



# Maryland Municipal Attorneys Association

Lynn Board President; Todd Pounds, Vice President; Frank Johnson, Secretary; Jason DeLoach, Treasurer

MINUTES FOR NOVEMBER 12, 2020 MEETING

APPROVED FEBRUARY 11, 2021

The Thursday, November 12, 2020 MMAA meeting was held virtually, using “Zoom,” for the third virtual meeting; this was also the third annual joint city-county attorney meeting. The meeting convened at Noon and Lynn Board, President, called the meeting to order at that time and welcomed everyone. She said she was pleased to see the County attorneys join us today.

1. Minutes of the July 16, 2020 virtual meeting were unanimously approved, on motion by Todd Pounds which was seconded by Jason DeLoach.
2. Tom Yeager, president of the County Attorneys Association, welcomed County attorneys, noted no MACo conference this fall but said there would be a County Attorney training next Tuesday, November 17.
3. Lynn noted we wanted to give Judges Booth and Getty as much of the hour as possible, and noted a handout had been provided to everyone to focus on the cases.

Judge Booth started and welcomed everyone. She noted some challenges in the “zoom: and virtual environment and shared a few pro’s and con’s first. She asked Judge Getty to lead the discussion. He said it’s a world of “up close and personal;” noted we all miss the courtroom, but noted this may take some time, and that spreading out in person may not work. He said they believe the Zoom format works well and without a mask we can have some engagement between the bench and attorneys arguing. So far, they have seen no technical issues. He noted two approaches – a head shot where you argue, or set up a podium or rostrum and argue as if before the court, but need a separate microphone for that or your sound won’t work. He warned that we should be aware of any background, as some colors can clash, but that the Zoom platform has worked well. He said his advice is to make a “mock argument” video, tape it, and make sure the lighting is good and that it works, so that the image is in focus. Judge Booth also noted it’s useful to have a cellphone or alternative in place just in case the computer malfunctions.

Lynn asked if there were any oral argument questions; and there were none.

Judge Booth said the 2019 term was very interesting with a number of cases, including common-law breach of fiduciary duty; recognizing tortious interference with bequests; and adopting the *Daubert* standard for expert testimony. As to local government, they selected several cases to review.

First, *70-80 Properties v. RALE*. She said it has limited direct application, She said the development application was for 1500 units, hotly contested, lasting many months and organized oppositions. She said the County approved it 4 to 1 at the commissioner level. One of the commissioners had attended a meeting at a group focused on transportation, and made suggestions for their supporting letter which was introduced to the County at the 11<sup>th</sup> hour. The citizens group filed a petition for review after approval, arguing this was an Ethics ordinance violation. The Circuit Court agreed and remanded, and the newly elected legislative body opted for de novo review and the court agreement. She noted this was then appealed. The Court concluded the legislative body had the right to use a de novo hearing, did not apply zoning estoppel based on lack of reliance on zoning approval, but ultimately it was a plain-language interpretation of the Frederick County Ethics ordinance. Judge Getty noted the ordinance itself should not be considered a model as it can chill the ability of local officials to speak to others. One question raised about zoning estoppel was whether it might be accepted or adopted at some point; Judge Booth noted it

came up twice last term but nothing now pending. She said there might be a time when the court adopts it, but Maryland has been conservative on vested rights and zoning estoppel, also noting the lack of a substantial reliance fact pattern.

Next, *7222 Ambassador Road v. National Center on Institutions and Alternatives*. Here, reviewing limited liability corporation laws. He said they were required to review the organization and construct of State Department of Assessments and Taxation and required reporting. Here, Ambassador Row had filed lawsuit based on a rental issue, and he said the focus of the argument was the interpretation of the LLC statute. He noted the case involved an LLC that had failed to satisfy its requirements to remain an LLC. He said the case interpreted the LLC statute and found the lynchpin of the case was the LLC's failure to file an annual report to SDAT and thus forfeited the right to do business as well as the right to pursue litigation, and here found the appeal was not permitted by law, as a result.

Third, *Baltimore City Police v. Potts/Estate of William James*. Consolidated cases, Judge Booth explained, regarding two persons stopped by the police. One was beaten and searched, guns were planted on them, and they went to prison. Potts sentence was vacated and James was released after spending 7 months in prison. They sued the police, and the issue was whether the City was responsible, such that the police were acting within the scope of their employment. The Court, she said, found they were so acting, based on careful fact analysis based on the *Sawyer v. Humphries* case. She explained their actions were not to steal or for personal benefit but within the focus of their work, even as their actions were illegal. She noted the importance of reviewing the officer's actual conduct in each case.

Fourth, *Wynne v. Controller*: Judge Getty noted this was a challenge to the General Assembly's budget powers in changing the interest due on tax refunds. The Wynne's challenged the interest due on taxes originally paid on their out of state tax income. The law was found to be a violation of the commerce clause, but the refunds and interest due was a concern for local governments in the midst of the 2008-2009 recession, so the General Assembly reduced the interest rate due, he explained, reducing the interest rate on the overpayment from 13% to 3% or so. Noted the Supreme Court had found requiring payment was a violation in an Alito decision, thus raising the interest rate question. Judge Getty said the Court concluded that the rate reduction was not a violation of the commerce clause.

Fifth, *Estate of Jeffrey Blair v. Austin*: Judge Booth noted this was an excessive force police case, involving a few seconds of a video recording. She explained the footage, about 7 seconds, showed the officer firing four shots very suddenly. Blair died before trial but not from the injuries, and his estate filed the complaint for excessive force. Jury awarded damages, but she said the Court of Special Appeals reversed, finding no other alternative, and the Court of Appeals reinstated the excessive force verdict. She noted it was a 4 to 3 decision based on surveillance video; she noted both she and Judge Getty dissented but the majority found that the evidence allowed the jury to decide that excessive force occurred. Judge Getty instead said the focus should be the officer in the situation and not later by hindsight or Monday-morning quarterbacking. She noted it's likely we will see more of these cases.

Sixth, *Joseph Stracke v. Estate of Kerry Butler*; Judge Getty said another fact-driven case with a 4 to 3 decision, and question was giving credence to jury decision. Question he said was whether 2 Baltimore City medics were grossly negligent in treating Mr. Butler at an early morning call. A jury verdict for gross negligence was reversed by the judge, but the Court of Special Appeals reversed that. The Court's majority found the paramedics were not grossly negligent in that they were not acting with wanton or reckless disregard in following required protocols, but said there were extensive facts involved which were reviewed in detail. He noted the conclusion was that an error in judgment did not necessarily mean that judgment was grossly negligent.

Seventh, *Maryland Reclamation Associates* case: Judge Booth noted it was a longstanding case, going back to 1989, where MRA contracted for 62 acres for a rubble landfill and obtained inclusion in the Harford County waste management plan. But, with a change to the legislative body, the County Council sought to remove the rubble landfill from the plan and add zoning changes. She noted MRA first sought a declaratory judgment against the County decision, where they were found to have failed to exhaust their administrative remedies. And that case involved a variance request, where the Court determined they had no vested right to the landfill use and there was no zoning estoppel. But this final case involved a takings claim asserting vested rights, arguing the county's actions interfered with reasonable expectations. The jury awarded damages but the Court of Special Appeals reversed based on a violation of statute of limitations, and the Court reversed based on failure to exhaust administrative remedies; she said the Court concluded this had to be raised as part of their first claims and not held back. She notes they sought certiorari from the Supreme Court which was just denied in the last week or so.

Eighth: *Mayor and City Council of Baltimore v. Prime Realty*: Judge Getty said the issue was a challenge to substituted service. This was a receivership for real property, he said, and the resident agent had moved to Montgomery County with a post office box. But, SDAT does not accept post office boxes and rejected the change. Thus, Prime Realty didn't get notice as notices went to the vacant prior Bel Air, Maryland address. He said the issue was whether the substitute service statute was still valid, and the Court found it was and that Baltimore City made sufficient efforts to locate Prime Realty and substituted service was justified.

Ninth (and last): *Pizza di Joey and Madame BBQ v. Baltimore City*. Judge Booth noted this was challenging a 300-foot distance requirement between a vendor and a brick and mortar restaurant. The Circuit Court held the 300 foot rule did not deprive substantive due process but struck the ordinance *sua sponte*, finding it vague. The Court of Special Appeals reversed and upheld the ordinance, finding it rationally related to a legitimate government interest and that the statute was not vague (and that the Circuit Court should not have made the *sua sponte* finding the ordinance was vague).

4. Lynn thanked both Judge Booth and Judge Getty for their presentations, and many members individually also offered their thanks. She then turned it over to Justin Fiore, MML's Manager of Government Relations, and he turned it over to Angelica Bailey, Director of Government Relations for MML, who serves in the role from which Candace Donoho recently retired. She noted the recent MML legislative priorities and asked Bill Jorch, MML's Manager of Government Relations and Research, to speak on that issue. He noted the priority is to eliminate the current HUR funding sunset in 2024 which would lead to a major decline in revenue. He also noted retention of authority for right of way placement of technology infrastructure, including small cell but also broad band and landline installations as well. Justin noted another initiative to look at climate change more holistically and focus on that issue more broadly. Bill also asked that if anyone could provide input from their councils and local leadership on addressing police reform issues, to please do so as background information,

Natasha Mehu, Legislative Director for MACo spoke briefly about their 4 priorities, including County budget security and the need to prepare for the worst; split election funding between states and counties and ensure proper local input involving county funding; building out broadband access; and focus on protecting funding for public health. She also noted police reform efforts will be a key issue, especially body camera footage under the PIA and the Local Government Tort Claims Act limits on torts committed by police officers.

With nothing further for the good of the order, Lynn adjourned the meeting at 1:25 p.m.

Frank Johnson, Secretary