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Recent Developments: Casey v. Mayor and City Council of Rockville: A Governmental Action to Classify a Property as Historic under Article 66B of the Maryland Code Does Not Require Consideration of the Resulting Economic Impact the Changed Classification Will Have on the Property Owner

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## RECENT DEVELOPMENT

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### **CASEY V. MAYOR AND CITY COUNCIL OF ROCKVILLE: A GOVERNMENTAL ACTION TO CLASSIFY A PROPERTY AS HISTORIC UNDER ARTICLE 66B OF THE MARYLAND CODE DOES NOT REQUIRE CONSIDERATION OF THE RESULTING ECONOMIC IMPACT THE CHANGED CLASSIFICATION WILL HAVE ON THE PROPERTY OWNER.**

**By: Chad Shue**

The Court of Appeals of Maryland held that when an authorized governmental body evaluates a structure for historic designation under Article 66B of the Maryland Code, that body is not required to consider or evaluate any evidence concerning financial hardship that the historical designation will impose upon the property owner. *Casey v. Mayor and City Council of Rockville*, 400 Md. 259, 929 A.2d 74 (2007). Furthermore, the Court held that the property owner's claim for an unconstitutional taking of property without compensation could not be heard until she could make a showing that the regulating authority made a final determination regarding the demolition permit. *Id.* at 314, 929 A.2d at 107.

In June of 2001, Betty Brown Casey ("Casey") filed a permit with the City of Rockville to demolish a dilapidated eighty-year-old bungalow in Rockville, Maryland. Since the bungalow was over fifty years old at the time, Rockville's environmental guidelines recommended that the property be evaluated by the Rockville Historic District Commission ("HDC") and the Mayor and City Council of Rockville ("City") for its historical qualities before issuing a demolition permit for the structure.

The HDC scheduled a public meeting in October of 2001 to evaluate the bungalow, and notified all parties. Based on the evidence before it, the HDC found the bungalow met the criteria to qualify as a historical property, and recommended that it be rezoned as such, despite indications that renovating the property was not economically feasible. HDC forwarded its recommendation to the City, which subsequently rezoned the bungalow as historic, without regard to the

cost required to repair the bungalow. In support of its decision, the City cited the fact that the bungalow met several of the established criteria for a structure worthy of historical merit.

Once a structure is identified as historic, a property owner must utilize a different permitting process than non-historic properties, in accordance with sections 8.01-8.17 of Article 66B of the Maryland Code ("Article 66B"). Instead of filing for this permit, Casey filed a petition in the Circuit Court for Montgomery County to review the City's decision to rezone the bungalow in August of 2003. The circuit court held that the evidence supported the City's decision to rezone the bungalow, but the City erred by failing to include evidence of economic hardship on the property owner.

Both parties filed separate appeals to the Court of Special Appeals of Maryland, which, in August 2006, affirmed most of the lower court's rulings. The Court of Special Appeals of Maryland vacated the circuit court's mandate for the City to reconsider the economic impact of rezoning the bungalow.

Casey filed a petition for writ of certiorari with the Court of Appeals of Maryland. The Court granted the writ to consider whether the City's failure to evaluate the economic impact of rezoning the property resulted in an unconstitutional taking of property without just compensation, and whether Casey was denied a constitutionally protected property interest without due process of law.

In affirming the Court of Special Appeals of Maryland, the Court first noted that Article 66B states that a local government can establish an area to be protected based on its "*historic, archaeological, or architectural significance*," but does not establish any particular criteria that a local government must use for doing so. *Casey*, 400 Md. at 280, 929 A.2d at 87 (citing MD. ANN. CODE art. 66B, § 8.02 (2007)). Thus, the City was not required to consider economics in evaluating the historical merits of a structure. *Casey*, 400 Md. at 288-89, 929 A.2d at 92. The legislature did not require consideration of financial hardship to property owners until a property is classified as historic and the property owner files a permit with the HDC. *Casey*, 400 Md. at 289, 929 A.2d at 92. Considering the public policy behind historical preservation, the Court reasoned that the absence of plain language explicitly requiring the inclusion of economic factors in a historical zoning determination indicated that the legislature did not intend it to be considered. *Id.* at 298, 929 A.2d at 97.

The Court also held it was proper for the City to delay Casey's original demolition permit until after a historical evaluation of the bungalow. *Id.* at 294, 929 A.2d at 95. Rockville's environmental guidelines, which recommend a structure over fifty years old be reviewed for historical merit prior to approval of a demolition permit, were created to further the protection of Rockville's natural resources. *Id.* at 295, 929 A.2d at 95-96. Thus, the City's application of the guidelines was not "arbitrary, capricious, or otherwise improper." *Id.* at 294-95, 929 A.2d at 95. Furthermore, the Court held that the standard permitting process still requires that a permit be issued only after it is found to comply with applicable "rules, regulations, ordinances, or statutes." *Id.* at 296 n.35, 929 A.2d at 96 n.35. Thus, the City properly followed the environmental guidelines to "trigger" a historical evaluation of the bungalow. *Id.* at 295-96, 929 A.2d at 96.

Additionally, the Court found that rezoning the bungalow as historic was not an unconstitutional taking of property. *Id.* at 314, 929 A.2d at 107. To conclude as such, the Court of Appeals of Maryland compared the instant case with that of *Broadview Apartments Co. v. Comm'n for Historical & Architectural Pres.*, 49 Md. App. 538, 433 A.2d 1214 (1981). *Casey*, 400 Md. at 98, 929 A.2d at 299. In *Broadview*, the Court of Special Appeals of Maryland found that Baltimore City erred when the City's Historic District Commission ("HDC") denied a demolition permit before considering economic feasibility on the owner when: 1) the structure at issue had been zoned historic; and 2) the owner filed for a demolition permit in accordance with Article 66B of the Maryland Code. *Casey*, 400 Md. at 298-99, 929 A.2d at 98 (citing *Broadview*, 49 Md. App. At 546, 433 A.2d at 1218). In the instant case, however, Casey had not filed for a demolition permit under Article 66B because she directly appealed the rezoning of the bungalow. *Casey*, 400 Md. at 302-03, 929 A.2d at 100-01. Therefore, until Casey files for a demolition permit and HDC approves or denies it, the Court cannot render a final decision as to the ultimate impact of the rezoning on Casey. *Id.* at 314, 929 A.2d at 107. The Court determined that, for there to be an unconstitutional taking of property, Casey must show that, "the restrictions imposed [are] such that the property cannot be used for any purpose . . . [not] that the zoning action results in substantial loss or hardship." *Id.* at 307, 929 A.2d 103 (quoting *Mayor and City Council of Baltimore v. Borinsky*, 239 Md. 611, 622, 212 A.2d 508, 514 (1965)).

By allowing governmental agencies to focus only on historical merit, the Court of Appeals of Maryland promotes the public policy of

protecting historically significant structures without a decision being influenced by factors unrelated to the structure's historical qualities. Furthermore, this case assists practitioners in recognizing the importance of informing clients of the risks involved with appealing an administrative ruling to the judicial system prior to exhausting every other available administrative remedy.