



**Housing Opportunities Commission of Montgomery County
Position Statement**

HB892 (SB 233)

Business Regulation –Abandoned Cemeteries – Acquisition and Disposition

House Committee on Economic Matters & Committee on Health

Position: Unfavorable

The Housing Opportunities Commission (HOC) is Montgomery County’s Public Housing Authority and Housing Finance Agency, established by the State of Maryland and the County in 1974 to provide affordable housing for low-and moderate-income families. We serve over 20,000 families by providing rental assistance through federal, state and local vouchers; low-cost mortgages and down-payment assistance to qualifying first-time homebuyers; and financing, developing and preserving rental housing which we own and operate.

HOC respectfully submits its strong opposition to HB892 as introduced because it creates an unnecessary and burdensome new court procedure for managing disputes over cemeteries, disregarding a well-established framework for regulating cemeteries through licensing and strict controls in the development process. As this body is aware, the State is facing a tremendous housing crisis that requires the production of housing at a pace that far exceeds the current pipeline. This legislation has the potential to unintentionally create a new venue to stall or impede development, potentially significantly reducing the ability of organizations like HOC to preserve and produce new affordable housing.

The Senate’s amended version of SB233 avoids these unintentional consequences by focusing on improving the existing regulatory structures, rather than creating a broad new cause of action to supplant the established framework for regulating the redevelopment of cemeteries and burial grounds.

As introduced, HB892 would create a new set of property rights in descendents and a broad class of community organizations claiming to represent them. These individuals or organizations could challenge *any* transfer or sale of *any* property. This does not just impact sales of the property, but easements, rights-of-way, or even the ability to obtain financing secured by the property. The burden of proof would then be on the owner to demonstrate that the transfer is in the interest, not of all parties, but solely of the group that brought the challenge. If the owner cannot prove that the plaintiff is wrong about their own interests, then

the judge “shall” transfer ownership of the property to the plaintiff, apparently without compensation. Such a potential taking raises significant constitutional concerns.

Existing laws already regulate the operation of, and disputes related to, the location or treatment of cemeteries and burial grounds, including mechanisms for community involvement and input. These protections are appropriately focused on the *use* of the property, rather than its ownership. The Senate’s amended version of SB233 respects this distinction and rightfully avoids these difficult issues.

HOC is submitting testimony on this issue because we have had first-hand experience with the careful balance needed to honor the past while serving the present. In 2017, HOC purchased Westwood Tower, a property in the Westbard section of Bethesda. HOC was enthusiastic about the prospect of preserving this rare source of affordable housing in a very high-cost neighborhood. Constructed in the 1960s, Westwood Tower provides 212 homes and the opportunity to build more.

A potential historic burial ground was identified by County planners, but without clear evidence of where, or even whether, any remains are located today. HOC committed to work with the community to respectfully memorialize the site without displacing the 212 families that live there today.

Unfortunately, litigation over the property is ongoing and now approaching its fifth year. In the meantime, this has prevented HOC from renovating, redeveloping, or transferring the property, even with deed restrictions preserving affordability and ensuring that the appropriate process for archeological examination and memorialization are followed. Since no bank will secure a loan against a property on which they cannot foreclose, HOC has faced challenges financing maintenance and repairs on the property.

HOC is sensitive to the weight of the history of racial inequality in Montgomery County. Through our work in historically African-American communities like Emory Grove and Tobytown, we have worked proactively with community leaders to understand and rectify the mistakes of the past while also considering the needs of the people who live in our communities today. But because, as introduced, this bill does not adequately balance the needs of the present, we respectfully urge an unfavorable report.