Rubble company filed ‘takings’ suit too soon, high court says

By: Steve Lash Daily Record Legal Affairs Writer April 27, 2020

Maryland’s top court on Friday refused to reinstate a $45 million jury award to a company that has battled Harford County for nearly 30 years over the firm’s right to use its property as a rubble landfill.

In its 7-0 decision, the Court of Appeals said Maryland Reclamation Associates Inc. ran afoul of the legal doctrine that companies cannot challenge county zoning decisions in court without having exhausted their administrative appeals.

The high court said MRA invalidly sued Harford County without having first allowed its Board of Appeals to consider the company’s constitutional challenge to the county’s rejection of MRA’s rubble landfill request.

In its challenge, MRA claimed the county’s rejection amounted to a regulatory “taking” of the company’s property because the only reason MRA had bought the land was to store rubble. If deemed a taking, the company could seek just compensation under the Maryland Constitution.

Without addressing the merits of MRA’s claim, the high court said the company moved too quickly to circuit court.

“All constitutional claims arising out of the application of a zoning regulation must be exhausted at the administrative agency level before a court may consider the claims as part of a petition for judicial review or in a separate proceeding filed under the original jurisdiction of the court,” Judge Brynja M. Booth wrote for the high court.

“Our jurisprudence carves out no exception from this requirement for takings claims,” Booth added. “In the context of a claim asserting an unconstitutional taking of property arising from the application of a zoning regulation, a court is only permitted to consider the claim after the zoning agency makes an initial factual determination of whether the property owner has been denied all beneficial use of the property.”

If MRA had properly followed the administrative process, the Board of Appeals could have considered the company’s contention that the county’s rejection took from MRA its investment-backed, intended use of the property – and perhaps eliminated any need for litigation, the high court said.

“Utilizing its zoning expertise, the board would have the authority to establish reasonable conditions to limit any adverse effects that the operation would have on adjacent or nearby properties,” Booth wrote.

“If the board granted the variance relief to permit the property’s use as a rubble landfill, MRA would no longer have a takings claim for just compensation” under the Maryland Constitution, Booth added. “If, however, the board determined that the site is simply not suitable for a rubble landfill, and declined to grant the variance, MRA would then have the right to proceed with a jury determination of just compensation of its property under the Just Compensation Clause … of the Maryland Constitution.”

MRA is “considering all options,” including a potential appeal to the U.S. Supreme Court, said the company’s appellate attorney, Brett Ingerman, adding that the Maryland Constitution’s takings clause is as broad as the federal Constitution’s.

Left unchanged, the Court of Appeals’ decision requiring administrative exhaustion of the constitutional claim will be “the death knell for regulatory takings cases in Maryland,” said Ingerman, of DLA Piper in Baltimore.

Rather than hearing the claim anew, circuit courts are bound by procedural precedent to give deference to final administrative decisions that are not arbitrary and capricious and are supported by substantial evidence.

“It’s a deferential standard of review in circuit court,” Ingerman said.

“The Court (of Appeals) has made it virtually impossible for a private property owner to have a jury trial on a regulatory takings claim in Maryland,” he added. “It gives the county carte blanche to do what they want, and impact on the property owner be damned.”

Harford County’s appellate attorney, Andrew H. Baida, hailed the high court for making clear that litigants challenging a county’s zoning decision as a regulatory taking must exhaust the administrative process before going to court.

“It’s an important constitutional issue,” said Baida, of Rosenberg Martin Greenberg LLP in Baltimore. “It’s a good win for government.”

Churchville-based MRA bought the 62-acre property in 1989. The county had previously included the property in a waste management plan and the state issued an environmental permit, allowing the land to be used as a landfill, according to court documents. But the county then adopted a zoning amendment with new conditions that hindered MRA’s ability to use the property as a landfill, the documents stated.

MRA initially sued in 1991, seeking to move forward with the rubble landfill project on the grounds that the company had a vested right to do so. The case went up and down the court system, with multiple stops at the Court of Appeals, which ultimately held in 2004 that MRA could still seek a zoning variance or exception before asking for judicial review.

On remand, the Harford County Board of Appeals denied the zoning variance a final time in 2007. MRA was unsuccessful in getting that decision overturned in court, including in the Court of Appeals in 2010.

In 2013, MRA filed the controversial lawsuit, claiming that the county deprived the company of "beneficial use" of its property for which just compensation is owed under the state constitution.

The Harford County Circuit Court jury agreed with MRA that the county's rejection was a "taking" and set the just compensation at $45.4 million, including $30.8 million in principal and $14.6 million in interest. The Court of Special Appeals overturned the verdict last year, saying MRA had failed to file suit within three years of the Board of Appeals' June 5, 2007, rejection of the company's request for variances to build the landfill.

The Court of Appeals agreed — in a footnote to its 83-page opinion — that the lawsuit was filed too late and spent the rest of its decision explaining why MRA's takings claim could not have been brought in court because the administrative process had not been exhausted.

The Court of Appeals rendered its decision in *Maryland Reclamation Associates Inc. v. Harford County, Md.*, No. 52 September 2019.