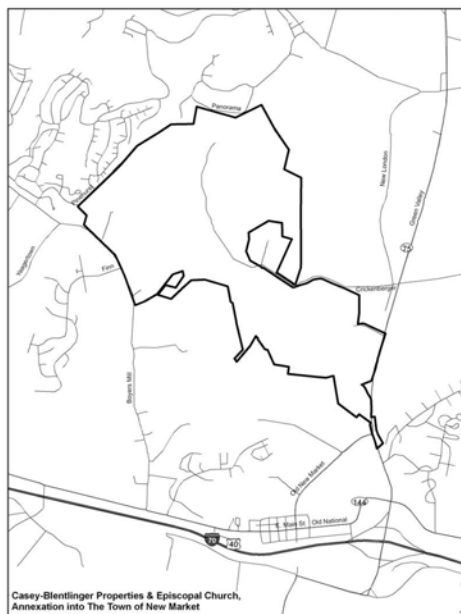


October 21, 2006

Five years ago when I ran for Mayor, I promised to do two very significant things. The first was to change the zoning to allow different types of shops in the Historic District. The second was to build a bypass around the town. The purpose of these initiatives is to preserve the charm of the town by alleviating traffic on Main St. and creating community by providing greater economic opportunity for residents. The Adventure Park annexation further reinforces this policy by providing much needed tax base and strengthening our tourist destination economy. In April 2003, the Town passed new zoning that has given us seven new shops, an addition to the Tea Room and demolition and re-construction of 82 W. Main St. (now Barefoot Boutique).

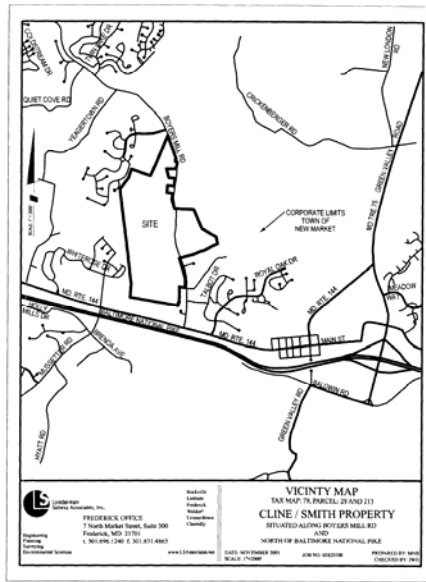
On September 30th the Town received annexation petitions for the Smith-Cline (SC) and Casey-Blentlinger (CB) properties. These petitions were filed before the October 1st deadline to avoid new legislation (HB1141) that could make it significantly more difficult for municipalities to annex property. These are the properties that not only a corridor for a future bypass, but are most crucial to controlling future traffic on Main St.

Exhibit 1



Casey Blentlinger Property

Exhibit 2



Smith Cline Property

These annexations, however, provide other opportunities as well as challenges. In order to derive the greatest benefit from these annexations, I have identified the following goals:

- Alleviate traffic through town in terms of vehicles per day.
- Increase school capacity with the least amount of development.
- Create a unified well thought out community through our planning not the County's.
- Preserve open/green space
- Create playing fields for LUYAA.
- Phase building construction according to our needs (we control growth).
- Provide funding to complete the new fire hall needed regionally.
- Provide funding for Main St. water line completion.
- Provide funding for new street lighting for streetscape.
- Provide funding for a community deputy to share regionally.
- Establish a discretionary fund for the purpose funding our own grant program to assist those who may need help hooking up to public water.

Main St. currently experiences 10,000+ vpd.¹ In 1972, the volume was only 1,450 vpd.² By 2002, traffic volume had grown to 6,300 vpd.³ The Ijamsville Road Corridor Study predicts traffic volume to be 10,000 vpd by 2005 and 15,600 by 2020 without recommended improvements to the regions road network.⁴ Figures 1-4 illustrate traffic scenes from Main St. over the last 33 years.

Alternative I of the study proposes an easterly extension from Boyer's Mill Rd. to Rt. 75. Some of you know this as the Crickenburger Rd. bypass. We call it the Casey-Blentlinger bypass. This alternative suggests that this proposal will limit traffic to 12,800 vpd by 2020.

¹ State Highway Administration

² Ibid.

³ Ibid

⁴ The Traffic Group, Ijamsville Road Corridor Study, May 12, 2000, Exhibit 6. (copy available online at www.townofnewmarket.org)

Exhibit 3



Casey Blentlinger Bypass

Alternative II proposes a westerly leg extending from Boyer's Mill Rd. to Meadow Rd. This alternative does not eliminate one vehicle from Main St. It leaves us with 15,600vpd by 2020.

Alternative III proposes both roads in concert with each other. This has the same effect for the Town as Alternative I.

Figure 1



**1972
1450 vpd**

In order to prevent Boyers Mill Rd. from falling into LOS F status, the Study recommends extensions from Boyers Mill southwesterly towards Ijamsville Rd. (Alternative II) and easterly towards Md. 75 (Alternative I).⁵ Implementation of Alternate III will limit traffic to 12,800 vpd by 2020.⁶ Extension from Boyers Mill to Ijamsville Rd. (Alternative II) alone will still allow 15,600 vpd by 2002.⁷

⁵ Ibid. pp. 45-46.

⁶ Ibid. Exhibit 12.

⁷ Ibid. Exhibit 10.

Figure 2



2002
6,300 vpd

The only improvements appropriated in the County CIP are for the southwesterly extension (Alternative II) from Boyers Mill Rd. to Md. 144 to Ijamsville Rd. to Md. 80 to I-270 and widening of Boyers Mill Rd. itself.⁸ The County has also budgeted to widen, construct shoulders, create passing lanes and turning/bypass lanes on Md. 144 west of New Market as well as correcting alignments along Mussetter Rd.⁹ The total cost of these CIP projects are \$12.85 million with all construction to be completed by 2010.¹⁰

Figure 3



2003
8,300 vpd

There is no appropriation for the easterly extension (Alternative I) from Boyers Mill Rd. to Md. 75 commonly referred to as the Crickenberger Rd. or Casey/Blentlinger bypass.

⁸ County, CIP, pp. 141 – 154.

⁹ Ibid. pp. 141 – 160.

¹⁰ Ibid. p. 143.

Figure 4



December 11, 2004
10,000 vpd

Figure 5



June 2006
10,000+ vpd

Figure 6



January 2006
10,000+ vpd

The Study did not contemplate the effects of the completion of the Meadow Rd. I-70 interchange or implementing pedestrian nodes into the Town's "streetscape" project.

Adequate Public Facilities Ordinance (APFO) can stop growth as evidenced by the fact that the number of building permits let in the New Market Region from July 1, 2005 to June 30, 2006 was 121.¹¹ The historic average is 511. Given that the impact fees needed to build schools and other infrastructure are tied to the number of permits issued, APFO creates a complex set of simultaneous equations that has no optimal solution. Without this source of fee revenue, the County must rely on general revenues (your property taxes) to pay for necessary improvements. Given the County does not generate enough money given their current tax structure from their operating budget to fund improvements in our region, no less the entire county, they have four options.

1. They can significantly raise your property taxes.
2. Issue bonds (go into debt). Go back to 1 above.
3. Do nothing and put off LHS and other improvements indefinitely (Indefinite Inadequacy).
4. Use developer funds to build schools and roads.

Recent events with Land Stewards suggest the County will increasingly look towards the fourth option. Each time the County allows a developer to pay for a school to get by APFO it has the unintended consequence of allowing sprawl growth as well. Thus, APFO cannot create community or control growth according to Smart Growth principals. It can only stop growth.

Furthermore, exacting school funds from the developer at the County level rests on a fatal legal premise. Whether one lives in the town or county, we are all county residents. Requiring any one person to pay for a new school to build a home or develop a large track of land while not requiring the same of another disproportionately places the burden of the requirement. Essentially, this is a tax that is not equitably shared nor is it enabled in any legislation. Judge Cathell addresses this issue in *Steele v. Cape*, 111 Md. App. 1 (1996) stating that the "County at large must bear the burden of providing adequate schools."¹² Furthermore, The Court shed light upon the legality of such exactions in *Halle Development Corp. v. Anne Arundel County* when it stated that the exactions "resemble" an illegal tax.¹³ As County taxpayers, do we want our financial structure to be based on a house of cards?

On the other hand, if you want to belong to the Town of New Market, there are conditions. These conditions, in exchange for annexation into the Town, can be established in a municipal annexation agreement. These agreements have been judicially enforced (*Mayor and Council of Rockville v. Rylyns Enterprises, Inc.* 372 Md. 514 n. 35 (2001)). Moreover, state statute (Md. Ann. Code, art. 66B, § 13.01 (k) (2)) provides express authority for agreements pertaining to construction and financing public facilities.¹⁴ Moreover, state statute (Md. Ann. Code, art. 66B, § 4.01) provides express recognition of such agreements. Furthermore, given that they are contractual, annexation agreements provide for the opportunity for architectural controls and other beneficial arrangements (see goals above) beyond the regulatory police powers of land use controls.¹⁵ Architectural controls, monetary and other consideration have been incorporated into every annexation agreement and developer's rights and responsibilities agreement undertaken. If the Town were to pass an APFO, the current architectural controls currently exercised over Royal Oaks, Brinkley Manor and the Orchard would be subject to judicial challenge as illegal contract zoning as suggested in the Court of Appeals of Maryland in *Halle*, supra.¹⁶

¹¹ Eric Soter, Frederick County Division of Planning, email, September 15, 2006

¹² William C. Wantz, Esq., [A Comparison of Adequate Public Facilities Ordinances with Other Infrastructure Concurrence Techniques in Municipal Annexation](#), December 2003. pp. 8-9. (copy available online at www.townofnewmarket.org)

¹³ *Ibid.* pp. 13-14.

¹⁴ *Ibid.* p. 15.

¹⁵ *Ibid.* pp. 16-17.

¹⁶ *Ibid.* p. 17.

This leads to the question of accomplishing Smart Growth in the New Market Region. We must create the proper incentives and use the correct concurrency tools. Incredibly we already have both, but no one (except the Town) realizes it. Given APFO ability to stop development, it creates an incentive for annexation based development.¹⁷ This forces development around current population and infrastructure centers (i.e. municipalities). Growth under this model would occur concentrically around towns. This provides an opportunity for municipalities to legally take the exactions that APFO can not as outlined above. Thus, using our two concurrency tools (APFO and annexation agreements), we have created the proper incentive to annex that allows us to use legal methods to acquire the needed infrastructure to achieve concurrency.

This model of planning requires a collaborative effort of the Town, County, Frederick County Public Schools and other agencies. Given that the County controls utilities in the New Market Region per our Water Service Area Agreement, if the County or FCPS are not satisfied with the plan, utilities will not be extended to implement it. This is a built-in checks and balances system.

The goal is to work our way out of inadequacy incrementally by allowing municipalities to obtain roads, schools and other infrastructure. This model provides the opportunity to create community and truly manage growth since it can not be implemented by just one agency or jurisdiction. It is a community effort. Likewise, it will require a collective mind set and individual leadership to establish. The current set of BOCC candidates has only espoused more or better APFO. That is only half the equation. They have not recognized or do not understand the opportunity provided by working with municipalities. Else, perhaps given the polarity of the issue, they are simply unwilling to share in decision making. Given how hotly debated the growth issue is in the New Market Region, would you be surprised that not one candidate has come to speak to the Mayor & Council? I'd like to ask them some very detailed question regarding how they propose to manage growth and work with municipalities. I get the very distinctive impression; they haven't considered the details or are just unwilling to share them with us.

Anytime a property that borders the town is presented for annexation we must make a decision with permanent long term consequences. Specifically, any property that develops outside the town (i.e. Meadows, Woodspring, New Market West PUD and the New Market Center) will never annex. This creates a permanent barrier to the Town's future ability to control its own destiny as an independent jurisdiction. Thus, we have a strategic decision to make. Do we risk that the current political environment will last forever? Or do we recognize the fact that the pendulum always swings both ways? After December 31st new legislation takes effect that will make it prohibitively difficult to annex property into town. This opportunity will never happen again.

For more facts, information and in-depth analysis please see Annexations on our website www.townofnewmarket.org. I will continue to add to this discussion as we learn more about the fiscal, road and school impacts.

Winslow

¹⁷ Ibid. pp. 7-8.