

"Federation Corner" column  
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### **Crown Farm is now a bigger planning failure**

by Wayne Goldstein

I'm writing about the Crown Farm for the second time in two weeks because, a few days ago, I learned that one of the farms that make up the Crown Farm property was found to be eligible for the National Register of Historic Places (NRHP) in 1996. This fact alone could cause delays and other problems for this development. The failure of those involved in this project to either know about or act appropriately about this readily-available fact amounts to a bigger planning failure. Many people, and apparently, too many public officials, do not understand how important historic preservation is to their communities, particularly when it comes to projects that receive state or federal funding.

The National Historic Preservation Act was passed in 1966 because Congress found that "... in the face of ever-increasing extensions of urban centers, highways, and residential, commercial, and industrial developments, the present governmental and nongovernmental historic preservation programs and activities are inadequate to insure future generations a genuine opportunity to appreciate and enjoy the rich heritage of our Nation."

Congress also found that it was "... necessary and appropriate for the Federal Government to accelerate its historic preservation programs and activities, to give maximum encouragement to agencies and individuals undertaking preservation by private means, and to assist State and local governments and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities."

To do this, Congress required that "The Secretary of the Interior is authorized to expand and maintain a National Register of Historic Places [NRHP] composed of districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering, and culture." There are specific criteria that must be met for anything to be placed on the NRHP. In 1966, Congress also passed the Department of Transportation Act. Section 4(f) of this Act "requires federal agencies to identify and avoid impacts to parklands, recreation areas, historic sites, and wildlife and waterfowl refuges. Specifically, Section 4(f) precludes 'use' of these resources, either directly through a physical taking or indirectly through 'constructive use' unless there are no prudent and feasible alternatives, and the project incorporates all possible planning to minimize harm... Section 4(f) by its own terms protects historic sites of local, state or national significance. In order to invoke the protections of 4(f), an historic site must meet the criteria of eligibility for inclusion in the National Register of Historic Places."

In 1996, the Maryland Historical Trust (MHT), in consultation with the Maryland State Highway Administration (SHA), found that the England-Crown Farm, part of the larger Crown Farm property, met two of the criteria and was eligible for listing on the NRHP. This was in addition to the Montgomery County Council finding in 1984 that this historic farm met the criteria to be placed on the county's Master Plan for Historic Preservation. What the NRHP eligibility meant was that if any transportation project were to be built near the England-Crown Farm using federal funds, then the involved federal and state agencies were legally required to work with MHT to determine if there would be any Section 4(f) direct or constructive use of the farm. In addition, Maryland requires any state agency or any project using state funds to also consult with MHT in a less restrictive way known as a Section 106 review.

There are two planned projects for the Crown Farm property that will use state or federal money and where federal and state law requires that these projects be evaluated for the impact on the England-Crown Farm. The first is the plan to reserve 32 acres of the property for a new high school. The Board of Education (BOE)

is a state agency under certain circumstances. It has been at pains to insist on that twice in the last 4 years. In 2002, the Attorney General wrote: "...Finally, should the property be listed in or eligible for the Maryland Register of Historic Properties, any capital project potentially affecting the property may be subject to the review and consultative process set out in Annotated Code of Maryland, Article 83B, 5-617. Under that law, the State unit responsible for the project would consult with the Maryland Historical Trust to determine whether the project would adversely affect the historic property and, if so, the State unit would be required to negotiate with the Trust on a plan to avoid, mitigate, or satisfactorily reduce the adverse effect... The Board has apparently acknowledged that it may be subject to the Maryland Historical Trust consultative process."

Specific plans are being made in the proposed annexation agreement on behalf of the BOE as to how and when the 32 acres will be used to build a new school. Therefore, BOE should start to act like the state agency it claims that it is and consult with MHT as soon as possible to determine if there will be potential impacts to the farm and what to do about them. This process could be completed as quickly as 30-60 days. BOE should have completed this process months ago, particularly since it already owns historically designated properties and should have made a routine inquiry about the locally-designated farm just a short distance away.

The second project is the Corridor Cities Transitway (CCT). This project, the responsibility of the Maryland Transit Administration (MTA), working with the Federal Transit Administration (FTA), will receive both state and federal funds, so MHT needs to be consulted through both the Section 106 review and the more rigorous Section 4(f) review. This is what makes the Crown Farm a bigger planning failure, because the CCT is now planned to pass within several hundred feet of the historic buildings. It is highly unlikely that MHT will find that there is no constructive or even direct use of the farm under Section 4(f), and MTA and FTA may have to work with MHT to redesign the CCT to avoid, minimize, or mitigate this use. The original alignment of the CCT was further from the farm, and bringing the alignment closer was apparently done without regard for the greater negative impact. MTA did the Section 4(f) review in early 2002 for the more distant alignment, and it is not known if MHT has even reviewed that alignment.

MTA's apparent willingness to shift the CCT alignment for the sake of other's convenience seems to indicate an indifference to this important Federal requirement and is inexcusable. It has funded studies of the Purple Line that have identified both Columbia Country Club and the Falkland Apartments as being NRHP-eligible. MHT may require MTA to reconsider this decision. This will have to delay the signing of the annexation agreement, because neither the developer nor Gaithersburg will know where roads, parks, utilities, or property lines and buildings will be able to be placed because of the possible need to change the CCT alignment. If the proposed agreement were to go forward now and permanent actions such as platting lots and starting construction were to begin, a change required by MHT could wreak havoc on the plans of many people that could be comparable to the Clarksburg Town Center.

Gaithersburg planners bear the brunt of any local government blame because of their repeated refusals to listen to the county Historic Preservation Commission or anyone else about the need to evaluate, designate, protect, and reuse the county-designated farm. If the top planners weren't so seemingly determined to pretend that the farm didn't exist, they might have taken more seriously the fact that the farm was NRHP-eligible.

Finally, the developer, KB Home, now could find itself in a difficult position because its due diligence before buying the Crown Farm may not have included adequate consideration for this one crucial fact. The proper evaluation of this national historic resource could cause delays and could require extensive changing of plans, and this could cost both time and money to everyone.