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ATTORNEYS &
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MICHAEL A. EULER, SR.,

Plaintiff,

v.

STEPHANIE FLASCH, *et al.*,

Defendants.

* * * * *

DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

Plaintiff Michael A. Euler ("Euler") has asserted claims manifestly relating to Defendants' constitutionally protected communications with a government body and the public at large about matters within the authority of the government body and of public concern. Accordingly, Plaintiff's Complaint must be dismissed as a so-called "SLAPP" suit prohibited by MD Code, Courts & Judicial Proceedings ("CJP") § 5-807 (Maryland's "Anti-SLAPP Statute"). In any event, Plaintiff's Complaint fails to state a claim upon which relief can be granted, and must be dismissed pursuant to Rule 2-322(b)(2).

STATEMENT OF FACTS AND ALLEGATIONS

Euler sets forth only a few factual allegations in his Complaint – none of which support his claims. Euler alleges he is a developer who has requested an expansion of Harford County's "development envelope" (Complaint, at ¶ 7); and, he owns property within the area of the requested development expansion. *Id.* Euler alleges Defendants Stephanie Flasch and Beth Poggioli set up a website called "Keep Fallston Rural" that includes a petition in opposition to the requested expansion of the development envelope (the "Petition"). Complaint, at ¶ 8.

Euler further alleges Ms. Flasch and Ms. Poggioli published false statements: "the expansion will allow and/or Euler desires to build 'big box retail', strip malls, and/or apartment complexes" on his property within the area of the proposed expansion. Complaint, at ¶ 8. According to Euler, this property is zoned for agricultural use and agriculturally-zoned property cannot be used for big box retail, strip malls, and apartment complexes and he has no intention to use his property for these purposes. Complaint, at ¶ 9.

Euler also alleges the Petition falsely states some persons have signed the Petition who have allegedly not signed it. Complaint, at ¶ 11. Euler does not allege – specifically or otherwise – who these persons are or that he is one of these persons.

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STANDARD OF REVIEW

When moving to dismiss, a defendant asserts that, even if the allegations of the complaint are true, the plaintiff is barred from recovery as a matter of law. *Porterfield v. Mascari II, Inc.*, 374 Md. 402, 414 (2003). Thus, in considering a motion to dismiss, the Court examines only the sufficiency of the pleading, assuming the truth of the well-pleaded relevant facts and all reasonable inferences drawn therefrom. *Morris v. Osmose Wood Preserving*, 340 Md. 519, 531 (1995) (citations omitted). The Court, however, does not consider “merely conclusory charges that are not factual allegations.” *Id.* (citations omitted). Moreover, “any ambiguity or want of certainty in [the] allegations must be construed against the pleader.” *Manikhi v. Mass Transit Admin.*, 360 Md. 333, 345 (2000) (citation omitted).

Ultimately, “[t]he critical inquiry is not whether the complaint specifically identifies a recognized theory of recovery, but whether it alleges specific facts that, if true, would justify recovery under any established theory.” *Tavakoli-Nouri v. State*, 139 Md. App. 716, 730 (2001) (emphasis added). Accordingly, “[i]f the pleadings do not as a matter of law allege sufficient facts to entitle a party to the relief sought on the claim,” the Court may (and should) grant a motion to dismiss for failure to state a claim. *Noble v. Bruce*, 349 Md. 730, 759 (1998).

ARGUMENT

Quintessentially, this lawsuit is a strategic lawsuit against public participation, or so-called “SLAPP” suit. In Maryland, under the Anti-SLAPP Statute, a defendant may move to have the lawsuit dismissed when its claims materially relate to conduct and communication on the part of the defendant that is aimed at procuring a particular government action. As set forth below, this lawsuit falls squarely within the Anti-SLAPP Statute. For that reason alone this Court must dismiss each of Euler’s meritless claims. In the alternative, Euler’s lawsuit must be dismissed pursuant to Rule 2-322(b), because the Complaint fails to state a claim upon which relief can granted.

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I. Under The Anti-SLAPP Statute, Ms. Flasch And Ms. Poggioli May Not Be Held Civilly Liable For Exercising Their Constitutionally Protected Rights To Free Speech And Participation.

In 2004, Maryland enacted its Anti-SLAPP Statute, joining the efforts of numerous other states to prevent the abusive use of the civil judicial system by persons seeking to obstruct the speech and participation rights of citizens. Maryland's Anti-SLAPP Statute, provides:

A defendant in a SLAPP suit is not civilly liable for communicating with a federal, State, or local government body or the public at large, if the defendant, without constitutional malice, reports on, comments on, rules on, challenges, opposes, or in any other way exercises rights under the First Amendment of the U.S. Constitution or Article 10, Article 13, or Article 40 of the Maryland Declaration of Rights regarding any matter within the authority of a government body or any issue of public concern.

CJP § 5-807(c). Under the Anti-SLAPP Statute, this Court must dismiss Euler's Complaint if it finds that: (A) this lawsuit fits within the definition of a SLAPP suit because it (1) was filed in bad faith, (2) was brought against parties who have communicated with the government or public regarding a matter within the authority of the government or an issue of public concern, (3) is materially related to the protected communications; and (B) Ms. Flasch and Ms. Poggioli made these communications without constitutional malice. CJP § 5-807(b). Because each of these elements is satisfied, Euler's Complaint must be dismissed.

A. This Action Falls Squarely within the Definition of a SLAPP Suit.

This lawsuit is a classic example of an attempt to bully citizens and chill constitutionally protected speech. Euler filed this lawsuit solely to silence Ms. Flasch and Ms. Poggioli's public opposition to the proposed expansion of the Harford County development envelope – a proposed government action that will ostensibly have a positive impact on Euler's business as a developer. *See* Complaint, at ¶ 7.

Maryland's Anti-SLAPP Statute provides the definition of a SLAPP suit:

(b) A lawsuit is a SLAPP suit if it is:

(1) Brought in bad faith against a party who has communicated with a federal, State, or local government body or the public at large to report on, comment on, rule on, challenge, oppose, or in any other way exercise rights under the First Amendment of the U.S. Constitution or Article 10, Article 13, or Article 40 of the

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Maryland Declaration of Rights regarding any matter within the authority of a government body or any issue of public concern;

(2) Materially related to the defendant's communication; and

(3) Intended to inhibit or inhibits the exercise of rights under the First Amendment of the U.S. Constitution or Article 10, Article 13, or Article 40 of the Maryland Declaration of Rights.

CJP § 5-807(b). On its face, the Complaint, with its sparsely pleaded allegations, can be defined only as a SLAPP suit.

1. Euler Filed This Lawsuit in Bad Faith.

Euler's bad faith in filing the Complaint against Ms. Flasch and Ms. Poggioli is apparent from the face of the Complaint. As discussed in detail in Section II of this Motion, Euler does not assert a single meritorious cause of action that could possibly be established by the facts alleged. As one commentator has explained, bad faith is demonstrated by the mere filing of the suit –

Plaintiffs file SLAPPs not with the intent of recovering from defendants, but rather to silence individuals and groups that have publicly opposed the plaintiff's actions or interests with the threat of costly, time-consuming, and potentially reputation-damaging litigation. The threat of such litigation – which is generally without merit – has a chilling effect on public participation and speech and consumes already-strained judicial resources.

Carson Hilary Barylak, *Reducing Uncertainty in Anti-SLAPP Protection*, 71 Ohio St. L.J. 845, 846-47 (2010).

By his Complaint, Euler admits he is a developer who proposed expansion of the development envelope. *See* Complaint, at ¶ 7. He also admits that the Petition openly opposed expansion to the development envelope. *Id.* at ¶ 8. Because Euler's claims are completely unsupported (*see* Section II, *infra*) and because he brazenly seeks to stop the opposition spearheaded by Ms. Flasch and Ms. Poggioli by demanding compensatory damages in excess of \$75,000 and seeking injunctive relief, Euler's sole motivation for filing this lawsuit is obvious: to stop the "Keep Fallston Rural" movement and silence Ms. Flasch and Ms. Poggioli. Manifestly, Euler has filed this lawsuit in bad faith.

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2. This Lawsuit Was Brought against Parties Who Have Communicated with a Government Body and the Public Regarding a Matter within the Authority of the Government Body and an Issue of Public Concern.

From the allegations of the Complaint, it is clear this lawsuit originates solely from Ms. Flasch and Ms. Poggioli's communications with a government body and the public at large. The "Keep Fallston Rural" Petition specifically referenced in the Complaint is a constitutionally protected communication with the Harford County government and citizens of Harford County. In the Complaint, Euler admits the proposed expansion of the County's development envelope includes the extension of *public* sewer and water service, a text-book example of a matter within the authority of government – the Harford County Council. *See* Complaint, at ¶ 7.

Euler goes on to acknowledge the Petition is aimed at publicly opposing a proposed expansion being considered by the Harford County Council. Complaint, at ¶¶ 7-8. The Petition itself, which over 1,000 citizens chose to sign, is addressed to "Harford County Government Decision Maker."¹ The communications at issue plainly represent communications by Ms. Flasch and Ms. Poggioli with both the Harford County government and the public at large.

3. This Lawsuit Is Materially Related to the Protected Communications of Defendants.

Euler's lawsuit relates materially (indeed, exclusively) to Ms. Flasch and Ms. Poggioli's communications with a government body and the public at large. The "Keep Fallston Rural" Petition allows citizens to voice their opposition to the proposed development expansion, which Euler has admitted is a matter within the repose of the local government because it involves the expansion of public water and sewer utilities. *See* Complaint, at ¶¶ 7-8. Euler's claims are materially and exclusively related to these protected communications. *See* Complaint, at ¶¶ 7-11. As a matter of fact, the Complaint fixates on the protected communications made by Defendants and does not make a single allegation relating to anything other than Defendants' statements

¹ A copy of the Petition (available at <http://www.thepetitionsite.com/148/607/228/keep-fallston-rural-say-no-to-proposed-expansion-of-the-development-envelope-in-fallston/>), which is specifically referenced by Euler in his Complaint (*see* ¶¶ 8, 10-11), is attached hereto as *Exhibit A* and does not transform this motion into one for summary judgment. Rather, the Court may properly consider the Petition, which forms the basis of Euler's claims, as it merely supplements the Complaint's vague allegations and is undisputed. *See Advance Telecom Process, LLC v. DSFederal, Inc.*, 224 (Md. App. 164, 175 (2015) (explaining that where extraneous documents merely supplement the complaint or are uncontroverted, the motion is not transformed into one for summary judgment).

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about the proposed change to Harford County's current land use policy and the opposition to that change set forth in the "Keep Fallston Rural" Petition.

4. *This Lawsuit Was Filed with the Intention of Inhibiting the Exercise of Rights under the First Amendment and Articles 10, 13, and 40 of the Maryland Declaration of Rights.*

Indisputably, Euler filed his Complaint for the purpose of using the civil court system to inhibit Defendants' constitutionally protected speech and participation rights. The Complaint, when compared to the Petition, makes it crystal clear what this lawsuit is about: Euler is a developer who proposed an expansion to the development envelope; Ms. Flasch and Ms. Poggioli have organized legitimate public opposition to that expansion; now Euler seeks to use baseless claims to halt that public opposition. Euler's intent to quell the protected communications of Defendant is transparent from his request for preliminary and permanent injunctive relief to stop the Defendants' speech, resting on meritless claims which relate entirely to the "Keep Fallston Rural" Petition.²

Furthermore, Euler's claims for money damages in excess of \$75,000 are a flagrant attempt by a developer to "to intimidate individuals and organizations that speak out against ... development projects, government actions or operations, or other activities that affect their financial interests." *See* Barylak, at 846. The mere threat of expensive and time-consuming litigation is enough to chill protected speech. *Id.* Where, as here, the claims asserted are entirely meritless, the intent to inhibit the exercise of these rights protected by the Maryland and U.S. Constitutions is readily deduced from the filing of this lawsuit.

B. *There Is No Constitutional Malice.*

Euler's allegation Ms. Flasch and Ms. Poggioli made false statements about Euler's desire to develop strip malls and apartment complexes, as well as his allegation the Petition's list of signers falsely lists some unknown persons who have not signed – even if presumed true – do not come close to establishing constitutional malice. Constitutional malice requires clear and convincing evidence that the defendant made false statements with knowledge of their falsity or

² Preliminary and permanent injunctive relief comprise an emergency remedy based on a claim of immediate and irreparable harm that cannot be remedied by monetary damages. The simple fact Euler never even bothered to file a motion in support of his requested injunctive relief shows there is no such immediate and irreparable harm to enjoin – notwithstanding Euler's failure to remotely particularize the "harm" he wants this Court to stop.

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reckless disregard for the truth. *See New York Times Co. v. Sullivan*, 376 U.S. 254, 279-80 (1964) (creating the constitutional malice standard in defamation suits with First Amendment implications); *see also Shapiro v. Massengill*, 105 Md. App. 743, 772 (1995).

Euler's Complaint alleges: "Defendants have published false statement ...that the expansion will allow and/or Euler desires to build 'big box retail', strip malls, and/or apartment complexes on property zoned for agricultural use." *See* Complaint, at ¶ 8. Presuming this is an accurate summarization of the statements made by Defendants – which it is not – the Complaint does not allege facts needed to establish – nor is it reasonable to presume Ms. Flasch and Ms. Poggioli made these statements knowing – that they were false and/or with reckless disregard for the truth. Given the clear and convincing evidentiary standard Euler must meet, his bald, unsupported assertions are simply not enough.

Similarly, Euler's allegation there are names signed to the Petition who did not, in fact, sign it does not support a finding of constitutional malice. Euler does not allege – because he cannot – that Ms. Flasch and/or Ms. Poggioli personally submitted the supposedly false names. Indeed, there is not even an allegation Defendants made false statements relating to individuals who signed the Petition. Hence, Euler has not alleged facts to support constitutional malice on the part of Defendants. Moreover, considering the wide latitude citizens enjoy when speaking publicly on matters of public concern, there is no reasonable inference that can be drawn from the Complaint that the alleged "false" statements were made by the Defendants with constitutional malice.

For these reasons, the Complaint is a SLAPP suit and must be dismissed under CJP § 5-807.

II. Euler's Complaint Should Be Dismissed For Failure To State A Claim Upon Which Relief Can Be Granted.

In addition to violating the Anti-SLAPP Statute, Euler's Complaint fails to state a claim for false light, tortious interference, and injurious falsehood.³ By failing to state a claim for Counts I-III, Count IV for preliminary and permanent injunctive relief must also be dismissed, since there is no wrongful conduct to enjoin.

³ This failure demonstrates Euler's bad faith in filing this lawsuit.

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A. Count I – Injurious Falsehood.

Euler's Complaint fails to state a claim for injurious falsehood. Injurious falsehood, or disparagement, requires:

the publication of matter derogatory to the plaintiff's title to his property, or its quality, or to his business in general, or even to some element of his personal affairs, of a kind calculated to prevent others from dealing with him, or otherwise to interfere with his relations with others to his disadvantage. The cause of action founded upon it resembles that for defamation, but differs from it materially in the greater burden of proof resting on the plaintiff, and the necessity for special damage in all cases.

Brass Metal Products, Inc. v. E-J Enterprises, Inc., 189 Md. App. 310, 351 (2009) (quoting *Beane v. McMullen*, 265 Md. 585, 607–608 (1972)).

Euler alleges no facts which could possibly establish the "Keep Fallston Rural" Petition or any other statements made by Ms. Flash or Ms. Poggioli are "derogatory" or disparaging to Euler or his property; nor does Euler allege he has suffered any special damages. In fact, the Petition does not even mention Euler. Rather, the Petition relates to the effect of *potential* government action concerning future development in Harford County which may or may not benefit Euler. Accordingly, Euler has not stated a claim for Injurious Falsehood and Count I must be dismissed.

B. Count II – Tortious Interference With Economic Relations.

Euler also fails to state a claim for tortious interference with economic relations. Tortious interference with economic relations "is committed when a third party's intentional interference with another *in his or her business* or occupation *induces a breach of an existing contract* or, absent an existing contract, *maliciously or wrongfully infringes upon an economic relationship.*" *Macklin v. Robert Logan Associates*, 334 Md. 287, 297 (1994) (emphasis added). None of these necessary elements are established in Euler's Complaint.

Again, the Petition does not mention Euler or his business. Euler makes no factual allegation regarding any contract or economic relationship which could have been interfered with by Defendants; neither does Euler make any factual allegation the "Keep Fallston Rural" Petition caused a breach or infringement of any such unidentified contract or economic relationship. *See* Complaint, at ¶¶ 7-11. While the success of the proposed development envelope expansion may have positive economic implications for Euler as a developer, he has no actual economic or

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contractual relationship with the Harford County Council related to his request for inclusion in the development envelope expansion.

When considering the issue of an amendment to the County's comprehensive growth plan, the Harford County Council is by definition performing its duty as a local government body. Euler does not have a greater right to attempt to influence the governmental process than Ms. Flasch and Ms. Poggioli simply because his pecuniary interests may benefit from the approval of the proposed expansion. Mr. Euler's economic concerns do not trump Defendants' constitutional protections and publicly opposing a government action that may or may not benefit Euler's business cannot support a claim Defendants intentionally interfered with his business relations.

Moreover, the Petition, which sets forth public opposition to a proposed land use action by a local government, cannot possibly satisfy the *malicious* or *wrongful* means element of tortious interference with economic relations. If it could, the First Amendment to the U.S. Constitution and Article 10, Article 13, or Article 40 of the Maryland Declaration of Rights would be meaningless. Thus, Euler has failed to state a claim for tortious interference with economic relations and Count II must be dismissed.

C. Count III – False Light.

Euler similarly fails to state a claim for false light invasion of privacy. A defendant is liable for false light invasion of privacy where the defendant "gives publicity to a matter concerning another that places the other before the public in a false light [and] (a) the false light in which the other person was placed would be highly offensive to a reasonable person, and (b) the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed." *Furman v. Sheppard*, 130 Md. App. 67, 77 (2000) (quoting *Bagwell v. Peninsula Regional Medical Center*, 106 Md. App. 470, 513-514 (1995)).

Even assuming the truth of his sparse allegations, Euler's Complaint fails to show he was placed in a "false light" which "would be highly offensive to a reasonable person." *Id.* First, an alleged false statement that the "expansion will allow and/or Euler desires to build 'big box retail', strip malls, and/or apartment complexes" cannot not be deemed *highly offensive* by a reasonable person. *See* Complaint, at ¶ 8. At worst, it is a statement of opinion about potential future development. Second, Euler's allegation the Petition inaccurately identifies certain

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persons as signatories even though those (unknown) persons allegedly did not sign it, does not support (much less establish) Euler's claim he was placed in a false light by Defendants. Complaint, at ¶ 10-11.

Moreover, Euler lacks standing to bring a false light claim seeking money damages on the grounds that an internet-based petition contains an inaccurate statement relating to *persons* other than Defendants having signed it. For these reasons, Euler's claim for false light fails and Count III must be dismissed.

III. Defendants' Statements Opposing The Expansion Of Harford County's Development Envelope And The Statements Set Forth In The "Keep Fallston Rural" Petition Opposing That Expansion Are Privileged As A Matter Of Law.

Assuming *arguendo* Plaintiff could establish Defendants' statements opposing the expansion of Harford County's development envelope, including the oppositional statements set forth in the Petition, placed Plaintiff and/or his undefined "businesses" in a false light (which he clearly cannot), Defendants' statements concern a matter of legitimate public interest within the Harford County community and, thus, are protected by the common law public interest privilege and fair comment privilege. Accordingly, Plaintiff's claims of "Injurious Falsehood" (Count I) and "False Light" (Count III) fail as a matter of law.⁴

Maryland law recognizes four basic common law qualified privileges to defamation claims. They include:

1. The public interest privilege, to publish materials to public officials on matters within their public responsibility;
2. The privilege to publish to someone who shares a common interest, or, relatedly, to publish in defense of oneself, or in the interest of others;
3. The fair comment privilege; and
4. The privilege to make a fair and accurate report of public proceedings.

Gohari v. Darvish, 363 Md. 42, 57 (2001) (internal citations omitted).

If an allegedly defamatory statement enjoys a qualified privilege, the privilege defeats an action for defamation. *Bagwell v. Peninsula Reg'l Medical Center*, 106 Md. App. 470, 511

⁴ An allegation of false light must meet the same legal standards as an allegation of defamation. *Piscatelli v. Van Smith*, 424 Md. 294, 305-06 (2012) (citing *Harnish v. Herald-Mail Co.*, 264 Md. 326, 337 (1972); see also *Hosmane v. Seley-Radtke*, 227 Md.App. 11, fn. 2 ("Inasmuch as a false light claim must meet the same legal standards as an allegation of defamation, we engage in analysis of the defamation claim, but the same analysis applies to the false light claim.") (internal citations omitted).

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(1995) (cert. denied 341 Md. 172 (1996)). Qualified privileges rest upon the principle a defendant may escape liability for an otherwise actionable defamatory statement, if publication of the utterance advances social policies of greater importance than the vindication of a plaintiff's reputational interest. *Woodruff v. Trepel, et al.*, 125 Md.App. 381, 401 (1999) (internal citations omitted). Statements expressing opinions of public interest are protected by a qualified privilege. *Kapiloff v. Dunn*, 275 Md. App 514, 525-26 (1975).

Whether a statement is protected by a conditional privilege is a question of law for the court to decide. *Gohari*, 363 Md. at 54. If, as here, the privilege applies, the burden shifts to the plaintiff to show the privilege was abused. *Id.* In order to overcome the privilege, a plaintiff must establish the defendant acted with constitutional malice. *Id.* at 63-64. As discussed *supra*, Plaintiff cannot establish Defendants acted with constitutional malice.

A. Defendants Alleged Defamatory Statements Are Protected by the Public Interest Privilege.

Defendants' statements opposing the proposed change to Harford County's current land use policy, and the opposition to that change as set forth in the Petition, are protected by the common law public interest privilege. The proposed expansion of the Harford County development envelope is a matter of public interest, concerning all citizens of the county. Statements regarding any proposed change in land use policy are appropriately addressed to the governing body with authority over such matters – in this case, the Harford County Council and other county planning and zoning officials.⁵ Defendants' statements opposing the expansion of the county's development envelope, and the Petition setting forth such opposition, fall clearly within the scope of the County Council's duty to review and enact legislation governing county land use policy. Accordingly, Defendants' statements are protected by the public interest privilege.

B. Defendants Alleged Defamatory Statements Are Protected by the Fair Comment Privilege.

The fair comment privilege is available for opinions or comments regarding "matters of legitimate public interest." Comments, criticisms and opinions concerning the involvement of public persons in matters of public or general interest or concern are within the protection of the

⁵ The land use policy at issue is known as "The Master Plan" of Harford County. The Master Plan and any amendment thereto, is a matter within the authority of the Harford County Council. See Code of Harford County, Maryland, § 169-1.

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fair comment privilege. *Kapiloff v. Dunn*, 27 Md.App. 514, 533 (1975) (concluding the performance ratings of high-school principals were a matter of legitimate public interest). Such statements, with the exception of true statements of fact concerning the conduct of public figures, are generally, however, qualified. *Id.*, at 525, 531. Thus, false statement of facts are protected if not knowingly false or not published with reckless disregard of their truth or falsity. *Id.* Fair and honest opinions are privileged if they are based upon true facts and have some relation to or connection with those facts. *Id.* Moreover, opinions based on false facts are protected if the publisher was not guilty of actual malice with regard to these supportive facts.

As discussed *supra*, Plaintiff has not alleged any facts to establish Defendants made any of the alleged "false" statements concerning a *possible* change to Harford County's land use policy with actual (i.e. constitutional) malice. Defendants' statements opposing a proposed expansion of the Harford County development envelope, and the Petition setting forth the opposing view of Defendants and hundreds of other county residents, are "fair comment" regarding a matter of public interest in Harford County.

Absent any allegations upon which this Court could reasonably infer Defendants' allegedly "false" statements were made with constitutional malice, the fair comment privilege defeats a defamation action in which, like the case at bar, alleged defamatory statements concern a matter of public interest. *See Piscatelli*, 424 Md. at 315-16. Plaintiff has failed to plead any allegations which could be reasonably establish the opinions of Defendants (and the Petition setting forth such opinions) about the proposed expansion of the Harford County development envelope were knowingly false or published with reckless disregard of their truth or falsity. Indeed, Defendants' statements regarding this matter of public policy reflect their fair, honest and protected opinions. Accordingly, the fair comment privilege applies and Counts I and III of Plaintiff's Complaint must be dismissed as a matter of law.

CONCLUSION

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For the foregoing reasons, Defendants Stephanie Flasch and Beth Poggioli respectfully request this Court dismiss the Complaint with prejudice pursuant to CJP § 5-807, without leave to amend. In the alternative, Defendants request this Court dismiss Counts I through IV of the Complaint for failure to state a claim upon which relief can be granted. In any event, Defendants respectfully request such other and further relief as the nature of their cause may warrant.

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