

## The Role of the Comprehensive Plan in Decision Making With Respect to Development of the Crystal Spring Project

### Overarching View of the Maryland General Assembly

As part of Smart and Sustainable Growth Act of 2009, the State amended the Land Use Code to make clear that Comprehensive Plans are not merely guides to follow if you want, and to ignore if so inclined. The preamble to the 2009 State statute made the intent of the General Assembly very clear:

WHEREAS, ...Maryland requires a local jurisdiction to implement the provisions of its local comprehensive plan through...the adoption of applicable zoning ordinances and regulations, planned development ordinances and regulations, ... and other land use ordinances and regulations that are consistent with the plan; and

WHEREAS, Citizens invest countless hours in determining the future direction of their jurisdiction through local comprehensive plans; and

WHEREAS, The people of Maryland are best served if land use decisions are consistent with locally adopted comprehensive plans; and . . .

WHEREAS, It is the intent of the General Assembly . . . that comprehensive plans should be followed as closely as possible while not being elevated to the status of an ordinance and that deviations from the plan should be rare...

### Annapolis has chosen to give the Comprehensive Plan the force of Law

“Section 21.02.030 of the City Code states that “[t]he Zoning Code is adopted for the purpose of promoting the public health, safety and general welfare of the citizens of the City of Annapolis . . . and [B.] to ensure the integrity of, and help implement, the Comprehensive Plan.” Thus, because the City of Annapolis has linked its Comprehensive Plan, by Ordinance, with the Zoning Code, the Plan is implemented with the full force and effect of law.” See, *July 25, 2014 memorandum for Annapolis Office of Law to Alderman Littmann.* (See more detailed discussion of this conclusion that the ACP has the force of law in Tab 28)

**Even if the Annapolis Comprehensive Plan did not have the force of law under the Annapolis City Code, The Planning Commission still must determine if the Crystal Spring Development is “consistent” with its provisions.**

§ 3-205. Planning commission review.

...

(b) Prior approval required. -- A publicly or privately owned street, square, park, or other public way, ground, or open space, a public building or structure, or a public utility may not be authorized or constructed in the local jurisdiction or in a geographic section of the local jurisdiction until the planning commission has approved the location, character, and extent of the development as consistent with the plan. Md. LAND USE Code Ann. § 3-205 (2015).

On November 18, 2014 the Attorney General of Maryland issuing an opinion which confirmed this reading of Md. LAND USE Code Ann. § 3-205. See, 99 OAG 152 at 156-57, footnote 6. This section of law stands on its own and the General Assembly chose not to provide a definition of

“consistent” with the plan. In testimony before the Environmental Matters Committee on June 19, 2014 the Office of Law acknowledged this duty. Counsel testified as follows:

“And as [Planning and Zoning staff] said, things like... planned development approvals have to be consistent with the plan... So if it’s determined by, for instance, the Planning Commission in the case of a planned development...that there is a failure of consistency with the plan, they will not approve – they cannot approve the particular application.”

“So while the plan is not a law in essence, there is a force of law behind it.” Transcript, page 5.

**“Policies” and “development patterns” stated in the Comprehensive Plan are significant. Apart from the location, character, and extent of a specific development having to be consistent with the plan, the State also requires that Annapolis’ laws and regulations be consistent with the ACP, and they are not.**

**Section 3-303(a)** At least once every 10 years as part of the comprehensive plan revision process the City shall ensure the implementation of the visions, development regulations element, and sensitive areas element of the plan.

**Section 3-303(b)** The City’s shall ensure the implementation requirement above through the adoption of the following “implementation mechanisms” that are “**consistent with**” the comprehensive plan:

Zoning laws

Planned development ordinances and regulations

Subdivision ordinances and regulations; and

Other land use ordinances and regulations

**Article - Land Use Section 1-304 – Defines what the above “implementation mechanisms” must address to be “consistent with” the comprehensive plan**

“consistent with” shall mean adoption of a law or regulation that will further, and not be contrary to, the following items in the ACP:

**Policies** (*many stated in the ACP are not followed or ignored*)

**Timing of the implementation of the plan** (e.g., see priority action items in ACP, page 140 – complete sector studies and new traffic impact regs by 2012)

**Timing of development** (e.g., see priority action items in ACP, page 140 - complete sector studies and new traffic impact regs by 2012)

Timing of rezoning

**Development patterns** (*e.g., Opportunity Areas built as outlined in the ACP with respect to location, size, type of development, infrastructure improvements, etc...*)