Op-Ed, Baltimore Sun, Sunday, December 23, 2007

Saving the Bay from the Bench

By Kim Coble
Maryland Executive Director, Chesapeake Bay Foundation

When citizens want to change how the government protects the environment, they generally work toward changing legislation, regulations or government leaders. Rarely do people think about judges.

But they should.

Maryland's judges are thoughtful people whose primary experience is with criminal and business law. But they are often unaware or insufficiently educated about the environment and the laws meant to protect it. Too often, these judges do not have a fundamental understanding of the complexity and importance of our natural resources, and some view environmental offenses as minor compared with other crimes and violations. Lacking a larger understanding, they can be overly sympathetic to claims that protecting our water, air and land should be subordinate to an individual's property rights.

As a result, in recent years, we have seen cases in which the legislature had to go back and rewrite legislation to repair damage done to environmental laws through misinterpretation by the court system. For example, two cases involving the building of a hunting lodge on the Nanticoke River resulted in decisions weakening the Critical Area law, forcing the General Assembly to pass additional legislation supporting its original intent.

The Critical Area Act, passed by the General Assembly in 1984, presumes that the "cumulative impact of current development and all new development" within 100 feet of tidal waters is harmful to water quality. Under the law, the developer, not the county or opposing citizens, is required to prove that the new development will not harm water quality. Unfortunately, many of those who review applications to build in the "critical area" have ignored these basic concepts.

The courts and other judicial institutions (as well as many local planning offices) have chosen to ignore the cumulative impact of the next shopping center, apartment complex or industrial park. Each case is reviewed independently, and thus the courts look only at the impact of just this "one" case: One parking lot. One gazebo. One bed of underwater grasses destroyed. One wetland lost.

It's an argument developers routinely deliver, with amazing success. But the cumulative effects of these "ones" is death by a thousand cuts for our environment, our rivers and streams, and our bay.

Many Marylanders are unaware of the severity of the problem, because most courts make decisions about a single case and report on the decision using legal jargon. These decisions are

issued away from the public eye. That makes these decisions — and the appointment of those who write them — even more critical.

Sadly, the cost of mounting a legal challenge to each case is beyond the financial ability of most citizens. And special-interest organizations, willing to act on behalf of concerned individuals, are rarely even allowed to appear because of an overly narrow interpretation of who has “standing” — that is, who has the right to appear before the board or court.

Even when a board or court imposes punishment for environmental violations, the sanction is usually minimal despite gross violations of the law, and in spite of the irrevocable, long-lasting damage to our communities. Typically, local courts impose a fine of only a few hundred dollars for an abuse that carries a maximum fine of tens of thousands of dollars.

Judges who respect our natural resources and the common good, who have a demonstrated record of protecting the public interest, can help preserve and restore the land, air and water that belong to all citizens.

Maryland has good environmental laws. They could be stronger, but even the strongest and most well-crafted laws are only as good as those who enforce them.

Kim Coble is Maryland executive director of the Chesapeake Bay Foundation. Her e-mail is kcoble@cbf.org.

Copyright © 2007, The Baltimore Sun