

**SUMMARY OF REPORTED LAND USE CASES (sorta)
DECIDED BY THE COURTS OF APPEAL IN 2006 (sorta)**

By:

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This past year was not one that had many significant land use cases decided by our Courts of Appeals. It did have, however, a number of cases that will have significant impact on the land use practice, with the emphasis on practice. There are three lines of cases that are worth looking at for discussion.

Although these are not land use cases in the pure sense, I suggest that we take a look at River Walk Apartments, LLC v. Roger Twigg, et al., No. 49, Sept Term, 2006 (CA). This case, decided January 10, 2007 (okay, so I fudged the dates a

little) was decided by the Court, holding that the Mayor did not have the authority to sign two deferral agreements, for the deferral of impact fees. The Court of Appeals stated that the Mayor did not have the authority to sign the two deferral agreements, and that they needed legislative authority to agree to the deferral of the impact fees. It appears from the facts that the property owner did not attempt to circumvent the City's procedures, and the acts of the two mayors involved were agreed to by the City attorney.

The other case, also involving the City of Frederick, J.P. Delphey Limited Partnership v. Mayor and City of Frederick, No. 41, Sept Term, 2006, decided December 14, 2006, arose out of a vote to authorize the City Attorney to condemn the Delphey property for a parking deck. The vote to authorize condemnation was

taken in private, closed session, where the notice of the closed session did state that it was for the purpose, among others, to discuss the acquisition of the J.P. Delphey property.

I bring up these cases together, to raise the issue of governmental estoppel.

That principle which was stated a number of times, including the Permanent Financial case, allows for the validation of governmental action where the government acted in good faith, and under a reasonable interpretation. These cases seem to place the private party at risk, even when working with the elected and appointed officials of an agency, and following the established procedure. It appears to place a greater risk in dealing with government. As we all know, in dealing with government, we must respect the established procedures and direction

of government counsel.

The next set of cases involves apparently, one individual, Douglas Armstrong. I bring this up because this one person appeared before the Court of Appeals (one before the Court of Special Appeals) three times. Douglas M. Armstrong v. Mayor and City Council, No. 1704, September Term, 2004, 169 Md App 655, 906 A 2d 415, decided September 1, 2006, Douglas M. Armstrong v. Board of Municipal and Zoning Appeals, No. 2525 (unreported) CSA, decided August 25, 2006, and Douglas M. Armstrong, et al. v. Baltimore City, MD, No. 30, September Term, 2005, 390 Md 469, 889 A 2d 399 decided January 6, 2006. None of the cases seems of special note, but it was so unusual that all three were from the same party, I am sure there is some story behind it but, not being Baltimore-centric,

I ask if anyone can tell the whole story.

The last case of note and worth discussion is Mayor and Council of Baltimore City v. Valsamaki, et al., No. 55, September Term, 2006, decided February 8, 2007 (I fudged a little by including this case decided in 2007, but this case appeared to merit some discussion now.) This case arises out of a condemnation matter, filed by the City of Baltimore. It appears from the facts that the City, using its “quick-take” authority under the Maryland constitution, filed to take Mr. Valmasaki’s property. It appears from the Court decision that the City had no real land use plan for the property or any specific plans for its use after taking. The Court struck down the “quick-take”. The discussion between “public use” and “public taking” is especially interesting and worth substantial discussion.

Other Land Use Cases Last Year

1000 Friends of Maryland, et al. v. Robert L. Ehrlich, Jr. et. al., No. 1245, September Term, 2005, decided September 19, 2006;

This case holds for the principle that decisions relating to “Smart Growth” are not appealable by private groups. The practical application is the State funding of improvements in what is called “growth areas” of the State.

Mayor and City Council of Baltimore v. Neighborhood Rentals, Inc. et. al., No. 1585, September Term, 2005, decided September 21, 2006. (CSA) 170 Md App 671, 908 A 2d 111;

Applicant for a permit to operate a “rent to own” store. The use is permitted by the zoning ordinance, but not permitted by the Urban Renewal Plan at that location by the Hamilton Business Area Urban Renewal Plan. Apparently, the zoning ordinance incorporates the local urban renewal plans recommendations on

permitted uses. The applicant alleged the Plan had expired but the Court found that the Plan was still valid, and the restrictions on permitted uses in the Plan were valid.

Manian v. County Council, No. 1305, September Term, 2005, decided September 29, 2006. (CSA) 171 Md App 38, 908 A 2d 665;

Adjoining property owner alleged that the proposed Development Plan Amendment did not set forth the particulars of the site as set forth in the zoning ordinance. The Court held that detail the neighbor was seeking is set forth in the site plan, the next step and not appropriate for the Development Plan.

Maryland Overpak Corporation v. Mayor and City Council of Baltimore, No. 76, September Term, 2005, decided October 16, 2006. (CA) 396 Md 16, 909 A 2d 235;

This case examines the definition of “zoning action”. The case arises out of an appeal by a neighboring property owner from an approval of a modification of

an existing PUD. The Court examined whether the action by ordinance to amend the PUD, including a fact finding hearing constituted “zoning action” and is appealable under the standard appeal rights. The Court found that this action was a zoning action and could be appealed.

Grand Bell Manor, Condominium v. Gancayco, No. 2529, September Term, 2004 decided March 2, 2006. (CSA) 167 Md App 471, 893 A 2d 1144;

Court found that in a case where a use is a special exception, approved by a Board of Appeals, parking requirements may not be modified by the Director of Department of Permitting Services, but must be approved by Board of Appeals as modification of special exception. This case is out of Montgomery County and may be peculiar to that County.

Montgomery County, MD v. Rotwein, No. 2414, September Term, 2004, decided September 6, 2006. (CSA) 169 Md App 716, 906 A 2d 959;

This case upholds the strict standards of granting a variance, and contrary to a certain judge's comments that the standards are relaxed. Otherwise, I cannot see why this case was reported.

And Finally

Purich v. Draper Properties, No. 9, CA, decided December 7, 2006;

This case may have application only in Montgomery County, but here goes.

Draper Properties owns a gas station property in Cloverly, an area in eastern Montgomery County. The filling station on the property was built in the early 60's and from 1963 to 1997 it was operated as a lawful nonconforming use. In 1997, Draper applied for a special exception to modify the service station and it was

granted. Its operation continued but the improvements that were required by the grant of the special exception were not built. After a show cause hearing, the Board revoked the special exception and deemed that the nonconforming use continued.

The court held that the nonconforming use ceased when the special exception was granted, and once that happens the owner cannot go back to the nonconforming use status after six months, which is the repose period for nonconforming uses in Montgomery County.

That makes sense, but there is another situation that also is very common in Montgomery County. Often a special exception text is changed dramatically, causing most existing special exceptions in that category to not be in conformance

with the new regulations. Is the use now a nonconforming use, a conforming use, but with violations, or a conforming use with nonconforming aspects? Must all special exceptions be modified when the statutory regulations are modified?

Hmmmmm...