UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1245

September Term, 2014

---

M. HASIP TUZEER, ET AL.

v.

BOARD OF LIQUOR LICENSE COMMISSIONERS FOR BALTIMORE CITY, ET AL.

---

Eyler, Deborah S.,
Graeff,
Berger,

JJ.

---

Opinion by Graeff, J.

---

Filed: July 7, 2015

This is the third time we address concerns raised by appellants, nearby residents (the "Neighbors") of a Baltimore City restaurant.[1] This appeal, like the last one, relates to the efforts of Richard D'Souza, one of the appellees, to obtain a liquor license for his limited liability company, Gluten Free, LLC, another appellee. In the last appeal, we remanded the case for the Board of Liquor License Commissioners for Baltimore City (the "Board"), another appellee, to consider whether Mr. D'Souza was an "authorized individual" to apply for a liquor license pursuant to Article 2B, § 9-101(c). *YIM, LLC v. Tuzeer*, 211 Md. App. 1, 43-48, *cert. denied*, 432 Md. 470 (2013) ("*YIM II*").

On remand, the Board determined that Mr. D'Souza satisfied the requirements of Art. 2B, § 9-101(c), stating that he was a taxpayer and a registered voter, although the latter no longer was a requirement of the law. Accordingly, the Board granted Mr. D'Souza's liquor license application.

The Neighbors filed a "Petition for Judicial Review and Enforcement of the Open Meetings Act" in the Circuit Court for Baltimore City. They asserted that the Board's decision should be reversed for several reasons, including that "the application of Gluten Free, LLC was approved in violation of the Open Meetings Act." The circuit court determined that the Neighbors had waived their Open Meetings Act claim because they failed to raise that issue before the Board, and it otherwise affirmed the decisions of the Board.

[1] The residents are: M. Hasip Tuzeer, Hattie McCain, Nellie Skiles, Edith Stern, Jorge Gonzalez, F. Ernesto Kellum, Douglas M. Armstrong, Joan M. Floyd, Dottie Campbell, Edwin Hopkins, Romaine Johnson, and Peggy Matthews.

On appeal, the Neighbors present four issues for our review, which we have rephrased as follows:

1. Did Gluten Free's forfeiture effectively withdraw its pending liquor license application?

2. Did the Board err in concluding that Mr. D'Souza was a taxpayer?

3. Did the Board err in finding that Mr. D'Souza complied with the registered voter requirement of Art. 2B, § 9-101(c)?

4. Did the circuit court err in denying the Neighbors' Open Meetings Act claim?

For the reasons set forth below, we shall affirm in part, reverse in part, and remand to the circuit court for consideration of the Neighbors' Open Meetings Act claim.

## FACTUAL AND PROCEDURAL BACKGROUND

### I.

### Prior Proceedings

In this Court's first opinion addressing this restaurant, *Tuzeer v. YIM, LLC*, 201 Md. App. 443, 449 (2011), *cert. denied*, 424 Md. 293 (2012), this Court explained that, in 2006, appellee, YIM, purchased the property at 123-129 West 27th Street in Baltimore City. Mr. D'Souza operated a gluten free bakery on one side of the property, and he wanted to obtain a liquor license for a restaurant "that would cater to gluten-free clients" on the other side of the property. *Id.* at 451.[2] The Neighbors objected, citing concerns "regarding the impact

[2] The property had been used as a restaurant and bar by Two Sisters Grille, LLC ("Two Sisters"). On November 13, 2009, Mr. D'Souza filed an application on behalf of Gluten Free, LLC to transfer the liquor license from Two Sisters. *YIM, LLC v. Tuzeer*, 11 Md. App. 1, 10, *cert. denied*, 432 Md. 470 (2013).

that a restaurant with a liquor license would have on the neighborhood and its residents, specifically concerns about crime, disorderly conduct, noise, and parking." *Id.* In October, 2009, the Baltimore City Board of Municipal and Zoning Appeals permitted the continuous non-conforming use of the W. 27th Street property, stating that the issuance of a liquor license would be addressed by the Board. *Id.* at 453 & n.5.

The issue of the liquor license was addressed in *YIM II*:

> [O]n October 13, 2009, D'Souza filed an application for a liquor license on behalf of Gluten Free, LLC ("Gluten Free") for 127 West 27th Street. He also filed an application to transfer the liquor license from Two Sisters on November 13, 2009, as well as a license renewal application on March 24, 2010. On March 31, 2010, counsel for YIM submitted a Transfer Authorization form signed by the owners of Two Sisters.

211 Md. App. at 10.

The Board held several hearings on the issue. At the June 24, 2010, hearing, the Board addressed "D'Souza's application to transfer ownership of the liquor license 'where [the transferor] establishment has been closed for more than 90 days.'" *Id.* at 13. The Neighbors' arguments involved both "the lack of neighborhood support for the liquor license and the deficiencies of the license applications." *Id.* With respect to the alleged deficiencies in the applications, this Court explained:

> [T]he Neighbors argued that the October 13, 2009 transfer application was "noncompliant" because neither D'Souza nor his co-applicant "identifie[d] any property on which he pays taxes in his individual name as required by Article 2B," nor did the application list which applicant is a city taxpayer. *See* § 9–101(c).
>
> The Neighbors also asserted that both the Baltimore City and Baltimore County Boards of Elections had failed to locate D'Souza "anywhere on the voting rolls of the State of Maryland." A witness for the Neighbors testified that she had obtained a copy of the voter registration lists

> for the legislative district that covers D'Souza's home address. She said that she had printed the alphabetical listing of voters from the end of the letter C to the beginning of the letter E and that D'Souza's name was not on the list. However, the Board chairman later stated that he did not take the voter registration lists as seriously as the Neighbors did because, in essence, he did not find them reliable. He explained that he had purchased a similar list before, when he ran for office, and that the list "was terrible. People had died 10 years ago, I went and knocked on their door, people who had never lived there."
>
> D'Souza testified that although he had not registered to vote, he believed that he had been registered automatically once he became a United States citizen. When asked to confirm that he asserted on his license application that he was a "resident or taxpayer of Baltimore City for more than two years," D'Souza stated that this information was still true. On cross-examination, however, he admitted that he did not know if he was registered to vote as of that date and that he had never voted. He also testified that he resided at his home with his wife, in whose name the property was listed. He stated that he did not pay property tax in his own name, though he also testified that he paid "Maryland personal property taxes, federal taxes, FICA, all that" for both the bakery business that he owned and another warehouse facility in Baltimore City.

*Id.* at 14-15.

The Board ultimately denied the transfer of the liquor license. *Id.* at 16. Noting the Neighbors' concerns about parking and noise, it stated that it could not "determine that there is a public need and desire at this point for this transfer to occur." *Id.*

On July 15, 2010, counsel for D'Souza and Gluten Free requested that the Board reconsider its decision denying the transfer application, focusing on "the community support for the liquor license, particularly if D'Souza agreed to time restrictions on the sale of alcohol." *Id.* at 17. The Board agreed to consider the motion for reconsideration, and it scheduled a hearing for August 12, 2010. At the hearing:

> D'Souza advised the Board that since the June 24 hearing, he had entered into an agreement with two of the community associations regarding

> the operating hours for the restaurant. The Board received a copy of the agreement, which indicated that D'Souza's restaurant would stop selling alcohol at 10:30 p.m. on weeknights and 12:30 a.m. on weekends. The agreement also required D'Souza to get the community associations' permission to add any other operator or manager to the establishment.

*Id.* at 18-19.

The Board ultimately was persuaded to change its ruling, and it granted the transfer of the liquor license. It explained:

> Based upon the petition—it was pointed out to us after a 4-1/2 hours hearing on this very matter, we have deliberated for about 5 minutes before denying it, the request—we really did not get a chance to completely delve into the numerous petitions, both for and against the request. Of note though, were the petitions, although pointed out by counsel in closing arguments at the June 24th hearing, a lot of community support within the neighboring 3 blocks was on this petition. It was buried within and it was difficult for the Board to piece together. On reconsideration, obviously, a motion was filed with—highlighting the neighbors with the most proximity to the proposed location.
>
> The Board also considered, and [YIM] argued, the really extreme unique nature of services and products to be offered by this business. This Board is required under 10-202(a) to in fact consider such requests. We routinely grant licenses where potential uniqueness may be dubious. Beer is beer, wine is wine, liquor is liquor. Not in this case. In this case, gluten-free products, including gluten-free alcohol, may not be available anywhere else in the city or the region. So we see an extreme uniqueness of products to be offered.
>
> With the only piece of new evidence that was submitted today, which we consider a stipulation, or at least an agreement—a stipulation between three of the parties and their attorneys involved—we've accepted an agreement from Charles Village Civic Association, Greater Remington Improvement Association, and the property owner of 127 West 27th Street. Therein, the Licensee, Mr.—or the Applicant, Mr. D'Souza, has agreed that he will stop the sale and service of alcohol at 10:30 p.m. on Sunday nights through Thursday nights, no new patrons entering after 11, and the premises being shuttered by 11:30. He's also agreed that there will be no alcohol sold or served after 12:30 a.m., and that the premises will be shuttered by 1:00 a.m. with no patron re-entry. . . .

> Based on all those facts, the Board does in fact reconsider [its] decision of June 24th, 2010, finding by the agreement . . . and the petition which was in evidence at the original hearing, that there is a public need and desire, a *de minimis* impact on existing licensees, a negligible impact on general health, safety and welfare, including crime, traffic and parking, and certainly a potential uniqueness of services and products.
>
> So we will grant this transfer application to Mr. D'Souza subject to the strict enforcement of the terms and conditions of the agreement between CVCA, GRIA and the property owner and Licensee at 127 West 27th Street.

*Id.* at 19-20.

The Neighbors filed a petition for judicial review. On March 24, 2011, the circuit court for Baltimore City concluded that the liquor license was active and subject to transfer, but "the Board's decision to grant the license transfer was invalid because there was not substantial evidence of D'Souza's compliance with the voter registration requirements of § 9–101(c)." *YIM II*, 211 Md. App. at 21. The Neighbors contended, *inter alia*, that the Board erred in granting the transfer application because there was not substantial evidence to determine that Mr. D'Souza was a taxpayer and registered voter in Baltimore City. *Id.* at 41-42. We agreed with that argument, stating that, for a limited liability company to receive a liquor license, it must be "'applied for by and be issued to 3 of the authorized persons of that limited liability company, as individuals, for the use of the limited liability company, at least 1 of whom shall be a registered voter and taxpayer of the county or city.'" *Id.* at 42 (quoting Art. 2B, § 9-101(c)). With respect to the evidence in that regard, we stated:

> D'Souza testified at the June 2010 hearing. When asked if he had registered to vote, he stated "I haven't." He followed up on that answer with an explanation that he believed that when he became a United States citizen, he was automatically registered to vote, though he admitted that he was not sure

> if that was correct. He also testified that he had been a Baltimore City resident for at least two years, though his wife was the sole owner of the house in which they lived. When asked to confirm that he asserted on his license application that he was a "resident or taxpayer of Baltimore City for more than two years," D'Souza stated that this information was still true. On cross-examination, however, D'Souza admitted that he did not know if he was registered to vote as of the date of the application and that he had never voted. When asked if he paid property tax in his own name, he stated that he did not. He testified, however, that he paid "Maryland personal property taxes, federal taxes, FICA, all that" on his bakery and his warehouse facilities, both of which were located in Baltimore City.
>
> The evidence before the Board at the June 2010 hearing is contradictory at best and certainly does not lead to a finding that D'Souza is both a registered voter and a taxpayer. The Board's decision to grant the license transfer request was therefore not supported by substantial evidence regarding D'Souza's compliance with the requirements of § 9-101(c).

*Id.* at 43.

Noting that there was "a lack of clarity in the definition of 'taxpayer,' and by the passage of a new law regarding voter registration, Judge Robert Zarnoch, writing for this Court, gave guidance to the Board on remand on both issues. With respect to the issue whether D'Souza was a taxpayer, this Court stated:

> At oral argument, counsel for the Neighbors argued that this Court had all the evidence it needed to find that D'Souza was not a taxpayer under § 9-101(c). They argue that under this provision only a real property taxpayer may qualify. But it is not clear that this position is correct.
>
> Although "taxpayer," read literally, could mean any person who pays any tax, even sales tax or income tax, the word "taxpayer" must be read in the context of Article 2B, particularly when coupled with the words "of the county or city." *Cf. Superior Outdoor Signs, Inc. v. Eller Media Co.*, 150 Md. App. 479, 502-07 (2003) (defining "taxpayer" in the context of standing to challenge a municipal zoning regulation). Article 2B does not have a general definition of "taxpayer," nor has this Court or the Court of Appeals considered the meaning of the word in the alcoholic beverage laws.

> Three Attorney General Opinions touch on the subject, however. In 1940, the Attorney General responded to a question from a member of a corporation that had applied for a liquor license. 25 Opinions of the Attorney General 88 (1940). Only one of the officers was a resident and registered voter in the county in which the application had been made, and the only tax that person paid was a personal property tax of $100 for his car. *Id.* In the Attorney General's view, Article 2B did not "require that the applicant own property of a specific kind, or of a minimum value," making the car-owning officer qualified to apply for the license. *Id.*
>
> Although the property tax on automobiles was abolished in 1947, *see* ch. 99, 1947 Md. Laws 142, in another opinion the Attorney General observed that this change did not affect "the right of an owner of an automobile to qualify as a taxpayer in the County and taxing area of his residence." 32 Opinions of the Attorney General 64 (1947). This opinion was based on the fact that an automobile owner must still pay a license fee to the State, which then remits part of the fee to the county in which the individual resides. *Id.* Yet a later opinion from the Attorney General appeared to repudiate the view that the payment of tax to the State suffices for tax to the county. In finding that the payment of income tax does not qualify an individual as a taxpayer under Article 2B, the Attorney General observed that the:
>
> > [P]ayment of income tax to the State does not gratify the requirement that the officer be a taxpayer of the County or City and, we believe that this deficiency is not remedied by the fact that the State distributes to the various political subdivisions certain portions of the revenue derived from several taxes, including the income tax law.
>
> 35 Opinions of the Attorney General 87 (1950). The Board may wish to consider these opinions, along with additional testimony by D'Souza.

*Id.* at 44-45.

The Court then addressed another issue to be considered on remand, the "type of lease D'Souza signed." *Id.* at 45 n.39. We stated:

> It may be possible that D'Souza actually pays the property taxes for 127 West 27th Street, as commercial leases are sometimes "net leases," or leases in which "the lessee pays rent plus property expenses (such as taxes and insurance)." Black's Law Dictionary 908 (8th ed. 2004); see also *Penn*

> *Gardens Section Two v. Melnick*, 256 Md. 72, 74-75 (1969) (describing "net lease" that called for a monthly payment that included "the payment of all property expenses by the lessees").

*Id.*

With respect to the requirement at the time of the March 2011 hearing, that a license applicant be a registered voter, this Court noted that "it has been viewed by some as unconstitutional as applied to non-citizens." *Id.* at 45-46. The Court explained that, "[f]ollowing 2012 legislation, the registered voter requirement no longer appears to apply to a person in D'Souza's situation." *Id*. at 47. Article 2B, § 9-101(c)(ii) now provides: "In Baltimore City, an authorized person of a limited liability company who holds an alcoholic beverages license for the use of the limited liability company that was granted on or before June 1, 2012, need not be a registered voter in Baltimore City."[3] *Id.* Noting that "[t]he Board approved the liquor license transfer on August 12, 2010," this Court stated "that D'Souza appears to fall under the terms of the statute." *Id.* Accordingly, the Court directed the Board to "consider the voter registration on remand as well." *Id.* at 48.

## II.

## Proceedings on Remand

The Board held a remand hearing on December 12, 2013. Although the parties did not include in the record their submissions to the Board, we glean from the transcript that the Neighbors raised several new issues. Initially, they argued that the application for a

[3] House Bill 232 and Senate Bill 534 of the 2012 Session added this new language to § 9-101(c).

license was moot because Gluten Free's charter had been forfeited during the pendency of the appeal, and therefore, there was no pending application before the Board.[4] The Board rejected this argument, stating that the license was not automatically voided upon the forfeiture of Gluten Free.

The Board next addressed the registered voter requirement under Art. 2B, § 9-101(c), and whether the 2012 amendment applied to Mr. D'Souza. The Neighbors argued that the liquor license was not "lawfully approved or granted in 2010," and therefore, Art. 2B, § 9-101(c)(ii) did not apply to Mr. D'Souza because that section applied only to holders of liquor licenses that were validly granted prior to June 1, 2012. Mr. D'Souza argued that, pursuant to the amendment to the statute, he no longer needed to be a registered voter, but, in any event, he was, at that time, a registered voter in Baltimore City. The Board agreed with Mr. D'Souza's argument in that regard, and it denied the Neighbors' motion to deny the license.

The Neighbors also contended that Art. 2B, § 9-101(c)(ii), the registered voter exception, was an unconstitutional "special law." They argued that the Maryland Constitution prohibits laws that are secured by individuals who seek out and obtain special advantages from the legislature and that apply only to certain individuals or entities instead of a general class, and that Art. 2B, § 9-101(c)(ii) was such a law. Mr. D'Souza, on the other hand, argued that Art. 2B, § 9-101(c)(ii) "applie[d] to a whole broad class of people who apply for liquor licenses in Baltimore City," and therefore, it was not a special law.

[4] Gluten Free's charter was forfeited on October 1, 2012, and it was reinstated on January 9, 2013.

The Board rejected the Neighbors' argument, stating that "this law protects or covers potentially thousands or potentially millions of people who are not registered to vote, certainly thousands, who are not registered to vote in the City of Baltimore, who are now able to hold a liquor license in Baltimore City."

The Board next addressed whether Mr. D'Souza was a taxpayer. Counsel for Mr. D'Souza argued that he was a taxpayer in 2009, and he was a taxpayer at the time of the hearing, stating that this Court in *YIM II* understood that a tenant in a commercial lease who paid real property taxes would qualify as a taxpayer for the purposes of Art. 2B, § 9-101(c). Counsel entered into evidence a commercial lease showing that Mr. D'Souza was responsible for payment of the personal property taxes and a portion of the real property taxes for 127 W. 27th Street in 2009. He also offered into evidence the property tax statements for 127 W. 27th Street for the period of time between 2009 and 2013, which showed that the property taxes were paid. Accordingly, he argued, Mr. D'Souza was a taxpayer.[5]

Counsel for the Neighbors was given a chance to respond. Counsel stated: "I have nothing."

The Board found that Mr. D'Souza was a taxpayer, stating: "We have documents here to verify that Mr. D'Souza and/or his companies were taxpayers in 2009. They are

[5] Counsel subsequently offered evidence that "Mr. D'Souza purchased a home in Baltimore City in 2012, and he paid the property taxes."

taxpayers today pursuant to the definition of a taxpayer." It granted the request for a liquor license.

## III.

## Petition for Judicial Review

On December 26, 2013, the Neighbors filed a Petition for Judicial Review and Enforcement of the Open Meetings Act in the circuit court. In the Memorandum supporting their petition, they argued, as a "threshold question[] for reversal," that the "Board's approval of the application of Gluten Free, LLC violated the Open Meetings Act."[6] They argued that the Board failed to conduct its deliberations and decision-making in an open session, suggesting that it took place in a closed session. In response to these arguments, the Board argued that the Neighbors' contentions were waived because they failed to raise them before the Board. In any event, it argued that there was no violation of the Open Meetings Act, submitting an affidavit from the Chairman stating that the "decision that was rendered was in consensus with all members of the Board." Mr. D'Souza argued that it was "inappropriate to presume that the Liquor Board somehow met in secret in violation of the Open Meetings Act or that they acted under the duress of the Chairman," and that, "[h]ad the other two voting members of the [] Board in any way not

[6] The Open Meetings Act was, at the time of the Neighbors' appeal to the circuit court, codified at Title 10 of the State Government Article. It subsequently was recodified at Title 3 of the General Provisions Article. *See* Md. Code (2014) § 3-101 *et seq.* of the General Provisions Article ("GP"). For clarity and simplicity, we will cite to the recodified version of the Act.

concurred in the decision as announced by the Chairman, they would have stated their disagreement."

The Neighbors further argued that the Board erred in making the following conclusions: (1) it had authority to approve Gluten Free's application given the prior forfeiture of Gluten Free, LLC; (2) Mr. D'Souza was a taxpayer; (3) Art. 2B, § 9-101(c)(ii) applied to Mr. D'Souza; and (4) Art. 2B, § 9-101(c)(ii) was not a special law.

The circuit court held a hearing on June 9, 2014. With respect to the Neighbors' Open Meetings Act claims, counsel for the Neighbors argued that "there is supposed to be a dialogue of discussion" "at an open meeting where the public can observe and listen to the dialogue." He asserted that there was no dialogue here, stating: "The chairman made his decision either because he had talked in – in chambers privately with the rest and they were going to go along with him, which is illegal, or it was his decision alone and the other ones just sat there – they didn't even say 'We agree.' . . . They said nothing." Although he argued that there was no evidence of a private meeting, he stated that there "is certainly an implication that if that's what they were doing, then they must've had a prior conversation, and it certainly wasn't in the transcript in the record."

The court ultimately affirmed the decision of the Board. With respect to the argument that the Board violated the Open Meetings Act, the court stated that, although it found the issue intriguing, it "cannot entertain arguments before it at this stage in a judicial review that had not been raised below." The court stated that "there were steps that could have been taken to at least force . . . the body to entertain those issues below."

With respect to the other issues, the court stated:

> The taxpayer argument, to me, baffles me because, in fact, I think the decision is clear in what you were asking for – or Petitioner is asking for is simply a matter to displace the winner and move him aside because you don't like the decision.
>
> But I think the taxpayer decision is not only appropriate, but fair. Otherwise, we will find a number of our citizens, especially those that are in business, not just in terms of this license, but in general being caught in a trap when the U.S. Congress figures out as to how they deal with people in general as being citizens that deals with the reality of being registered voters, not only in this state but across the country. The issue strikes a chord. The question of whether or not there was a special law has been dealt with as well.
>
> I can't find a reason for us not to conclude the following and that is that there's a substantial basis to affirm the decision below on each of the issues that are being raised here today.

On June 9, 2014, the court issued an order affirming the Board's December 12, 2013, decision.

## STANDARD OF REVIEW

This Court recently set forth the standard of review we apply in a case involving an administrative decision:

> Judicial review of an administrative decision "generally is a 'narrow and highly deferential inquiry.'" *Seminary Galleria, LLC v. Dulaney Valley Improvement Ass'n, Inc.*, 192 Md. App. 719, 733 (2010) (quoting *Maryland-Nat'l Park & Planning Comm'n v. Greater Baden-Aquasco Citizens Ass'n*, 412 Md. 73, 83 (2009)). This Court looks "through the circuit court's decision and evaluates the decision of the agency," *Chesapeake Bay Foundation, Inc. v. Clickner*, 192 Md. App. 172, 181 (2010), 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.'" *Cosby v. Dep't of Human Res.*, 425 Md. 629, 638 (2012) (quoting *Bd. of Phys. Quality Assurance v. Banks*, 354 Md. 59, 67-68 (1999)).
>
> With respect to the Board's factual findings, we apply the substantial evidence test, which "'requires us to affirm an agency decision, if, after

> reviewing the evidence in a light most favorable to the agency, we find a reasoning mind reasonably could have reached the factual conclusion the agency reached.'" *Miller v. City of Annapolis Historic Pres. Comm'n*, 200 Md. App. 612, 632 (2011) (quoting *Montgomery Cnty v. Longo*, 187 Md. App. 25, 49 (2009)). Administrative credibility findings likewise are entitled to great deference on judicial review. Credibility findings of hearing officers who themselves have personally observed the witnesses "'have almost conclusive force.'" *Kim v. Maryland State Bd. of Physicians*, 196 Md. App. 362, 370 (2010), *aff'd*, 423 Md. 523 (2011) (quoting *Anderson v. Dep't of Pub. Safety and Corr. Srvs.*, 330 Md. 187, 217 (1993)). A reviewing court "'may not substitute its judgment for the administrative agency's in matters where purely discretionary decisions are involved.'" *Mueller v. People's Counsel for Baltimore Cnty.*, 177 Md. App. 43, 82-83 (2007) (quoting *People's Counsel for Baltimore Cnty v. Surina*, 400 Md. 662, 681 (2007)), *cert. denied*, 403 Md. 307 (2008). With respect to the Board's conclusions of law, "a certain amount of deference may be afforded when the agency is interpreting or applying the statute the agency itself administers." *Employees' Ret. Sys. of Balt. v. Dorsey*, 430 Md. 100, 111 (2013). "We are under no constraint, however, 'to affirm an agency decision premised solely upon an erroneous conclusion of law.'" *Id.* (quoting *Thomas v. State Ret. & Pension Sys.*, 420 Md. 45, 54-55 (2011)).

*Geier v. Maryland State Bd. of Physicians*, ___ Md. App. ___, No. 1095, Sept. Term, 2014, slip op. at 21-23 (filed May 29, 2015).

## DISCUSSION

### I.

### Gluten Free's Forfeiture

The Neighbors' first contention involves the effect of the forfeiture of Gluten Free's right to do business on October 1, 2012, for the failure to file a 2011 property tax return, on Gluten Free's application for transfer of the liquor license. The forfeiture lasted 101 days, until January 9, 2013, when Gluten Free's right to do business was restored.

Maryland Code (2007 Repl. Vol.) § 11-101(a)(1) of the Tax-Property Article ("TP") "requires a limited liability company to file a tangible personal property report on or before

April 15 of each year." *Price v. Upper Chesapeake Health Ventures*, 192 Md. App. 695, 703, *cert. denied*, 415 Md. 609 (2010). The Limited Liability Company Act, codified in Title 4A of the Corporations and Associations Article, governs LLCs and provides that an LLC that fails to file a property report forfeits "the right to do business in Maryland and the right to the use of the name" of the LLC. *See* Md. Code (2009 Supp.) § 4A-911(c), (d) of the Corporations and Associations Article ("CA").

The Neighbors argue that "[t]he forfeiture of Gluten Free, LLC pursuant to the Limited Liability Act left the Board with nothing to approve on December 12, 2013." They explain their position as follows:

> The liquor license application of Gluten Free, LLC was submitted in October of 2009 and approved by the Board in August of 2010. That approval was reversed by the Circuit Court in March of 2011. In October of 2012, while appeals were pending in this Court, Gluten Free, LLC was declared forfeit and therefore, pursuant to C&A § 4A-911(d) . . . was prohibited from doing business and using its name.

(Footnotes omitted). The Neighbors assert that Gluten Free's October 2012 forfeiture of the right to do business applied to its pending liquor license application, resulting in the application being effectively withdrawn and leaving no application pending for the Board to approve on December 12, 2013.

Appellees disagree. They assert that, although an LLC that fails to file a tax report forfeits the right to do business, it "does not cease to exist during a period of forfeiture,"

and, therefore, the "basis for [the Neighbors'] legal supposition that the liquor license expired fails."[7]

We agree with appellees. In *Price*, 192 Md. App. at 704-08, this Court discussed the distinction between the consequences of a failure to file a tax report on a corporation and an LLC. We explained:

> Although C & A § 3–503(d) provides, in the case of a corporation, that "the charters of ... corporations [that failed to file an annual tax report] are repealed, annulled, and forfeited, and the powers conferred by law on the corporations are inoperative, null, and void," C & A § 4A–911(d) states only that an LLC that fails to file a tax report forfeits "the right to do business in Maryland and the right to the use of [its] name." The statute does not say that LLC articles of organization, like corporate charters, are forfeited for failure to file tax reports or pay taxes. C & A § 4A–920 also indicates that *the LLC does not become non-existent after it forfeits those rights*, providing:
>
> > The forfeiture of the right to do business in Maryland and the right to the use of the name of the limited liability company under this title does not impair the validity of a contract or act of the limited liability company entered into or done either before or after the forfeiture, or prevent the limited liability company from defending any action, suit, or proceeding in a court of this State.

*Id.* at 704-05 (emphasis added) (footnote omitted).

Pursuant to this analysis, Gluten Free did not cease to exist during its 101 day forfeiture. Although it forfeited the right to do business during that time, the Neighbors cite no authority to support its contention that Gluten Free's forfeiture effectively withdrew

[7] The Board also stated in its brief that Mr. D'Souza was the holder of the liquor license. At oral argument, however, counsel for the Board admitted that the license was, in effect, issued to Gluten Free, LLC, and that the argument it originally advanced in its brief does not impact this Court's analysis. *See* Art. 2B, § 9-101(c)(1)(i), (5)(ii) (a liquor license application "made for a limited liability company" must be applied for by three or more authorized individuals).

its application before the Board. Accordingly, we reject the Neighbors' argument that the consequences of the LLC forfeiture was withdrawal of the license application, "leaving the Board nothing to approve on December 12, 2013."

## II.

## Taxpayer Requirement

As indicated, this Court in *YIM II* remanded to the Board for a finding whether Mr. D'Souza was a "taxpayer" pursuant to Article 2B, § 9-101(c)(1)(i), which requires that a liquor license for an LLC be applied for by an authorized person who is "a registered voter and taxpayer of the county or city, or the State when the application is filed with the Comptroller." In that regard, we stated:

> It may be possible that D'Souza actually pays the property taxes for 127 West 27th Street, as commercial leases are sometimes "net leases," or leases in which "the lessee pays rent plus property expenses (such as taxes and insurance)." Black's Law Dictionary 908 (8th ed. 2004); see also *Penn Gardens Section Two v. Melnick*, 256 Md. 72, 74-75 (1969) (describing "net lease" that called for a monthly payment that included "the payment of all property expenses by the lessees").

*YIM II*, 211 Md. App. at 45 n.39.

At the remand hearing, counsel for Mr. D'Souza entered into evidence a commercial lease showing that Mr. D'Souza was responsible for payment of the personal property taxes and a portion of the real property taxes for 127 W. 27th Street in 2009. He also offered into evidence the property tax statements for 127 W. 27th Street for the period of time

between 2009 and 2013, which showed that the property taxes were paid. Accordingly, he argued, Mr. D'Souza was a taxpayer.[8]

Counsel for the Neighbors was given a chance to respond. Counsel stated: "I have nothing." The Board found that Mr. D'Souza was a taxpayer, stating: "We have documents here to verify that Mr. D'Souza and/or his companies were taxpayers in 2009."

The Neighbors assert that "[t]here was insufficient evidence to support the Board's ruling that the October 2009 application of Gluten Free, LLC complied with the 'taxpayer' requirement of Article 2B." They assert, with no citation to authority, that the net lease payments did not show that Mr. D'Souza was a "taxpayer" because, to be a "taxpayer," a person must own "taxable real property in one's own name." They further assert that the commercial lease that was admitted into evidence was not authenticated and was inconsistent with Mr. D'Souza's prior testimony.

Appellees' response is brief. They assert:

> The status of D'Souza as a Baltimore City taxpayer, through his net lease payments could scarcely be clearer: D'Souza was personally responsible for personal property taxes of $2,400 annually on the lease, along with "a pro-rated portion of the real property taxes for the Property based on the fraction formed by the square footage of the Lease Property divided by the square footage of the Property (the 'Percentage Interest')."

[8] Counsel subsequently offered evidence that "Mr. D'Souza purchased a home in Baltimore City in 2012, and he paid the property taxes." The Neighbors argue that this evidence is not relevant because the issue is whether Mr. D'Souza was a taxpayer at the time of the initial application. Because we determine that there was substantial evidence to support the Board's finding that Mr. D'Souza was a taxpayer at that time, we need not address whether Mr. D'Souza's status as a taxpayer at the time of the remand hearing was sufficient to support for his application as a taxpayer.

They contend that, given this evidence, and no contrary evidence from the Neighbors, the conclusion of the Board that Mr. D'Souza was a taxpayer of Baltimore City at the time the transfer application was granted in 2010 "can hardly be questioned."

As the Court stated in *YIM II*, 211 Md. App. at 44, Article 2B does not define the term "taxpayer." In that case, the Neighbors' position was that only a real property taxpayer could qualify. *Id.* In this case, however, presented with evidence that Mr. D'Souza paid property taxes pursuant to his lease, they add an additional requirement, asserting that, to qualify as a taxpayer, a person must own "taxable property in one's own name." The Neighbors cite no authority to support their position, and we are not persuaded. If the General Assembly had intended to limit the word taxpayer to that extent, it certainly knew how to do so. *See* Art. 2B, § 1-102(b)(1) (defining "taxpayer" in Anne Arundel County as "an individual who owns real property in the individual's own name, individually or jointly with others, and pays real property taxes to Anne Arundel County"). In the absence of such limiting language, we agree with appellees that the evidence presented on remand, showing that Mr. D'Souza paid property taxes pursuant to his lease, qualified him as a "taxpayer" pursuant to Art. 2B, § 9-101(c)(1)(i).

The Neighbors further argue on appeal that this evidence was insufficient because it was inconsistent with prior testimony. They did not, however, make any such assertion before the Board. Instead, counsel for the Neighbors responded to the evidence by stating: "I have nothing." Under these circumstances, we perceive no error in the Board's finding that Mr. D'Souza was a "taxpayer" at the time the liquor license was transferred.

## III.

## Registered Voter

At the time of the initial application, Article 2B, § 9-101(c) required that the applicant for a liquor license for an LLC be a "registered voter" of the county or city in which the application was made. In 2012, the General Assembly amended Art. 2B, § 9-101(c) to provide an exception to this requirement, as follows: "In Baltimore City, an authorized person of a limited liability company who holds an alcoholic beverages license for the use of the limited liability company that was granted on or before January 1, 2012, need not be a registered voter in Baltimore City."

This Court in *YIM II* remanded to the Board to determine whether the new law applied to Mr. D'Souza. In that regard, the Board found as follows:

> Mr. D'Souza is a United States citizen and a registered voter today, although he need not be based on our determination of the new law in effect, which the Board doesn't believe suffers from any constitutional frailties, the least of which is being a special law. . . . We've determined that the court has asked us to interpret the requirements now in light of the 9-101 changes in the law. And, therefore, the Board believes that the 9-101(c)(i) issues are clear in this case. That Mr. D'Souza no longer need be a registered voter, and the he has always been a taxpayer.

The Neighbors argue that the Board erred in so finding because the 2012 amendment to Art. 2B, § 9-101(c) "did not exempt the application of Gluten Free, LLC from the 'registered voter' requirement of Article 2B." They make two contentions in this regard: (1) the amendment to the statute was "an illegal 'special law'"; and (2) even if it was not an unconstitutional special law, it "does not apply to an application that was otherwise unlawfully approved." We address these contentions in turn.

**A.**

**Special Law**

The Neighbors contend that the 2012 amendment to Art. 2B, § 9-101(c), providing that, in Baltimore City, an authorized person of an LLC who holds a liquor license granted on or before January 1, 2012, need not be a registered voter, was an unconstitutional special law. They argue that, contrary to the statements of the Board, which adopted the position advocated for by counsel for YIM, the amendment does not apply to a broad class of people. Rather, they assert, the amendment had no prospective effect, and it "*maintained* the existing 'registered voter' requirement for LLC applicants, with the retrospective exception of the one whose failure to meet the requirement in October of 2009 had been successfully pursued on judicial review." They contend that this "retrospective exception is a 'special law.'"

Appellees argue that the Board "correctly concluded that Art. 2B, § 9-101(c)(1)(ii) is not an unconstitutional special law." They assert that the amendment "applies to all members of a class, that class being limited liability companies that hold liquor licenses in Baltimore City. Members of that class, which hold liquor licenses granted before June 1, 2012, need not be registered voters in Baltimore City." Accordingly, they assert, the legislation is not "special," and the determination by the Board that the amendment was not unconstitutional as a "special" law should be affirmed.[9] This Court has explained

[9] Appellees also note that Art. 2B, § 9-101(c) has been amended twice since the 2012 amendment, each time to relax residence requirements to "decrease the possibility that the statute will be held unconstitutional due to restrictive residency or voter registration requirements."

the constitutional prohibition of a special law in *CCI Entm't, LLC v. State*, 215 Md. App. 359, 395 (2013), as follows:

> Article III, § 33 of the Maryland Constitution provides, in pertinent part, that "the General Assembly shall pass no special Law, for any case, for which provision has been made, by an existing General Law." While the prohibition against special legislation may serve other interests, one of the important historical purposes behind § 33's prohibition against "special laws" has been "'to prevent one who has sufficient influence to secure legislation from getting an undue advantage over others. . . .'" *Cities Service v. Governor*, 290 Md. 553, 568-69 (1981) (quoting *M. and C.C. of Baltimore v. U. Rys. & E. Co.*, 126 Md. 39, 52 (1910)).

"'A special law is one that relates to particular persons or things of a class, as distinguished from a general law which applies to all persons or things of a class.'" *Maryland Dep't of Env't v. Days Cove Reclamation Co.*, 200 Md. App. 256, 265 (2011) (quoting *Prince George's County v. B. & O. R.R. Co.*, 113 Md. 179, 183 (1910)).

There are five general factors that the Court considers in determining whether a law is "special":

> (a) the underlying purpose of the legislation in question to determine whether it was actually intended to benefit or burden a particular member or members of a class instead of an entire class,
>
> (b) whether particular individuals or entities are identified in the statute either explicitly or by clear implication, as determined by a consideration of the substance and "practical effect" of an enactment as well as its form,
>
> (c) whether a particular individual or business sought and received special advantages from the Legislature, or if other similar individuals or businesses were discriminated against by the legislation,
>
> (d) the public need and public interest underlying the enactment, and the inadequacy of the general law to serve the public need or public interest; and
>
> (e) whether the legislatively drawn distinctions are arbitrary and without any reasonable basis.

*CCI Entm't*, 215 Md. App. at 396-97. In applying these factors, "we begin with the presumption that the legislative enactment is constitutional." *Id.* at 399. The burden is on the challenger to demonstrate that a validly enacted law is unconstitutional. *Id.*

Applying these five factors, we hold that the Neighbors have failed to meet their burden to show that Art. 2B, § 9-101(c)(ii) is an unconstitutional special law. With respect to the first factor, whether the amendment was intended to benefit a particular member of a class instead of an entire class, the Neighbors point solely to the fact that the legislation, as initially proposed, was general and prospective, but it subsequently "was trimmed and tailored" to a retrospective exception to meet the needs of Gluten Free.

> As originally introduced, Art. 2B, § 9-101(c)(ii) would have provided:
>
> In Baltimore City, an authorized person of a limited liability company who holds an alcoholic beverages license for the use of the limited liability company need not be a registered voter in Baltimore City.

H.B. 232 (2012); S.B. 534 (2012). As initially drafted, the legislation clearly was enacted to benefit an entire class, i.e., authorized persons of limited liability companies who hold an alcoholic beverage license. Although the bill subsequently was narrowed to apply only to holders of liquor licenses that were granted prior to June 1, 2012, the Neighbors have presented no persuasive legislative history regarding the reason for the change.

The only evidence of legislative intent offered by the Neighbors was the testimony of Ms. Joan Floyd that Delegate Shawn Tarrant made comments indicating that Mr. D'Souza was the beneficiary of this legislation. This testimony, however, is not sufficient to show the intent of the General Assembly in enacting this law. As this Court has explained:

> "It is a familiar principle of constitutional law that this Court will not strike down an otherwise constitutional statute on the basis of an alleged illicit legislative motive." . . . "What motivates one legislator to make a speech about a statute is not necessarily what motivates scores of others to enact it, and the stakes are sufficiently high for us to eschew guesswork."

*CCI Entm't*, 213 Md. App. at 407 (quoting *Pack Shack, Inc. v. Howard County*, 138 Md. App. 59, 71 (2001)).

With respect to the second factor, whether Art. 2B, § 9-101(c)(1)(ii) identifies a particular a particular individual or entity, it clearly does not. It applies to any "authorized person of a limited liability company who holds an alcoholic beverages license for the use of the limited liability company that was granted on or before June 1, 2012." Art. 2B, § 9-101(c)(1)(ii).

To be sure, a statue could identify a specific individual without explicitly naming the person. As the Court of Appeals explained in *Cities Service Co.*, 290 Md. 570-72:

> The record in this case shows that the exemption was sought by Montgomery Ward, that the Legislature was advised that one business was the sole beneficiary, that Montgomery Ward is the only subsidiary of a producer or refiner which can qualify, and that no other existing general retail mass merchandiser could qualify in the future if it became a subsidiary of a producer or refiner.
>
> . . . In *Reyes* [*v. Prince George's County*, 281 Md. 279 (1977)], the challenged statute authorized Prince George's County to sell revenue bonds to finance the construction of "any sports stadium or sports arena in Prince George's County." The Act was challenged as a special law on the ground that, at the time of its enactment, there was in fact only one beneficiary in the county, the Washington National Arena. Judge Digges for the Court pointed out that if the Washington National Arena were the only beneficiary, by the Act identifying the arena by name "or in any equivalent manner," it might well have been a special law, 281 Md. at 305, 380 A.2d 12 (emphasis supplied). However, we upheld the statute because it applied to sports arenas or sports stadia in the county generally, and that any additional sports arenas or stadia were eligible for county financing.

> The present case would be like *Reyes* except for the January 1, 1979, qualifying dates. . . . It is undisputed that no existing retail mass merchandiser in Maryland no competitor of Montgomery Ward could in the future come within the exemption because of the January 1, 1979 "grandfather clauses."

The Neighbors have offered no such evidence in this case. There was no evidence submitted to show that Mr. D'Souza was the sole beneficiary of this legislation.

With respect to the third factor, whether Mr. D'Souza sought and obtained a special advantage, the Neighbors offer no evidence to support the argument that Mr. D'Souza specifically sought the enactment of Art. 2B, § 9-101(c)(1)(ii) to succeed in his attempt to obtain a liquor license. Even if he did, however, that would not weigh heavily in favor of appellees' position. Citizens are permitted to seek changes in the law from the legislature, and the legislature is permitted to change the law to serve the needs of the citizens of Maryland. The prohibition on special laws is intended to prevent laws that would give an "undue advantage" to a party with sufficient influence. *CCI Entm't*, 215 Md. App. at 395. The evidence offered by the Neighbors falls short of establishing that Mr. D'Souza sought and obtained an "undue advantage," especially where the 2012 amendment applies to any liquor license applicant similarly situated to Mr. D'Souza.

The Neighbors do not comment on the fourth and fifth factors. They do not argue, and we do not conclude, that these factors weigh in favor of a finding that Art. 2B, § 9-101(c)(1)(ii) is an unconstitutional special law.

After consideration of the requisite factors, we conclude that the Neighbors failed to meet their burden to show that Art. 2B, § 9-101(c)(1)(ii) is an unconstitutional special law. The Board properly rejected the Neighbors' claim in this regard.

**B.**

**Application to Mr. D'Souza**

The Neighbors next argue that, even if Art. 2B, § 9-101(c)(1)(ii) is not an unconstitutional special law, the Board erred in applying that section to Mr. D'Souza. Noting that the amendment applies only to a license "granted" on or before June 1, 2012, they construe the term "granted" to mean "otherwise lawfully granted." They assert that this Court in *YIM II* declared that the license granted in 2010 was not lawfully granted because there was not sufficient evidence of compliance with the "taxpayer" requirement. Accordingly, they argue that, because the license was not lawfully granted, the registered voter exception of Art. 2B, § 9-101(c)(1)(ii) does not apply to Mr. D'Souza.

We disagree with the premise of the Neighbors' contention. As the appellees note, we stated in *YIM II*, 211 Md. App. at 47, that "[t]he Board approved the liquor license transfer on August 12, 2010." In our mandate, we made clear that we did not affirm or reverse the decision of the Board regarding granting the license, but rather, we remanded for further proceedings to determine whether the license properly was granted. *Id.* at 51. We did not hold that the license was not lawfully granted, and therefore, the Neighbors state no ground of error in this regard.

**IV.**

**Open Meetings Act**

The Neighbors' final contention is that "[t]he Board's approval of the application of [Mr. D'Souza] violated the Open Meetings Act, and the [c]ircuit [c]ourt erred when it refused to accept jurisdiction over the issue." They assert that the Board failed to "conduct

its deliberation and decision-making" in open session, and the circuit court erred in ruling that their Open Meetings Act claim was waived because it was not raised before the Board.

Appellees contend that the Board did not violate the Open Meetings Act. It argues that the Neighbors "failed to introduce any evidence, nor do they refer to any in their brief, suggesting" that the Board did not meet in an open session.

The Open Meetings Act is based on the following policy ground:

> It is essential to the maintenance of a democratic society that, except in special and appropriate circumstances . . . public business be conducted openly and publicly[] and . . . the public be allowed to observe[] the performance of public officials[] and the deliberations and decisions that the making of public policy involves.

Md. Code (2014) § 3-102(a) of the General Provisions Article ("GP").[10] Relevant to the claim here, GP § 3-102 requires public bodies to meet in open session. In this regard, the Court of Appeals has explained that it is "the deliberative and decision-making process in its entirety which must be conducted in meetings open to the public since every step of the process, including the final decision itself, constitutes the consideration or transaction of public business." *Wesley Chapel Bluemount Ass'n v. Baltimore County*, 347 Md. 125, 138-39 (1997) (quoting *New Carrollton v. Rogers*, 287 Md. 56, 72 (1980)).

If a person believes that a public body failed to comply with the requirements of the Act, he or she is permitted to file a petition in the circuit court requesting that the court determine whether the Act is applicable, "require the public body to comply" with the Act,

[10] Formerly codified at Md. Code (2009 Repl. Vol.) § 10-501 of the State Government Article.

or "void the action of the public body." GP § 3-401(b)(1)(i)-(ii). The circuit court may issue an injunction, or if it finds the public body "willfully" failed to comply with the Act, "declare the final action of a public body void." GP § 3-401(d)(4).

In this case, appellees presented to the circuit court an affidavit from Stephan Fogleman, the Chairman of the Board, stating that the Board conducted its deliberation and decision making in open session. The Neighbors did not present any evidence to contradict that assertion.

On appeal, it presents its claim that there was a violation of the Open Meetings Act as follows:

> The transcript shows that while all three Board members were present at this public hearing, the only member to utter a word was the presiding Chairman. There was never any public discussion or deliberation, any motion made or called for, or any vote taken. There was no public airing of the views of the two members who constituted the majority of the Board. During the public proceedings, as the majority maintained its silence, the Chairman announced findings, conclusions and rulings on issues raised by the Protestants. At the end of the public proceedings, the chairman restated the Board's findings, conclusions and rulings. These could only have been based on deliberation and decision-making that took place in private, in violation of the Open Meetings Act.

The circuit court did not address this issue on the merits. Instead, it ruled that the Neighbors' Open Meetings Act arguments were waived because they had not been raised before the Board. We agree with the Neighbors that this ruling was erroneous.

The Open Meetings Act provides that "any person may file with a *circuit court* that has venue a petition that asks the court" to evaluate violations by a "public body" of GP §§ 3-301, 3-302, and 3-306(c). GP § 3-401(b)(1) (emphasis added). Moreover, GP § 3-401(e) specifically provides that "[a] person may file a petition under this section

without seeking an opinion from the Board," and "[t]he failure of a person to file a complaint with the Board is not a ground for the court to stay or dismiss a petition." By its plain terms, the Open Meetings Act authorizes aggrieved parties to file a petition in the circuit court without first raising the issue before the public body. A claim under the Open Meetings Act, therefore, appropriately may be raised for the first time by filing in the circuit court.[11]

Here, the Neighbors raised their Open Meetings Act claims, along with their petition for review of the Board's decision, in a Petition for Judicial Review and Enforcement of the Open Meetings Act. Accordingly, they filed an appropriate petition to enforce the Open Meetings Act with the circuit court in compliance with GP § 3-401(b). The circuit court erred in refusing to address the merits of the Neighbors' petition for enforcement of the Act, and we reverse its ruling on this ground.

Because the claims relating to the Open Meetings Act involve factual issues that were not ruled on by the circuit court, we remand to that court to address those issues and rule on the Neighbors' Open Meetings Act claim on the merits.

**JUDGMENT AFFIRMED, IN PART, AND REVERSED, IN PART. CASE REMANDED TO THE CIRCUIT COURT FOR BALTIMORE CITY FOR CONSIDERATION OF APPELLANTS' OPEN MEETINGS ACT CLAIM. COSTS TO BE PAID 75% BY APPELLANTS, 25% BY APPELLEES.**

[11] Of course, the party raising the petition must comply with the other requirements of the Open Meetings Act, such as filing within the limitations periods set forth in GP § 3-401(b). Those requirements, however, are not at issue in this case.