



OFFICE OF THE COUNTY ATTORNEY

Douglas M. Duncan
County Executive

Charles W. Thompson, Jr.
County Attorney

MEMORANDUM

TO: John J. Clark, Director
Office of Project Development
Department of Public Works and Transportation

VIA: Marc P. Hansen, Chief *MPH*
General Counsel Division
County Attorney's Office

FROM: Eileen T. Basaman, Assistant County Attorney *ETB*
County Attorney's Office

DATE: November 5, 1999

RE: Legal Requirement to Provide Access to a Private Property from the Public Right-of-Way

This memorandum is written in response to your October 22, 1999, request for assistance in preparing a response to inquiries from the Luxmanor Citizens Association. Your request for research assistance really asks for the answers to two questions. The first question is the implied question about the source of the Department's authority to review preliminary plans of subdivision and to make recommendations to the Maryland-National Capital Park and Planning Commission regarding road access and safety concerns. The second question concerns the source of the requirement to provide property owners access to public rights of way.

The answer to the first question is found in Chapter 50 of the Montgomery County Code (1994), as amended (the "Subdivision Regulations"). Section 50-35 (a) (2) of the Subdivision Regulations requires the Planning Board to refer two copies of every preliminary plan of subdivision to the "County Department of Public Works and Transportation as to roads, streets, crosswalks, paths and storm drainage." In addition, § 50-35 (d) requires that the Planning Board may not approve a preliminary plan of subdivision until the applicant has "furnish[ed] road, crosswalk and pedestrian path grades and a street profile approved in preliminary form by the County Department of Public Works and Transportation."

The reasons for this are obvious. Although the M-NCPPC is staffed with traffic planners, the traffic and civil engineers responsible for the safe design and maintenance of County roads are on staff at the Department of Public Works and Transportation (DPWT), the agency charged with designing and maintaining the County Road system. The specific engineering principles applied by DPWT in its review are specified in technical manuals generally accepted within the

engineering industry, and adopted for use by the agency in reviewing road profiles and safety factors. The acceptance or adoption of engineering conventions is within the expertise and sound discretion of DPWT.

With respect to the other question asked, i.e. the source of the requirement to provide access to public roads to all taxpayers, the answer has long been settled in Maryland. The requirement is found in the due process clauses in the U.S. and Maryland Constitutions. These provisions have been interpreted by the Maryland Court of Appeals to mean that a denial of access to public rights of way violates the due process clause, and constitutes a compensable taking. In Sanderson v. Mayor & City Council of Baltimore, 135 Md. 509, 109 A.425 (1920), the Court determined that the excavation of roads at a grade significantly inconsistent with the abutting properties that rendered the abutting properties all but inaccessible from the right of way "resulted in the practical destruction of access to [plaintiff's] property, and we are of the opinion that...the injury amounts to the taking of private property without making just compensation therefor to the owner." Id., 135 Md. at 523. The Court has consistently ruled since that time that denial of access to a property constitutes a compensable taking. See also, Arnold v. Prince George's County, 270 Md. 285, 311 A.2d 223 (1973), ("a denial of access from the public street to a property by the governmental agency may also result in a taking without the payment of just compensation").

You have apparently also been asked questions about the authority of the Board to credit evidence presented by the applicant and the staff at M-NCPPC over the testimony and evidence of those who appeared in opposition. Specific questions must be referred to the M-NCPPC or raised in an appeal timely filed from the Planning Board's determination. However, generally, fact findings of an administrative body cannot be disturbed on appeal.

I hope that this has been responsive to your inquiry. Please do not hesitate to contact this office if you have any other questions on this matter.

CWT:pas

cc: Scott Wainwright; Traffic and Parking Services
Gayle Libby Curtiss; Property Acquisition
Greg Leck; Project Development

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