Circuit Court for Prince George's County
Case No. CAE19-18641

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 307

September Term, 2020

THE REDEEMED CHRISTIAN CHURCH OF GOD (VICTORY TEMPLE)

v.

COUNTY COUNCIL FOR PRINCE GEORGE'S COUNTY, MARYLAND

Nazarian,
Wells,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: August 4, 2021

The Redeemed Christian Church of God, Victory Temple ("Victory Temple") owns an approximately twenty-nine-acre piece of property in Bowie on which it planned to construct a church with a seating capacity of 1,200 to 2,000 people. The property was designated Category 5 under Prince George's County's Water and Sewer Plan (the "Water and Sewer Plan" or the "Plan"), which means that the property is within the County's water and sewer envelope but should not be developed until water and sewer lines are available to serve it. To develop the property, the Victory Temple would need its designation to be upgraded to Category 4. According to the Water and Sewer Plan, such an upgrade must be accomplished by way of a legislative amendment to the Plan. Victory Temple applied for an amendment in or about November 2018.

In May 2019, after consideration by various local agencies and after two public hearings, the County Council of Prince George's County (the "Council") voted against the category change request. In response, Victory Temple filed a petition for administrative mandamus under Title 7, Chapter 400 of the Maryland Rules. The Circuit Court for Prince George's County granted the County's motion to dismiss, holding that the Council's refusal to change the water and sewer designation was a legislative decision and not subject to challenge by way of administrative mandamus. We agree and affirm.

I. BACKGROUND

Victory Temple is a religious congregation associated with the Redeemed Christian Church of God ("RCCG"), an evangelical Christian denomination headquartered in

Nigeria.[1] According to Victory Temple, the RCCG began in Nigeria in 1952 and has grown to over 40,000 parishes in 165 countries. Victory Temple was founded in Bowie in 1996 and has grown from 500 members in 2002 to over 2,000 adult members and 350 children and teenage members today. Victory Temple operates out of a former furniture store, a space that, it represents, has grown too small for its congregation. To that end, in 2018, Victory Temple acquired property totaling approximately twenty-nine acres located at 14403 Mount Oak Road in Bowie. Victory Temple planned to construct on the site a 60,000 square foot, two-story facility with a proposed seating capacity of 1,200 to 2,000 people.

The dispute before us relates to the requirements of the County's Water and Sewer Plan, a ten-year plan addressing water supply and sewerage systems that Maryland law requires each county to have. Maryland Code (1982, 2014 Repl. Vol.), § 9-503 of the Environment Article ("EN"); *see Dugan v. Prince George's Cnty.*, 216 Md. App. 650, 655–56 (2014). The parties do not dispute that the applicable version is the Water and Sewer Plan the County adopted on November 18, 2008. The Plan divides areas of the County into water and sewer categories based on their capacity to accommodate additional water and sewer customers. If a proposed project requires more new water and sewer capacity than its categorization permits, the landowner can file an application, through procedures the Plan defines, asking the County Council to amend the Plan to change the property's water and sewer category.[2]

[1] Unless otherwise indicated, the facts we recount here are undisputed.

[2] Chapter 6 recognizes two amendment processes, referred to as "Legislative" and "Administrative." The Plan provides for three Legislative Amendment cycles per year

Victory Temple's proposed church building requires more water and sewer capacity than the property's categorization (Category 5) would allow, so the Temple submitted an application for a category change (to Category 4) in the Council's December 2018 Legislative Amendment cycle. According to the Water and Sewer Plan, the "Legislative Amendment process typically takes about four months" and involves the Council's referral of the proposed amendment(s) to local agencies for comments, followed by the Council's introduction of a Resolution and a public hearing. The process culminates when the Council reviews and votes on the proposed amendments. Section 6.3.2 of the Plan provides that "[i]n order for the County to approve a particular category change, the project must meet the policies and criteria listed Section 2.1.4 of this plan." Section 2.1.4 includes three pages of considerations under six subheadings:

> A. Environmental factors
>
> B. Economics and general fiscal concerns
>
> C. Planning, zoning, and subdivision requirements
>
> D. Federal, State, Regional, County and Municipal land use plans and planning policies
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> E. Water and sewer facility plans, engineering constraints, and the availability of transmission and treatment capacity
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> F. The need to alleviate public health problems

Section 2.1.4.D, which addresses land use and area planning, contains a subsection that

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and ten Administrative Amendment cycles per year. The Plan expressly provides that a change from Category 5 to Category 4 must be accomplished through the "Legislative Amendment Process." In contrast, changes from Category 4 to Category 3 must be made through the Administrative Amendment Process. Applications for Legislative Amendments may also be initiated by the Maryland-National Capital Park and Planning Commission ("M-NCCP") and the Maryland Department of the Environment.

references "traffic impacts":

> Proposed development shall be analyzed for consistency with the General Plan, master/sector plans, and functional master plans as defined by Article 28 of the Maryland Annotated Code. This analysis shall include, but not be limited to, the impact of proposed developments and water and sewer extensions on land use, development patterns, historic sites and districts, public facilities, green infrastructure, and transportation system, including, but not limited to, **traffic impacts**, road construction needs, sidewalks, pedestrian trails and road connectivity in the surrounding neighborhoods.

(Emphasis added.)

The initiation and consideration of Victory Temple's application followed the "Legislative" process outlined in the Plan. Specifically, Victory Temple applied for the change in or about November 2018. On March 12, 2019, the County Council introduced Resolution CR-18-2019, which included Victory Temple's application and the applications of seven other applicants being considered in the December 2018 cycle. On April 11, 2019, the Prince George's County Planning Board[3] transmitted to the County Council a staff report (the "Staff Report," "Report," or "DPIE Staff Report") prepared by the County's Department of Permitting, Inspections and Enforcement ("DPIE"). The Staff Report contained information and recommendations for all eight of the applications, and incorporated input from and the recommendations of a variety of local entities and agencies.

[3] Prince George's County's Planning Board is comprised of the five commissioners of the M-NCCP appointed from Prince George's County. Maryland Code (2012), §§ 20-201, 15-102, 15-103 of the Land Use Article.

The Report included DPIE's own conclusion that the Property "is consistent with criteria established in the [2008 Water and Sewer] Plan":

> **2008 Water and Sewer Plan:** The property is consistent with criteria established in the Plan relating to contiguity to existing urban or suburban developments, proximity to existing or funded public water and sewer systems and in concert with the availability of other public facilities. The Plan recommends properties located inside the Sewer Envelope to be developed on public water and sewer systems and requires the developers to bear the full responsibility of the costs of on-and [sic] - offsite public facilities.

The Report also indicated that according to the Prince George's County General Plan, the "vision" for the area in which the Property is located "is context-sensitive infill and low to medium-density development" and that, according to the 2006 master plan for Bowie, the property is in an area for which "residential low land use development" is recommended.[4] The Staff Report also contained observations addressing "Transportation," including that at least one roadway would need "[a]dditional dedication . . . to meet the master plan right-

[4] The Staff Report's subsections concerning area planning stated as follows:

> **2014 *Plan Prince George's 2035 Approved General Plan* (Plan 2035):** The subject property is located within the Growth Boundary of the Prince George's County Growth Policy Map in Plan 2035. The property is located in the Established Communities of Plan 2035. The vision for the Established Communities is context-sensitive infill and low to medium-density development and recommends maintaining and enhancing existing public services, facilities and infrastructure to ensure that the needs of residents are met.
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> **Master Plan:** The 2006 Approved Master Plan for Bowie and Vicinity and Sectional Map Amendment for Planning Areas 71A, 71B, and 74B recommends residential low land use development.

of-way." and that "a transportation study may be required to evaluate adequacy of the roadways in the surrounding area."[5]

The entry for the Washington Suburban Sanitary Commission ("WSSC") offered specific observations about the water and sewer lines, including the statements that the WSSC "will make the determination of the best means to provide water service to the site when the applicant submits a HPA review package," that half of the property would be served by one extension to an existing sewer line, and that the other half could be served by an extension to another existing sewer line.[6]

[5] The section containing the observations about Transportation stated:

> **Significant Impact on Transportation System:** The subject site is located on an arterial roadway (A-26) and a planned master plan sidepath trail. The western boundary of the subject site is along collector road (C-300) with a planned master plan trails shared roadway. Additional dedication will be required along a portion of the subject site fronting A-26 to meet the master plan right-of-way along the site frontage. No additional dedication is required along C-300 to meet master plan right-of-way. Depending on the size of the proposed church, a transportation study may be required to evaluate adequacy of the roadways in the surrounding area. Additionally, frontage and trail improvements along both A-26 and C-300 may be required at the time of development.

[6] The section concerning the WSSC stated:

> **Washington Suburban Sanitary Commission (WSSC) Comments:**
>
> **Water:** An existing 8-inch water main in Margary Timbers court and an existing 8-inch water main in Dew Drive are available to serve the site. Also, a 24-inch water main in Church Road is 400-feet north of the property line. WSSC will make the determination of the best means to provide water service to the site when the applicant submits a HPA review package. Program-sized water mains may be required but

Finally, the Staff Report indicated that the City of Bowie recommended that the Council deny the requested amendment, while the Planning Department and the County Executive recommended granting it.[7]

On April 16, 2019, the County Council held a public hearing. Neighborhood

would not necessitate appearance in an adopted CIP.

> **Sewer:** Average wastewater flow: 11,520 gpd. Approximately one-half of the subject property drains towards the southeast and can be served by an approximate 150-feet extension to the sewer in Dew Drive. This extension would connect at an existing sewer manhole. Likewise, depending on the approved established grade for Church Road, the other half of the property may be served by an extension of an approximate 1,050-feet sewer in Church Road at an existing manhole.

[7] The sections concerning the City of Bowie, the Planning Department, and the County Executive stated:

> **City of Bowie:** On February 4, 2019, the City of Bowie City Council conducted a public hearing on CR-18-2019, Prince George's County Water and Sewer Plan Amendment Application #18/W-07, The Redeemed Christian Church of God/Victory Temple. To hear from the Homeowners Associations in the area, the City Council tabled action on the subject request until its meeting on February 19, 2019. Sixteen individuals addressed the subject amendment request during the Citizen Participation portion of the City Council meeting on February 19, 2019. The City of Bowie City Council unanimously voted to recommend denial of the requested Amendment.
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> **Planning Department Recommendation:** Advance to Water and Sewer Category 4 – Community System Adequate for Development Planning.
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> **County Executive Recommendation:** Advance to Water and Sewer Category 4 – Community System Adequate for Development Planning.

residents and others appeared, and each person got approximately three minutes to speak. Of the thirty-four people who spoke about Victory Temple's application, twenty-one spoke against approving the category change.[8] The opponents raised a variety of concerns, including strains on community infrastructure, property valuations, and increased traffic and congestion. One individual, Joe Meinert, identified himself as the City of Bowie Planning Director. He stated that Bowie residents had raised concerns about the impact the project would have on traffic and referenced a letter, dated March 15, 2019, from the Bowie City Council to the Prince George's County Council, which is also in the record. The letter describes a traffic improvement project planned for a stretch of Church Road "where improvements are desperately needed between MD 214 and Woodmore Road/Mount Oak Road," but noted that the project was not currently funded.[9]

After hearing from those opposed to the category change, the County Council heard from those in favor of the amendment. They included the pastor of Victory Temple and members of the church. They emphasized the health, economic, and youth services that the

[8] A total of thirty-six people spoke; only two spoke about applications other than Victory Temple's.

[9] In its brief, Victory Temple represented that "[t]he City Manager for the City of Bowie signed off on the Appellants' request . . ." and that the City of Bowie's Planning and Community Development Department "recommended approval of [Victory Temple's] request . . . ." The County asserts that "those comments were not part of the record before the County Council or the circuit court." Resolving factual disputes is not part of our task on appeal. We take note of this disagreement, but observe that Victory Temple does not dispute that the City of Bowie ultimately voted to recommend denial of the amendment, as is set forth in the April 11 Staff Report on page 18 and in a March 15, 2019 letter from the City Council of Bowie to the County Council.

church provides to its members. Ade Olujobi described himself as "the project coordinator for the church", and he described a meeting with community residents on February 14 at which residents had raised concerns about traffic congestion, sediment control, water and sewer lines, and property values. He described the church's willingness to work with the residents to address those concerns. Other witnesses disputed the opponents' claims about traffic, infrastructure, and property values.

On April 23, 2019, the Council's Transportation, Infrastructure, Energy and Environment Committee ("TIEE Committee") held a hearing on all eight of the applications. No public testimony was allowed, but Shirley Anthony-Branch made comments about Victory Temple's application and the others on behalf of the DPIE and Tiffany Williams-Jennings made comments on behalf of the Planning Board. Ms. Branch explained that Victory Temple's application "met all the criteria" set forth in the Water and Sewer Plan for a category change from 5 to 4 and that the Category 4 designation would trigger further review and planning procedures:

> Again, as I indicated to the Council Members earlier, when Staff looks at applications, we look at them in totality in regards to the entire County, not specific to any district. When we reviewed the Redeemed Christian Church of God, they met all the criteria that is adopted in the Water and Sewer Plan. And when they meet that criteria, unless there are some extenuating circumstances, our recommendation would always be to allow it to go to Category 4. And Category 4 is when the planning agency would be able to review this more succinctly, more in depth. . . .

Ms. Williams-Jennings explained that as the planning process for the Property proceeded, additional analysis would follow, including an archaeology survey and transportation

study.

After the Committee heard from Ms. Branch and Ms. Williams-Jennings, Todd Turner, Chair of the Council and member of the TIEE Committee, made a motion to maintain Category 5 for the Victory Temple Property. He observed initially that "this was a case of interest at the public hearing last week" and noted that he had met with members of both the church and the community. He went on to explain that the Council must consider whether the project meets the "policies and criteria" set forth in § 2.1.4 of the Water and Sewer Plan. After summarizing the § 2.1.4 policies and criteria, Mr. Turner went on to offer reasons why Victory Temple's requested category change did not meet them and to assert that Victory Temple had not demonstrated that it would experience hardship were it required to meet them.

Mr. Turner emphasized that the requested amendment was not consistent with the County's 2014 General Plan (Plan 2035) or the 2006 Bowie and Vicinity Master Plan and Sectional Map Amendment, which, he asserted, "direct that this area is for low-density residential development." He cited the testimony of the opponents at the April 16 hearing and highlighted the traffic problems that they asserted would arise, as well as the City of Bowie's recommendation to deny the application. Finally, he concluded that "there still needs to be work done amongst all the stakeholders involved in this process." Because the outcome of this case depends upon whether the council's decision was a legislative act, we set forth Mr. Turner's comments at length, as they shed light on the nature of the Council's decision-making process:

So, pursuant to the Plan, the Council conducted our public hearing on CR-18-2019, last week on April 16, 2019, which contained this Resolution and this particular application and received extensive and substantial testimony taken from more than 30 witnesses, with over approximately, I estimated about 60 percent of those were in opposition to the application. I was heartened by the testimony for and against about the acknowledgements of the church's work and its role in the community, but they also expressed a series of concerns on potential impacts of this particular application.

So, based on the review of that record, including the public testimony, there are compelling reasons to maintain the current water and sewer category of the subject property pursuant to Sections 2.1.4 and 6.3 of the Adopted Water and Sewer Plan. These include, but are not limited to, and I would direct you directly to the testimony that's in the record from the hearing last week related to traffic impacts, the environmental impacts, the economic impact, the fiscal impact, potential pollution and air pollution, lack of infrastructure, including for stormwater management, potential impact on the quality of life, inconsistency with the General and Area Master Plans, no demonstration of a hardship by this applicant, and, additionally, the City of Bowie's position.

I believe, and I'll just touch on some of those, not all of them, but they are within the record. This application is inconsistent with the Approved County 2004 [sic] General Plan, Plan 2035, and the 2006 Bowie and Vicinity Master Plan and Sectional Map Amendment that directs that this area is for low-density residential development under the R-E Zone, even though the church is an allowed use within the R-E Zone. The R-E Zone is consistent with the surrounding properties, including along Church Road corridor south of Mt. Oak Road, the neighboring subdivisions, including Woodmore Estates, Mt. Oak Farm and Woodmore Highlands.

There was substantial testimony in the record that an application for a 60,000-square-foot building with seating capacity for 12 [sic] to 2,000 persons with an estimated 750 parking spaces, particularly in an area where we have a history of speeding and accidents along Mt. Oak and Church Roads, and that is in the record, would also unduly burden the community. In addition, the applicant, in both its application

> and testimony before the County Council has not provided any evidence nor demonstrated hardship in meeting these policies and criteria under the Water and Sewer Plan. In addition, maintaining the current category of the property would not create an undue burden on or preclude the church in developing its property in the future consistent with the community character.
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> Finally, obviously the City of Bowie, which borders this property and owns a major community park just south of this property and Church Road Park, conducted its own review and public hearing on this application. In addition, the City Staff testified and provided written correspondence requesting a denial of this category change, which the Committee can take due notice of obviously by reference.
>
> So, where does that leave us? I believe there still needs to be work done amongst all the stakeholders involved in this process, whether it's the church, the surrounding communities, the City of Bowie and the County. So, in conclusion, for those reasons, and based on the record, the testimony, written reports and the correspondence that this Council has received, I would move that we maintain Category 5 for the water and sewer for this subject property application 18/W-07. Thank you, Madam Chair.

The Committee then voted 5–0 to maintain sewer Category 5 for the Property.

As for the other seven applications, the Committee discussed them separately. Four were brought by churches or religious organizations, one by a waste management maintenance facility, and one by a residence and small business. The Committee voted to approve all seven of the remaining applications, including the application of a church for a waiver from the requirement to connect to the public sewer system where the Planning Department and City Executive had recommended to deny the waiver request.

The administrative record also contains a committee report that summarized the meeting and the votes. It includes a full paragraph about the church's waiver request, a full

paragraph about Victory Temple's application, and a list of the votes on the remaining six applications. The paragraph on Victory Temple's application indicated that the committee voted to deny the application until more of the concerns about traffic and the § 2.1.4 factors could be addressed:

> The committee also discussed application #18/W-07 for The Redeemed Christian Church of God's request for the advancement from water & sewer category 5 to category 4. Significant testimony occurred at the Council's public hearing on April 16, 2019 regarding concerns on the impact of the proposed 60,000 square foot, two-story church. Similar concerns were raised at a hearing conducted by the City of Bowie, which provided a letter of opposition dated March 15, 2019. The concerns included the impact on traffic and parking on Church Road and in the surrounding neighborhoods. The committee's discussion included this issue, as well as the factors contained in Section 2.1.4 of the Adopted 2008 Water & Sewer Plan. After consideration of these issues, the committee voted to retain the current water & sewer category 5 for this property until more of these concerns are addressed.

On May 7, 2019, the full County Council conducted a final reading and vote on the Resolution. As to Victory Temple's Application, Councilmember Deni L. Taveras explained:

> The [TIEE] Committee also discussed the application of 18/W-07 for the Redeemed Christian Church of God's request for the advancement of, from water sewer category 5 to category 4. Significant testimony occurred at the Council's public hearing on April 16, 2019, regarding concerns on the impact of the proposed 60,000-square-foot, two-story church. Similar concerns were raised at the hearing conducted by the City of Bowie. We [were] provided a letter of opposition dated March 15, 2019. The concerns included the impact on traffic and parking on Church Road and in the surrounding neighborhoods. [] The Committee's discussion included this issue as well as the factors contained in Section 2.1.4 of the

> Adopted 2008 Water and Sewer Plan. After consideration of these issues, the Committee voted to retain the current water and sewer category 5 for this property until more of the concerns are addressed.

The Committee then voted unanimously to adopt the Resolution, which had been amended to retain the Property's Category 5 designation.

On June 6, 2019, Victory Temple filed in the circuit court a "Petition for Administrative Mandamus, or in the Alternative, Petition for Judicial Review," citing Maryland Rules 7-401, *et seq.* and Maryland Rules 7-201, *et seq*. The County moved to dismiss. On February 21, 2020, the circuit court held oral argument, and on March 31, 2020, issued an order granting the County's motion. The order stated in relevant part:

> [It is] ORDERED, that Prince George's County's Motion to Dismiss is hereby GRANTED in its entirety as to Respondent County Council of Prince George's County sitting as the District Council. Petitioner conceded, at the hearing in this matter, that Maryland Rule 7-201 is inapplicable. Furthermore, this Court finds that the decision of the Prince George's County Council sitting as the District Council was legislative, as such Maryland Rule 7-401 is inapplicable, and it is further,
>
> ORDERED, that even if this Court found that the District Council's action in this matter was [] quasi-judicial, this Court finds, on the merits, that the District Council acted within its authority, articulated sufficient rationally based reasons for its decision, and its decision is supported by substantial evidence in the record, and it is further
>
> ORDERED, that this case is closed statistically.

Victory Temple appealed. We supply additional facts as needed below.

II. DISCUSSION

Victory Temple raises two questions,[10] but we reach the first question only, which we rephrase as follows: Did the circuit court err in determining that the Council's decision not to change the Property's water and sewer category was legislative? We hold that the Council's decision was legislative and affirm the circuit court's decision dismissing the petition.

An administrative mandamus action, governed by Title 7, Chapter 400 of the Maryland Rules, lies when the challenged administrative agency action was quasi-judicial in nature and there is no right of judicial review by statute.[11] Md. Rule 7-401(a) ("The rules

[10] Victory Temple phrased the Questions Presented as follows:

> 1. Whether the circuit court erred in finding that the decision of the Council, sitting as the District Council, which denied the Appellant's water & sewer application (for the December 2018 Cycle of Amendments) was not a quasi-judicial action by the District Council.
>
> 2. Whether the circuit court erred in affirming the District Council's decision denying the Appellant's water & sewer application (December 2019 Cycle of Amendments) because it is not supported by substantial evidence.

The County phrased the Questions Presented as follows:

> 1. Did the circuit court properly dismiss Appellant's claim for relief pursuant to Maryland Rule 7-401 where the County Council acted in a purely legislative capacity when it denied Appellant's application for a legislative amendment to the Water and Sewer Plan?
>
> 2. Even if the County Council acted in a quasi-judicial capacity, should its decision be affirmed on the basis that it is supported by substantial evidence on the record?

[11] In contrast, an action for judicial review, governed by Title 7, Chapter 200, of the Maryland Rules, is appropriate when the challenged action was quasi-judicial in nature

in this Chapter govern actions for judicial review of a quasi-judicial order or action of an administrative agency where review is not expressly authorized by law."). But if the challenged action is not quasi-judicial, and is instead legislative, then administrative mandamus under Title 7, Chapter 400 is not appropriate. *Talbot Cnty. v. Miles Point Prop., LLC*, 415 Md. 372, 396 (2010) (holding that administrative mandamus was not proper procedural mechanism to challenge council's legislative action); *Mayor & Council of Rockville v. Pumphrey*, 218 Md. App. 160, 192 (2014) (holding the circuit court "lacked jurisdiction to undertake administrative mandamus review in the text amendment case because the enactment was not a 'quasi-judicial act'"); *see also Dugan v. Prince George's Cnty.*, 216 Md. App. 650, 659 n.13 (2014) (observing that "[a] declaratory judgment action is appropriate when there is no judicial review by statute and the action was quasi-legislative in nature, while an administrative mandamus action is appropriate when there is no judicial review provided by the statute and the action was quasi-judicial in nature" (*citing Bethel World Outreach Church v. Montgomery Cnty.*, 184 Md. App. 572, 596–97 (2009))). So if the Council's decision to deny Victory Temple's request to change the water and sewer category was a legislative act, the circuit court did not err in dismissing Victory Temple's Rule 7-401(a) petition for administrative mandamus.

County councils can take quasi-judicial or legislative actions in various contexts.

and there *is* a statutory right of judicial review. *Dugan v. Prince George's Cnty.*, 216 Md. App. 659 n.13 (2014); *Bethel World Outreach Church v. Montgomery Cnty.*, 184 Md. App. 572, 595–96, 596 n.1 (2009). Victory Temple does not dispute that there is no statutory right of judicial review here and that Title 7, Chapter 200 doesn't apply, even if the Council's decision were quasi-judicial.

The test is the same, though, and turns on the nature of the act in which the council engaged and whether the challenged decision was based on individual or general grounds. *Dugan*, 216 Md. App. at 659 (*citing Bucktail, LLC v. Cnty. Council of Talbot Cnty.*, 352 Md. 530, 545 (1999)). Specifically, "[t]he outcome of the analysis of whether a given act is quasi-judicial in nature is guided by two criteria: (1) the act or decision is reached on individual, as opposed to general, grounds, and scrutinizes a single property; and (2) there is a deliberative fact-finding process with testimony and the weighing of evidence." *Maryland Overpak Corp. v. Mayor & City Council of Balt.*, 395 Md. 16, 33 (2006) (*citing Armstrong v. Mayor & City Council of Balt.* ("*Armstrong III*"), 169 Md. App. 655, 666–69, 668–71 (2006)). A legislative body is not necessarily acting quasi-judicially when a decision affects one parcel of land—what matters is whether "the matter taken up at the hearing is disposed of based on the unique characteristics" of the property at issue. *Maryland Overpak*, 395 Md. at 39; *see Miles Point*, 415 Md. at 387 (observing that "the greater a decisionmaker's reliance on general, 'legislative facts,' the more likely it is that an action is legislative in nature. Likewise, the greater a decision-maker's reliance on property-specific, 'adjudicative facts,' the more reasonable it is to term the action adjudicatory in nature.").

A. Decisions To Amend A County's Water And Sewer Plan May Be Either Legislative Or Quasi-Judicial.

Generally speaking, decisions to amend a county's water and sewer plan are legislative, but those decisions may also be quasi-judicial. This case presents a close call, and the inquiry is fact-specific, so we summarize relevant cases in some detail to provide context for our analysis. *First*, we look at *Miles Point*, 415 Md. 372, and *Bethel World*, 184

Md. App. 572, which held that county council decisions regarding amendments to water and sewer plans were legislative and not subject to challenge by administrative mandamus. *Next*, we discuss *Gregory v. Board of Cnty. Comm'rs of Frederick Cnty.*, 89 Md. App. 635 (1991), and *Appleton Regional Cmty. Alliances v. Cnty. Comm'rs of Cecil Cnty.*, 404 Md. 92 (2008), which held that county council decisions regarding amendments to water and sewer plans were not subject to judicial review as "zoning actions" under the former Article 66B, § 4.08 (which has since been recodified as § 4-401 of the Land Use Article). *Finally*, we discuss *Dugan*, 216 Md. App. 650, which held that a county council decision to deny a requested amendment to a water and sewer plan was quasi-judicial and subject to challenge by administrative mandamus.

In *Miles Point*, the Court of Appeals held that the Talbot County Council's denial of two applications to reclassify two separate parcels of property for the purposes of Talbot County's water and sewer plan was legislative. 415 Md. at 395. With respect to the first parcel, the Court reasoned that the Council's findings addressed "broad-based facts" relating to Talbot County infrastructure, county-wide sewage treatment and overflow issues, and policy issues. *Id.* at 388. With respect to the second parcel, the Court reasoned that the denial was based on the Council's conclusion that developing the property would run counter to the county's and town's comprehensive land use plans:

> At no point during the findings of fact leading to this conclusion did the Council indicate a focus on the unique characteristics of the Shore Lands property. Rather, the Council directed its attention to matters of law and policy, including the long-range development strategy of Talbot County. Significantly, reclassification of any A-1 zoned

> property in Easton's growth area would have proved incompatible with the County's long-range plans.

Id. at 395–96.

Similarly, in *Bethel World*, this Court held that the Montgomery County Council's denial of a church's request to change the water and sewer category of a property from 6 to 3 was legislative, and therefore the circuit court did not err in dismissing the church's petition for administrative mandamus. 184 Md. App. at 575, 579–80. We reasoned that the church's "category change request was bound up in broader policy considerations nearly from the time it was submitted." *Id.* at 592. The church's property was located in a zone intended for agricultural use and for which the county's master plan recommended denial of water and sewer service. *Id.* at 579. The church argued that it fell within an exception to that general policy, but the Montgomery County Council denied the request—as well as the requests of other applicants for similar exceptions—because of environmental and other concerns raised by the allowance of an increasing number exceptions to the general policy. *Id.* at 592–93. The Court also looked at the comments by council members during the hearing at which the request was denied and observed that, among those comments, "[t]here is not a single mention of facts specific to Bethel's property . . . beyond general references to the plan to build a church. Instead, broad policy considerations predominate, as they did throughout the County's deliberations." *Id.* at 594.

Other cases address, in different procedural contexts, the reviewability of governmental bodies' decisions regarding amendments to water and sewer plans. These cases also suggest that such decisions usually, but not always, have more to do with the

respective county's broader policy and planning considerations than they do with individual characteristics of the affected properties. In *Gregory*, this Court affirmed the dismissal of a petition for judicial review of the decision of the Board of County Commissioners of Frederick County to approve an amendment to the water and sewer plan. 89 Md. App. at 638. Among other things, the amendment "upgrade[d] the water and sewerage service priority categories of two undeveloped parcels of land." *Id.* The question was whether the Board's decision was subject to judicial review as a "zoning action" within the meaning of Maryland Code, Article 66B, § 4.08(a) (1988). *Id.* at 637. In deciding that it wasn't, *Gregory* likened the Board's decision-making process to comprehensive planning as opposed to property-specific zoning. *Id.* at 643. We reasoned that although the decision did affect two particular parcels of land, the Board had focused on the effects that the expansion of water and sewer services would have "on a considerable number of properties as they relate to each other and to the surrounding area." *Id.* at 643 (*quoting Montgomery County v. Woodward & Lothrop, Inc.*, 280 Md. 686, 713 (1977)). We remarked that "the Amendment was clearly 'designed to affect local and regional needs and all property owners within the planning area,'" *id.* at 642 (*quoting Woodward & Lothrop*, 280 Md. at 713), and concluded that the adoption of the amendment was in the nature of a "planning" action and therefore was not a "zoning action" reviewable under § 4.08(a). *Id.* at 644.

In reaching that conclusion, we can be read to imply that decisions leading to the amendment of water and sewer plans would *always* be more like "comprehensive"

planning decisions and would therefore *never* be "zoning actions" subject to judicial review under § 4.08(a). We observed that we were "unable to conceive of a situation in which the adoption of an amendment to a county's comprehensive water and sewerage plan would lack such a comprehensive basis." *Id.* at 643. We went on to explain, quoting EN § 9-505, that amendments to these plans arise in the context of a county's planning for the "'orderly expansion and extension' of public water supply and sewerage systems within its boundaries," and that because adopting these amendments "is part of each county's responsibility to revisit its plan periodically. . . . [T]he adoption of a particular amendment to the plan cannot be isolated from the context of the plan as a whole." *Id.* at 643–44.

The Court of Appeals endorsed this view in *Appleton*, in which it cited *Gregory* with approval. 404 Md. at 104. In *Appleton*, as in *Gregory*, the question was not reviewability under administrative mandamus but was instead whether a county zoning board's approval of an amendment to the water and sewer plan was reviewable as a "zoning action" under Maryland Code, Article 66B, § 4.08 (1957, 2003 Repl. Vol.). *Id.* at 98. *Appleton* held that it wasn't, reasoning, among other things, that the challenged decision more closely resembled a planning action, not a zoning action.[12] *Id.* (*citing Gregory*, 89

[12] Although *Appleton*, unlike *Gregory*, did discuss the distinction between quasi-judicial and legislative actions, the Court didn't reach the question of whether the decision challenged there was quasi-judicial or legislative. *Appleton*, 404 Md. at 101. In dicta, the *Appleton* Court "assumed, without deciding" that the water and sewer plan amendment was adopted by a quasi-judicial process based on the citizen opponents' assertions that the process "was initiated by a single party, [the developer]; required a hearing with receipt of factual and opinion testimony; and, covered only a few specific, related parcels of land." *Id.* It went on to decide that the challenged decision was not a "zoning action" because it did not meet the definition as set forth in *Maryland Overpak*,

Md. App. at 643).

But in *Bethel World*, a case arriving on the same procedural posture as this one—*i.e.*, a property owner challenging via administrative mandamus the denial of its request to upgrade the water and sewer category—we distinguished the expansive statements about the comprehensive nature of water and sewer plan amendments in *Gregory* and *Appleton*. 184 Md. App. at 579–80. *Bethel World* first distinguished the procedural posture by observing that *Appleton* and *Gregory* did not arise in the context of administrative mandamus, and instead arose in the context of judicial review under § 4.08(a) of Article 66B, which provides for review of "zoning actions." 184 Md. App. at 589. *Bethel World* went on to conclude that the challenged decision in that case was legislative in nature. Although *Appleton* and *Gregory* were procedurally distinguishable, *Bethel World* nevertheless relied on their expansive comments about the nature of decisions to amend water and sewer plans as being more like land use planning decisions than specific zoning decisions. 184 Md. at 592 ("[B]oth cases rejected the comparison of a water and sewer plan amendment to piecemeal zoning by noting that the proposed amendments would have an effect beyond the specific parcels of land seeking a category change, and that a water and sewer plan remains a comprehensive land use planning tool even when it is changed incrementally." (*citing Appleton*, 404 Md. at 103–05; *Gregory*, 89 Md. App. at 643–44)).

But *Bethel World* distinguished *Appleton* and *Gregory* by clarifying that all

i.e., it did not decide "the permissible uses of the property" at issue and nothing about the property's zoning status changed as a result of the decision-making body's action. *Id.* at 101 (*citing Maryland Overpak*, 395 Md. at 50).

amendments to the Montgomery County water and sewer plan weren't necessarily legislative. *Id.* at 596. The Court observed that regardless of the label of the process surrounding a water and sewer category change request as "legislative" or "administrative," there may be circumstances under which an amendment to the water and sewer plan is quasi-judicial and not legislative:

> A particular action by a legislative body may be legislative or quasi-judicial. We are not holding that all actions by the Council amending the water and sewer plan, even when the nature of the amendment is not subject to the administrative delegation process, are necessarily legislative. We hold that the action, in this instance, was legislative, for the reasons discussed.

Id. at 596.

And, in fact, we held in *Dugan* that the council's decision to grant a water and sewer category change request *was* quasi-judicial. 216 Md. App. at 660–61. *Dugan* is the only case that the parties have cited, and that we have found, that holds expressly that a county council's decision to amend a water and sewer plan was quasi-judicial and reviewable via administrative mandamus. Although we recognized the "general rule" that decisions to amend water and sewer plans are legislative, we noted that *Bethel World* expressly left open the possibility that a water and sewer amendment could be quasi-judicial. 216 Md. App. at 661 (*citing Bethel World*, 184 Md. App. at 596). *Dugan* went on to hold that the "unique" circumstances of that case supported the conclusion that the council's approval of the amendments was quasi-judicial. 216 Md. App. at 660. Those unique circumstances were that the council approved the amendments after being ordered by the United States District Court for the District of Maryland to show cause why its members should not be

held in contempt and sanctioned for violating its order to process any future water and sewer category change applications by a church without further delay. *Id.* at 658. The federal court issued the latter order after a jury found that the council's earlier decision to deny the church's water and sewer category change request were motivated by religious discrimination, and therefore violated the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C. § 2000cc, *et seq*. *Id.* at 658 (*citing Reaching Hearts Int'l, Inc. v. Prince George's Cnty.*, 584 F. Supp. 2d 766 (D. Md. 2008), *aff'd*, 368 Fed. Appx. 370 (4th Cir. 2010)). We reasoned that the council's approval "was not based on the overall community planning, but rather [on] a specific federal court opinion and order concerning discrimination against [the church's] application."[13] *Id.* at 660.

[13] Victory Temple has also challenged the Council's denial of its category change request in federal court on the ground that the Council violated RLUIPA. Victory Temple prevailed in the U.S. District Court after a bench trial. *The Redeemed Christian Church of God (Victory Temple), Bowie, Md. v. Prince George's Cnty.*, *Md.*, 485 F. Supp. 3d 594, 608 (D. Md. 2020). The County has appealed to the Fourth Circuit and its appeal is still pending.

Although our decision may be rendered moot in the event the Fourth Circuit affirms the district court's decision, it is not moot yet. The parties indicated at oral argument that the District Court's judgment had not been stayed, and since then, the court denied the County's motion to stay judgment pending appeal. *The Redeemed Christian Church of God (Victory Temple), Bowie, Md. v. Prince George's County, Md.*, No. DKC 19-3367, 2021 WL 1103697 (D. Md. Mar. 23, 2021). Since oral argument, counsel for Victory Temple informed us that on May 4, 2021, the Fourth Circuit denied the County's motion to stay judgment. Then on May 11, 2021, the County Council passed a resolution approving the application, but the resolution notes specifically that the approval is "conditional" and that it "may be revoked or rescinded at any time following disposition of" this or the appeal pending before the Fourth Circuit. Assuming, without agreeing or deciding, that legislation can be amended conditionally, we will take the resolution at face value and treat it, for mootness purposes, as taking whatever effect it has only after we and the federal courts decide the pending cases before us.

In sum, to determine whether a county council's decision to deny a water and sewer category change may be challenged by administrative mandamus, a court must first determine whether the decision was legislative or quasi-judicial because Rule 7-401 authorizes review of quasi-judicial decisions only. Decisions concerning requests to amend water and sewer plans are often legislative because they tend to involve broad considerations concerning the orderly expansion of water and sewer service in the county, even where a decision addresses a request concerning an individual parcel of land. But those decisions can be quasi-judicial where they are made on individualized grounds and, as in *Dugan*, "the approval was not based on the overall community planning, but rather on a specific federal court opinion and order concerning discrimination against [the church's] application." 216 Md. App. at 660.

B. The Council's Decision Was Legislative.

With that background, we return to this case. A legislature's action is quasi-judicial if "(1) the act or decision is reached on individual, as opposed to general, grounds, and scrutinizes a single property; and (2) there is a deliberative fact-finding process with testimony and the weighing of evidence."[14] *Maryland Overpak*, 395 Md. at 33 (*citing Armstrong III*, 169 Md. App. at 666–69, 668–71); *see Miles Point*, 415 Md. at 388. As *Maryland Overpak* explained, the first prong distinguishes decisions resulting from a focus

[14] Although *Maryland Overpak* is distinguishable procedurally—it addressed whether the challenged decision was reviewable as a "zoning action" under § 4.08 of Article 66B—its distinction between quasi-judicial and legislative acts applies all the same. *See Miles Point*, 415 Md. at 387 (*citing Maryland Overpak*, 395 Md. at 39).

on particularized findings relating to individual property from decisions resulting from findings concerning "broader, community-wide implications":

> The essential point of this observation may be understood to distinguish an act by a legislative body that focuses on an individual property or assemblage of properties requiring particularized findings as to the circumstances of that property (or assemblage of properties) from acts that primarily have broader, community-wide implications which encompass considerations affecting an entire planning area or zoning district. Thus, when a legislative body considers a comprehensive area zoning or rezoning, the focus of its deliberations is not on a single parcel of land in a district or planning area, but rather on the entire district or area because it is the characteristics of the entire district that will inform the body's ultimate decision.

395 Md. at 35–36.

In this case, the challenged decision was legislative because it was decided on general grounds. Although a closer call than in *Miles Point* and *Bethel World*, the Council grounded its decision more so in long-term development considerations than on factual findings about the unique characteristics of the Property. In his comments before the TIEE Committee on April 23, Mr. Turner specifically cited the project's inconsistency with the area's long-term planning to remain "low-density residential development" and the area residents' and the City of Bowie's concerns about traffic problems that potentially would be exacerbated by the building of a large church for 1,200 to 2,000 people and with 750 parking spaces.

Victory Temple argues that the Council failed to identify facts supporting its conclusion that the criteria were met. And indeed, Mr. Turner generally referenced the

Plan's § 2.1.4 considerations—"traffic impacts, the environmental impacts, the economic impact, the fiscal impact, potential pollution and air pollution, lack of infrastructure, including for stormwater management, potential impact on the quality of life, inconsistency with the General and Area Master Plans, no demonstration of a hardship by this applicant"—without identifying specific factual findings illustrating them. Instead, he referred to testimony from the April 16, 2019 public hearing and asserted that factual support for the denial lay "within the record." And he asserted, without explanation, that "maintaining the current category of the property would not create an undue burden on or preclude the church in developing its property in the future consistent with the community character," even though it seems pretty obvious that rejecting Victory Temple's application will hinder it from developing the church building it seeks to build.

But Mr. Turner's less-than-rigorous evidentiary argument does not alter the conclusion that the Council's decision was legislative in nature. The Council seemed to engage more in a general information-gathering process than a formal fact-finding process. Many individuals spoke at the public hearing, but they weren't sworn and each was given a limited amount of time (three minutes) to speak. There was no cross-examination, and no council member asked the speakers any questions. And although the County does not argue that the second *Overpak* prong—that there was a deliberative fact-finding process—was not met, the record doesn't reveal one. Neither the TIEE Committee nor the Council as a whole made specific factual *findings* about the Property. Instead, Mr. Turner's April 23 comments, the Committee Report, and Ms. Taveras's May 7 comments demonstrate that

the Council based its decision to deny Victory Temple's application on concerns about long-term planning and the community's concerns about potential traffic problems for the whole area, which weighs against finding the denial a quasi-judicial act. *Maryland Overpak*, 395 Md. at 37 ("The principal characteristic of a quasi-judicial proceeding is that of fact-finding by the undertaking body, even if the relevant facts are undisputed.") (*citing Bucktail*, 352 Md. at 543); *see Kenwood Gardens Condos., Inc. v. Whalen Props., LLC*, 449 Md. 313, 336 (2016) (observing that the *Maryland Overpak* test "requires a deliberative fact-finding process with testimony and the weighing of evidence," and holding that the resolution of the county council at issue was not quasi-judicial because the council "conducted no adjudicative hearings, nor did it consider documentary evidence or opinion testimony similar to the Baltimore City Council in *Overpak*, 395 Md. at 38"); *Board of License Comm'rs for Prince George's Cnty. v. Glob. Express Money Orders, Inc.*, 168 Md. App. 339, 345 (2006)).

The Council's decision here was more like the decisions in *Miles Point* and *Bethel World* because it was made based on "broader, community-wide implications which encompass considerations affecting an entire planning area or zoning district." *Maryland Overpak*, 395 Md. at 36, 39 (observing that, even when the legislative body's "focus" was on one parcel of land, its decision is not necessarily quasi-judicial; instead, what is determinative is whether "the matter taken up at the hearing is disposed of based on the unique characteristics" of the property at issue). The overarching concern here was not the orderly expansion of water and sewer service, but consistency with area planning and

traffic safety. Both were considerations the council was permitted, and indeed required, to take into account under § 2.1.4 of the Plan. More importantly, both are general considerations not tied specifically to characteristics of the Property itself. And finally, this case is not like *Dugan*, where the decision to approve a water and sewer upgrade was made in response to a federal court order directed at the particular piece of property at issue.

On this record, then, we hold that the County's adoption of Resolution CR-18-2019 was the result of a legislative process and that the circuit court did not err in dismissing Victory Temple's petition for administrative mandamus. And as a result, we do not reach the question of whether substantial evidence in the record supported the Council's decision on the merits. [15]

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. APPELLANT TO PAY COSTS.

[15] A legislative decision *may be* subject to review in the courts by way of mandamus, injunction, declaratory action, or by certiorari. *Bethel World*, 184 Md. App. at 597. But Victory Temple has invoked none of those procedures here, and we have no occasion here to address whether the council's decision to deny the amendment, as a legislative act, was appropriate. *Cf. Bethel World*, 184 Md. App. at 597–600 (where party filed claims for writ of mandamus, injunctive relief, declaratory judgment, and certiorari, and where court determined that challenged decision was legislative, court reviewed challenged decision under standard of review applicable to legislative decisions, *i.e.*, whether the government body acted outside its legal boundaries); *see also Prince George's Cnty. v. Carusillo*, 52 Md. App. 44, 50–53 (1982) (where party sought writ of mandamus, court applied applicable arbitrary and capricious standard and held that County had acted arbitrarily and capriciously in denying requested amendment to water and sewer plan, where trial court found that applicant had met applicable criteria and the County had conceded that it had the obligation to grant a requested change if an applicant meets the criteria).