MARYLAND Association of COUNTIES

House Bill 243

Land Use Actions – Legislative Bodies – Judicial Review

MACo Position: **OPPOSE**

To: Environment and Transportation Committee

Date: February 9, 2016

From: Leslie Knapp, Jr.

The Maryland Association of Counties (MACo) **OPPOSES** HB 243. The bill would expand standing requirements for both comprehensive zoning and comprehensive planning actions, create unwarranted litigation, and imperil Smart Growth-friendly development projects.

HB 243 would apply property owner standing to comprehensive rezoning and comprehensive planning actions. The bill is allegedly trying to "fix" a recent Maryland Court of Appeals decision, *Anne Arundel County, Maryland v. Steve Bell*, No. 29, September Term, 2014. However, MACo believes that the *Bell* decision properly held that taxpayer standing is the appropriate standing requirement for comprehensive rezoning cases and that HB 243 would detrimentally alter how standing works in land use decisions.

Purpose of Standing

"Standing" is the legal right to bring and maintain a lawsuit. As the *Bell* decision noted, the purpose of standing is to limit the ability to bring suit to those parties who are directly affected by a decision:

> "Imposing limitations on the numerical class of potential claimants is consistent with the point of standing laws generally. As noted by the venerable scribe of all things involving Maryland zoning and land use, Stanley D. Abrams, Esquire, the standing requirement is 'based upon the necessity of limiting the parties to the proceeding to those who are uniquely affected by the decision which is being appealed and precluding frivolous appeals, harassment, or merely crowding the courts with litigation instituted by or involving those

169 Conduit Street, Annapolis, MD 21401
410.269.0043 BALT/ANNAP ◆ 301.261.1140 WASH DC ◆ 410.268.1775 FAX
www.mdcounties.org

> persons who are not specially affected by the decision and have no statutory right of appeal.' Stanley D. Abrams, *Guide to Maryland Zoning Decisions*, § 4.01 (5th ed. 2012)."[1]

Types of Standing

There are two types of standing discussed in the *Bell* holding: (1) taxpayer standing; and (2) property owner standing.

In order to qualify for taxpayer standing, a person must allege: (1) that the person is a taxpayer in the appropriate jurisdiction; and (2) that the person is challenging an action, either expressly or implicitly, on behalf of all taxpayers. Additionally, a person must show a "special interest" or "special damage" from the challenged action that is distinct from that of the general public. For taxpayer standing, this can be met by alleging: (1) an action by a government or public official is illegal or *ultra vires* (beyond the power of the entity); and (2) that the action may injure the person's property, resulting in a loss of money or an increase in taxes.

In order to qualify for property owner standing, a person must also show a special aggrievement or harm to his or her property that is different from the general public. There are two tests that apply to property owner standing. First, a person who has property that is adjoining, confronting, or in close proximity to property affected by the challenged action is automatically considered aggrieved. This is known as "*prima facie* aggrievement."

Second, a property owner that is not adjoining but within a close distance (typically 200 to 1,000 feet from the property affected by the challenged action but could be farther in very rare exceptions) can be aggrieved if the property owner can prove certain "plus factors" regarding injury. This is known as "almost *prima facie* aggrievement."

The *Bell* Holding

In the *Bell* decision, the Court correctly concluded from previous decisions that taxpayer standing should apply to primarily legislative land use actions (such as comprehensive zoning), while property owner standing should apply to administrative, executive, or quasi-judicial land use action (such as piecemeal rezonings, special exceptions, and nonconforming uses).

> "As demonstrated by *Superblock I, Superblock III,* and *State Center*, the doctrine of property owner standing may apply to administrative land use decisions and other land use actions undertaken as executive functions. We have not applied heretofore the doctrine to purely legislative acts reached through solely legislative processes."[2]

---

[1] *Bell* opinion, p. 34.

[2] *Bell* opinion, p. 28.

HB 243 would override the well-reasoned arguments of the *Bell* decision and instead require property owner standing for both comprehensive zoning and comprehensive planning decisions. This would create serious legal and policy consequences that are outlined in the next section.

HB 243 Consequences for Comprehensive Zoning and Planning Actions

Increase in Plaintiffs and Litigation: As the *Bell* decision noted, comprehensive zoning typically encompasses large geographic areas that can literally include hundreds or thousands of parcels. Applying property owner standing to this process would dramatically increase the number of potential plaintiffs and consequently litigation.

> "[T]here is no reason to think that the application of property owner standing to comprehensive zoning legislation will limit the class of potential plaintiffs – indeed, it will expand the class exponentially."[3]

Slowing or Stopping of Comprehensive Zoning Process: Given the complexity and public process requirements for comprehensive planning and zoning, local governments struggle to complete the process in a timely manner. In recognition of these challenges, the General Assembly recently passed legislation moving local governments from a 6-year to a 10-year planning cycle.[4] The provisions of HB 243 would likely further slow or even freeze the process.

Redevelopment and Revitalization Projects: Particularly at risk are Smart Growth-friendly redevelopment and revitalization projects. These types of projects often need comprehensive zoning changes and occur in areas with dense populations. Expanded standing would give "not in my backyard" opponents more ability to challenge and potentially defeat an otherwise worthy project.

Comprehensive Plans: By subjecting comprehensive planning actions to property owner standing, HB 243 also expands standing to challenging comprehensive plans. During the adoption of the "consistency" requirements in 2009, MACo raised concerns about making comprehensive plans the equivalent of a legally binding document.[5] Were a comprehensive plan treated as a legally binding document rather than a broad visionary statement, then local governments would be forced to write their plans in legal terms to minimize their liability. This will reduce or eliminate the ability of the public to properly understand and meaningfully participate in plan creation and implementation.

---

[3] *Bell* opinion, p. 30, footnote 20.

[4] SB 671/HB 409 of 2013.

[5] SB 280/HB 297 of 2009. MACo ultimately supported this legislation.

The *Bell* decision focused its discussion on comprehensive zoning actions and did not even reference comprehensive plans. However, HB 243 reaches further. Additionally, the provisions of HB 243 would undermine legislation passed by the General Assembly just last Session clarifying the ability of local legislative bodies to amend their draft comprehensive plans.[6]

Severability: Another challenge would be the issue of severability. If a piece-meal zoning or special exception is found to be invalid, the holding's ramifications do not extend beyond that property. However, what happens if a property reclassification in a comprehensive zoning is found to be invalid? The *Bell* case raised the specter that all reclassifications could be found to fail because the overall process was a comprehensive one.[7]

Additional Petitioners: As occurred in the *Bell* case, if standing is broadened for comprehensive zoning, property owners who agree with the proposed zoning may now be forced to join in a challenge to protect their own property rights.

Conclusion

In conclusion, MACo believes the *Bell* case is a restatement and clarification of existing precedent regarding standing and that HB 243 would improperly expand standing for both comprehensive rezoning and comprehensive planning actions. The result would upend local comprehensive planning efforts, disrupt and potentially significantly delay the comprehensive rezoning process, and imperil Smart Growth-friendly redevelopment and revitalization projects. Accordingly, MACo would urge the Committee to give HB 243 an **UNFAVORABLE** report.

[6] SB 551/HB 919 of 2015. Both MACo and MML supported this legislation.

[7] *See Bell* opinion, p. 28.