios before the ordinance was passed. We think it is significant that when the original petition for annexation of the Durham-Julio tract was filed on August 17, 1961, the owners of the Pons-Kunkel property did not join in. The first mention to any official agency of possible annexation of the latter parcel appears to have been made orally at a Planning Commission meeting on September 6, 1961, as is indicated in a subsequent letter from Mr. Tarrant to the chairman of the commission. This date was more than three weeks after the passage of Ordinance No. 157.

While Pons participated in some or all of the action in the original Durham-Julio application, the proceedings proved abortive and were cancelled in December, 1961. We think the inference is permissible from the evidence that the Pons-Kunkel interests did not positively decide to request annexation until the joint petition was filed by the owners of the four properties on January 13, 1962. It was conceded that Pons did not attend meetings of either the Planning Commission or the Town Commissioners at which this petition was discussed or voted upon. There is no intimation in the evidence that Pons influenced the proceedings or the result with respect either to Ordinance No. 157 or Resolution No. 20. Rather, the passage of the ordinance seems to have been dictated by the necessities of the situation then facing the town, and the form of the enactment was suggested by independent counsel. The evidence fails to bear out the Machiavellian role attributed to Pons by the appellants, and the cases which they cite are distinguishable on the facts.

While it is true that most, if not all, courts apply a strict rule in striking down enactments where one who participated is shown to have a conflicting interest, we said in the recent case of *Montgomery County v. Walker,* 228 Md. 574, 580, 180 A. 2d 865 (1962): "Whether, in a particular case, a disqualifying interest exists, is a factual question and is governed by the circumstances of that case, and the enunciation of a definitive rule is not possible." On the record presented here, we cannot

hold Judge Dyer clearly wrong in finding no conflict of interest on the part of Pons when he participated in the passage of Ordinance No. 157, Maryland Rule 886 a, and thus the validity of the ordinance was properly sustained. For similar holdings in cases involving more or less comparable facts, see *Wilson v. Long Branch,* 142 A. 2d 837 (N. J. 1958); *Van Itallie v. Borough of Franklin Lakes,* 146 A. 2d 111 (N. J. 1958); *Benincasa v. Incorporated Vill. of Rockville Centre,* 215 N. Y. S. 2d 575 (1961); and see annotation, 133 A.L.R. 1257.

II

The appellants next contend that Resolution No. 20, providing for both annexation and zoning of the four tracts mentioned, is invalid for four specific reasons. We shall discuss the issues in a sequence different from that appearing in the briefs. The appellants argue that "zoning changes and classifications for which there is a special statute [Code (1957), Art. 66B] are not intended to be included in an annexation resolution under the guise of the 'conditions and circumstances' provision of the annexation statute [Code (1957), Art. 23A, sec. 19(b)]."

Section 19(b) of the annexation law, *supra,* provides:

> "* * * The resolution shall describe by a survey of courses and distances, and may also describe by landmarks and other well-known terms, the exact area proposed to be included in the change, and shall contain complete and detailed provisions as to the conditions and circumstances applicable to the change in boundaries and to the residents and property within the area to be annexed."

Resolution No. 20 in the case before us adequately describes the four tracts and provides for their annexation, and then fixes their zoning classifications (as hereinbefore mentioned) and makes other provisions expressly as "conditions and circumstances applicable to the change in said corporate boundaries and to the residents of property in the areas so annexed * * *". Thus we must determine whether the assignment of zoning classifications is a proper "condition" or "circumstance" of annexation so that it may be accomplished in the annexation resolution.

The appellants do not cite (nor have we found) a single case supporting their argument, but rather base their contention on a survey of the annexation statutes of most of the States. They point out that not one state annexation statute expressly provides for zoning as a proper condition and circumstance of annexation, even though many provide for a wide variety of other subjects which are proper conditions and circumstances. The only case raising the identical question was *Tanner v. City of Boulder*, 377 P. 2d 945 (Colo. 1962), but that case went off on a jurisdictional point and the issue presented here was not decided, as the appellants note in their brief.

We see no logical reason to hold that zoning is not a proper condition and circumstance of annexation. It does not seem to us that sec. 19(m) of Art. 23A, requiring the inclusion of certain provisions in an annexation resolution, and making permissive the inclusion of certain other provisions as to special treatment with respect to taxation and municipal services and facilities, was intended by the Legislature to limit the broad language of sec. 19(b) requiring the inclusion of "complete and detailed provisions as to the conditions and circumstances" which shall affect the "residents and property within the area to be annexed". Not being blessed with prescience as to all situations which might arise, the Legislature chose not to define the types of conditions and circumstances which might properly be cognizable in future annexation proceedings. The maxim *"expressio unius est exclusio alterius"*, meaning that the expression of one thing implies the exclusion of another thing not mentioned (which is not a rule of law but merely an auxiliary rule of statutory construction), is not applicable to sec. 19(m) in view of the language of sec. 19(b), for the maxim should not be applied to override the manifest intention of the Legislature or a provision of the Constitution. *Kirkwood v. Provident Savings Bank*, 205 Md. 48, 55, 106 A. 2d 103 (1954).

A municipality having an authorized planning and zoning authority has exclusive jurisdiction to zone annexed property, Code (1957), Art. 23A, sec. 19(p). To require such a municipality to annex and then later zone, in separate proceedings, would appear to be illogical and wasteful when the requirements of both Art. 23A and Art. 66B can be satisfied in one proceeding, as happened in the instant case. The realities of modern annexation are such that the owners of the properties to be annexed are vitally interested in the zoning classification which their properties will receive upon annexation. Delay in classifying could often result in considerable financial loss.

Although the precise question as to the propriety of combining annexation and zoning classification in one proceeding does not appear to have been decided in any reported case, we did have occasion to comment on the problem in the recent case of *City of Annapolis v. Kramer*, 235 Md. 231, 201 A. 2d 333 (1964). That case involved an application for rezoning some years after the subject property had been annexed and zoned by one resolution. While it was not necessary there to decide the question now before us, Judge Hammond, for the Court, reviewed certain provisions of Articles 23A and 66B and then stated (at p. 234 of 235 Md.): "It would appear that the provisions on the same subject matter of Articles 23A and 66B of the Code must be read together and be applied when a municipality zones for the first time in the course of annexing land. * * *" In the case before us the requirements of both statutes were satisfied. In one other case, *Westwood Development Company v. City of Abilene*, 273 S. W. 2d 652 (Tex. Civ. App. 1954), annexation and zoning were carried out in the same proceeding, but the validity of so doing was not at issue.

Judge Dyer concluded that zoning is a condition applicable to property. We agree, and hold that the fixing of zoning classifications for newly annexed property is properly includable in a resolution providing for annexation by a municipality which has an authorized planning and zoning commission and where, as here, such municipality has otherwise complied with the requirements of Articles 23A and 66B of the Code.

The appellants next argue that Resolution No. 20 is invalid because it "violates the rules against enlarging by implication statutes in derogation of common law and requiring strict application of all delegated powers". They contend that since neither Art. 23A nor Art. 66B provides for the combining of annexation and zoning in one proceeding, Resolution No. 20 is void. We think otherwise. Basically, no enlargement of the

powers delegated by the two statutes is effected by exercising the powers together. Although it is true that neither statute specifically provides for such a combination, the manner in which we have interpreted Art. 23A, sec. 19(b), above in regard to "conditions and circumstances" makes the combination permissible.

It is further urged that Resolution No. 20 violates Art. III, sec. 29, of the Maryland Constitution, made applicable to municipal charter amendments by Code (1964 Supp.), Art. 23A, sec. 13(c), on the grounds that it embraces more than one subject (annexation and zoning) and its title does not mention zoning.

Maryland has given a liberal interpretation to the constitutional requirement. *Balto. Transit Co. v. M.T.A.*, 232 Md. 509, 194 A. 2d 643 (1963); Everstine, *Titles of Legislative Acts*, 9 Md. Law Rev. 197. In the *M.T.A.* case, the title of the Act creating the Metropolitan Transit Authority was challenged because the title did not refer to the seat-tax fee described in the Act. We rejected the contention, holding that the seat-tax fee was one of the means of effectuating the purpose of the Act and that it need not be mentioned in the title. To the same effect see *Allied American Co. v. Comm'r.*, 219 Md. 607, 150 A. 2d 421 (1959); *Leonardo v. County Comm.*, 214 Md. 287, 134 A. 2d 284 (1957).

In *Baltimore City v. Reitz*, 50 Md. 574 (1879), quoted with approval in *Hitchins v. Cumberland*, 177 Md. 72, 80, 8 A. 2d 626 (1939), the basic principle was stated (50 Md. at p. 579): "* * * If several sections of the law refer to and are *germane* to the same subject-matter, which is described in its title, it is considered as embracing but a single subject, and as satisfying the requirements of the Constitution in this respect. * * *" And, in reply to an argument that one section of the law was discordant and dissimilar to another, the Court further said (at p. 581): "* * * Had it been enacted as a separate law, its validity could not be denied. If the two sections are not so discordant, that they would be effective and valid as separate laws, why can they not be embraced in the same Act * * *".

Sutherland, in his treatise on statutory construction, states that: "Where numerous provisions are necessary to effectuate

the main purpose of legislation, it may not be urged against the statute's validity that other ends also are served, if all the provisions are germane to the general subject." 1 *Sutherland, Statutory Construction* (3rd ed.), sec. 1713. See, *idem*, secs. 1707, 1710, 1711 and 1712. See also *Rhyne, Municipal Law*, pp. 227-228.

As we have seen, the fixing of zoning classifications for newly annexed land is a proper condition and circumstance of annexation, and thus it is germane to the subject. This being so, its inclusion in Resolution No. 20, without specific reference to it in the title, was proper.

The appellants claim as their final reason for the invalidity of Resolution No. 20 that no proper public notice of the R-2 zoning classification of the Pons-Kunkel property was contained in the resolution. This contention is without merit. As noted above, the public notice of the hearing before the Town Planning Commission stated that the Pons-Kunkel tract would be zoned R-1, but at the public hearing the owners of the property requested the Planning Commission to recommend an R-2 classification to the Town Commissioners. The Planning Commission did recommend an R-2 classification and the Town Commissioners accepted the recommendation. In the notices of the public hearing before the Town Commissioners on Resolution No. 20 an R-2 classification of the Pons-Kunkel property was proposed upon annexation.

It was the function of the Planning Commission (and not of their consultant) to advise the Town Commissioners in regard to zoning. *St. Mark's, etc. Church v. Doub*, 219 Md. 387, 149 A. 2d 779 (1959); *Hewitt v. Baltimore County*, 220 Md. 48, 151 A. 2d 144 (1959). We stated in the *Doub* case that a zoning commissioner could properly change his recommendation, after public notice and a hearing, before the recommendation was made to the county commissioners, and that a further public notice and hearing were not required. In the case before us the Planning Commission did not "change" its recommendation after the public hearing, since it had not yet made a recommendation to the Town Commissioners. Since the Town Commissioners accepted the recommendation when made and their notices of the hearing before them did contain mention of

the R-2 classification proposed for the Pons-Kunkel property, the public was adequately notified as to the Commissioners' intention. Cf. *Bishop v. Bd. of Co. Commissioners,* 230 Md. 494, 187 A. 2d 851 (1963); *Cassidy v. Board of Appeals,* 218 Md. 418, 146 A. 2d 896 (1958).

III

The next contention of the appellants is that comity and the Maryland planning statute prohibit evasion of the Harford County Master Plan as interpreted by the Circuit Court for Harford County in the Worthington case by the device of annexing the Durham-Julio property to Bel Air. They argue that Code (1957), Art. 66B, sec. 16, makes "it obligatory that towns and counties honor and respect the development and land use of their neighbors." Although we do not agree with the appellants' interpretation of sec. 16, since it relates only to the preparation of a master plan by a municipal planning commission, we do agree with the general proposition that a municipality when it zones its territory should take into consideration the character of the areas immediately surrounding its borders. However, the appellants would have this Court adopt a much more demanding rule. It is their contention that since the effect of the decision in the Worthington case was to prohibit the construction of a shopping center on the Durham-Julio tract while it remained in Harford County under the county's Master Plan, the town of Bel Air after annexation of the land could not allow such construction. This theory would require a municipality not only to take account of the character of the area surrounding its borders but would require a municipality to abide by a zoning ordinance (as judicially interpreted) of another jurisdiction. As we have seen, a municipality with an authorized planning commission has exclusive authority to zone newly annexed areas, but the theory of the appellants would render this authority nugatory in many cases. The short answer to appellants' contention is that the Harford County Master Plan does not "regulate" zoning within the town of Bel Air.

Considering the character of the area annexed, the Durham-Julio property and the two small properties annexed were zoned commercial in the county, and they were assigned this classification upon annexation. The question as to whether a shopping

center is a permitted use under the town's zoning classification must await the application for a permit to build such. At the time of the decision of the court below no such application had been made and the court rightfully declined to make a ruling prematurely. Therefore that question is not properly before this Court. We are simply holding that the mere existence of the Harford County Master Plan and the mere circumstance of its interpretation by the Circuit Court for Harford County does not prevent the town of Bel Air, after considering the character of the land surrounding its borders, from deciding that a shopping center is a proper use of the area annexed.

As to the cases relied on by the appellants, such as *Borough of Cresskill v. Borough of Dumont,* 104 A. 2d 441 (N. J. 1954), we do not read them as standing for the proposition advanced by the appellants. The *Cresskill* case involved four adjoining boroughs in a highly industrialized section of New Jersey where one built up area merged into another. The Court gave some indication that its decision might have been different in a case "where there are large undeveloped areas at the borders of two contiguous towns." (p. 445).

As the situation stands today, we do not think the zoning of the Durham-Julio tract as B-3 by the town was unreasonable considering the character of the land adjoining it in the county.

IV

The final contention of the appellants is that both Ordinance No. 157 and Resolution No. 20 are invalid because, they claim, they are based on contracts and are special interest legislation, and further, because the property owners reserved the right to withdraw their consent to annexation during the pendency of the proceedings.

Assuming without deciding that the rule against zoning by contract is applicable to initial zoning of newly annexed property, we do not believe that the circumstances before us demonstrate such an illegality. The appellants base their argument here on speculation, not fact. There is no evidence supporting the appellants' assertion that the property owners and the town of Bel Air entered into any agreement in regard to the zoning

of their respective properties. The most that can be extracted from the record is that the property owners let their desires in regard to zoning be known and that the town fulfilled these desires. Ordinance No. 157 makes no reference to any agreement and cannot be termed special interest legislation since it applies to any property which is proposed to be annexed. Nor does Resolution No. 20 make any reference to any agreement, or state any conditions to the annexation or zoning.

Although the petition for annexation did contain a provision that the property owners could withdraw their consent to annexation prior to its completion, it would seem that this right would be theirs regardless of such a provision. Resolution No. 20 contained no reference to this "condition". The appellants assert that "the basic deal appears to have been that the Julios would get the otherwise unavailable but essential sewerage for their complex of stores, while the town hoped to get expanded borders, taxable base and someone to help pay for the very expensive Area 6 sewerage facilities." But there is no indication in Resolution No. 20 that annexation or zoning is conditioned on such sharing of costs. As previously noted, the town, by a resolution passed in 1957, has required that a property owner consent to annexation in order to receive sewer service from the town.

We think the case before us presents no problem of zoning by contract, since the legislative body of Bel Air has made no provision in Ordinance No. 157 or Resolution No. 20 conditioning their action in zoning on annexation upon any acts of the property owners. *Pressman v. Baltimore*, 222 Md. 330, 160 A. 2d 379 (1960).

We think the decree appealed from must be affirmed. In view of our disposition of the case, we need not consider the appellees' contention that the appellants did not have standing to bring this suit.

Decree affirmed; appellants to pay the costs.

KNOTTS v. STATE

[No. 117, September Term, 1964.]

CRIMINAL LAW—*Indictment—No Error In Permitting State To Elect To Try Defendant For Only One Of Offenses In Each Of Two Allegedly Duplicitous Counts.* Appellant filed a motion to dismiss the indictment against him on the ground that two of the counts were duplicitous because they charged offenses against three different individuals. All four counts of the indictment related to the same transaction. The trial court permitted the State to amend the indictment by deleting from the two counts in question the names of two of the individuals. The Court *held* that the trial court committed no error in permitting the State to follow this procedure. The action, in effect, was on election by the State to try the defendant for one only of the offenses charged in each of the two counts alleged to be duplicitous by taking a *nolle prosequi* as to all other offenses charged in the said counts. Furthermore, no prejudice resulted from this procedure since another count, charging armed robbery, was sufficient in form and substance, and there was a general verdict of guilty on that count and the sentence was well within the statutory maximum for armed robbery. pp. 418-421

SEARCHES AND SEIZURES—*Where Defendant Was Lawfully Arrested For Misdemeanor, Driving Without A License, Committed In Officer's Presence, Shotgun And Cap Taken From Car At Time Of Arrest Were Properly Admitted In Trial For Armed Robbery.* p. 421

CRIMINAL LAW—*Confession—Properly Admitted Where State Met Burden Of Showing It Was Freely And Voluntarily Made.* p. 421

S. K. S.

Decided February 4, 1965.

Appeal from the Circuit Court for Garrett County (HAMILL, J.).

Dale Junior Knotts was found guilty, by a jury, of robbery

v. Greyhound Corp., 247 Md. 662, 666-67, 234 A. 2d 255, 257 (1967).

Order of Maryland Tax Court affirmed, costs to be paid by appellant.

MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION ET AL. v. MAYOR AND COUNCIL OF ROCKVILLE ET AL.

[No. 13, September Term, 1974.]

Decided October 8, 1974.

STATUTES — *Construction — Cardinal Rule — To Ascertain And Carry Out The Real Legislative Intent.* pp. 555-556

STATUTES — *Construction — To Determine Legislative Intent, The Language Of The Enactment Is Considered In Its Natural And Ordinary Signification So That Where There Is No Ambiguity Or Obscurity In The Language There Usually Is No Need To Look Elsewhere To Ascertain Intent.* p. 556

ZONING — MUNICIPAL CORPORATIONS — *Annexation — Special Exceptions Permitted By A County Zoning Ordinance Cannot Form The Basis Of The Comparison Required Under Code (1957, 1973 Repl. Vol.), Art. 23A, Sec. 9(c) In Determining Whether The Zoning Classification For Annexed Land Permits A Different Use Than Specified In The County Master Plan.* p. 556

ZONING — MUNICIPAL CORPORATIONS — *Montgomery County — Annexation — Under The Provisions Of Code (1957, 1973 Repl. Vol.), Art. 23A, Sec. 9(c), A Classification Permitting A Planned Residential Unit Development Which Actually Has Been Approved And Which Allows Townhouses And Garden Apartments Is Not Only A Different Use Than Those Permitted Under R-R, R-E And R-150 Classifications Of The Montgomery County Master Plan, It Is "Substantially Different."* pp. 556-557

ZONING — MUNICIPAL CORPORATIONS — *Annexation — Under The Provisions Of Code (1957, 1973 Repl. Vol.), Art. 23A, Sec. 9(c), The New Zoning Assigned To Annexed Land Must Be Compared With The Master Plan In Effect Prior To The Annexation.* p. 557

ZONING — CHARTERED COUNTIES — MUNICIPAL CORPORATIONS — CONSTITUTIONAL LAW — *Municipal Corporations Are Subject To The Provisions Of Code (1957, 1973 Repl. Vol.), Art. 23A, Sec. 9(c) By The Terms Of Maryland Constitution, Art. XI-E, Sec. 6 And The Effect Of A County's Master Plan Under The Statute Is Not Violative Of Maryland Constitution, Art. XI-A, Sec. 3.* pp. 557-558

STATUTES — CONSTITUTIONAL LAW — *Construction — Except In Rare Instances, The Principle That A Statute Which Either Commands Or Forbids The Doing Of An Act In Terms So Vague That Persons Of Ordinary Intelligence Must Necessarily Guess At Its Meaning And Differ As To Its Application Violates The Constitutional Guarantees Of Due Process Of Law, Is Applicable Only In Criminal Cases.* pp. 558-559

ZONING — MUNICIPAL CORPORATIONS — CONSTITUTIONAL LAW — *Void For Vagueness — Code (1957, 1973 Repl. Vol.), Art. 23A, Sec. 9(c) Does Not Impose Or Exact Obedience To A Rule Or Standard Which Is So Vague And Indefinite As Really To Be No Rule Or Standard At All.* pp. 559-560

ZONING — STATUTES — CONSTITUTIONAL LAW — *Zoning Is A Valid Exercise Of The Police Power When It Is Rationally Related To The Health And Safety Of The Community.* pp. 560-561

ZONING — MUNICIPAL CORPORATIONS — CONSTITUTIONAL LAW — *Annexation — Code (1957, 1973, Repl. Vol.), Art. 23A, Sec. 9(c) Is Not Arbitrary Or Unreasonable And Is Rationally Related To A Legitimate State Objective That The Threat Of Changed Zoning For Annexed Land Might Be Disruptive To Surrounding Areas.* p. 561

ZONING — MUNICIPAL CORPORATIONS — CONSTITUTIONAL LAW — *Annexation — Code (1957, 1973 Repl. Vol.), Art. 23A, Sec. 9(c) Is Not A Zoning Ordinance With Exclusionary Effects But a Statutory Limitation On The Powers Of A Municipality Annexing Land.* p. 561

R. L. H.

Joint Motion for clarification or rehearing filed October 24, 1974; denied October 24, 1974.

Appeal from the Circuit Court for Montgomery County (SHURE, C. J.), pursuant to certiorari to the Court of Special Appeals.

Action by Maryland-National Capital Park and Planning Commission and Montgomery County, Maryland against Mayor and Council of Rockville, HMC Enterprises, Inc. and Ronald Creamer and David M. Blum, trustees, for declaratory and injunctive relief with regard to alleged invalid zoning for annexed land. Ronald C. Johnson, Floyd Weber and Donald C. Foery intervened. From a decree granting motions for summary judgment, plaintiffs and

intervenors appeal. Upon petition by defendants, a writ of certiorari was issued to review the case prior to action by the Court of Special Appeals.

Reversed and remanded for passage of a decree conformable to the views expressed herein; appellees to pay costs.

The cause was argued before MURPHY, C. J., and SINGLEY, SMITH, DIGGES, LEVINE, ELDRIDGE and O'DONNELL, JJ.

Stephen J. Orens, Assistant County Attorney, with whom were *Richard S. McKernon, County Attorney, Alfred H. Carter, Deputy County Attorney, John B. Walsh, Jr.*, and *Stephen P. Johnson, Assistant County Attorneys*, on the brief, for Montgomery County, Md. *Sanford E. Wool*, with whom was *Robert H. Levan* on the brief, for Maryland-National Capital Park and Planning Commission. *Ralph R. Roach* for Ronald C. Johnson et al.

Roger W. Titus, City Attorney, for Mayor and Council of Rockville. *David E. Betts* for HMC Enterprises, Inc.

LEVINE, J., delivered the opinion of the Court.

This is the sequel to *Md.-Nat'l Cap. P. & P. v. Rockville*, 269 Md. 240, 305 A. 2d 122 (1973), in which we reversed a circuit court decision sustaining demurrers to appellants' bill of complaint for declaratory and injunctive relief. Since a detailed account of the circumstances giving rise to this dispute may be found there, we shall mention only those which are essential to our decision.

We are confronted here with questions regarding the construction and constitutionality of Chapter 116 of the Laws of 1971. That enactment, which added a proviso to Maryland Code (1957, 1973 Repl. Vol.) Art. 23A, § 9 (c), states that no municipality annexing land may, for five years following annexation, rezone the land so as to permit "a land use *substantially different* from the use for the land specified in the current and duly adopted master plan or plans of the county or agency having planning and zoning

jurisdiction over the land prior to its annexation." (emphasis added). Chapter 116, enacted as an emergency measure, became effective on April 23, 1971.

On January 25, 1972, the Mayor and Council of Rockville, Maryland (Rockville), a municipal corporation organized pursuant to Article XI-E of the Maryland Constitution and Article 23A of the Annotated Code of Maryland, annexed 174.8176 acres of land owned by appellee, HMC Enterprises, Inc. (HMC). Prior to such annexation, the subject property was located within the Maryland-Washington Regional District, and was therefore under the zoning and planning jurisdiction, respectively, of appellees, Montgomery County, Maryland (the County) and the Maryland-National Capital Park and Planning Commission (the Commission).

Immediately following the annexation, Rockville adopted Ordinance No. 2-72, which placed the newly annexed land in the city's R-90 zoning classification. In that zoning category, the property qualified for a procedure under Rockville's zoning ordinance known as Planned Residential Unit Development (PRU), which is in the nature of a special exception. Pursuant to a contract dated January 21, 1972, Rockville agreed to permit development of the subject property by HMC in accordance with the Planned Residential Unit Development provision.

On January 25, 1972, Rockville adopted Resolutions No. 4-72 and No. 6-72. Resolution No. 4-72 authorized the Mayor to execute the previously mentioned contract. Resolution No. 6-72 approved the Planned Residential Unit Development for the annexed property in accordance with "Plan A." That plan proposed the construction of 583 dwelling units in a subdivision consisting of 140 sale townhouse units, 64 rental townhouse units, 130 rental garden apartment units, and 249 single family units.

There was in effect on January 25, 1972, a "Master Plan for The Vicinity of Rockville, Part 1," duly adopted by the Commission on April 26, 1961, and a "Master Plan for Potomac-Travilah and Vicinity," duly approved by the County and duly adopted by the Commission on January 25,

1967. Under those plans, the annexed property was variously recommended for the R-R zone (rural residential), the R-150 zone (detached restricted residential), and the R-E zone (residential estate). Neither townhouses nor garden apartments were allowed, as permitted uses or special-exception uses, under any of those three county classifications. They were, however, permitted uses under Rockville's Planned Residential Unit Development.

In our prior decision, we held that appellants could maintain this action, and need not be relegated to the statutory appeal prescribed for "zoning cases"; we also held that the suit was not barred by laches. Upon remand, which was followed by cross-motions for summary judgment, the chancellor granted appellees' motion, ruling that Rockville, "... by its annexation and rezoning, has not permitted a land use *substantially different* from the use specified in the Master Plan[s] adopted by the Maryland-National Capital Park and Planning Commission ...." (emphasis added). He thus found it unnecessary to reach additional issues which appellees had raised under the Federal and Maryland Constitutions. To avoid the possibility of further appeals, we shall decide them here.

We are thus presented with these questions:

I Whether Rockville placed HMC's land "... in a zoning classification which permits a land use substantially different from the use for the land specified ..." in the two Master Plans?

II Whether Chapter 116 violates Article XI-A, § 3 of the Maryland Constitution?

III Whether Chapter 116 violates the Due Process Clause of the Fourteenth Amendment to the Federal Constitution and Article 23 of the Maryland Declaration of Rights?

I

The chancellor rested his decision "... that [Rockville], by its annexation and rezoning, has not permitted a land use substantially different from the use specified in the Master Plan[s]," on three grounds: (1) That the three county zoning

categories, R-R, R-E and R-150, and the R-90 in Rockville included an array of "permitted uses," a comparison of which demonstrates that the four classifications are similar to each other; [1] (2) that substantial change is to be measured in the broadest possible terms, *e.g.*, whether Rockville rezoned the subject property "... to commercial or industrial use, or to any multi-family residential zone. ...."; (3) that on March 13, 1973, the County established a new "P-D" (Planned Development) zone in the nature of a special exception, which the chancellor characterized as "strikingly similar" to Rockville's PRU procedure. In strenuously urging affirmance, appellees quite understandably argue that these grounds for the chancellor's ruling were correct.

The thrust of appellees' argument on this issue focuses on the intent of the Legislature. What seems to have troubled them is that Chapter 116 requires a comparison between a land use recommended by a Master Plan and a land use permitted by a given zoning classification. The solution to this dilemma — in the view taken below and advocated here by appellees — is the inclusion not only of permitted uses, but all special exception uses contained in each of the four zones which are being compared. By applying this broader standard of comparison, appellees thus find it possible to argue that Rockville's R-90 zone is more restrictive than the three county zones; hence, there has been no violation of Chapter 116.

The cardinal rule of statutory construction is to ascertain and carry out the real legislative intent, *Radio Com., Inc. v. Public Serv. Comm'n*, 271 Md. 82, 93, 314 A. 2d 118 (1974); *Scoville Serv., Inc. v. Comptroller*, 269 Md. 390, 393, 306 A. 2d 534 (1973); *Silberman v. Jacobs*, 259 Md. 1, 267 A. 2d 209 (1970); *Atlantic, Gulf v. Dep't of Assess. & T.*, 252 Md. 173,

1. The R-R and R-E zones in the county contain a wide range of "permitted uses" including one-family detached dwellings, places of worship, farms, fire stations, institutions of a non-commercial nature, pipelines, government buildings and recreational areas, private pools and temporary helistops. With minor variations, not here relevant, the same uses are also permitted in the R-150 zone.

The R-90 zone in Rockville includes some, but not all, of those contained in the three county zones.

249 A. 2d 180 (1969); and in ascertaining that intent, the Court considers the language of an enactment in its natural and ordinary signification, *City of Gaithersburg v. Mont. Co.*, 271 Md. 505, 511, 318 A. 2d 509 (1974); *Grosvenor v. Supervisor of Assess.*, 271 Md. 232, 315 A. 2d 758 (1974); *Radio Com., Inc. v. Public Serv. Comm'n, supra.* If there is no ambiguity or obscurity in the language of a statute, there is usually no need to look elsewhere to ascertain the intent of the legislature, *Scoville Serv., Inc. v. Comptroller, supra; Atlantic, Gulf v. Dep't of Assess. & T., supra.*

The language of the statute is clear in foreclosing a ". . . zoning classification which permits a land use substantially different from the *use* for the land *specified in the current and duly adopted Master Plan* . . . ." (emphasis added). Reference is made to neither the existing county zoning classifications nor any special exception thereto. The only uses "specified" for the subject property in the current and duly adopted Master Plans are R-R (rural residential), R-E (residential estate), and R-150 (density control development, one family, detached, restricted residential, average lot size). Thus, any special exceptions permitted by the County zoning ordinance in any of those three zones cannot be the basis for a comparison. On the other hand, if, in rezoning the property simultaneously upon annexation, the municipality also grants a special exception, as Rockville has done here, then surely it has ". . . place[d] that land in a zoning classification which *permits* [the] land . . ." to be developed under that special exception. Therefore, the special-exception uses provided in the three county zones should have been ignored; but the PRU, although embodied in Rockville's R-90 zone as in the nature of a special exception, had actually been approved and, therefore, should have been considered. Hence, contrary to the clear legislative intent expressed in the statute, Rockville has "place[d] that land in a zoning classification [R-90] which permits [as] a land use" the PRU.

We pass, then, to the question whether the use permitted by Rockville's zoning classification is "substantially different" from the uses specified by any of the three county zones. We think it is. All three provide basically for

single-family dwellings, differing principally in lot sizes and density. Were it not for the PRU, the same might well be said of Rockville's R-90 zone. The townhouses and garden apartments that would be developed under the PRU, however, are "substantially different" from single-family dwellings. In sum, even if all the "permitted uses" in each of the three county zones and Rockville's R-90 classification enter into the "substantially different" equation, as urged by appellees, the added factor of the PRU establishes a substantial difference between the R-90, on the one hand, and the R-R, R-E, and R-150, on the other.

A word is in order regarding the P-D zone which, having been established by the County on March 13, 1973, was not in existence when the annexation occurred. As we noted earlier, Chapter 116 speaks of "a land use substantially different from the use for the land specified in the current and duly adopted master plan or plans of the county or agency having planning and zoning jurisdiction over the land prior to its annexation." The question is whether the words "prior to its annexation" modify only the phrase "county or agency" or whether they also refer to "duly adopted Master Plan." Following annexation, neither the County nor the Commission had planning and zoning power over the annexed property, *Prince George's Co. v. Laurel*, 262 Md. 171, 277 A. 2d 262 (1971). Thus, even if, for the sake of argument, we treat the adoption of the P-D zone as a modification of the Master Plans, the latter no longer applied to the land in controversy. In short, the city's new zoning must be compared with the Master Plans in effect prior to the annexation.

II

Article XI-A, § 3 of the Maryland Constitution limits the power of the County to enact laws for a local municipality. In relevant part, this section provides:

> ". . . [N]othing herein contained shall be construed to authorize or empower the County Council of any County in this State to enact laws or regulations for any incorporated town, village, or municipality in

said County, *on any matter covered by the powers granted* to said town, village, or municipality by the Act incorporating it, or any subsequent Act or Acts amendatory thereto." (emphasis added).

It is maintained by appellees that this proviso has been violated by the County. They claim that Chapter 116 grants to the County the power to preempt Rockville's zoning authority contained in Art. 66B. Were this true, it might well be violative of the Maryland Constitution. What appellees overlook is that Article XI-A, § 3 merely precludes counties from exercising the legislative power actually granted to municipalities. Chapter 116 circumscribes the municipality's power to rezone annexed land for a period of five years. In effect, it withholds that power except when exercised in conformity with a duly adopted Master Plan. To the extent that the municipality's power to rezone is withheld in this manner by Chapter 116, surely the County has not violated Article XI-A, § 3 by enacting any laws for any incorporated municipality ". . . on any matter covered by the powers granted to said . . . municipality . . . ."

Article XI-E, § 6 of the Maryland Constitution, dealing primarily with limitations upon home rule charters, expressly provides that "[a]ll charter provisions, or amendments thereto, adopted under the provisions of [Article XI-E], shall be subject to all applicable laws enacted by the General Assembly . . . ." It seems clear that Rockville, being a municipal corporation established under Article XI-E, is subject to the provisions of Chapter 116, an enactment of the General Assembly.

III(a)

The contention that Chapter 116 violates the Due Process Clause of the Fourteenth Amendment and Article 23 of the Maryland Declaration of Rights is bifurcated. First, appellees maintain "that the proscription contained in Section 9 (c) [of Art. 23A] is void for vagueness on its face or, alternatively, as applied." It bottoms this argument on the principle that a " 'statute which either commands or forbids the doing of an act in terms so vague that persons of

ordinary intelligence must necessarily guess at its meaning and differ as to its application violates the constitutional guarantees of due process of law.' *State v. Magaha*, 182 Md. 122, 32 A. 2d 477, 478 (1943)."

The short answer to appellees' contention is that, except in rare instances, this principle is applicable only in criminal cases. Note, *The Void-for-Vagueness Doctrine in the Supreme Court*, 109 U. Pa. L. Rev. 67, 69-70 n. 16 (1960). Significantly, both decisions cited by appellees to support their argument are criminal cases: *Coates v. City of Cincinnati*, 402 U. S. 611, 91 S. Ct. 1686, 29 L.Ed.2d 214 (1971) and *State v. Magaha, supra*. As the Supreme Court said in *United States v. Harriss*, 347 U. S. 612, 74 S. Ct. 808, 98 L. Ed. 989 (1954):

> "The constitutional requirement of definiteness is violated by a *criminal* statute that fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute. The underlying principle is that no man shall be held *criminally* responsible for conduct which he could not reasonably understand to be proscribed." 347 U. S. at 617 (emphasis added).

In one of the rare cases, if not the only one, in which a vagueness attack on a non-criminal statute has succeeded in the Supreme Court, the latter emphasized that what had been imposed there was ". . . the exaction of obedience to a rule or standard which was so vague and indefinite as really to be no rule or standard at all." *Small Co. v. Am. Sugar Ref. Co.*, 267 U. S. 233, 239, 45 S. Ct. 295, 69 L. Ed. 589 (1925).

Appellees contend that the words "land use" and "use for the land," as they appear in the statute, require the comparison of a "use with a use." Yet, they say, since each of the zoning classifications applicable to this case contains numerous permitted uses, many of which are themselves substantially different from each other, it is impossible to make the comparison required by the statute. We do not see it quite that way. As we have indicated, neither of the two Master Plans in question mentions the numerous "permitted

uses" listed in each classification under the relevant provisions of the zoning ordinance. On the contrary, they merely identify the zones by the categories under which they are popularly recognized. For example, as we have already noted, R-E, which covers part of the subject property, is denoted on the Master Plan as "residential estate." Similarly, R-R is described as "rural residential," and R-150 as "restricted residential, medium density." Suffice it to say that Chapter 116 does not impose or exact obedience to a rule or standard which is so vague and indefinite as really to be no rule or standard at all, *Small Co. v. Am. Sugar Ref. Co., supra.*

III(b)

The final constitutional argument advanced by appellees is that Chapter 116 constitutes a denial of Due Process because it places land annexed by a municipality in a "straight jacket" for five years. They hypothesize that a substantial change in the character of a neighborhood might occur, which would otherwise support a rezoning, but no jurisdiction would be empowered to effect such a change. Furthermore, they argue, the straight jacket is tightened because the zoning is frozen to a use recommended by a Master Plan which, under *Chapman v. Montgomery County*, 259 Md. 641, 271 A. 2d 156 (1971), does not even enjoy the stature of an original or comprehensive zoning.

Zoning has been upheld as a valid exercise of the police power when it is rationally related to the health and safety of the community. *Euclid v. Ambler Co.*, 272 U. S. 365, 47 S. Ct. 114, 71 L. Ed. 303, 54 A.L.R. 1016 (1926). The *Euclid* Court held that a statute was constitutional unless it was found that the provisions are clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare. This rule was reaffirmed in *Village of Belle Terre v. Boraas*, 416 U. S. 1, 94 S. Ct. 1536, 39 L.Ed.2d 797 (1974), which upheld a zoning ordinance limiting occupancy of one family dwellings to traditional families or to groups of not more than two unrelated persons. In the face of constitutional attack, the

Court upheld the ordinance on the grounds that it was reasonable, not arbitrary, and bore a relationship to a permissible state objective.

A major objective of Chapter 116 is to preserve the integrity of the Master Plan adopted by the jurisdiction or commission having planning power immediately prior to annexation. In enacting Chapter 116, the General Assembly validly could have considered that the planning and zoning functions frequently involve large areas, and not merely the land being annexed; and, therefore, that a substantial change in the zoning of an annexed tract might well be disruptive to the planning for the surrounding areas. Thus, the statute is rationally related to a legitimate state objective, and is not arbitrary or unreasonable, *Village of Belle Terre v. Boraas; Euclid v. Ambler Co., both supra.*

Appellees cite a number of Pennsylvania cases invalidating exclusionary zoning statutes: *National Land and Investment Co. v. Kohn*, 419 Pa. 504, 215 A. 2d 597 (1965) (4 acre lot zoning unconstitutional as being exclusionary); *Appeal of Girsh*, 437 Pa. 237, 263 A. 2d 395 (1970) (Failure of town of 4.64 square miles and 13,000 inhabitants to provide for apartments in their zoning held unconstitutional as exclusionary); *Appeal of Kit-Mar Builders, Inc.*, 439 Pa. 466, 268 A. 2d 765 (1970) (2 and 3 acre lot size zoning unconstitutional); *Cheney v. Village 2 at New Hope, Inc.*, 429 Pa. 626, 241 A. 2d 81 (1968) (planned residential unit type of zoning approved). These cases are all inapposite to the issue before us, since they deal with zoning ordinances and their exclusionary effects. Chapter 116, on the other hand, is manifestly not a zoning ordinance, but a statutory limitation on the powers of a municipality annexing land. *Md.-Nat'l Cap. P. & P. v. Rockville*, 269 Md. 240, 246, 305 A. 2d 122 (1973). Chapter 116 violates neither the Due Process Clause of the Fourteenth Amendment nor Article 23 of the Maryland Declaration of Rights.

Since the action taken by Rockville did not comply with Chapter 116, which was validly enacted, the chancellor erred in granting appellees' motion for summary judgment. Upon remand, a decree should be entered granting summary

judgment in favor of appellants and providing for appropriate declaratory and injunctive relief.

Reversed and remanded for passage of a decree conformable to the views expressed herein; appellees to pay costs.

GUTWEIN ET AL. v. EASTON PUBLISHING COMPANY

[No. 19, September Term, 1974.]

Decided October 8, 1974.

ADMINISTRATIVE LAW — CIVIL RIGHTS — *Where, Although The Evidence Was Conflicting, There Was Substantial Evidence To Support The Finding Of The Commission On Human Relations That A White Male Employee Had Been Discharged By His Employer Because Of His Association And Relationship With His Black Fiancee, The Commission's Finding Should Have Been Accepted By The Lower Court.* p. 567

ADMINISTRATIVE LAW — CIVIL RIGHTS — *Termination By An Employer Of A White Male Employee's Employment Because Of His Association And Relationship With His Black Fiancee Was Within The Contemplation And Coverage Of Maryland Code, Article 49B, § 19 (a), Making It An Unlawful Employment Practice For An Employer To Discharge Any Individual Because Of Such Individual's Race.* pp. 567-568

ADMINISTRATIVE LAW — CIVIL RIGHTS — *Commission On Human Relations — Enforcement Powers — In The Absence Of Specific Statutory Authorization, The Commission On Human Relations Did Not Have Power Under Maryland Code, Article 49B, § 14 (e) To Award Money Damages To An Employee Found To Have Been Unlawfully Discharged.* pp. 568-577

R. H.

Motion for rehearing filed November 4, 1974; denied November 6, 1974.

Appeal from the Circuit Court for Talbot County (WISE, J.).

Appeal by Easton Publishing Company from an order of the Maryland Commission on Human Relations on a complaint filed by Paul D. Gutwein awarding money damages to complainant. From an order reversing the order of the Commission, complainant and the Commission appeal.

Order reversed; that part of the Commission's order awarding money damages vacated; each party to pay its own costs.

The cause was argued before MURPHY, C. J., and SINGLEY, DIGGES, LEVINE, ELDRIDGE and O'DONNELL, JJ.