Circuit Court for Montgomery County
Case No. 486253-V

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 0619

September Term, 2022

DEVIN BATTLEY and LINDBERGH PARK OWNERS ASSOCIATION

v.

MONTGOMERY COUNTY, MARYLAND

Wells, C.J.,
Graeff,
Berger,

JJ.

Opinion by Wells, C.J.

Filed: February 17, 2023

* At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This appeal, brought by Devin Battley and the Lindbergh Park Owners Association (together, "appellants," or "the LPOA"), involves the denial of Water Quality Protection Charge ("WQPC") credits to all but five property owners in the Gaithersburg commercial development of Lindbergh Park. The Montgomery County Department of Environmental Protection ("DEP") made the initial denial, concluding credits should only be awarded to those owners whose properties contain the development's three stormwater treatment ponds, and not to any other members, whose property contained only grading and channeling mechanisms for directing stormwater to the ponds. The LPOA appealed to the Maryland Tax Court, who reversed and granted all LPOA members the maximum WQPC credits. Montgomery County appealed to the Circuit Court for Montgomery County, who reversed the Tax Court and remanded for the regulatorily-prescribed calculations of credits owed to the five property owners. The LPOA now appeals to this Court, submitting the following questions for our review, which we have reorganized and rephrased[1]:

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[1] The LPOA's questions presented, verbatim, read:

1. Was the latest decision of the Montgomery County Circuit Court erroneous, as the Maryland Tax Court and, in 2017, the Montgomery County Circuit Court unequivocally ruled it to be?

2. Is the WQPC, as construed and applied by the County, unconstitutional, as containing unlawful and unreasonable differing treatment of landowners who treat their own stormwater versus those who do not?

3. Is the County's failure to grant the property owners WQPC credits, in contravention of the Circuit Court's 2017 ruling and the Chief Judge of the Maryland Tax Court's 2021 decision, a misuse of County funds and an additional improper burden on the property owners, who have complied with the WQPC law's stated goals and property owner incentivization, but have been

1. Was the Tax Court legally correct in concluding that the drainage mechanisms directing stormwater from each LPOA member's property to stormwater treatment ponds makes that owner eligible for WQPC credits?

2. Was the Tax Court's conclusion that all LPOA members are entitled to the maximum WQPC credit supported by substantial evidence?

For the reasons that follow, we answer "no" to both, affirming the circuit court's reversal and remand of the Tax Court's decision.

FACTUAL AND PROCEDURAL BACKGROUND

To reduce erosion, pollution, local flooding, and to comply with its obligations under State law and its Municipal Separate Storm Sewer System ("MS4") Permit[2],

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forced to spend time and resources to not be double taxed for the stormwater they in fact treat?

We determine that the second issue was not raised or decided below. Md. Rule 8-131 ("Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal."). "In addition, it is [the Supreme Court of Maryland's] established policy to decide a constitutional issue only when necessary." *Robinson v. State*, 404 Md. 208, 217 (2008). Because we do not find it necessary or helpful to decide this issue in light of our holdings on the preserved issues, we decline to do so.

We also note that the LPOA does not include in its brief to this Court a corresponding section for its third issue. Without any explanation or authority for this argument, we do not address it. *See Ruffin Hotel Corp. of Maryland v. Gasper*, 418 Md. 594, 618, 690 (2011) (citing *State Roads Comm'n v. Halle*, 228 Md. 24, 32 (1962)) ("[A]ppellate courts cannot be expected to either (1) search the record on appeal for facts that appear to support a party's position, or (2) search for the law that is applicable to the issue presented."). And like the issue raised in the second question presented, we do not find that the third issue was raised or decided below. Md. Rule 8-131.

[2] The Maryland Department of the Environment's "MS4 permits are a result of extensive stakeholder engagement. Maintenance of existing infrastructure is essential and

Montgomery County assesses a Water Quality Protection Charge on property owners "based on the potential for a property to contribute to stormwater runoff."[3] Montgomery County Code ("MCC") § 19-34(b); Code of Montgomery County Regulations ("COMCOR") § 19.35.01.03. Property owners can receive credits against this charge, however, if "the property contains a stormwater management system for which the County does not perform structural maintenance that either treats on-site drainage only or both on-site drainage and off-site drainage from other properties located within the same drainage." MCC § 19-35(e)(1)(A).

Lindbergh Park is a business park comprised of multiple individually owned lots. The development contains no real property owned by members collectively or by the LPOA itself. Each property owner is an LPOA member under the terms of a Declaration of Protective Covenants recorded in the Land Records of Montgomery County. Lindbergh Park's design employs three stormwater management ponds, located on five owners' properties, and grading and infrastructure on each individual property to channel that property's stormwater into one of the three ponds. By those covenants recorded with the

the new permits require local jurisdictions to maintain the previous stormwater pollution reduction efforts while also requiring additional stormwater pollution reduction to restore waterways. The additional restoration requirements are to reduce the impacts of impervious surface areas that have little through stormwater treatment with green infrastructure and other techniques. These new permits meet Maryland's Chesapeake Bay commitments and also increase accountability, enhance public education and include innovative and cost-effective monitoring options." https://mde.maryland.gov/programs/water/stormwatermanagementprogram/pages/storm_gen_permit.aspx

[3] https://www.montgomerycountymd.gov/water/wqpc/about.html.

County, the LPOA has agreed to maintain the development's stormwater facilities so that they remain "in proper working condition in accordance with approved design standards, and with the law and applicable executive regulations."[4] If the LPOA fails to do this, "the County may perform all necessary repair and maintenance work, and the County may assess the Covenantor(s) and/or all owners of property served by the [stormwater management] Facility for the cost of the work and any applicable penalties." In adhering to this obligation, all LPOA members pay maintenance fees.

In 2015, the LPOA applied to the DEP for WQPC credits on behalf of all property owners based on those stormwater management practices. The DEP granted credits to only the five properties containing the ponds, for 2015 through 2017.[5] After DEP denied reconsideration the LPOA appealed to the Board of Appeals for Montgomery County. The Board granted the County's motion for summary disposition and dismissed the appeal. The LPOA members appealed to the Circuit Court for Montgomery County, where the Honorable Ronald Rubin reversed the Board, concluding all LPOA members were entitled to WQPC credits. The County appealed to this Court, and we reversed the circuit court on grounds that the LPOA failed to exhaust administrative remedies since the County changed the appeals process during the appeal. *Bd. of Appeals for Montgomery Cnty. v. Battley*, No. 448, Sept. term, 2017, 2018 WL 3492823, at *1 (Md. Ct. Spec. App. July 20,

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[4] The parties stipulated to these facts before the Circuit Court for Montgomery County in the proceeding directly below.

[5] "Any credit granted under [MCC § 19-35(e)] is valid for 3 years." MCC § 19-35(e)(2).

2018).

In accordance with the new appeals process, in September 2018, the LPOA appealed the DEP's credit award to the County's Finance Director. The Finance Director denied the appeal on May 8, 2019, agreeing that only the owners of the five properties on which the ponds were located were entitled to credits. The LPOA appealed to the Maryland Tax Court, which agreed with the LPOA and granted all property owners the maximum WQPC credit for the respective years: 80 percent for 2015, and 100 percent for 2016 and 2017. The County appealed to the circuit court, where this time, the Honorable Sharon Burrell reversed the Tax Court, holding just as the Finance Director had, that only the five property owners whose property contained the ponds were eligible for WQPC credits. The circuit court also remanded the case for factfinding as to how many credits each of those five properties was owed. The LPOA timely appealed to this Court.

STANDARD OF REVIEW

"Because the Tax Court is an administrative agency, its decisions are reviewed under the same appellate standards generally applied to agency decisions. We look through the decision of the Circuit Court and evaluate directly the conclusions reached by the Tax Court." *Clear Channel Outdoor, Inc. v. Dir., Dep't of Fin. of Baltimore City*, 244 Md. App. 304, 312 (2020), *aff'd*, 472 Md. 444 (2021) (internal citations and quotations omitted).

"A court's role in reviewing an administrative agency adjudicatory decision is narrow[.]" *Comptroller of Treasury v. Taylor*, 465 Md. 76, 86 (2019) (quoting *Comptroller of Treasury v. Taylor*, 238 Md. App. 139, 145 (2018)). In fact,

> an administrative agency's interpretation and application of the statute which the agency administers should ordinarily be given considerable weight by reviewing courts. Moreover, recognizing that the agency's decision is prima facie correct and presumed valid, we must review the agency's decision in the light most favorable to it.

Clear Channel, 244 Md. App. at 313 (internal citations and quotations omitted). Our review "is limited to determining if there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law." *Taylor*, 465 Md. at 86 (quoting *Taylor*, 238 Md. App. at 145). However, "[w]e owe no deference when the agency's conclusions are premised on an error of law." *Harford Cnty. People's Couns. v. Bel Air Realty Assocs. Ltd. P'ship*, 148 Md. App. 244, 259 (2002). In that sense, "[w]e review the Tax Court's decisions of law *de novo*." *Clear Channel*, 244 Md. App. at 313 (internal citations and quotations omitted). And "[w]e cannot uphold the Tax Court's decision on grounds other than the findings and reasons set forth by the Tax Court." *Taylor*, 465 Md. at 86.

DISCUSSION

I. The LPOA Members' Eligibility for WQPC Credit

A. Parties' Contentions

The LPOA contends that all its properties are entitled to WQPC credits, because even those properties without ponds are part of a stormwater management system which treats stormwater on-site. This is so, the LPOA says, because each property in Lindbergh Park contains open and closed storm drain systems, pipes and grading ("drainage mechanisms") that channel stormwater into the stormwater treatment ponds in the

development. Because each owner's drainage mechanisms are part of one system, it cannot be said that stormwater from any property is "treated off-site by a stormwater management system owned by a different property owner." The LPOA emphasizes that a finding to the contrary undermines the purpose of the credits, which is "to reduce the amount of the Charge paid by property owners whose actions have reduced stormwater runoff and thereby assisted the County's efforts to comply with its MS4 Permit" (quoting MCC § 19-35, Legislative Request Report), because each property owner has done just that. Finally, the LPOA posits that each property owner is an "owner" of the stormwater management system "by virtue of owning an interest in the stormwater management facility that is appurtenant to and passes with the title to each LPOA commercial property."

The County responds that the LPOA's proposed interpretation of MCC § 19-35(e)(1)(A) is overly broad and renders the criteria for WQPC credit outside of containing a "stormwater management system" superfluous; that is, it ignores the requirement that the stormwater management system also treat on-site drainage. The County's argument continues that the drainage mechanisms on each LPOA property do not treat on-site drainage, but merely convey runoff. The County adds that the purpose of the credit is "to allow the County to catalog and claim credit toward its obligations [at the state level] for stormwater treatment measures on private property," and that such measures are to be informed by the 2000 Maryland Stormwater Design Manual. But because the drainage mechanisms on the LPOA properties "plainly fail[] to achieve" these standards, providing a credit to each owner would run counter to the purpose of the WQPC credits.

B. Analysis

The Tax Court Decision

On May 15, 2021, the Tax Court held that all LPOA members were eligible for WQPC credits because each property's stormwater is directed to the treatment ponds in the development. The court explained:

> So I think I can find as a matter of law that [the LPOA's] motion for summary judgment shall be granted. And the reason for that, and I will not recite all of the facts in the record that I think demonstrate that [the LPOA members] are entitled to the tax credit, but I will just begin with the fact that [MCC] Section 19-21 defines on-site stormwater management as "The design and construction of stormwater practices to control stormwater runoff in a development."
>
> The Lindbergh Park stormwater management ponds receive a stormwater runoff from all of the Lindbergh Park properties. I think its conceded that stormwater from Lindbergh Park properties flows into and is treated by one of the three stormwater management ponds, and the stormwater management ponds collect stormwater from the entire development. All the property owners treat their stormwater in accordance with the [WQPC] statute.
>
> [The County] argues that the [WQPC] credits only are allowed for properties that have stormwater ponds located on them. This argument, in my mind, is contrary . . . to the statutory law as well as common sense. Under [the County's] logic each property in Lindbergh Park commercial development would be required to construct a stormwater management pond in order to obtain a [WQPC] credit.
>
> The Court finds that the stormwater management system includes all the grading and channeling designed so that the stormwater from all the properties flow into the stormwater ponds.
>
> Therefore the Court finds that all the property owners in the commercial development that has and manages a private stormwater management system are entitled to the credit for the [WQPC] levied upon their properties.

As we will discuss, in reaching this conclusion, the Tax Court did not consider the plain language of the statute regarding what (or *whose*) "property" must contain the stormwater

management system in question, nor did it consider the corresponding regulatory text that requires the stormwater management system "treat" on-site stormwater.

Statutory Interpretation of MCC § 19-35(e)(1)(A)

To determine whether the drainage mechanisms on the LPOA members' properties make those property owners eligible for WQPC credits, we follow standard principles of statutory interpretation for analyzing MCC § 19-35(e)(1)(A):

> We must examine the [statute] with the goal of ascertaining the legislative intent, by resorting first to the plain language of the law. *Thanner v. Balt. County*, 414 Md. 265, 277, 995 A.2d 257, 264 (2010). We strive to avoid constructions that are inconsistent with common sense or render any of the statutory language nugatory or surplusage. *Lonaconing Trap Club, Inc. v. Md. Dep't of the Env't*, 410 Md. 326, 339, 978 A.2d 702, 709 (2009). If the language is ambiguous because it is susceptible to more than one equally reasonable construction, we look to legislative intent to resolve the ambiguity. *Melton v. State*, 379 Md. 471, 477, 842 A.2d 743, 746 (2004).

State v. Pair, 416 Md. 157, 168 (2010).

Notably, the text of MCC § 19-35(e)(1)(A) was amended in 2016. In 2015—at the time of the LPOA's application for credits through its first appeal in the circuit court before the Honorable Ronald Rubin—MCC § 19-35(e)(1)(A) read:

> A property owner may apply for, and the Director of Environmental Protection must grant, a credit equal to a percentage, set by regulation, of the Charge if . . . the property contains a stormwater management system that is not maintained by the County.

From July 7, 2016 through the present, that provision reads:

> A property owner may apply for, and the Director of Environmental Protection must grant, a credit equal to a percentage, set by regulation, of the Charge if . . . the property contains a stormwater management system for which the County does not perform structural maintenance *that either treats*

> *on-site drainage only or both on-site drainage and off-site drainage from other properties located within the same drainage area[.]*

(Emphasis added). At the time of LPOA's 2015 application[6] and presently, MCC § 19-21 includes the following relevant definitions:

> *Stormwater management*: The collection, conveyance, storage, treatment and control of stormwater as needed to reduce accelerated stream channel erosion, increased flood damages, or water pollution.
>
> *Stormwater management system*: Natural areas, environmental site design practices, stormwater management measures, and any structure through which stormwater flows, infiltrates, or discharges from a site.
>
> *On-site stormwater management*: The design and construction of stormwater practices to control stormwater runoff in a development.

As we recounted above, a critical part of the County's argument is that the drainage mechanisms on each individual property do not "treat" drainage, as any "stormwater management system" must, to be eligible for WQPC credits under MCC § 19-35(e)(1)(A). This requirement is only made express, however, in the current version of the statute. And so it would seem that our conclusion today on the LPOA members' eligibility for WQPC credit might differ depending on which version of MCC § 19-35(e)(1)(A) we apply.[7] After

[6] All three definitions were already included or amended to their present form as of July 27, 2010. 2010 L.M.C., ch. 34, § 1.

[7] In fact, we presume the simpler version of the statute in effect in 2015 largely influenced Judge Rubin's holding that all LPOA members were entitled to WQPC credits. Judge Rubin reasoned:

> [The Board of Appeals] conflat[ed] the statutory meaning of "stormwater management system" found in [MCC §] 19-35(e)(1) to equate with only the stormwater management ponds on the properties at issue in this case. The relevant Code section mandates credits for property owners who have

all, in view of the plain language of the "stormwater management system" definition, we'd have little trouble concluding that the drainage mechanisms on each LPOA property are "stormwater management systems," since the parties stipulated below that the mechanisms discharge stormwater from each property.

Critically though, neither party has argued that the 2016 amendment affects their position, to this Court, the circuit court,[8] or the tax court[9]. In fact, the LPOA stated at oral

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"stormwater management systems" and not the narrower "stormwater management facilities," which the council could have so codified had that been their intent.

[8] In the circuit court hearing before Judge Burrell, only the County referenced the amendment, stating:

> I do want to be clear that the bulk of my presentation is going to be about the current iteration of the Montgomery County Code. There was a change that occurred in 2015 that only affects the first tax levy year at issue. But for the majority of the tax levy years and moving forward, the current iteration of the Code is the relevant one. The County of course does believe that the same ultimate disposition should occur for both. But just for ease of reference, we're going to stick to that one set of language in the Code.

Likewise, Judge Burrell's opinion states in a footnote:

> Although subsection (A) of the statute was changed in 2016, neither party has distinguished the prior or current version of the statute in arguing their position. Accordingly, the Court will focus on the statute currently in existence.

[9] Again, only the County mentioned the change before the Tax Court, stating:

> Now I will also just point out that that credit eligibility language in the County Code Section 19-35(e)(1)(A), which unequivocally states that a property's stormwater must be treated on-site in order for the owner of that property to qualify for a [WQPC] tax credit, is more detailed and clarifying

argument that the 2016 (current) version controls the outcome of the case, and expressly said to Judge Burrell in the circuit court that it was *not* arguing that all its properties were eligible simply because each contained its own "stormwater management system" with no requirement that the individual system "treat" the stormwater.[10] Moreover, because, as we will explain, we conclude that the LPOA properties with only drainage mechanisms are not entitled to *any* WQPC credits—at least on the evidence before the Tax Court—regardless of which version of the statute we apply, we decline to decide which version (*if* only one) controls the outcome.

LPOA Properties with Drainage Mechanisms Only are Entitled to Zero WQPC Credits

Assuming for the sake of argument, not only that the simpler 2015 version of MCC § 19-35(e)(1) controls, but also that each LPOA member was technically eligible for WQPC credits on the basis that each property contains a "stormwater management system" by virtue of its drainage mechanism that "discharges [stormwater] from a site", MCC § 19-

> than the 2015 version of that provision that Judge Rubin was interpreting in the case of *Battley vs. [Board] of Appeals*.

[10] Instead, LPOA's argument was that each property owner was essentially an owner of the larger, singular "stormwater management system" that consisted of the three stormwater treatment ponds:

> And we are not arguing that mere conveyance of storm water is enough to achieve a credit. These property owners convey their stormwater to stormwater management ponds within the development that they paid to build and they paid to maintain.

Put simply, the LPOA was arguing that the existence of the stormwater treatment ponds entitles each member to credit, regardless of any express "treatment" requirement in the statute—and therefore, regardless of which iteration of the statute is applied.

21, those property owners would nonetheless be entitled to *zero* WQPC credits based on the regulatorily prescribed calculations.

In determining the size of the credit that each eligible applicant is entitled to—the mandatory second step of a credit determination—we first revisit relevant portions of text appearing in both versions of MCC § 19-35(e)(1):

> A *property owner* may apply for, and the [DEP] must grant, a credit equal to a percentage, *set by regulation*, of the Charge if . . . *the property contains* a stormwater management system[.]

(Emphasis added). Turning then to the regulation that informs the credit amount, in 2015, Code of Montgomery County Regulations ("COMCOR") 19.35.01.05A provided, in relevant part:

> The Director must award a maximum credit of 50 percent, based on the volume of water *treated* by a combination of environmental site design and other stormwater management systems *maintained by the property owner exclusively*, or a maximum credit of 80 percent, based on the volume of water completely *treated* by environmental site design practices alone, as specified in the application provided to a nonresidential or multifamily residential property owner if the property contains a County approved stormwater management system and the system is *maintained by the property owner exclusively*, in accordance with the maintenance requirements of the [DEP].

(Emphasis added). That regulation in its current form, COMCOR 19.35.01.05B, provides in relevant part:

> (1) The Director must award a credit, not to exceed 60 percent, based on the proportion of the total volume of water *treatment* provided by *the stormwater management system* relative to the environmental site design storage volume required under State law as specified in the Water Quality Protection Charge Credit Procedures Manual published by the Director and incorporated by reference as if fully set forth. The volume of treatment required will be based on the environmental site design specified in the 2000 Maryland Stormwater Design Manual, as amended.

…

> (4) The Director must award a credit, not to exceed 80 percent, if the total volume of water treatment is provided by a stormwater management system that implements environmental site design to the maximum extent possible.

(Emphasis added).

Even without the "treatment" requirement of the present version of MCC § 19-35(e)(1), the credit calculations set by regulation (COMCOR 19.35.01.05A in 2015 and COMCOR 19.35.01.05B from 2016 to present) require that some stormwater is treated by the stormwater management system *on that property* owned by the applicant. If no stormwater is treated by the system that exists on the owner's property, then the credit percentage will necessarily be zero.

Although "treat" was not defined in this section of the County Code during the litigation,[11] the LPOA does not argue to this Court, nor did it argue in the proceedings below, that the drainage mechanisms on each property "treat" stormwater. In fact, the parties stipulated to the circuit court that the treatment of the stormwater occurs in the ponds: "Stormwater from Lindbergh Park properties flows into and *is treated by* one of three stormwater management ponds" (emphasis added)—i.e., *not* on each individual member's property where the property contains only the drainage mechanism. Instead, the LPOA's argument takes an ownership angle: that the Lindbergh Park development's larger

[11]The County added a definition for "Treatment or Treat" in COMCOR 19.35.01.02 on April 26, 2022. http://www.montgomerycountymd.gov/exec/register/regs/2022/June22AdoptedRegshtml and select "MCER NO.18-21."

stormwater management system (the stormwater treatment ponds which collect stormwater from each individual property within the development) is essentially owned by each and every LPOA member, since all property owners share the costs and responsibilities of maintenance. Although we sympathize with these property owners whose properties do not contain the ponds and yet have shared in their costs, we conclude that this argument is without merit.

Giving consistent meanings to words and phrases used in the same provision, *see* Antonin Scalia & Bryan A. Garner, Reading Law: *The Interpretation of Legal Texts* 195, at 170 (Thomson/West 2012) (explaining the canon of construction: the presumption of consistent usage), we conclude that “the property” that must “contain[]” the “stormwater management system” is the property *owned by* the “property owner” applying for the WQPC credit. MCC § 19-35(e)(1)(A). Accordingly, “the stormwater management system” “provid[ing]” “the total volume of water treatment” in COMCOR 19.35.01.05B must be the system on the property owned by the applicant. Similarly, the “stormwater management system” that yields the “volume of water treated” must be either “maintained by the property owner exclusively” or “contain[ed]” on the property owner’s property. COMCOR 19.31.01.05A(1) (amended 2016). Because the individual LPOA members do not share ownership of the properties on which the ponds are located, they are not eligible for WQPC credits based on the ponds. The Tax Court’s decision, seemingly founded on this theory,

was legally incorrect. Accordingly, we reverse the decision of the Tax Court that all LPOA members are entitled to the maximum WQPC credits for 2015, 2016 and 2017.

II. Amount of WQPC Credit Owed to the Five LPOA Members with Stormwater Treatment Ponds on Their Properties

A. Parties' Contentions

The LPOA says all property owners are entitled to the maximum WQPC credits for three reasons: "(i) the current credit structure as applied is fundamentally unfair and ignores the benefit the LPOA members provide to the County; (ii) the credit structure ignores the spirit and intent of the parameters originally set forth by the State; and (iii) the amount of available credits has changed to a possible 100% since [the LPOA's] Board appeal was filed."

The County counters that regardless of how many properties are eligible for WQPC credits, the Tax Court erred in awarding *any* owners (including the five LPOA members whose properties contain the ponds) maximum credits, because it did so without any reference to the applicable regulations for calculating the credits owed. Thus, its conclusion lacked an adequate factual basis.

B. Analysis

Having already determined that the Tax Court was legally incorrect in concluding that each LPOA member—specifically those with only drainage mechanisms on their properties—was eligible for WQPC credits, we approach this second issue only in regard to the five property owners whose properties contain the stormwater treatment ponds. That is, we will determine whether the Tax Court's finding that all the property owners are

entitled to the maximum credit percentage for each of the three years at issue is supported by substantial evidence in regard to these five property owners.

In determining the size of the credit that each eligible applicant is entitled to, we note once more the part of MCC § 19-35(e)(1) which provides that "the Director of Environmental Protection must grant[] a credit equal to a percentage, *set by regulation*". (Emphasis added). COMCOR 19.35.01.05B presently specifies how the credit amount is to be determined.[12] It provides, in relevant part:

> (1) The Director must award a credit, not to exceed 60 percent, based on the proportion of the total volume of water treatment provided by the stormwater management system relative to the environmental site design storage volume required under State law as specified in the Water Quality Protection Charge Credit Procedures Manual published by the Director and incorporated by reference as if fully set forth. The volume of treatment required will be based on the environmental site design specified in the 2000 Maryland Stormwater Design Manual, as amended.
>
> …
>
> (4) The Director must award a credit, not to exceed 80 percent, if the total volume of water treatment is provided by a stormwater management system that implements environmental site design to the maximum extent possible.

Regarding the amount of credits to be awarded, the Tax Court simply stated:

> [T]he Court finds that all the property owners in the commercial development that has and manages a private stormwater management system are entitled to the credit for the [WQPC] levied upon their properties.
>
> Now I should note for 201[5] that the maximum amount is 80 percent, and the maximum amount in 2016 . . . and 2017 was a hundred percent, and the

[12] And as explained above, COMCOR 19.35.01.05A (amended 2016) provided the relevant instructions in 2015.

> Court finds that those percentages should be followed by the appropriate authorities in Montgomery County.

The Tax Court made no findings to support this conclusion. We also do not see in the hearing transcript or in the joint stipulation of uncontested facts where the facts necessary for making this calculation—e.g., the total volume of water treatment provided by the stormwater management system, the environmental site design storage volume required under State law, and the extent to which environmental site design is implemented—were provided, or even mentioned. Therefore, we hold this conclusion was not supported by substantial evidence, *Taylor*, 465 Md. at 86, even for the five property owners whose properties contain the stormwater treatment ponds. Accordingly, we affirm the circuit court's reversal and remand of this issue to the Tax Court.

THE JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY IS AFFIRMED. APPELLANT TO PAY THE COSTS.