

Senate Bill 680 amends Section 19(b) (2) (B) of Article 81 providing, in pertinent part, that:

"A lien shall arise in land which has been assessed on the basis of agricultural use assessment ... on a date which is the earlier of the date of finality when the land is assessed on the basis of full value following a prior assessment on the basis of agricultural use; or the date on which the owner or other person having a property interest in the land is issued a building permit to commence or engage in the construction of improvements for nonagricultural use ...; or the date on which the owner or other person having a property interest in the land records any plot. The lien shall arise by operation of law...."

The Supreme Court has held that a fundamental requirement of due process in any proceeding which is to be accorded finality is a hearing "at some time before a person is finally deprived of his property interest." Wolf v. McDonnell, 418 U.S. 539, 557-558 (1974). In Barry Properties v. Fick Brothers, 277 Md. 15 (1976), the Maryland Court of Appeals held portions of the Maryland mechanic's lien law unconstitutional. Striking down that portion of the law which created a lien from the time work was performed or materials furnished, the Court ruled this amounted to a deprivation of a significant property interest without notice or a prior hearing and was, therefore, unconstitutional.

Senate Bill 680 provides that a lien shall arise on the earlier of three possible dates when the land use is characterized as nonagricultural. These are: (1) the date of finality when the land is assessed on the basis of full value; (2) the date on which a building permit is issued, or (3) the date on which any plat is recorded. Since the lien arises on one of these dates "by operation of law" and the bill fails to provide the owner with an opportunity to be heard before the lien arises, we believe that the ruling in Barry Properties compels the conclusion that this amounts to an unconstitutional denial of due process of law.

In so concluding, we are mindful of Section 29(a) of Article 81 which provides that before land is assessed the person against whom the assessment is proposed shall be given notice and an opportunity to present his side of the case. It is arguable that this provision might save a lien which would arise under House bill 680 as of the date of finality when the land is assessed for full value.¹ It would not, however, impact those instances under the bill where a lien would arise on the date a building permit is issued or a plat recorded as there is no new assessment and, hence, no opportunity whatsoever to obtain a hearing before the creation of the lien. Indeed, and most significantly,