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Bucktail, LLC v. County Council, 723 A.2d 440 (Md. 1999)

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Bucktail, LLC v. County Council, 723 A.2d 440 (Md. 1999)

Trask appealed the judgment of the Commission to the Supreme Court of Maine, arguing that: (1) the Commission committed an error of law by measuring flowage in terms of acreage; and (2) that a conflict existed between the Dam Abandonment Act and the Maine statute relating to the sale of water utility property requiring the Commission to give precedence to the Abandonment Act.

The court addressed the first issue by stating that the purpose of section 6109 was to “govern the sale or transfer by a consumer-owned water utility of land or property owned by that water utility” Under this statute, a municipality has the right of first refusal to purchase any land that lies within its boundaries and is offered for sale under the statute. The property that is subject to the statute is defined as “any land or property owned by a water utility . . . [which] contains greater than five contiguous acres.”

The court defined flowage rights as “in the nature of an easement appurtenant,” which is an easement that is incapable of existing separate from the land to which it is connected. Since easements were included in statutory definitions of “sale” and “land,” and since section 6109 required a minimum threshold in acres, the court found that the Commission was correct to measure flowage in terms of acreage. The court stated that the legislative history supported the Commission’s interpretation and that other jurisdictions also referred to flowage rights in terms of acreage. It concluded that it was inconsistent to ensure that a city had an opportunity to preserve interests in shorefront property without a corresponding right in the dam property. The public value of the shorefront property is eliminated without the dam.

As to Trask’s second argument, the court found that the Dam Abandonment Act and section 6109 could be read in harmony with each other and that the two statutes were not conflicting. The Dam Abandonment Act stated that a dam owner should follow the procedures set out in the Dam Act until locating a prospective buyer, thus implementing section 6109.

Stephanie Pickens

MARYLAND

Bucktail, LLC v. County Council, 723 A.2d 440 (Md. 1999) (holding that the County Council did not support its decision to deny a developer a growth allocation with substantial evidence).

Bucktail, LLC, a company formed to acquire and to develop land, intended to build homes on ninety-three acres of land located near the town of St. Michaels, Maryland. Of the ninety-three acres, twenty were zoned as rural residential. However, the remaining seventy-three were located within the Chesapeake Bay Critical Area Protection Program’s resource conservation area, restricting construction to one

home per twenty acres in areas that contained naturally dominated environments. The zoning allowed Bucktail to construct only three homes.

To increase the number of homes it could build, Bucktail applied for a growth allocation with the Talbot County Planning Commission. If approved, the growth allocation would have changed the overlay zoning from a resource conservation area to a limited development area and would have changed the underlying zoning from rural conservation to rural residential. The new zoning would allow Bucktail to build fourteen homes.

The Planning Commission compared Bucktail's application to statutory critical area criteria, which minimizes damage to water quality and to natural habitats. The Planning Commission approved and recommended that the County Council approve Bucktail's application. In conformance with statutory mandates, the County Council introduced a bill and opened the application for public hearings. After the public hearing, the Council voted four to one against the bill. The Council found that Bucktail's growth allocation did not comply with all the critical area criteria. The Council denied Bucktail's application for the growth allocation.

Bucktail sued the Council for denying application. Neighboring property owners intervened as defendants. The circuit court found that substantial evidence supported the Council's decision. Bucktail appealed to the Court of Special Appeals where it argued that substantial evidence did not support the Council's denial of the rezoning, suggesting that the Council acted as a quasi-judicial entity. The Council summarized its act as legislative and immune from challenge.

The court determined that the Council's ultimate decision denying the rezoning remained legislative. However, it ruled that the process of applying the standards to particular facts remained judicial.

The court held that the Council's judicial actions were not supported by substantial evidence on the record, stating that the agency needed to have stated reasons for its decision. Thus, the court held that the Council did not advise Bucktail of the deficient facts and circumstances within the application.

Madoline Wallace

MINNESOTA

Pelican Group of Lakes Improvement Dist. v. Minnesota Dep't of Natural Resources, 589 N.W.2d 517 (Minn. Ct. App. 1999) (holding the Department of Natural Resources had no duty to hold a contested permit hearing for activities occurring above the high water level of Cormorant Lakes).

Pelican Group of Lakes Improvement District ("Pelican Group") is