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ITEM 10, COUNCIL 10/23/09

M. Kostrencich

**STATEMENT of J.H. McQUISTON on
BUILDING PERMIT REQUESTS for SPORTS DISTRICT**

Honorable President and Members of the City Council:

When I was an active Civil Rights lawyer and Congressional adviser, I needed Judicial pronouncements to prevail in many Civil Rights cases.

One critical Judicial pronouncement I invoked was:

What is the effect of subsequent legislation on prior grants?

Civil Rights lawyers are grateful for a ruling by **John Marshall**, in the United States Supreme Court:

During the wars with England, the American Congress issued letters to "privateers", authorizing them to seize ships on the excuse that they aided the enemy. After the wars, the Congress amended the law so that no privateer could use the former authorizations.

The capturer of the *Schooner Peggy* tried to get the Court to ignore the amendment, saying that the prior issuance of the letter could not be affected by the amendment.

The Court disagreed. In *The Peggy*, 1 Cranch, Marshall declared that the **law as it exists at the moment is to be applied, regardless of prior cachets.** The capturer was denied the *Peggy* as a result.

In the **Civil Rights field**, people were being denied their rights because litigation to enforce rights was too expensive to be undertaken. So, Congress enacted the **Civil Rights Attorney Fee Awards Act, Section 1988 of Title 42, U.S. Code.** It said that from that date of enactment, victorious people preserving their rights should recover their attorney fees. Ordinarily, the "American Rule" makes all parties pay only for their own attorneys' fees.

During the time of enactment, the **School Board of Richmond, VA**, was being sued by **Bradley**. After Bradley was vindicated, Bradley applied for compensation per Section 1988. The Board refused to pay because the law was enacted after the suit had commenced.

The U.S. Supreme Court settled the issue in 416 U.S., a case dear to all **Civil Rights protectors.** It said that *Peggy* controls such events. Enactment **voided conflicting prior commitments.** Fees were payable.

Only when a **specific and Constitutionally-defensible exception** for persons is contained **in the amended law, is an exception allowable.**

Here, developer needs additional permits before the project can be lawfully conducted. But *Peggy* and *Bradley* **require this Council and the City to deny the permits. They would constitute an "exception".**

Even if the City enacted a special ordinance to permit the project to continue, as a matter of law such would be a "special benefit" which is Unconstitutional.

I pray the Council will not be a party to such an Unconstitutional act.

Respectfully submitted,

c: Interested parties