

**STATEMENT OF COMMISSIONER C. PAUL SMITH
ON REPEAL OF ORDINANCE 09-28-532
March 1, 2011**

On March 1, 2011, The Board of County Commissioners (BOCC) voted 4-1 to repeal Ordinance No. 09-28-532, which provided that for County properties annexed into a municipality after June 23, 2009, the County's Adequate Public Facilities Ordinance (APFO) provision for schools shall control in these annexed areas unless that city's APFO provision is more restrictive than the County's. By repealing Ordinance 09-28-532, this eliminated the controversial provision by which the County sought to override any municipality APFO that the County deemed insufficient. The repeal of Ordinance -09-28-532 will make moot the lawsuit currently pending in which Frederick City and several other municipalities sought a court ruling to invalidate the ordinance on the grounds that the County had no authority to enact such a law. The repeal of this ordinance will also restore cooperation between the County and the municipalities.

Repeal of Ordinance 09-28-532 does not repeal the County's APFO, and it would not repeal the school component of the APFO. It only repealed a recently enacted amendment of the County APFO which *purported* to regulate municipal properties which were annexed into cities after June 23, 2009. I use the word "purported" because the municipalities contend that the County does not have the authority to do this. Therefore, Frederick City and several other municipalities filed suit in Circuit Court, asking the Court to invalidate Ordinance No. 09-28-532 because it infringed upon their municipal powers.

The prior BOCC passed Ordinance 09-28-532 in response to Frederick City's annexing the Crum and Thatcher properties (approximately 435 acres) north of Frederick City on or about September 2, 2009. The prior BOCC opposed these annexations, and on September 28, 2009, passed Ordinance No. 09-28-532, which purported to supersede the school provision of a municipality's APFO if that city's provision were less restrictive than the County's

The law suit between the municipalities and the County is now moot. There was no consensus that by any legal experts that the County would prevail. This litigation was representative of the exceedingly strained relationship that the prior BOCC had with the municipalities. Approximately half of the county residents reside in the municipalities.

The municipalities felt that Ordinance 09-28-532 was not only illegal, but also over-reaching on the part of the County, which, through which the County Board of Education, controls redistricting and can regulate the number of students in particular schools. At least one municipality complained that the County's APFO prevented residential growth in a city while allowing it in County areas just outside the city's limits, thereby allowing residential growth outside the city; thus only requiring the city to block growth that would impact the schools attended by both city and county students.

I supported repeal of this ordinance for these reasons:

- It violated and infringed on the State powers given to the municipalities to govern themselves and to control growth within their boundaries.
- It will stop wasting County money in defending an ill-considered, flawed law.
- It will help restore a positive and productive relationship with the municipalities.
- It will facilitate the development of critical jobs in the northern annexation areas.

This latter point is especially important for Frederick County at this time because the County has lost about 3,000 jobs in the last three years. These job losses have contributed to over 1,000 foreclosures in the County. There are currently over 5,000 vacant homes in Frederick County (according to the 2010 Census). Job losses result in vacant homes, a big reduction of income tax revenue for the County, and declining property values. More jobs will cure all of these problems, and the northern annexation areas are the best and most immediate location to pursue to deliver a strong and lasting job recovery.

Opponents to repeal of Ordinance 09-28-532 raised several other arguments that I will briefly respond to here.

- It was argued that the BOCC was contemplating repealing the school provision of the County APFO. This is not correct. The school provision remains intact. The only part of the APFO to be repealed is the defective, recent amendment which attempted to supersede one city's APFO.

- It was argued that repeal of this ordinance would be a major threat to the education of our children. This is false. There is no basis for this threat. The prior BOCC passed a Comprehensive Plan that the BOCC said would accommodate residential growth of 100,000 people over the next 20 years. They project the building of approximately 35,000 new homes during this time. This will certainly impact our schools. The northern annexation area will include approximately 1,000 homes. These homes will be precisely the best location for new residences--that is close to schools, roads, stores, jobs, and close to water, sewer, and electrical services. This area is very close to Fort Detrick and the Monocacy Boulevard job corridor. Frederick County previously planned for this area to be developed with jobs and homes. The prior BOCC changed the existing plans and then objected when Frederick City sought to follow through with the long-time plan.

While it can be debated whether 35,000 new homes in 20 years is too many for the County, the real problem is not new homes in the municipalities, but rather new homes outside the municipalities. Whatever residential growth the County will have, it would be best in the municipal areas, exactly like the Crum property. It is growth outside the municipalities that causes the dreaded sprawl.

- It was argued that the Frederick City APFO is worthless to prevent overcrowding of schools in the northern annexation areas. The City APFO has a 3-year sunset provision which allows residential development to occur 3 years after a developer applies for APFO approval, even if it fails the school test. While this provision is less restrictive than the County's provision, the County Board of Education nevertheless, retains and exercises redistricting power to address many school capacity issues.

Most importantly, it is only the recently annexed areas that may be affected by this repeal. I say, “may be affected,” because the cities took the position that this ordinance was not valid. Furthermore, the commercial job component of the Crum and Thatcher annexations are so significant, and will bring in so many new jobs, and will bring in so much new property tax revenues (estimated at \$9 million per year), that the 1,000 home residential part of this development is more than offset by the monetary benefits to the County from this job growth.

- Opponents to the repeal attempt to convey the impression that they don’t want another school in the County, but all plans contemplate further schools. The Crums gave 25 acres to be used for an elementary school if and when the County should choose to use it.
- Opponents to the repeal do not acknowledge that there will be substantial residential growth in the County. It doesn’t help to base planning solutions on the premise that there will be no residential growth. Such an approach would be a mistake.
- Opponents to the repeal argued that the northern annexations would ruin Frederick County. This is not true. Again, this is the best area for the County and City to attempt to attract the best, new jobs. Opponents do not suggest realistic proposals to address the County’s need for new jobs—they have no answer, yet they oppose a good solution.

The County is currently working with the cities to enact a school impact fee amendment to County and municipal APFOs that would allow residential development to occur upon payment of a school impact fee that is calculated to approximate the cost of the financial impact the new residences would have on school construction costs. Each municipality would independently enact its own ordinance or version thereof. This approach, without mandating uniform standards, can still be extremely effective. Passage of such impact fee legislation can resolve the primary financial aspects of school crowding. This will also restore a good working relationship between the County and the municipalities so we can work together in planning for our future.

The northern annexations will also help fund key road improvements that are needed.

1. The Thatcher property cannot begin to build the first 30% of its commercial development until work begins on the Monocacy Blvd/US 15 interchange. And that 30% development cannot open for business until the Monocacy Blvd/US 15 interchange is open.
2. The Thatcher property is giving the land required on the east of US 15 to build the Biggs Ford Road/US 15 interchange (valued at several million dollars).
3. The Thatcher property cannot begin to build the remaining 70% of its commercial development until work begins on the Biggs Ford Road interchange. And that development cannot open for business until that interchange is open.
4. The Crum property is giving the land required on the west of US 15 to build the Biggs Ford Road/US 15 interchange (valued at several million dollars).

5. The Crum property cannot begin to build its commercial development until work begins on the Biggs Ford Road/US 15 interchange. And the commercial development cannot open for business until the interchange is open.
6. The Crum property must build a one-mile extension of Willow Road (projected cost of \$5-8 million) before the residential section is done.

The number one need in Frederick County right now is **JOBS**- good, new jobs. Accelerating job growth in the northern annexation areas will help facilitate this solution . The negative impact on schools from this development will be minimal, if any. The financial benefits to the County; however, will be so great that it is worthy of the full support of the BOCC and the County residents. Repeal of Ordinance 09-28-532 will help the economic recovery of the County, will help build a good working relationship with the municipalities, and will not jeopardize our schools nor the quality of education that our children receive.