Circuit Court for Prince George's County
Case No. CAL15-08843

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 486

September Term, 2016

BRUCE PLETSCH, et al.

v.

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, SITTING AS THE DISTRICT COUNCIL

Wright,
Kehoe,
Shaw Geter,

JJ.

Opinion by Kehoe, J.

Filed: July 24, 2019

This is an appeal from a judgment of the Circuit Court for Prince George's County, the Honorable Krystal Q. Alves, presiding, that affirmed a decision of the County Council of Prince George's County, sitting as the District Council. The matter before the Council was an appeal from a decision of the County's Planning Board that approved an application to amend a previously-approved conceptual site plan for a mixed-use development on a tract of land located in Bowie commonly referred to as "Melford."[1] The appellants are Bruce Pletsch and other owners of nearby properties. Arrayed against them are the District Council; St. John Properties, Inc., the developer of the proposed project; and the City of Bowie.

Between them, the parties raise five issues, which we have rephrased:

1. Do the appellants have standing to maintain this action?

2. Did the District Council err when it affirmed the Planning Board's determination that the residential density recommendations in the 2006 Bowie and Vicinity Area Master Plan were amended by Plan Prince George's 2035?

3. Did the District Council err when it affirmed the Planning Board's findings that the site design guidelines were satisfied pursuant to § 27-276(b)(1) of the County Zoning Ordinance?

4. Did the District Council err when it determined that the Planning Board's decision satisfied the criteria in § 27-546(d)(3) of the County Zoning Ordinance?

[1] This is not the first time that a Maryland appellate court has considered a land use dispute involving the Melford tract. *See City of Bowie v. Mie Properties, Inc.*, 398 Md. 657 (2007); *Floyd v. County Council of Prince George's County* 55 Md. App. 24 (1983).

> 5. Did the District Council violate the Public Ethics Law where three of the District Council Members who voted to affirm the Planning Board's were elected to the District Council after St. John Properties filed its ethics affidavits?

We conclude that: (1) appellants have standing; (2) there was no legal error involved in the District Council's interpretation of the relevant provisions of the County's General Plan and the Bowie Area Master Plan; (3) the District Council did not err in its determinations under either § 27-276(b)(1) or § 27-546(d)(3) of the County Zoning Ordinance; and (3) appellants' argument that there was a violation of the Public Ethics Law is unpersuasive. We will affirm the judgment of the circuit court.

Statutory Overview

A. The Maryland-Washington Regional District Act

Prince George's County derives its authority to engage in land use regulation from the Maryland-Washington Regional District Act (the "RDA").[2] *Prince George's County v. Zimmer Development*, 444 Md. 490, 524–25 (2015); *County Council of Prince George's County v. Brandywine Enterprises, Inc.*, 350 Md. 339, 342 (1998). The RDA is now codified as Division II of the Land Use Article ("LU") of the Maryland Code. Land use control in the Regional District functions on the same conceptual bases as does land use regulation in the rest of the State. There are two broad categories of land use control: zoning

[2] The Maryland-Washington Regional District includes all of Montgomery County and Prince George's County "except for the City of Laurel, as its boundaries existed on July 1, 2008." Md. Code Ann., Land Use Article § 20-101(b)(2).

and planning, which includes subdivision regulation. *Zimmer*, 444 Md. at 505, and *Appleton Regional Community Alliance v. County Commissioners of Cecil County*, 404 Md. 92, 102 (2008).

The RDA assigns the primary responsibility for planning to the Maryland-National Park and Planning Commission (the "Commission"), which is a non-partisan body of ten members, five chosen from Montgomery and five from Prince George's County. LU § 15-102. [3] Among its other planning responsibilities, and at the direction of the appropriate district council, the Commission is charged with preparing a general plan for each county. LU § 21-103. The purpose of a general plan is to "(1) guide and accomplish a coordinated, comprehensive, adjusted, and systematic development of the regional district; (2) coordinate and adjust the development of the regional district with public and private development of other parts of the State and of the District of Columbia; and (3) protect and

[3] As the Court observed in *Zimmer*,

> the RDA seeks to foster a degree of independence in and immunize, to some extent, the Commission from undue grass roots and hierarchical political influence. The RDA directs that commissioners[ ] must be individuals of "ability" and "experience." LU § 15–102(b). Of the five commissioners from each county, no more than three may be members of the same political party, LU § 15–102(c)(1), and if a commissioner is appointed to fill an unexpired term, he or she must be a member of the same political party as the vacating commissioner. LU § 15–102(d)(5). Finally, "[a] commissioner may not be selected as representing or supporting any special interest." LU § 15–102(c)(2).

444 Md. at 527 (footnotes omitted).

promote the public health, safety, and welfare." LU § 21-101. A general plan is "'more than a detailed zoning map and should apply to a substantial area, be the product of long study, and control land use consistent with the public interest. An important characteristic of a general plan is that it be well thought out and give consideration to the common needs of the particular area.'" *Maryland-Nat. Capital Park and Planning Com'n v. Greater Baden-Aquasco Citizens Ass'n.*, 412 Md. 73, 85 (2009) (quoting E.C. Yokley, Zoning Law and Practice § 5–2 (4th ed.2003)). The relevant general plan in the present case is the Plan Prince George's 2035, enacted by the Commission in 2014 (the "2014 General Plan").

Additionally, the Commission is required to divide each county into local planning areas and to prepare area master plans for each planning area. LU § 21-105(b) and (c).[4] Currently, Prince George's County is divided into seven such areas, which are termed "subregions." The relevant area master plan in the present case is the 2006 Bowie and Vicinity Plan.

Area master plans "differ from General Plans 'in that master plans govern a specific, smaller portion of the County and are often more detailed in their recommendations than the countywide General Plan as to that same area.'" *Greater Baden-Aquasco Citizens Ass'n*, 412 Md. at 89 (2009) (quoting *Garner v. Archers Glen Partners*, 405 Md. 43, 48 n.

[4] The RDA also authorizes district councils to adopt "functional master plans." LU § 21-106. As their name suggests, the scope of functional master plans are not limited to specific geographic areas of a county but rather address broader governmental activities, e.g., transportation, public safety, etc. that have regional impacts.

5 (2008) (brackets omitted)). General plans and area master plans are adopted at different times. In order to minimize the possibility of conflicts between area master plans and general plans, a district council is authorized to designate an area master plan, or an amendment to a master plan, as an amendment to the general plan. LU § 21-105(d). Although there is no provision in the RDA that explicitly allows a district council to designate a general plan as an amendment to an area master plan, the Zoning Ordinance provides (emphasis added):

> When Functional Master Plans (and amendments thereof) and General Plan amendments are approved after the adoption and approval of Area Master Plans, *the Area Master Plans shall be amended only to the extent specified by the District Council in the resolution of approval*. Any Area Master Plan or Functional Master Plan (or amendment) shall be an amendment of the General Plan unless otherwise stated by the District Council.

PGCC § 27-640(a).

General plans, functional master plans, and area master plans must be approved by the relevant district council before they become effective. LU § 21-212 (Montgomery County); LU § 21-216 (Prince George's County).

The Commission is obligated to review the Prince George's County general plan at least once every ten years and more frequently if the District Council so directs. LU § 21-103(a) and (b). The Prince George's County District Council must consider whether to direct the Commission to update each local planning area master plan on at least a sexennial basis. LU § 21-105(c)(1)(i).

The five members of the Commission from each county also serve as the planning board for that county. LU § 20-201. Among other duties, a planning board "is responsible for planning, subdivision, and zoning functions that are primarily local in scope[.]" LU § 20-202(a)(1)(i). Among the functions assigned to the Planning Board are the review and approval of site plan applications. *County Council of Prince George's County v. FCW Justice, Inc*., 238 Md. App. 641, 655 (2018)

B. The Prince George's County Code

The provisions of the RDA are implemented in Prince George's County through the Prince George's County Code (the "PGCC"), primarily in the Prince George's County Zoning Ordinance (the "Zoning Ordinance"), which is codified as Title 27 of the County Code. Prince George's County is divided into classes of zones, including residential, commercial, industrial, planned community, and mixed use. PGCC § 27-109. The zoning classification of the Melford property is "Mixed-Use-Transportation Oriented" (M-X-T). The purposes of the M-X-T district are:

> (1) To promote the orderly development and redevelopment of land in the vicinity of major interchanges, major intersections, major transit stops, and designated General Plan Centers so that these areas will enhance the economic status of the County and provide an expanding source of desirable employment and living opportunities for its citizens;
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> (2) To implement recommendations in the approved General Plan, Master Plans, and Sector Plans, by creating compact, mixed-use, walkable communities enhanced by a mix of residential, commercial, recreational, open space, employment, and institutional uses;

> (3) To conserve the value of land and buildings by maximizing the public and private development potential inherent in the location of the zone, which might otherwise become scattered throughout and outside the County, to its detriment;
>
> (4) To promote the effective and optimum use of transit and reduce automobile use by locating a mix of residential and non-residential uses in proximity to one another and to transit facilities to facilitate walking, bicycle, and transit use;
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> (5) To facilitate and encourage a twenty-four (24) hour environment to ensure continuing functioning of the project after workday hours through a maximum of activity, and the interaction between the uses and those who live, work in, or visit the area;
>
> (6) To encourage an appropriate horizontal and vertical mix of land uses which blend together harmoniously;
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> (7) To create dynamic, functional relationships among individual uses within a distinctive visual character and identity;
>
> (8) To promote optimum land planning with greater efficiency through the use of economies of scale, savings in energy, innovative stormwater management techniques, and provision of public facilities and infrastructure beyond the scope of single-purpose projects;
>
> (9) To permit a flexible response to the market and promote economic vitality and investment; and
>
> (10) To allow freedom of architectural design in order to provide an opportunity and incentive to the developer to achieve excellence in physical, social, and economic planning.

PGCC § 27-542(a).

In order to accomplish these goals, proposed developments in the M-X-T district are required to obtain both conceptual and detailed site plan approval. PGCC § 27-546(a). This case concerns a conceptual site plan. Such plans illustrate "a very general concept for

developing a parcel of land before subdivision plans or final engineering designs are begun" for planned use developments and planned employment parks. PGCC § 27-272(a)(1).[5] Before a conceptual site plan is approved, the reviewing agency, which is initially the Planning Board, must make findings of fact as to a variety of statutory criteria. The Zoning Ordinance sets out required Planning Board findings that are applicable to all conceptual site plans, as well as M-X-T district-specific findings. *See* PGCC § 27-27-276 and § 27-213.[6]

[5] The purposes of the conceptual site plan review process are set out in PGCC § 27-272. They include: providing "for development in accordance with the principles . . . contained in the General Plan, Master Plan or other approved plan"; assuring that the proposed development complies with the County's site design guidelines; illustrating the "approximate locations [of proposed] buildings, parking lots, streets, green areas, and other similar physical features"; may be placed in the final design for the site; and showing the "general grading, woodland conservation areas, preservation of sensitive environmental features, [etc.] concepts to be employed in any final design for the site[."].

[6] PGCC § 27-276(b) states in pertinent part:

> (b) Required findings. (1) The Planning Board may approve a Conceptual Site Plan if it finds that the Plan represents a most reasonable alternative for satisfying the site design guidelines without requiring unreasonable costs and without detracting substantially from the utility of the proposed development for its intended use. If it cannot make this finding, the Planning Board may disapprove the Plan.
>
> (2) The Planning Board may approve a Conceptual Site Plan for a Mixed-Use Planned Community in the . . . M-X-T Zone if it finds that the property and the Plan satisfy all criteria for M-X-T Zone approval in Part 3, Division 2; the Plan and proposed development meet the purposes and applicable

(Footnote Continued. . . .)

requirements of the M-X-T Zone; the Plan meets all requirements stated in the definition of the use; and the Plan shows a reasonable alternative for satisfying, in a high-quality, well-integrated mixed-use community, all applicable site design guidelines.

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PGCC § 27-266(b)(3) incorporates by reference Part 3, Division 2 of the Zoning Ordinance. This division pertains to zoning map amendments. The provision of that part of the Zoning Ordinance that is relevant to property in the M-X-T district is § 27-213, which provides:

Sec. 27-213. - Map Amendment approval; amendments.

(a) Criteria for approval of the M-X-T Zone.

(1) The District Council shall only place land in the M-X-T Zone if at least one (1) of the following two (2) criteria is met:

(A) Criterion 1. The entire tract is located within the vicinity of either: (i) A major intersection or major interchange (being an intersection or interchange in which at least two (2) of the streets forming the intersection or interchange are classified in the Master Plan as an arterial or higher classified street reasonably expected to be in place within the foreseeable future); or (ii) A major transit stop or station (reasonably expected to be in place within the foreseeable future).

(B) Criterion 2. The applicable Master Plan recommends mixed land uses similar to those permitted in the M-X-T Zone.

(2) Prior to approval, the Council shall find that the proposed location will not substantially impair the integrity of an approved General Plan, Area Master Plan, or Functional Master Plan and is in keeping with the purposes of the M-X-T Zone. In approving the M-X-T Zone, the District Council may include guidelines to the Planning Board for its review of the Conceptual Site Plan.

(3) Adequate transportation facilities. (A) Prior to approval, the Council shall find that transportation facilities that are existing, are under construction, or for which one hundred percent (100%) of construction funds are allocated

(Footnote Continued. . . .)

A conceptual site plan must be submitted to the Planning Board by the owner of the subject property and meet a number of requirements. PGCC § 27–273(a)–(e). Generally, the Board is required to hold a hearing and make findings on a conceptual site plan application before making a decision. PGCC § 27–276(a)(7). The Planning Board may approve, disapprove, or approve with modifications a conceptual site plan. PGCC § 27–276(a)(5). The Board may approve a conceptual site plan in the M-X-T Zone if the Board:

> finds that the property and the Plan satisfy all criteria for M-X-T Zone approval . . . ; the Plan and proposed development meet the purposes and applicable requirements of the M-X-T Zone; the Plan meets all requirements stated in the definition of the use; and the Plan shows a reasonable alternative for satisfying, in a high-quality, well-integrated mixed-use community, all applicable site design guidelines.

PGCC § 27-276(b)(2).

> within the adopted County Capital Improvement Program, within the current State Consolidated Transportation Program, will be funded by a specificpublic facilities financing and implementation program established for the area, or provided by the applicant, will be adequate to carry anticipated traffic for the proposed development. (B) The finding by the Council of adequate transportation facilities at this time shall not prevent the Planning Board from later amending this finding during its review of subdivision plats.
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An application to amend a conceptual site plan may be filed by the applicant. PGCC § 27-279(a). In the present case, the same requirements apply for an amendment to a conceptual site plan as for filing and review of an original conceptual site plan.[7] No amendment to a conceptual site plan is permitted without the approval of the Planning Board. PGCC § 27-279(a).

C. The District Council's Authority to Review Planning Board Conceptual Site Plan Decisions

The District Council is authorized to review Planning Board decisions in conceptual site plan cases upon an appeal by a party of record in the proceeding.[8] The Zoning

[7] The Zoning Ordinance sets out a different procedure for "limited minor" amendments. *See* PGCC § 27-279(b)–(c). No one asserts that the amendment at issue in this appeal falls into this category.

[8] Section 27-280 states in pertinent part:

> (a) The Planning Board's decision on a Conceptual site plan or amendment of the Development District Standards for an approved Development District Overlay Zone may be appealed to the District Council upon petition by any person of record. . . . The petition shall be filed with the Clerk of the Council within thirty (30) days after the date of the notice of the Planning Board's decision. The District Council may vote to review the Planning Board's decision on its own motion within thirty (30) days after the date of the notice.
>
> (b) The Clerk of the Council shall notify the Planning Board of any appeal or review decision [and thereafter] the Planning Board shall transmit to the District Council a copy of the Conceptual Site Plan, all written evidence and materials submitted for consideration by the Planning Board, a transcript of the public hearing on the Plan, and any additional information or explanatory material deemed appropriate.

(Footnote Continued. . . .)

Ordinance also provides that, in such proceedings, the District Council exercises "original jurisdiction." PGCC § 27-132(f).[9]

As the *Zimmer* Court noted, however, the proper scope of PGCC § 27-132(f) is less expansive than its language, considered in isolation, might suggest:

> A provision of the county ordinance, such as PGCC § 27–132(f), that purports to give the District Council (or any other body) the authority to decide, *de novo*, a local function related to planning, zoning, subdivision, or

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> (c) The District Council shall schedule a public hearing on the appeal or review.
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> (d) Within sixty (60) days after the date the appeal petition is filed or the Council elects to review the Conceptual Site Plan, the Council shall affirm, reverse, or modify the decision of the Planning Board, or remand the Conceptual Site Plan one time to the Planning Board to take further testimony or reconsider its decision in accordance with specified grounds stated in the Order of Remand adopted by the Council. Where the Council approves a Conceptual Site Plan, it shall make the same findings which are required to be made by the Planning Board. If the Council fails to act within the specified time, the Planning Board's decision is automatically affirmed.
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> (e) The Council shall give its decision in writing, stating the reasons for its action. Copies of the decision shall be sent to the all persons of record, and the Planning Board.

[9] Section 27-132 states in relevant part:

> (f) Jurisdiction.
>
> (1) In deciding an appeal to the District Council, or Council election to review a decision made by the Zoning Hearing Examiner or the Planning Board, the Council shall exercise original jurisdiction.
>
> (2) For any appeal or review of a decision made by the Zoning Hearing Examiner or the Planning Board, the Council may, based on the record, approve, approve with conditions, remand, or deny the application.

> the assignment of street names and house numbers, is invalid. The District Council may not arrogate to itself original jurisdiction where the RDA places that responsibility elsewhere. Only the General Assembly, through amendment of the RDA, may accomplish that objective.

444 Md. at 571.[10]

In *Zimmer*, the Court held that the District Council exercises appellate, as opposed to original or *de novo* jurisdiction when it reviews Planning Board decisions granting or denying comprehensive design plan and specific design plan applications. 444 Md. at 571, 574. The Court's holding was premised upon its determination that the review of such design plan was local in nature and thus reserved to the Planning Board's original jurisdiction pursuant to LU § 20-202(a)(1)(i). In so doing, the Court specifically noted that it was *not* addressing the scope of the District Council's jurisdiction when it reviewed Planning Board decisions in site plan cases.[11] Recently, this Court concluded that the

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[10] *See also Zimmer*, 444 Md. at 526 n.30 ("To the extent that the Charter, or the ordinances adopted thereunder, conflict with the RDA, the Charter and ordinances are invalid and the RDA governs." (citing *Prince George's County v. Maryland–Nat'l Capital Park & Planning Commission*, 269 Md. 202, 223 (1973))).

[11] The Court explained:

> Despite their similarities, key differences exist between the CDP and SDP process and the Detailed Site Plan process. A Detailed Site Plan is required to demonstrate that its design "represents a reasonable alternative for satisfying the site design guidelines, without requiring unreasonable costs and without detracting substantially from the utility of the proposed development for its intended use." PGCC § 27–285(a)(1). It is a method of moderating design guidelines so as to allow for greater variety of development, while still achieving the goals of the guidelines. The CDP and SDP process, in contrast, is a broader implementation of planning considerations, aimed at producing "a better environment than could be

District Council exercises appellate jurisdiction when it reviews Planning Board decisions in *detailed site plans* "at least in the context of a plan required as a condition of the approval of a subdivision application in a Euclidean zoning district," because such plans "pertain to matters . . . . of purely local impact." *County Council of Prince George's County v. FCW Justice, Inc.*, 238 Md. App. 641, 672 (2018); *see also County Council of Prince George's County v. Convenience & Dollar Mkt./Eagle Mgmt. Co.*, 238 Md. App. 613, 638–39 (2018) (The District Council exercises appellate jurisdiction over Planning Board decisions regarding nonconforming use certification applications because the issues raised in such cases "are limited to the parcel in question, and are quintessentially local in nature.").

It is not necessary for us to decide whether the conceptual site plan in the case before us should be characterized as "local in nature," and thus within the exclusive original jurisdiction of the Planning Board because the District Council affirmed the Board's decision and, although the Council made findings of fact, those findings were consistent with those of the Planning Board.

> achieved under other regulations.... " PGCC § 27–521(a)(2). In the final analysis, CDPs and SDPs are not Detailed Site Plans by another name.

444 Md. at 562–63.

D. Judicial Review of a Decision by the District Council

A person aggrieved by a final decision by the District Council may seek judicial review of that decision by filing a petition in the Circuit Court for Prince George's County within 30 days of the decision. LU § 22-407(a)–(b). The court may:

> (1) affirm the decision of the district council;
> (2) remand the case for further proceedings; or
> (3) reverse or modify the decision if the substantial rights of the petitioner have been prejudiced because the district council's action is:
> (i) unconstitutional;
> (ii) in excess of the statutory authority or jurisdiction of the district council;
> (iii) made on unlawful procedure;
> (iv) affected by other error of law;
> (v) unsupported by competent, material, and substantial evidence in view of the entire record as submitted; or
> (vi) arbitrary or capricious.

LU § 22-407(e).

If the District Council, applicant, or any aggrieved party to the circuit court proceedings is unsatisfied with the circuit court's decision, that party may appeal to the Court of Special Appeals. LU § 22-407(f)(1).

Background

We can sometimes fulfill our obligations as an intermediate appellate court without necessarily "indulging the conceit that we could somehow say it better" than did the trial court. *See Sturdivant v. Maryland Dep't of Health & Mental Hygiene*, 436 Md. 584, 587–88 (2014). This is such a case. We would be hard-pressed to improve upon Judge Alves's thorough and succinct summary of the factual and legal background to this appeal.

Accordingly, we adopt as our own the following portion of the court's memorandum opinion. (The footnotes have been renumbered but the text of each footnote is unchanged.)

> The subject property is located in Bowie, Maryland and comprises approximately 431 acres northeast of the intersection of Crain Highway (MD 3) and John Hanson Highway (US 50/301) in Planning Area 71B and Council District 4. The property is bordered on the north by Sherwood Manor, an existing subdivision of single-family detached homes[12] and Patuxent River Park;[13] to the south by the John Hanson Highway (US 50/301) right-of-way and a small vacant property;[14] in the east by the Patuxent River and the U.S. Air Force transmitter station located in Anne Arundel County and to the west by the Crain Highway (MD 3) right-of-way. The property is current an office park, with a total of 1.5 million square feet of office and flex/research and development (R&D) build-out to date.
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> Specifically at issue within the subject property is 276 acres of the Melford property located in its central and southern potions. The primary area of revision requested by the Respondent/Applicant, St. John Properties, Inc. ([St. John] or Applicant) is defined in its application as "Melford Village" and constitutes a majority of the central portion of the property surrounding the Historical Melford House and cemetery north of Melford Boulevard, on both sides of existing Curie Drive, and south of an existing storm water management pond.
>
> On January 25, 1982, the District Council approved a Zoning Map Amendment for the subject property with ten conditions. As such, the property was rezoned from the Residential Agricultural (R-A) and Open Space (O-S) Zones to the Employment and Institutional Area (E-I-A) Zones. On July 7, 1986, the District Council approved Comprehensive Design Plan CDP-8601, subject to recommendation of the Planning Board for the

[12] Sherwood Manor is zoned Residential-Agricultural (R-A).

[13] Patuxent River Park is owned by the M-NCPPC. The Property is in the Reserved Open Space (R-O-S) Zone.

[14] This property is in the Open Space (O-S) Zone.

Maryland Science and Technology Center forth in PGCCB Resolution No. 86-107.

Fast forward nearly two decades later and central to the issues in this case, the District Council approved the 2006 Master Plan for Bowie and Vicinity and Sectional Map Amendment (2006 Bowie Master Plan) for Planning Areas 71A, 71B, 74A, and 74B via adoption of CR11-2006 on February 7, 2006. The Bowie Master Plan amended the Prince George's County 2002 General Plan by removing the Melford Property from the Bowie Regional Center and Rezoning the area from Employment and Institutional Area (E-I-A) Zone to Mixed Use-Transportation Oriented (M-X-T) Zone.

The original conceptual site plan (CSP-06002) submitted by [St. John] proposed a mixed-use development for the site with hotel, office, retail, restaurant, research and development and residential use components (366 single-family units including both detached and attached units and 500 multi-family units). In May 2009, the District Council rendered a final decision on the approval of CSP-06002 incorporating four modifications and 29 conditions. The District Council approved the mixed-use development. However, key to this appeal is that the District Council rejected the residential component of the proposed development.

On May 6, 2014, pursuant to the powers given to its under LU § 22-103, of the [RDA,] the District Council undertook its decennial consideration of the 2002 comprehensive general plan. Under the RDA, a district council and the M-NCPPC are required to put a general plan in place "to guide and accomplish a coordinated, comprehensive, adjusted, and systematic development of the regional district."[15] To that end, the District Council approved the Plan 2035 Prince George's Approved General Plan (2014 General Plan). Significant to the 2014 General Plan is that it classified the subject site at issue as part of the Bowie "Town Center." However, the site also retained its status as an "Employment Area."

[15] LU § 21-101(b).

> On June 9, 2014, [St. John] filed CSP-06002-01 with the M-NCPPC. Thereafter, CSP-06002-01 wound its way through the approval process.[16] On December 4, 2014, the Planning board approved CSP-06002-01. Petitioners appealed the decision to the District Council. After an extensive hearing, the District Council on March 23, 2015, issued its Notice of Final Decision and Order of Approval with Conditions affirming the Planning Board's decision (Final Order). Thereafter, Petitioners timely filed for judicial review to this court.

In addition to filing a petition for judicial review to the circuit court pursuant to LU § 22-407, appellants sought relief pursuant to § 5-839(a)(1) of the General Provisions Article ("Gen. Prov.") of the Maryland Code. They contended that St. John Properties violated the Public Ethics Law by failing to submit affidavits as required by that statute.

The circuit court affirmed the Council's decision, and found "no merit in [appellants'] argument that the required [ethics affidavits] were not filed."

Standard of Review

In a judicial review proceeding, the issue before an appellate court "is not whether the circuit . . . court erred, but rather whether the administrative agency erred." *Bayly Crossing, LLC v. Consumer Protection Division*, 417 Md. 128, 136 (2010) (citations, internal quotation marks, and brackets omitted). For that reason, we "look through" the circuit court's decision in order to "evaluate the decision of the agency" itself. *People's Counsel for Baltimore County v. Loyola College*, 406 Md. 54, 66 (2008).

[16] [Appellants] do not allege that there was any error in the approval process as such the court will not detail the lengthy history.

The scope of our review in judicial review proceedings is well-established:

> Judicial review of administrative agency action is narrow. The court's task on review is not to substitute its judgment for the expertise of those persons who constitute the administrative agency. In our review, we inquire whether the zoning body's determination was supported by such evidence as a reasonable mind might accept as adequate to support a conclusion. As we have frequently indicated, the order of an administrative agency, such as a county zoning board, must be upheld on review if it is not premised upon an error of law and if the agency's conclusions reasonably may be based upon the facts proven.
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> * * *
>
> Generally, a decision of an administrative agency, including a local zoning board, is owed no deference when its conclusions are based upon an error of law.

People's Counsel for Baltimore County v. Loyola College, 406 Md. 54, 66–67 (2008) (cleaned up).

Analysis

1.

We will first address the District Council's argument that appellants lack standing to seek judicial review because they were not "aggrieved" by the Council's decision.[17] The circuit court was not persuaded by this contention, nor are we.

[17] The District Council did not file a cross-appeal, which normally would bar the Council from challenging any part of the circuit court's judgment. *See Joseph H. Munson Co. v. Secretary of State*, 294 Md. 160, 168, (1982), *aff'd sub nom. Secretary of State of Md. v. Joseph H. Munson Co.*, 467 U.S. 947 (1984) ("A party to a trial court proceeding, however, is not entitled to seek direct appellate review and reversal of the trial court's judgment

The Council's standing argument is founded on Land Use Article § 22-407(a), which authorizes the judicial review of land use decisions by the District Council. At the time that the circuit court entered its judgment, § 22-407 read in pertinent part (emphasis added):

> (a)(1) Judicial review of any final decision of the district council, including an individual map amendment or a sectional map amendment, may be requested by *any person or entity that is aggrieved by the decision of the district council* and is:
> (i) a municipal corporation, governed special taxing district, or person in the county;
> (ii) a civic or homeowners association representing property owners affected by the final decision;
> (iii) the owner of the property that is the subject of the decision; or
> (iv) the applicant.

The flaw with the District Council's argument is that the current version of § 22-407(a) was not in effect on the date that appellants filed their judicial review action. On that date, LU § 22-407(a)(1) read as follows (emphasis added):

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unless he has filed a valid, timely order of appeal.). There is, however, an exception to this rule, as the *Munson* Court recognized:

> Under circumstances where absence of standing would present an alternate ground for upholding a trial court's judgment, an appellee is entitled to argue that ground in an appellate court. In such situation, a cross-appeal would be unnecessary and, in fact, would be improper. Moreover, in that situation, even if lack of standing were not raised by the appellee, an appellate court noticing the issue would normally consider it sua sponte under the principle that a judgment will ordinarily be affirmed on any ground adequately shown by the record, whether or not relied on by the trial court or raised by a party.

Id. at 167–68 (cleaned up). Because lack of standing on the part of appellants would have been an alternative ground to affirm the District Council's decision, the Council may raise standing to this Court. *See also Superior Outdoor Signs, Inc. v. Eller Media Co.*, 150 Md. App. 479, 495-96 (2003); and *Sipes v. Board of Mun. and Zoning Appeals*, 99 Md. App. 78, 86-88 (1994).

> Judicial review of any final decision of the district council, including an individual map amendment or a sectional map amendment, may be requested by:
> (i) any municipal corporation, governed special taxing district, or person in the county;
> (ii) a civic or homeowners association representing property owners affected by the final decision; or
> (iii) *if aggrieved, the applicant*.

In *Gosain v. County Council of Prince George's County*, 420 Md. 197, 208 (2011), the Court of Appeals held that the legislative history to the statutory predecessor to § 22-407(a) "make[s] it clear that, except for the applicant, aggrievement is not required for standing to bring a . . . judicial review action." Certainly, the current version of § 22-407(a) does require aggrievement but that amendment was effectuated by ch. 365 of the Acts of 2015, which became effective on October 1, 2015. This judicial review action was filed on April 24, 2015. The circuit court construed ch. 365 as having prospective application only.

"[T]here is a general presumption in the law that an enactment is intended to have purely prospective effect. In the absence of clear legislative intent to the contrary, a statute is not given retrospective effect." *Grasslands Plantation, Inc. v. Frizz-King Enterprises, LLC*, 410 Md. 191, 218 (2009) (quoting *Langston v. Riffe*, 359 Md. 396, 406 (2000). There are exceptions to this rule. One of them is that statutes that modify "only procedures or remedies" will be afforded retroactive application. *Grasslands*, 410 Md. at 219 (quoting *Langston*, 359 Md. at 407–07). Another is that, in Maryland, there is a "general presumption *in favor* of retroactivity in zoning cases." *Grasslands*, 410 Md. at 220 (emphasis in original). These presumptions do not apply, however, when the change to the

law affects substantive, as opposed to procedural, rights. *Id.* at 226. Applying these principles is not always easy in the context of judicial review proceedings. *Id.* at 221–26 (surveying cases). When a change is procedural, "the decision about retroactivity will turn on what aspect of the administrative/adjudication process is changed, at what point in the administrative/adjudication process the change is made, and the [substantive] question presented to the reviewing court. *Id.* at 227–28 (footnote omitted).

In the present case, the change in the law occurred after the administrative proceeding was concluded, and after the judicial review action was filed. The standing issue has nothing to do with the merits of the conceptual site plan amendment. We agree with the circuit court that there is nothing in chapter 365 of the Acts of 2015 that suggests that the General Assembly intended that the amendments to § 22-407 would apply to pending judicial review proceedings. We conclude, as did Judge Alves, that the 2015 amendment to LU § 22-407(a) does not apply to the case before us.

2.

Appellants argue that the District Council erred in determining that the 2014 General Plan superseded the 2006 Master Plan. Specifically, appellants contend that the residential component of CSP-06002-01 is incompatible with the provisions of the 2006 Master Plan.

The 2006 Area Master Plan was born out of "the key visions, goals, and policies" of the 2002 Prince George's County General Plan. The Master Plan rezoned Melford from the Employment and Institutional Area (E-I-A) zone to the M-X-T zone. Specifically, the

2006 Area Master Plan's Economic Development section states that "[t]he primary emphasis of the overall development at Melford (formerly the Maryland Science and Technology Center) is on employment. Site development should maximize employment opportunities so Melford becomes a major employment and mixed-use venue in the county." To that purpose, the Master Plan proposed that Melford "should be developed with a moderate-to-high density mixture of office, employment, retail, hotel, residential, and parkland/open space uses," and suggests that "[t]his will offer a mix of employment and residential uses that can create a place of activity and interaction for those who live, work, or visit the area. The residential component should develop in such a way that the residential buildings and settings complement Melford . . . ." The Area Master Plan called for a mix of single family detached and multifamily dwellings. Additionally, the ratio of floor area for a M-X-T conceptual site plan is 20 percent minimum and 30 percent maximum for residential, and 70 percent minimum and 80 percent maximum for office/employment/retail/hotel, importantly for this case, the 2006 Area Master Plan capped the residential component for Melford at "no greater than 866 dwelling units."

CSP-06002 was submitted in 2006 to develop Melford, and thus was bound by the terms of the 2006 Master Plan. In addition to 4.8 million square feet of office, flex, and research and development space, and three hotels, CSP-06002 proposed 866 residential units. In 2007, the Planning Board approved CSP-06002. In 2009, the District Council approved CSP-06002 with four modifications and 29 conditions, but denied its residential

component because "the high-density residential uses proposed by the applicant [was] not well integrated with employment and office uses elsewhere on the site."

The 2014 General Plan was enacted as a "comprehensive 20-year . . . blueprint for long-term growth and development in Prince George's County." The General Plan categorized areas within Prince George's County into "classifications." The City of Bowie, including Melford, was classified as a "Town Center," but Melford also retained its status as an Employment Area. "Town Centers" are designed to provide "new housing mix" such as low-rise apartments and condominiums, townhomes, and small, single-family lots. Meanwhile, "Employment Areas" are "areas commanding the highest concentration of economic activity in four targeted industry clusters—healthcare and life sciences, business services; information, communication, and electronics; and the Federal Government."

Employment Centers and Town Centers contain different use strategies. Employment Centers project a total of 2,520 dwelling units and 22,800 new jobs. Meanwhile, Town Centers project 6,300 dwelling units and 5,700 new jobs. Additionally, the average housing density for Town Centers is 10-60 dwelling units per acre.

On June 9, 2014, St. John Properties filed CSP-06002-1 as an amendment to CSP-06002. CSP-06002-1 retained the original proposal to add a mix of commercial, office, and retail space to Melford, but abandoned the proposal for three hotels. Importantly, CSP-06002-1 also amended the residential component, to increase the total number of residential

units from 866 to 2,500. On December 4, 2014, the Planning board approved CSP-06002-01.

Appellants point to the differences between the 2006 Bowie Master Plan and the 2014 General Plan regarding the residential uses in Melford. Where the plans conflict, appellants assert that the terms of the 2006 Master Plan should control CSP-06002-1, and that both the Planning Board and the District Council erred in concluding that the 2014 General Plan superseded the 2006 Master Plan. From that premise, appellants argue that the Board and Council erred in approving CSP-06002-1 because its proposal for 2,500 residential units is incompatible with the limits set by the 2006 Master Plan. This argument is unpersuasive.

Appellants are correct that the 2014 General Plan and the 2006 Master Plan differ regarding the limitations imposed on the residential component applicable to Melford. Appellants rely on PGCC § 27-639(a), which states:

> Any plans which were adopted or approved in accordance with the legally prescribed procedures in effect at the time of the action shall remain effective until superseded or amended in accordance with the provisions of this Part.

This is not, however, the only provision of the Zoning Ordinance that speaks to the relationship between an area master plan and the general plan. PGCC § 27-640(a) provides (emphasis added):

> When Functional Master Plans (and amendments thereof) and General Plan amendments are approved after the adoption and approval of Area Master Plans, *the Area Master Plans shall be amended only to the extent specified by the District Council in the resolution of approval*. Any Area Master Plan or Functional Master Plan (or amendment) shall be an amendment of the General Plan unless otherwise stated by the District Council.

The resolution of approval is CR-26-2014. One of the resolution's recital clauses states:

> WHEREAS, upon approval by the District Council, Plan Prince George's 2035 General Plan will supersede the 2002 Prince George's County Approved General Plan and *amend current approved master plans . . . to incorporate the Countywide goals, objectives, policies and strategies* for the implementation of these comprehensive long-term growth and development [policies] in Prince George's County[.]

This recital reflects the language of the 2014 General Plan itself. In pertinent part, the Plan states (emphasis added):

> All new County plans, studies, and programs should be consistent with the Plan 2035 vision, goals, policies, and strategies, Growth Policy Map, and Strategic Investment Map.
>
> * * *
>
> All planning documents which were duly adopted and approved prior to the date of adoption of Plan 2035 shall remain in full force and effect, *except the designation of tiers, corridors, and centers*, until those plans are revised or superseded by subsequently adopted and approved plans. *Plan 2035 is intended to represent a new vision which will be implemented over many years*, through the adoption of small area sector, master, and other development plans and studies, as well as through zoning via sectional map amendments. In the interim, prior to adoption or approval of superseding small area plans, and, as appropriate, *Plan 2035 policies may be noted and discussed for purposes of requirement master plan conformance analysis.*

The 2014 General Plan observes that it "may not align fully with ongoing activities within the region or previously approved priorities[,]" and so brings up to date "the priorities of County programs, master plans, and other studies with the priorities of Plan 2035."

In its decision, the District Council addressed the tension between the 2006 Area Master Plan and the General Master plan:

> In 2014, and in accordance with the decennial review requirement in Title 21 of the RDA . . . the District Council considered and approved an update to its General Plan on May 6, 2014. As part of that approval, the District Council declared that where approved General Plan recommendations conflict with existing area master plan and functional master plan recommendations, the 2014 General Plan update supersedes and amends any inconsistent provisions with said master plans, including the 2006 *Bowie and Vicinity Master Plan and SMA* for the area of the subject property. *See* CR-26-2014, at 1; 2014 *Plan Prince George's 2035*, at 194.

The Council found the "provisions of the 2014 General Plan inapposite to [appellants'] assessment that the subject property is one of four designated Employment Areas within the 2014 Plan." Instead, the Council found:

> persuasive the Land Use Policy 10.3 articulated in the Land Use Chapter of the 2014 General Plan, which calls for the County to "evaluate master plans that include Residential/Neighborhood Services land use and zoning to reduce commercial zoning [and to] [r]edesignate to residential land use as appropriate."

To put it another way, the District Council acknowledged that it was impossible to completely reconcile the relevant provisions of the 2014 General Plan—which call for a significant increase in the residential component in Melford—and the recommendations of the 2006 Area Master Plan. The Council concluded that the General Plan provisions should prevail.

We next determine if CSP-06002-01 meets the requirements of the 2014 General Plan. We agree with the Planning Board and the District Council and conclude that it does.

After providing a lengthy and detailed review of the facts and its findings, the Planning Board found that "the application is not inconsistent with the Plan Prince George's 2035 policies for a town center [or] . . . the 2006 Bowie and Vicinity Master Plan's policies for Melford, as amended by Plan Prince George's 2035." As to the residential component, the Board found that "[t]he introduction of residential will help support ancillary goods and services, thereby improving the attractiveness of the area to potential employers." Additionally, the Board took into consideration the Melford Property's designation as an employment center, and found:

> One way to assess whether or not the area should still be considered an employment area even with the introduction of residents is to look at the area's job to population ratio as compared to the county as a whole. Currently, the countywide job to population ratio is 0.36. After the introduction of 5,615 residents and the potential for 4,558 employees, the Melford area's jobs to population ratio would be 0.81, more than double the current countywide jobs to population ratio of 0.36. Even with the introduction of residential uses, Melford will still be significant employment area within the county.

The District Council affirmed the Planning Board's decision. The District Council concluded that CSP-06002-01's residential component "demonstrates sound consistency with the existing land use policy recommendations within the 2006 [Master Plan] concerning the emerging need, as well as documented future demand that is projected for affordable senior housing the area of the Melford Property." Further, the Council concluded that:

> the record contains specific demonstrated efforts by Applicant to incorporate specific strategies espoused within the land use policies embodied within

> several master plans applicable to the area proposed for the subject development. The purpose of the comprehensive planning and zoning recommendations is to realize important development recommendations espoused within current comprehensive plans in the subject proposal.

The District Council also concluded that CSP-06002-01 complied with the applicable zoning ordinance requirements. To that effect, the Council found that "the proposed office, retail, and residential uses are generally permitted in the M-X-T Zone . . ." and that "the proposed residential uses [are] consistent with . . . the M-X-T Zone." Indeed, CSP-06002-01 conforms with the purposes of the M-X-T Zone, which include "creating compact, mixed-use, walkable communities enhanced *by a mix of residential, commercial, recreational, open space, [and] employment* . . . ," and "[t]o promote the effective and optimum use of transit and reduce automobile use *by locating a mix of residential and non-residential uses in proximity to one another* . . . ." PGCC § 27-542(a) (emphasis added).

Based on the language in the 2014 General Plan and the purposes of the M-X-T Zone, of which Melford is classified, we cannot find error in the District Council's deference to the expertise of the Planning Board. *See County Council of Prince George's County v. Zimmer Development Co.*, 444 Md. 490, 573 (2015) ("A Planning Board decision is vulnerable if it is not authorized by law, is not supported by substantial evidence of record, or is arbitrary or capricious.").

3.

Appellants argue that the Planning Board did not satisfy the "finding requirement" of PGCC § 27-276(b)(1). That provision reads, in pertinent part:

> (b) Required findings.
>
> (1) The Planning Board may approve a Conceptual Site Plan if it finds that the Plan represents a most reasonable alternative for satisfying the site design guidelines without requiring unreasonable costs and without detracting substantially from the utility of the proposed development for its intended use. If it cannot make this finding, the Planning Board may disapprove the Plan.

PGCC § 27-276(b)(1).

Appellants contend that this finding was inadequate as a matter of law because it:

> merely recited the requirement [with] no discussion, no analysis, no pointer to any evidence in the record" to support its conclusion. For its part, the District Council's Order of Approval never even acknowledged the existence of Section 27-276(b)(1) or its required finding.

We do not agree. First, as to the adequacy of the Planning Board's finding, it is not necessary for an administrative agency to marshal specific evidence for each and every finding as long as the decision considered as a whole provides a reviewing court with the factual basis of the agency's reasoning. *See Critical Area Commission v. Moreland*, 418 Md. 111 (2011).[18] The finding in question comes at the conclusion of sixty-one pages of

[18] Writing for the Court in *Moreland*, Judge Battaglia explained:

> Moreland's assertion that the Board of Appeals must describe the evidentiary foundation for each of its findings, immediately following each finding, to enable meaningful judicial review does not have a foundation in our jurisprudence[.]
>
> • • •
>
> We can discern no statutory or jurisprudential basis for the conclusion that summarizing the evidence in a separate section deprived the Board's conclusory findings of adequate evidentiary support.

detailed analysis in which the Planning Board explained how, in a variety of ways, the proposed amendment to the Melford conceptual site plan represented "a most reasonable alternative for satisfying the site design guidelines without requiring unreasonable costs and without detracting substantially from the utility of the proposed development for its intended use." PGCC § 27-276(b)(1). This is a sufficient basis for the Planning Board's decision.

Appellants are correct that the District Council did not explicitly address § 27-276(b)(1) in its decision. But, the Council did state that it "adopt[ed] the findings and conclusions". . . [of the Planning Board's decision], except where otherwise stated herein." (Footnote omitted.) The Council's adoption by reference is sufficient.[19]

4.

Appellants next argue that the District Council erred in concluding that the Planning Board properly found that CSP-06002-01 met the requirements of PGCC § 27-546(d)(3).

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418 Md. at 128–29, 134.

[19] Appellants point to evidence in the record—specifically, two letters written by neighbors, and the testimony of those neighbors to the Board—that they assert shows that there was conflicting evidence as to whether the proposed amendment satisfied § 27-276(b)(1). But in order for us to reverse the District Council, we must conclude that no reasonable person would have reached the Board's conclusion based upon the evidence. *See, e.g.*, *Loyola College*, 406 Md. at 66–67 (2008) (An agency's finding of fact must be "supported by such evidence as a reasonable mind might accept as adequate to support a conclusion."). Appellants do not make such an argument. in any event, doing so would be an exercise in futility in light of the ample evidence in the record supporting the decisions of the Planning Board and the District Council.

PGCC § 27-546(d)(3) reads, in pertinent part:

> (d) In addition to the findings required for the Planning Board to approve either the Conceptual or Detailed Site Plan (Part 3, Division 9), the Planning Board shall also find that:
>
> * * *
>
> (3) The proposed development has an outward orientation which either is physically and visually integrated with existing adjacent development or catalyzes adjacent community improvement and rejuvenation[.]

Appellants maintain that CSP-06002-01 does not have "an outward orientation which either is physically and visually integrated with existing adjacent development or catalyzes adjacent community improvement and rejuvenation" as required by PGCC § 27-546(d)(3). According to appellants, rather than finding that the proposed development was integrated to areas *adjacent* to the development, the District Council found that the development was integrated to areas *within* Melford. Additionally, appellants assert that the proposed development does not have any outward orientation, and that for it to do so, a new pedestrian connection must be built, which has yet to be, and may not be, approved by the State Highway Administration. Finally, appellants contend that the Board admitted that it was unable to make this finding when it stated, in its order, that "[p]hysical integration with neighborhoods outside of Melford is a challenge."

As to PGCC § 27-546(d)(3), the Board found, in full (emphasis added):

> The subject property is located at the intersection of two freeways (MD 3 and US 50/301). To the north of the M-X-T-zoned property is Sherwood Manor, a single-family detached development. To the west of the subject site across MD 3 are the Buckingham at Belair and Kenilworth at Belair

> subdivisions within the City of Bowie. The CSP shows office, a hotel, and research and development along the perimeter of the adjacent roadways. Due to the size and location of the proposal, it is largely self-contained. *Physical integration with neighborhoods outside of Melford is a challenge*; nevertheless, *the applicant indicates that a pedestrian connection along Melford Boulevard to the adjacent development on the west side of MD 3 will be established (subject to approval by the Maryland State Highway Administration ("SHA") to physically connect Melford to nearby residential neighborhoods.* The City of Bowie also recommends a condition to this effect that will be further evaluated at the time of preliminary plan. *See* PGCPB No. 14-128, at 13; 10/20/2014 TSR, at 14-15.
>
> We find that the proposed neighborhoods within Melford Village, as represented in the design guidelines, *will have an outward orientation and will be integrated with the existing employment uses on the site.* The proposed addition of commercial and residential uses and amenity spaces is intended to catalyze the improvement and rejuvenation of all of Melford. *Id.*

Thus, the Board's findings, when read in their entirety, demonstrate that: (1) the applicant proposed to build a pedestrian connection from Melford to residential properties located on the opposite side of Route 3; and (2) the proposed new development will be visually oriented towards and integrated into the existing office and commercial uses in Melford. Both the Planning Board and the District Council found this sufficient to satisfy the requirements of § 27-546(d)(3). We will not substitute our judgment for those of the Planning Board and, ultimately, the District Council. *Loyola College*, 406 Md. at 66–67.

5.

Appellants contend that the ethics affidavits filed by St. John Properties were legally insufficient to allow the District Council to approve CSP 06002-01. At this juncture, it is necessary to provide some additional information on the Public Ethics Law.

Part V of Subtitle 8 of the Maryland Public Ethics Law[20] contains provisions applicable to land use proceedings in Prince George's County. Md. Code Ann. (2014) §§ 5-833–839 of the General Provisions Article ("GP").

Specifically, GP § 5-835(a)[21] prohibits an "applicant" filing a land use "application" from making campaign contributions to members of the District Council while its land use application is pending. It is not disputed that St. John Properties is an "applicant," nor that its request to amend the Melford conceptual site plan is an "application" for the purposes of the Public Ethics Law. Appellants do not allege that St. John Properties made any campaign contributions to members of the District Council while CSP-06002-1 was pending. Rather, the sole issue here is St. John Properties' filing of the ethics affidavits required by the Public Ethics Law.

GP § 5-835(c)[22] requires all applicants to file an affidavit stating (a) whether the

[20] While this case was pending before the Planning Board, the Maryland Public Ethics Law was recodified without substantive change as Title 5 of the General Provisions Article. *See* General Revisor's Note to the General Provisions Article. In this opinion, we will refer to the current version of the statute.

[21] GP § 5-835(a) states:

> An applicant or agent of the applicant may not make a payment to a member or the County Executive, or a slate that includes a member or the County Executive, during the pendency of the application.

[22] GP 5-835(c) states in pertinent part:

> (1) After an application is filed, the applicant shall file an affidavit under oath:

(Footnote continued. . . .)

applicant, or a member of his or her household: (1) made campaign contributions to a "member," (2) contributed funds to any council member's campaign committee either directly or through a political action committee within the 36 months preceding the application, or (3) solicited such contributions, If the answer to either of these questions is "yes," then the applicant must disclose the identify the council member(s) involved. St.

> (i) 1. stating to the best of the applicant's information, knowledge, and belief that during the 36-month period before the filing of the application and during the pendency of the application, the applicant has not made any
>
> payment to a [District Council] member's treasurer, a member's continuing political committee, or a slate to which the member belongs or belonged . . .; or
>
> 2. if any such payment was made, disclosing the name of the member. . . ;
>
> (ii) 1. stating to the best of the applicant's information, knowledge, and belief that during the 36-month period before the filing of the application and during the pendency of the application, the applicant has not solicited any person . . . to make a payment to a [District Council] member's treasurer, . . . continuing political committee, or a slate to which the member belongs . . .; or
>
> 2. if any such solicited payment was made, disclosing the name of the member. . .; and
>
> (iii) 1. stating to the best of the applicant's information, knowledge, and belief that during the 36-month period before the filing of the application. . .; or
>
> 2. if any such payment was made, disclosing the name of the member[;]
>
> (2) The affidavit shall be filed at least 30 calendar days before consideration of the application by the District Council.
>
> (3) A supplemental affidavit shall be filed whenever a payment is made after the original affidavit was filed.

John and its various affiliates filed affidavits stating that they had neither directly or indirectly contributed to any member's campaign nor solicited such contributions.

These affidavits must be filed at least 30 days before the District Council considers the application. If timely filed, an ethics affidavit serves as notice to the Council member in question that he or she cannot participate in the decision. *See* 100 Op. Att'y Gen 55 (2015) ("Under the Part V ethics provisions, District Council members must recuse themselves from a land use matter if they have received a contribution from the applicant within a 36-month period before the filing of the application. To facilitate the recusal provision, the law also requires applicants to submit an affidavit disclosing any payments they have made to a member of the District Council within the same 36-month period.").

To enforce the requirements of Part V, GP § 5-839 provides that the State Ethics Commission or an aggrieved person may file an action in the Circuit Court for Prince George's County. GP § 5-839 authorizes a court to "issue an order voiding" official actions taken by the District Council that were "in violation of this part[.]" GP § 5-839(a)(2).

All of the ethics affidavits filed in the case were dated May 27, 2014. The District Council approved CSP 06002-01 in March 2015. Between those dates, an election was held and three members were elected to the District Council who had not been on the Council when the ethics affidavits were filed in May 2014. Appellants concede that the ethics affidavits in the file applied to six Council members who were in office as of May 27, 2014 and who were subsequently re-elected. However, appellants assert that the ethics affidavits

did not apply to the newly-elected members of the County Council, specifically, Dannielle Glaros (District 3), Deni Taveras (District 2), and Todd Turner (District 4). Appellants argue that, as a result of the election, St. John Properties was required to file additional affidavits and its failure to do so violated the Public Ethics Law. The circuit court disagreed, as do we.

As we have explained, the Public Ethics Law requires an applicant or its agent to file an ethics affidavit regardless of whether contributions were made to a "member" of the county council.[23] *See* Gen. Prov. 5-835(c)(1)(i). The term "member" is defined at § 5-833(l) (emphasis added):

> "Member" includes *any candidate or person duly elected or appointed who takes the oath of office as a member of the County Council for Prince George's County* and who thereby serves on the District Council.

The term "candidate" is also defined at § 5-833(f):

> "Candidate" means a candidate for election to the County Council who becomes a member.

Clearly, Part V of the Public Ethics Law envisioned that land use applicants would file ethics affidavits not only for sitting Council members, but also for candidates for the County Council as well. That is precisely what happened in this case.

[23] While the affidavit form does not make it extremely clear that "member" includes candidates, it does refer to the relevant provisions of the Public Ethics Law, which would inform the reader of that fact.

St. John Properties filed its ethics affidavits on May 27, 2014. By that date, the three individuals who would later be elected to the Council had already filed their certificates of candidacy. *See* Section 5-303 of the Election Law Article of the Maryland Code ("in the year in which the governor is elected, a certificate of candidacy shall be filed not later than 9 p.m. on the last Tuesday in February in the year in which the primary election will be held[.]")[24] 2014 was a gubernatorial election year, so therefore, the candidates were known to the parties at the end of February 2014, several months prior to the applicant filing affidavits dated May 27, 2014. Therefore, St. John Properties was not required to file additional affidavits after the 2014 election when three new individuals were elected to the County Council. St. John Properties' May 27, 2014 ethics affidavits covered both sitting members of and candidates for the County Council, and so were sufficient to meet the requirements of Part V of the Public Ethics Law.

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

[24] Pursuant to Md. Rule 5-201, we take judicial notice of the records of the State Administrative Board of Election Law's records pertaining to the 2014 primary election for the Prince George's County Council. The Board's records show that Mesdames Glaros and Taveras and Mr. Turner appeared on the primary ballot. *See* https://www.elections.maryland.gov/elections/2014/results/primary/gen_results_2014_1_by_county_170.html (last visited July 8, 2019).