

COURT OF APPEALS OF MARYLAND

Armstrong v. Mayor of Baltimore, 409 Md. 648

976 A.2d 349 (2009) · No. No. 107, September Term, 2008 · Decided July 23, 2009

SUMMARY

The Maryland Court of Appeals addressed a challenge under the Maryland Open Meetings Act to Baltimore City Ordinance 04-659, which approved a parking lot associated with the Cresmont Loft development. The court held that the challenge seeking to invalidate the parking-lot approval was moot because subsequent Ordinance 04-855 amended the zoning law and made Ordinance 04-659 unnecessary. The court also discussed, as dicta, the parties’ dispute over attorney’s fees under the Open Meetings Act.

CASE DETAILS

COURT	Court of Appeals of Maryland
WRITING FOR THE COURT	Harrell; Bell, C.J.; Battaglia; Greene; Barbera; John C. Eldridge; Irma S. Raker
JURISDICTION	Maryland
DECIDED	July 23, 2009
DOCKET	No. 107, September Term, 2008
DISPOSITION	vacated
PROCEDURAL POSTURE	Petitioners sought review of a Court of Special Appeals decision concerning a challenge under the Maryland Open Meetings Act to Baltimore City Ordinance 04-659 and the award of attorney's fees. The Court of Appeals granted petitioners' petition for certiorari and the City's conditional cross-petition.
STANDARD OF REVIEW	Questions of statutory interpretation are reviewed de novo. An attorney's-fee determination under the Maryland Open Meetings Act is discretionary and is reviewed for abuse of discretion or clear error as applicable.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Douglas M. Armstrong, Joan L. Floyd, Howard B. McElwain, Jorge A. Gonzalez, F. Ernesto Kellum, Glen D. Gaddy, Jeffrey Groden-Thomas, Wendi Groden-Thomas v. Mayor and City Council of Baltimore, Cresmont Properties Ltd.

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QUESTIONS PRESENTED

1. Whether the enactment of Ordinance 04-855 during the litigation rendered moot petitioners' challenge to the validity of Ordinance 04-659 and the accessory parking lot authorization.
2. Whether a party that proves a violation of the Maryland Open Meetings Act may qualify as a prevailing party for purposes of attorney's fees even if it does not obtain every substantive remedy requested.
3. Whether the Circuit Court's attorney's-fee award could remain for further determination after the merits challenge became moot.

HOLDINGS

1. A substantive change in relevant zoning law enacted while a land-use or zoning case is pending is applied retrospectively under the Yorkdale rule. Ordinance 04-855 therefore applied to this case and eliminated the separate-ordinance requirement for Cresmont's accessory parking lot, rendering petitioners' challenge seeking to undo the parking-lot authorization moot.
2. Sections 1-202 and 3-306(a) do not prevent retrospective application of a zoning text amendment that changes a use from prohibited to permitted; they require continued compliance with other applicable zoning and permitting requirements.
3. A complainant prevails under Maryland Code, State Government Article section 10-510(d)(5)(i), for purposes of potential attorney's fees, by proving that the governmental body violated the Open Meetings Act, even if the complainant does not obtain all of the specific remedies requested.

KEY QUOTATIONS

“In land use and zoning cases, the law shall be applied as it is in effect at the time of argument.” (976 A.2d at 354)

“In light of the Act's goals and purpose, as described above, we interpret the qualifier “prevails” as being determinable according to the parties' respective success litigating the seminal Open Meetings Act violation claim, regardless of the specific remedies sought, or whether any or all of those remedies are achieved.” (976 A.2d at 375-376)

FACTUAL BACKGROUND

Cresmont Properties developed a seven-story, twenty-six-unit apartment building and a thirty-three-space accessory parking lot on property in Baltimore City's Parking Lot District II. The City Council enacted Ordinance 04-659 authorizing the parking lot after its Land Use and Planning Committee held one public hearing and later circulated an amended bill for written signatures, including signatures from members who had

not attended the hearing. While the litigation was pending, the City enacted Ordinance 04-855, amending the zoning code to exclude accessory parking from the definition of a parking lot requiring a separate ordinance.

PROCEDURAL HISTORY

Petitioners challenged the enactment of Ordinance 04-659, which authorized an accessory parking lot for the Cresmont Loft development, alleging that the City Council Land Use and Planning Committee violated the Maryland Open Meetings Act by privately circulating and signing the bill after a public hearing without conducting another public meeting. The Circuit Court found an Open Meetings Act violation, declined to void the ordinance because the full City Council's subsequent public action cured the violation, and awarded petitioners attorney's fees. The Court of Special Appeals agreed that a violation occurred and that the City Council's action cured it, but reversed the fee award. During the litigation, Ordinance 04-855 amended the zoning code so that accessory parking lots no longer required a separate ordinance. The Court of Appeals held the merits challenge moot under the Yorkdale rule, reversed the Court of Special Appeals regarding attorney's fees, and remanded with directions to dismiss the appeals.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The judgment of the Court of Special Appeals was vacated, and the case was remanded to that court with direction to dismiss the appeals. The Circuit Court for Baltimore City was to resolve finally the petitioners' general attorney's-fee award, applying the Court of Appeals' interpretation of prevailing-party status and the governing discretionary standards.

CASES CITED

- Yorkdale Corp. v. Powell, 237 Md. 121, 205 A.2d 269 (1964)
- Layton v. Howard County Board of Appeals, 399 Md. 36, 922 A.2d 576 (2007)
- Riverdale v. Washington Suburban Sanitary Commission, 308 Md. 556, 520 A.2d 1319 (1987)
- Janda v. General Motors Corp., 237 Md. 161, 205 A.2d 228 (1964)
- Suter v. Stuckey, 402 Md. 211, 935 A.2d 731 (2007)
- Department of Human Resources v. Roth, 398 Md. 137, 919 A.2d 1217 (2007)
- Attorney General v. Anne Arundel County School Bus Contractors Ass'n, 286 Md. 324, 407 A.2d 749 (1979)
- Community and Labor United for Baltimore Charter Committee v. Baltimore City Board of Elections, 377 Md. 183, 832 A.2d 804 (2003)
- Wesley Chapel Bluemount Ass'n v. Baltimore County, 347 Md. 125, 699 A.2d 434 (1997)
- Malamis v. Stein, 69 Md. App. 221, 516 A.2d 1039 (1986)
- Andy's Ice Cream, Inc. v. City of Salisbury, 125 Md. App. 125, 724 A.2d 717 (1999)
- Anne Arundel County v. Maragousis, 268 Md. 131, 299 A.2d 797 (1973)
- Dal Maso v. Board of County Commissioners, 264 Md. 691, 288 A.2d 119 (1972)

- Springloch Area Citizens Group v. Montgomery County Board of Appeals, 252 Md. 717, 251 A.2d 357 (1969)
- Marathon Builders, Inc. v. Montgomery County Planning Board, 246 Md. 187, 227 A.2d 755 (1967)
- Mandel v. Board of County Commissioners, 238 Md. 208, 208 A.2d 710 (1965)
- Buckhannon Board & Care Home, Inc. v. West Virginia Department of Health & Human Resources, 532 U.S. 598, 121 S. Ct. 1835, 149 L. Ed. 2d 855 (2001)
- Hewitt v. Helms, 482 U.S. 755, 107 S. Ct. 2672, 96 L. Ed. 2d 654 (1987)
- Ruckelshaus v. Sierra Club, 463 U.S. 680, 103 S. Ct. 3274, 77 L. Ed. 2d 938 (1983)
- Hanrahan v. Hampton, 446 U.S. 754, 100 S. Ct. 1987, 64 L. Ed. 2d 418 (1980)
- S-1 & S-2 v. State Board of Education, 21 F.3d 49 (4th Cir. 1994) (en banc)
- Jackson v. State, 408 Md. 231, 969 A.2d 277 (2009)
- International Association of Fire Fighters, Local 1715 v. Mayor of Cumberland, 407 Md. 1, 962 A.2d 374 (2008)