OFFICE OF THE COUNTY ATTORNEY

Douglas M. Duncan
County Executive

Charles W. Thompson, Jr.
County Attorney

MEMORANDUM

April 10, 2006

TO: Steven Silverman, Chair
Planning Housing and Economic Development Committee

VIA: Marc Hansen, Deputy County Attorney Marc Hansen

RE: Annexation Petition X-182 - Crown Farm

QUESTION

Does the annexation of Crown Farm violate Article 23A, § 19(a) of the Annotated Code of Maryland?

ANSWER

No. The annexation complies with the legal requirements of Article 23A, § 19(a)(2).

BACKGROUND

By memorandum dated April 4, 2006, Ralph Wilson, Senior Legislative Analyst, advises that the City of Gaithersburg is "proposing to annex the 180-acre Crown Farm property located east of Sam Eig Highway, south of Fields Road, and generally north of Key West Avenue." Mr. Wilson further states in the memorandum that there "is some question as to whether the annexation is in full compliance with State law, since it may result in an unincorporated County area bounded on all sides by the City." Mr. Wilson requests a legal opinion as to "whether the City of Gaithersburg's proposed enlargement of its corporate boundaries to include Crown Farm meets the requirements of Article 23A, Section 19(a)."

Mr. Wilson's memorandum is accompanied by two maps that depict the City of Gaithersburg's boundaries before and after the proposed annexation. The map titled "Boundary After Proposed Annexation" depicts contiguous parcels of unincorporated land between Washingtonian Boulevard and Fields Road, that, after the annexation, will be bordered by the City of Gaithersburg, excepting a sliver of un-annexed land, parallel to Fields Road, that will connect these unincorporated parcels to unincorporated land within Montgomery County.

DISCUSSION

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Article 23A, § 19(a) states:

> (a) Legislative body authorized to enlarge corporate boundaries. -- The legislative body, by whatever name known, of every municipal corporation in this State may enlarge its corporate boundaries as provided in this subheading; but this power shall apply only to land:
>
> (1) Which is contiguous and adjoining to the existing corporate area; and
>
> (2) Which does not create any unincorporated area which is bounded on all sides by real property presently within the corporate limits of the municipality, real property proposed to be within the corporate limits of the municipality as a result of the proposed annexation, or any combination of such properties.

We have found one Maryland case that is pertinent to the question that you have posed. [1] In *Anne Arundel County v. City of Annapolis*, the Court of Appeals had occasion to apply the relevant prong of Article 23A, namely § 19(a)(2). 352 Md. 117, 721 A.2d 217 (1998). In the *Anne Arundel* case, the court was

> called upon to determine whether an annexation by the City of Annapolis, which left an area of Anne Arundel County separated from the rest of the County by waterways on three sides and the City of Annapolis on the other, violated Maryland Code, Article 23A, section 19(a)(2) because it created the type of enclave prohibited by that statute. 352 Md. at 120, 721 A.2d at 217.

The court determined that the annexation created no illegal enclave or "tax island," because the statute literally prohibited the creation of an unincorporated area "bounded on all sides by real property" within the corporate boundaries. The portion of Anne Arundel County isolated by the annexation was bounded on three sides by water within Anne Arundel County, and so was not "enclosed on **all sides** by an area currently or proposed to be within the city limits of Annapolis." 352 Md. at 124-127, 721 A.2d at 220-222. (Emphasis in original).

Although the annexation survived plain language review, the court also examined the legislative intent behind that plain language. With respect to the issues that the General Assembly sought to address through § 19 (a)(2), the court stated:

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[1] There is an Attorney General opinion that interprets and applies Article 23A, § 19(a)(1) to an annexation proposed by the Town of Berlin. *82 Op. Atty Gen. Md. 87, 88* (1997). That opinion is inapposite to our analysis because it relates to § 19(a)(1) (the contiguous and adjoining requirement), not the provision at issue here, § 19(a)(2) (the enclave prohibition). The proposed Crown Farm annexation does not appear to raise an issue concerning the contiguous and adjoining requirement imposed under § 19(a)(1).

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> The problems inherent to enclaves or tax islands were that the residents within the resulting enclaves paid only county taxes yet used city facilities and services such as snow removal, parks, police protection, and health and environmental services. Additionally, the enclaves caused general confusion because citizens were unclear as to the enclaves' basic geographic location.

The court concluded that the "type of enclave prohibited by" § 19(a)(2) "includes only unincorporated areas completely surrounded on all sides by the incorporated area of the annexing municipality." 352 Md. at 130, 721 A.2d at 223.

The City's proposed annexation leaves unincorporated land between Washingtonian Boulevard and Fields Road that has some of the physical attributes of an enclave. That unincorporated area is substantially disconnected from the County and, as a consequence, may generate some of the difficulties that the General Assembly sought to remedy (and avoid) when it enacted Article 23A, § 19(a)–but no more so, I note, than the unincorporated area left by Annapolis. Given the Court of Appeals' literal application of § 19(a)(2) in the *Anne Arundel* case, I must conclude that the proposed annexation of the Crown Farm by the City of Gaithersburg is legal.

We trust that you will find this memorandum responsive to your inquiry.

cc: Ralph Wilson, Senior Legislative Analyst, Montgomery County Council

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