



# Maryland Municipal Attorneys' Association

## Quarterly Newsletter – Summer 2014

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

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### Revival of Quarterly Newsletter & Website

Several years ago, MMAA distributed a quarterly newsletter, which fell by the wayside when no one was available to keep it up. With the ease of electronic distribution, I've volunteered to help revive it. The intent is simple: make note of key court, legislative, AG and other decisions, with highlights rather than in-depth analysis. And with our email list we can follow-up (personally or in the next newsletter) or ask questions. A few pages should be sufficient, but this can be expanded as needed. The newsletter will also include information about MMAA, including upcoming meetings and issues of interest.

We will send the newsletter by email and include it on the MMAA page of the MML website. We also plan to add more updates to our website, including our bylaws and membership list. The intent is to provide more opportunities to share information, ask questions and collaborate. Think of how useful this might be when you're hit with a new question first thing in the morning.

Let me know what you think, and send along any suggestions. I'm happy to do brief articles on almost any topic and would gladly include short articles from others. Thanks for reading!

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### Prayers before Meetings Permissible

On May 5, 2014, the Supreme Court held in *Greece v. Galloway*, Case No. 12-696, 572 U.S. \_\_\_\_ (2014) that sectarian prayers given by ministers and

religious leaders before Town or City Council meetings do not violate the First Amendment. While the petitioners had argued that the prayers lacked diversity as they were almost always by Christian ministers, the Court held there was no First Amendment violation as opening legislative sessions by prayer was traditional and there was no coercion for anyone to participate.

The Court also held that a prayer's content would not likely raise concerns. But the 5-4 decision did note that governments had to maintain a policy of nondiscrimination, and a pattern of prayers that attempt to condemn or convert others to a particular religious belief would conflict with the First Amendment.

The U.S. District Court of Maryland recently dealt with this issue in *Hake v. Carroll County*, in which the Court most recently reversed a preliminary injunction issued against the Board of County Commissioners before the Supreme Court decision. Argument and a decision on the merits remain, however.

### MMAA Spring Meeting at Kent Narrows – Judges Harrell & Cathell Join Us

At the MMAA Spring meeting at Fisherman's Inn at Kent Narrows on May 8, Maryland Court of Appeals Judge Glenn T. Harrell, Jr. and retired Judge Dale R. Cathell joined us to discuss recent cases of interest, including an extensive discussion of decisions involving land use and zoning.

We thank them for joining us, and look forward to seeing them again next year!



## Zoning Must Follow Comprehensive Plan

The Smart and Sustainable Growth Act of 2009 (HB 297) was passed after the Court of Appeal's 2008 *Trail v. Terrapin Run* decision, in which the Court held that comprehensive plans were only guidelines that did not require strict conformity in zoning land use maps.

The General Assembly in 2009 began to take additional steps to mandate such conformity. These legislative changes and subsequent court decisions have added significance to passage of comprehensive plans. Court decisions since then have emphasized the need for legislative zoning changes to be consistent with master plans, and indeed with the goals expressed in those master plans.

## SB 212: Equal Treatment for Gender Identity

The General Assembly's SB 212 (2014) provides that persons must be treated equally and cannot be refused the use of public facilities, regardless of their gender identity. The bill provides the right of access without the need to show proof of gender identity, and requires after October 1, 2014 that any single-use facilities, such as bathrooms which can be locked from the inside, be gender-neutral. The bill does not specify any capital projects or separate facilities, but does require an "equivalent private space" to be available upon request at any gender-specific locker facility.

## 2014 – 2015 MMAA Officers

At the MMAA spring meeting, officers were all elected by acclamation. John Barr will continue serving as President and Suellen Ferguson as Vice President. Jason DeLoach is also continuing as Treasurer, but John Shay will now serve as

Secretary. Lynn Board agreed to serve as the MMAA Legislative Committee representative, and Elissa Levan will serve on the MML Board of Directors. Many thanks to everyone who's been willing to serve!

## FCC Considering Additional Limits on Ability to Regulate Wireless Facilities

The 1996 U.S. Telecommunications Act and resulting regulations have severely limited local government ability to regulate wireless facilities, such as telecommunications towers. As such, zoning restrictions are primarily limited to public safety concerns.

The FCC in September 2013 published notice it was considering further restrictions even on the ability to regulate wireless facilities for public safety, including environmental concerns. Additionally, the FCC is proposing to further restrict the ability to regulate changes and upgrades to existing facilities. The FCC has not yet adopted any new rules, but groups such as the International Municipal Lawyers Association (IMLA) have been working to coordinate local efforts nationwide to urge the FCC not to make such significant changes.

## MMAA Meeting at MML Convention

The MMAA will have a lunch meeting at the MML Convention on Monday, June 9, starting at noon. MMAA member Fred Sussman will talk about his service on the commission handling the revision (and rewriting) of the Land Use Article from the former Article 66-B. We look forward to his insights.

Also look for a number of MMAA members who will be presenting at the Convention, including Victor Tervala, Jay Gullo, Lynn Board, Brynja Booth, Elissa Levan, Tom Yeager, John Barr and Kevin Karpinski.