



Maryland Municipal Attorneys' Association

Quarterly Newsletter – Spring 2015

John Barr, President; Suellen Ferguson, Vice President; John Shay, Secretary; Jason DeLoach, Treasurer

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Newsletter Suggestions

This quarterly newsletter briefly highlights key legal issues and general updates for MMAA members. We hope you find it useful, and if you have ideas for upcoming issues, let editor Frank Johnson know at: fjohnson@gaithersburgmd.gov. Please share this with anyone who may want to join; most town and city attorneys in Maryland are members, and it's a good opportunity to share information. There's no cost to join, so send an email if you're interested: fjohnson@gaithersburgmd.gov.

Fall MMAA Meeting Discussion on Master Plan Approval Process and MML Legislative Priorities

Our fall lunch meeting was well attended; several new members also joined us. Members N. Lynn Board (Gaithersburg), Debra Daniel (Rockville) and Tom McCarron (Mount Airy) discussed recent developments on the issue of whether legislative bodies or planning commissions have final authority to adopt and amend municipal master plans. MML Government Relations Director Candace Donoho spoke on MML's legislative priorities for the 2015 General Assembly, which include restoring Highway User Revenue, clarifying master plan approval authority, and limiting public review of certain ethics disclosures for elected officials.

New Developments for Small-Cell Wireless Communication Facilities

In the past, telecommunication installations often involved large towers and monopoles. To encourage such infrastructure, Congress passed the 1996 Telecommunications Act, which, under regulation by the Federal Communications Commission (FCC), requires local governments to allow poles and towers. But wireless providers are now finding new ways to allow additional capacity even within areas having strong signal coverage. Thus municipalities should expect to see

applications for smaller facilities, such as antennas as small as 3 to 6 feet tall. These small antennas, which can be placed on other structures such as poles, roofs or buildings, also require a nearby receiving "box," which may be 2 or 3 feet tall.

City and town zoning ordinances may not provide for such small facilities, but only larger towers and monopoles. Because these small facilities can increase the ability for towns and city residents to use wireless communication, with far less impact than towers, municipalities may want to permit them. The FCC's October 2014 Order in FCC 14-153, which implements a recent update – the Middle Class Tax Relief and Job Creation Act of 2012 – is likely to become effective in the next few months. This proposed Order outlines new local permitting requirements, and would limit the ability to deny a permit under certain circumstances.

The FCC proposes that governments should have only 60 days to approve co-locations, removal or replacement projects that will not significantly increase physical dimensions *and* will be installed (co-located) where wireless equipment already exists. And a permit not approved within 60 days of submission will be deemed granted – unless denied within that 60 day timeframe for the few allowed, verifiable reasons, such as being too large or raising verifiable safety concerns. Governments would have a longer time, 90 days, to approve or deny co-locations or modifications that significantly change the physical dimensions of the structure, and 150 days for new installations. Additionally, approval would not be mandated.

Using small antennas is a less obtrusive way than towers to extend system capacity. But the ability to deny permits for small or "co-located" antennas is both limited now, and likely to be more restricted by the FCC Order, once it is effective. The key will be to address the permit as soon as possible, so that concerns can be addressed rather than having permits automatically granted after 60 or 90 days.



Abstention Isn't Always Neutral

Members of any legislative, regulatory or judicial body, including town and city councils, have the right to abstain from voting, and they are not obligated to give an explanation. Even so, they often indicate their abstention is based on a conflict of interest, while in other cases, no reason is given, and the abstention seems to be a simple statement of no commitment. But an abstention can make a difference. In most cases, city and town charters require that a majority of those present support the proposal in question for it to be formally approved. Because the person not voting is still present, an abstention can effectively be a no-vote, because it may prevent the necessary majority while not reducing the number of members who are present. Abstaining thus isn't always so neutral in effect!

Supreme Court to Determine Whether Counties Must Match State Income Tax Credits

Maryland counties face the possibility of owing thousands, or even millions, in income tax credits to out-of-state residents eligible for state income tax credits. And county income tax revenues impact municipalities, as Maryland law requires that counties share with municipalities 17% of that collected from residents living in that municipality.

While counties presumed their tax authority was independent, the Maryland Court of Appeals in 2013 ruled in *Comptroller v. Wynne* that when a person living out-of-state for part of the year claims a state tax credit, the county must provide the same credit. This would, for the first time, require counties to fund credits, and it would clearly reduce income tax receipts for future years as well – which would impact the amounts shared with cities and towns.

In the face of arguments made in certiorari petitions that the decision disregarded longstanding respect for local government's independent taxing authority, the Supreme Court on May 27, 2014 granted review. An oral argument and final decision before the Supreme Court adjourns in May is expected.

Attorney Grievance Commission Seeking Assistant Bar Counsel

The Attorney Grievance Commission of Maryland is accepting applications from members of the Maryland Bar for the position of Assistant Bar Counsel. Duties include screening of disciplinary complaints, presenting complaints before Peer Review Panels, litigation in circuit courts, oral argument before the Court of Appeals and other duties as directed by Bar Counsel. Applicants should be able to manage a substantial case load independently and must possess excellent research, analytical and writing skills. Substantive litigation experience required. Spanish language proficiency desirable. Base annual salary: \$65,273. Benefits include medical insurance and pension plan. Mail resume and 2 writing samples to: H.R. Department, Attorney Grievance Commission of Maryland, 100 Community Place, S-3.301, Crownsville, MD, 21032. EOE.

[The above has been provided at the request of the Attorney Grievance Commission of Maryland].

April 1st MMAA Meeting on the Impacts of Police Body Cameras

The MMAA's "winter" meeting will be held on April 1st, a few weeks late, due to weather and scheduling issues. Our speaker will be Karen Kruger with Funk and Bolton, P.A., who will discuss the issues and impacts related to the use of police body cameras -- which include safety, privacy and even public information requests. Body cameras have been an issue since last year's disputes in Ferguson, Missouri, and bills have been filed in the General Assembly to regulate them. We'll be at the Famous Dave's near Annapolis Mall. There will be no charge for members. An announcement will be coming shortly, and members can RSVP in the meantime to fjohnson@gaitersburgmd.gov.

A few members are proposing to establish a "lifetime achievement" MMAA award. This would not be annual, but recognition MMAA could give when appropriate. This will also be discussed at the next meeting. We hope to see you there!