

## **Excerpts from Judge McKenna Decision**

### **Relating to aesthetics:**

Relying on Members of City Council of Los Angeles v. Taxpayers for Vincent, the court in Board of Managers of SoHo International Arts Condominium v. City of New York, *supra*, noted that aesthetics is a substantial governmental interest within the police power of the state to regulate. In Burke v. City of Charleston, the court considered the application of a content neutral regulation in regard to a mural created on the exterior of a building in Charleston's Historic District, and the court concluded that in addition to other specifically identified objectives of the city's historic ordinance, the city possessed a significant governmental interest in the aesthetics of the designated historic areas. ...Based on the foregoing authority, **this Court concludes that the factors including aesthetic factors set forth in Subsection 21.56.060 A of the Annapolis City Code constitute a legitimate and significant governmental interest.**

### **Relating to regulating content/message:**

**The court finds that the regulations contained in Section 21.56.060 A are content neutral. The provisions of the Annapolis City Code authorizing the Historic Preservation Commission to consider certificates of approval were clearly enacted for purposes wholly unrelated to speech.**

### **Relating to confusion in the Code:**

Subsection 12.56.020 of the City Code defines an "alteration" as "any exterior changes that would affect the historic, cultural or architectural significance of a designated site or structure, any portion if which is visible or intended to be visible from a public way including, but not limited to construction, reconstruction, moving or demolition". The meaning of this provision is clear and unambiguous. **The Court concludes that a reasonable person, of ordinary intelligence and experience, will understand that an application for a certificate of approval is necessary for an alteration in the form of a mural created on an entire side of a building in the Annapolis Historic District.**

### **Relating to "It's just paint" and Design Guideline 8**

The purpose of Design Guideline 8 is evident from a common sense reading of that guideline. Design Guideline 8 applies to the exterior colors to be utilized in house paintings or building paintings in the Historic District of the City of Annapolis....The Defendant JKB commissioned Jeff Huntington to create a mural on the exterior surface of the building at 51-53 west Street in Annapolis. Mr. Huntington is not a house painter or a building painter. Mr. Huntington is a renowned and gifted artist. Design Guideline 8 entitles "Exterior Colors" has no reference in its text to murals or other works of art. Design Guideline 8 of the Annapolis Historic District Manual is not controlling of the Courts decision in regard to the issues in this case.