UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

Nos. 1016, 1017, and 1019
September Term, 2014

Frank Bazzarre *et al.*
v.
County Council of Prince George's County Maryland,
Sitting as the District Council, *et al.*

No. 1023
September Term, 2014

Christmas Farm, LLC
v.
County Council of Prince George's County Maryland,
Sitting as the District Council

No. 1024
September Term, 2014

MCQ Auto Servicecenter, Inc.
v.
County Council of Prince George's County Maryland,
Sitting as the District Council

No. 1061
September Term, 2014

Robin Dale Land, LLC
v.
County Council of Prince George's County Maryland,
Sitting as the District Council

No. 1062
September Term, 2014

ERCO Properties, Inc.
v.
County Council of Prince George's County Maryland,
Sitting as the District Council

No. 1426
September Term, 2014

Piscataway Road-Clinton MD, LLC
v.
County Council of Prince George's County Maryland,
Sitting as the District Council

Kehoe,
Leahy,
Kenney, James A., III,
(Senior Judge, Specially Assigned),
JJ.

Opinion by Kehoe, J.

Filed: May 30, 2017

*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.

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Introduction

In this opinion, we address appeals from eight judgments entered by the Circuit Court for Prince George's County affirming 2013 legislation by the County Council of Prince George's County sitting as the District Council (the "District Council"). The legislation in question, CR-80-2013, CR-81-2013, CR-82-2013 and CR-83-2013 (collectively the "2013 Resolutions"), approved new area master plans and enacted sectional map amendments for Planning Subregions 5 and 6 in the County. The appellants are: Charles Clagett, H. Manning Clagett, Christine Clagett, Diane Clagett Hoesch, Lee Clagett, James Clagett, Richard Clagett and Frank Bazzarre (collectively "the Clagetts); Christmas Farm, LLC; MCQ Auto Servicecenter, Inc.; Robin Dale Land, LLC; ERCO Properties, Inc.; and Piscataway Road-Clinton MD, LLC ("Piscataway"). They are property owners who are dissatisfied with the zoning and/or area master plan classifications assigned to their properties by means of the 2013 Resolutions. The appellee is the District Council, joined in one appeal by the Accokeek Mattawoman Piscataway Communities Council and some of its members (collectively, "AMP").

These appeals were not consolidated because they do not all involve precisely the same legal and factual issues. Nonetheless, they arise out of the same factual background. For that reason, they were scheduled for oral argument on the same day and before the same panel. For the sake of judicial efficiency, we will address all of the appeals in one opinion.

The opinion consists of several parts:

Part 1 is a summary of the pertinent provisions of the Maryland-Washington Regional District Act, which authorizes Prince George's County to engage in land use regulation; the Prince George's County Zoning Ordinance; and the Maryland Public Ethics Law.

Part 2 describes the convoluted factual background that is common to all of the appeals.

In Part 3, we summarize the parties' contentions.

Part 4 sets out the appropriate standard of review.

In Part 5, we address procedural arguments raised by the District Council as to why some of the appellants are not entitled to the appellate relief that they seek.

In Part 6, we analyze an appellate contention raised by most of the appellants, namely, that the actions of the District Council that led up to the enactment of the 2013 Resolutions were not consistent with an earlier judgment of the circuit court.

In Part 7, we explain how our resolution of that contention affects the outcome of each appeal. This will necessarily involve further analysis of the particular facts of each case as well as consideration of the other appellate contentions raised by each party.

Finally, in Part 8, we will summarize our holdings.

When everything is said and done, we will dismiss two appeals (both filed by the Clagetts) as moot, and will reverse the judgments of the circuit court in the remaining cases. We will remand the remaining Clagett case and the Christmas Farm, ERCO, Robin

Dale, and MCQ cases to the District Council for further proceedings consistent with this opinion. However, no remand to the District Council is necessary for Piscataway.

We ask for the reader's patience, fully aware that we will try it long before our task is complete.

Part 1. An Abbreviated Statutory Overview

A. The 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"). *Prince George's County v. Zimmer Development Co.*, 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 Md. Code Ann. (2012), Division II of the Land Use Article ("LU"). Although the RDA certainly has its nuances, some of which were explored by the Court of Appeals in *Zimmer*, 444 Md. at 523–30, land use control in the Regional District operates on the same conceptual bases as does land use regulation in the rest of the State. The RDA divides land use control into three broad categories: land use planning, zoning, and subdivision regulation.[1] We are concerned with the first two aspects of governmental regulation in these appeals.

[1] *See County Commissioners of Cecil County v. Gaster*, 285 Md. 233, 246 (1979) ("There are three integral parts of adequate land planning, the master plan, zoning, and subdivision regulations.").

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. [2] 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). These duties specifically include "the preparation and adoption of recommendations to the district council with respect to zoning map amendments[.]"LU § 20-202((b)(2).

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. Additionally, the Commission is required to divide each county into local planning areas and to prepare area master plans for each planning area. LU

[2] 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).

§ 21-105(b) and (c).[3] Currently, Prince George's County is divided into seven such areas, which are termed "subregions."

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.'" M*aryland-Nat. Capital Park & Planning Comm'n v. Greater Baden-Aquasco Citizens Ass'n*, 412 Md. 73, 89 (2009) (quoting *Garner v. Archers Glen Partners,* 405 Md. 43, 48 n. 5 (2008) (brackets omitted)).

General and 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 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). When this occurs, the Commission shall review the existing master plan, shall make such amendments as it deems necessary, and may make recommendations for "zoning, the staging of development and public improvements[.]" LU § 21-105(c)(2).

The RDA allocates responsibility for zoning, including, and particularly relevant to these appeals, comprehensive zoning and rezoning, to the county councils, sitting as district councils. The Prince George's County District Council is authorized to: (1)

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[3] The Commission also has authority to adopt functional master plans to address matters such as transportation routes and facilities. LU § 21-106.

"adopt and amend the text of the zoning law for that county," and (2) "adopt and amend any map accompanying the text of the zoning law for that county." LU § 22-104(a). Before the District Council may approve a zoning map amendment, the proposed amendment must be submitted to the Planning Board "for a recommendation as to approval, disapproval, or approval with conditions." LU § 22-208. Because area master plans include the Commission's recommendations for changes to the zoning classifications for individual parcels, the District Council enacts comprehensive re-zoning legislation, called "sectional map amendments," or "SMAs," on a subregional basis in conjunction with consideration and approval of updated area master plans for the region in question. *See* Prince George's County Code ("PGCC") § 27-225.01.05. [4]

All of these statutory requirements are implemented in Prince George's County through the Prince George's County Code. The local legislation that governs the District Council's authority to adopt SMAs and Master Plans is contained in the Prince George's County Zoning Ordinance (the "Zoning Ordinance"), which is codified as Title 27 of the County Code.

[4] As the Court noted in *Zimmer,* there are other administrative bodies and officials, specifically, the County Board of Appeals and the County's zoning hearing examiners, that play important roles in land use regulation in Prince George's County. 444 Md. at 526 n.32. Neither the board of appeals nor the hearing examiners figure in the present appeals.

B. The Prince George's County Code

Sectional Map Amendments

The local law governing the adoption of SMAs is contained in PGCC §§ 27-220–27-228. PGCC § 27-220 outlines the general purposes and intent served by the procedural provisions governing SMAs. It states that the procedures are structured in order to "provide for a systematic review of zoning and land use and how they conform to the principles of orderly comprehensive land use planning and staged development (as reflected in established public plans and policies) and planned public facilities[.]"

In order to accomplish this goal, and consistent with LU § 21-105(c)'s mandate, PGCC § 27-221(a) provides that each SMA must be reviewed and reconsidered at least once every ten years. However, if the District Council initiates a new SMA within five years of the previously adopted SMA, the Council must state the specific reason for enacting a new SMA within the resolution scheduling the preparation of the SMA. PGCC § 27-221(b).

The SMA process is initiated by a resolution of the District Council. PGCC § 27-224(a). Sections 27-225 through 27-226 set out specific procedures that the Planning Board and District Council must follow during the process of considering and adopting a new SMA. Once it receives authorization from the District Council, the Planning Board is responsible for preparing a proposed zoning map. PGCC § 27-225(c). "[A]ny person may request that specific zones . . . be considered for specific properties during the

Sectional Map Amendment process." PGCC § 27-225(a)(1). Once the Planning Board has completed a proposed map, it must be released for public review, and the Planning Board must hold a public hearing after providing notice to the public in general and potentially affected landowners in particular. PGCC § 27-225(d)–(e). The Planning Board then transmits the proposed SMA to the District Council and any affected municipalities for their review. PGCC § 27-225(f). PGCC § 27-225.01.05 authorizes the District Council and the Planning Board to consider a proposed master plan concurrently with a proposed sectional map amendment, which is the procedure that was followed in both the 2009 and 2012 SMA/master plan processes.

Section 27-226 governs the District Council's consideration of proposed SMAs. The District Council must hold a public hearing, after giving proper notice. PGCC § 27-226(b). The District Council may propose changes or revisions to the SMA, but if those changes are proposed after the close of the record from the public hearing or the revision has not been reviewed by and commented upon by the planning staff or the Planning Board, the District Council must first refer the proposed revisions to the Planning Board for review by the planning staff and recommendations by the Planning Board itself. PGCC § 27-226(c)(7). The Council must then hold an additional public hearing before acting on the SMA. PGCC § 27-226(c)(4). The District Council then reviews and votes upon each proposed change in zoning classification recommended by the Planning Board. PGCC § 27-226(e)(1). (We will discuss § 27-226 in more detail in Part 4.)

The drafters of the County's Zoning Ordinance anticipated an eventuality that occurred in this case. PGCC § 27-227 sets out an expedited procedure by which the District Council may reconsider an SMA, if the adoption of the SMA has been set aside by a court for procedural deficiencies.

Now we turn to the provisions of the Zoning Ordinance that govern the District Council's adoption of area master plans.

Area Master Plans

PGCC §§ 27-641–648 set out the procedures that the Planning Board must complete in order to adopt a new area master plan. The Board may undertake a plan review process only with the concurrence of the District Council. PGCC § 27-641(a). Relevant to the issues before us, the Planning Board prepares a description of recommended goals, § 27-643(a), which must be approved by the District Council. Section 27-644(a)(1). After a period of public participation and comment, PGCC § 27-643, the Board prepares a preliminary plan. PGCC § 27-644(a). The Planning Board and the District Council hold at least one joint public hearing on the preliminary plan and an associated sectional map amendment, if there is one. Section 27-644(b). At the conclusion of the Board's public hearing and public comment process, the planning staff prepares as analysis of the testimony, together with staff comments and recommendations. Section 27-645(a). The Board may adopt the preliminary plan or may adopt the preliminary plan "with amendments based on the record," together with a proposed sectional map amendment and a proposed zoning map, "which shall be based on the recommendations contained in

the adopted plan." PGCC § 27-645(c)(1). After additional reviews, the Planning Board may approve the proposed master area plan and transmit it to the District Council, together with a concurrent sectional map amendment. Section 27-645(c).

The District Council may, but need not, conduct an additional joint public hearing with the Planning Board before deciding whether to approve the plan. Section 27-646(a). The same code section contains very specific provisions as to how the District Council may consider amendments to the plan transmitted to it by the Planning Board. *Id.* at (a) and (b). These provisions are relevant to a disagreement among some of the parties as to the appropriate standard of review and we will discuss § 27-246 in Part 4 of this opinion.

Notably, there is no provision in the Zoning Ordinance for master plans that is analogous to PGCC § 27-227; that is, nothing in the Ordinance authorizes the District Council to reconsider a judicially-invalidated master plan on a truncated basis.

C. The Maryland Public Ethics Law

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

[5] While these cases were pending, 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.

Specifically, GP § 5-835(a)[6] prohibits an "applicant"[7] to a land use "application"[8] from making campaign contributions to members of the District Council while its land use application is pending.

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[6] 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.

[7] "GP § 5-833(c) states in pertinent part:

> (1) "Applicant" means an individual or a business entity that is:(i) a title owner or contract purchaser of land that is the subject of an application;(ii) a trustee that has an interest in land that is the subject of an application, excluding a trustee described in a mortgage or deed of trust; or(iii) a holder of at least a 5% interest in a business entity that has an interest in land that is the subject of an application but only if:
>
> 1. the holder of at least a 5% interest has substantive involvement in directing the affairs of the business entity with an interest in the land that is the subject of an application with specific regard to the disposition of that land; or
>
> 2. the holder of at least a 5% interest is engaged in substantive activities specifically pertaining to land development in Prince George's County as a regular part of the business entity's ongoing business activities.
>
> (2) "Applicant" includes:(i) any business entity in which a person described in paragraph (1) of this subsection holds at least a 5% interest; and(ii) the directors and officers of a corporation that actually holds title to the land, or is a contract purchaser of the land, that is the subject of an application. . . .

[8] GP § 5-835(d) states:

> "Application" means:(1) an application for:(i) a zoning map amendment;(ii) a special exception;(iii) a departure from design standards;(iv) a revision to a special exception site plan;(v) an expansion of a legal nonconforming use;(vi) a revision to a legal nonconforming use site plan; or(vii) a request for a variance from the zoning ordinance;(2) an application to approve:(i) a comprehensive design plan;(ii) a conceptual site plan; or(iii) a specific design plan; or(3) participation in adopting and approving an area master plan or sectional map amendment by appearance at a public hearing, filing

Second, GP § 5-835(b)(1)[9] prohibits a council member from participating in the consideration of an application if the applicant contributed to the council member's campaign within 36 months before the application was filed.

Third, GP § 5-835(c)[10] requires all applicants to file what the parties, the circuit court, and we call an "ethics affidavit," stating (a) whether the applicant contributed

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> a statement in the official record, or other similar communication to a member of the County Council or the Planning Board, where the intent is to intensify the zoning category applicable to the land of the applicant.

[9] GP § 5-835(b)(1) states:

> After an application has been filed, a member may not vote or participate in any way in the proceeding on the application if the member's treasurer or continuing political committee, or a slate to which the member belongs or belonged during the 36-month period before the filing of the application, received a payment during the 36-month period before the filing of the application or during the pendency of the application from any of the applicants or the agents of the applicants.

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

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

funds to any council member's campaign within the 36 months preceding the application, or solicited such contributions, and (b) if the answer to either of the former question is "yes," identifying the council member(s) involved. 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.").

Additionally, GP § 5-836 prohibits applicants from engaging in ex parte communications with members of the District Council and the County Executive

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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.

. . . .

regarding land use applications. It also imposes a duty on the applicant and the public official to disclose such communications with the clerk of the District Council within five business days of the day on which the communication was made or received.

Finally, GP § 5-839[11] provides that the State Ethics Commission or an aggrieved person may file an action in the Circuit Court for Prince George's County to enforce the requirements of Part V. The Public Ethics Law 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).

Part V did not spring into existence out of a vacuum. The impetus to enact what eventually became this portion of the Public Ethics Law arose out of public concerns

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[11] Section 5-839 provides in pertinent part:

> (a)(1) The Ethics Commission or any other aggrieved person may:
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> (i) file a petition for injunctive or other relief in the Circuit Court for Prince George's County to require compliance with this part; and
>
> (ii) assert as error any violation of this part in judicial review requested under § 22-407 of the Land Use Article.
>
> (2) The Court shall issue an order voiding an official action taken by the County Council if:
>
> (i) the action taken by the County Council was in violation of this part; and
>
> (ii) the legal action was brought within 30 days after the occurrence of the official action.
>
> (3) The Court, after hearing and considering all the circumstances in the case and voiding an action of the County Council, shall reverse, or reverse and remand, the case to the District Council for reconsideration.
>
> . . . .

about the appearance or reality of impropriety caused by members of the District Council voting on land use applications that had been filed by individuals who had contributed to the Council members' campaigns. *See* 100 Op. Att'y Gen. 55, 64–73 (discussing Part V's legislative history).[12]

Part 2. Factual and Procedural Background

A. General Overview

In 2007, the District Council adopted two resolutions which announced the Council's intention to initiate area master plan reviews and comprehensive rezoning in Subregions 5 and 6. In 2008, and as part of the process of reviewing and modifying the area master plans and SMAs for the two subregions, the Planning Board accepted requests from property owners to modify their properties' zoning classifications, as authorized by PGCC § 27-225(a).

The Clagetts, ERCO, Robin Dale, and Christmas Farm were among the many property owners that requested changes to zoning or plan classifications to permit more intensive development of their property. These efforts clearly were "applications," and the parties themselves "applicants," as those terms are defined in the Public Ethics Law.

[12] The original proposal for what eventually became Part V came from Walter M. Maloney, Jr., a prominent Prince George's County lawyer who raised the issue of possible improprieties in a meeting with the Prince George's County legislative delegation in 1989. *See Porten Sullivan Corp. v. State,* 318 Md. 387, 394 (1990). Mr. Maloney had been the chair of the committee that drafted the County's home rule charter, and later served first as County Attorney, and then, later still, as a member of the County Council.

All of them therefore should have filed the ethics affidavits required by GP § 5-835(c)(1) within the time-frame specified by § 5-835(c)(2). None of them did so. In failing to comply with the law, they were not alone. Most, but not all, of the persons seeking more advantageous zoning or master plan classifications in the 2009 SMAs failed to do so. The record is unclear as to why the affidavits were not filed and how or why the District Council overlooked what was, and is, an unambiguous statutory requirement.

In any event, the process culminated in the District Council's approving the master plan and enacting the SMA for Subregion 5 (Resolution CR-61-2009) and Subregion 6 (Resolution CR-62-2009) (collectively, the "2009 Resolutions").

Several petitions for judicial review were filed in the months after CR-61 and CR-62 were enacted.

The O'Neal Action

Patricia Mugg O'Neal, a Prince George's County resident, filed a petition for judicial review of the District Council's decision to approve the Subregion 5 Master Plan and SMA. Although O'Neal challenged CR-61-2009 as a whole, the focus of her suit was on a group of contiguous properties known as Hyde Field, which was owned by Zachair, Ltd. For present purposes, it is sufficient to say that Hyde Field was the subject of two pending floating zone applications when the District Council initiated the sectional map amendment process for Subregion 5. Those applications were incorporated into the Subregion 5 SMA as permitted by PGCC § 27-225(b)(1). O'Neal challenged the legality of this process. O'Neal did not assert that Zachair failed to comply with the Public Ethics

Law nor did she contend that CR-61-2009 was void due to noncompliance with that statute. The latter contention was, as we will see, at the heart of other challenges to the 2009 Resolutions, discussed *infra*.

O'Neal's judicial review action was assigned to the Honorable Melanie M. Shaw Geter, then an associate judge of the Circuit Court for Prince George's County, and now an associate judge of this Court. After a hearing, the circuit court issued an opinion dated February 2, 2012, which analyzed the contentions raised by the parties and affirmed CR-61-2009 in its entirety. O'Neal appealed that judgment, and her contentions are addressed by a panel of this Court in *Patricia Mugg O'Neal v. Prince George's County Council et al.*, No. 259, September Term, 2012, which will be filed in conjunction with this opinion.

The *Accokeek* Action

AMP, the Greater Baden Aquasco Citizens Association, and several individuals filed petitions for judicial review challenging both the Subregion 5 and the Subregion 6 Master Plans and SMAs. These actions were subsequently consolidated and we will refer to the consolidated action as "*Accokeek*" or the "*Accokeek* case."

Among their other contentions, the *Accokeek* petitioners asserted that the District Council violated the Public Ethics Law by approving requests to intensify the zoning classification of properties even though no ethics affidavits had been filed by the owners or would-be developers of the properties.

Around January 2010, and before the circuit court issued a decision in *Accokeek*, the District Council re-opened the administrative records for the 2009 Resolutions. It is not

clear what induced the District Council to do this. At oral argument, counsel for the District Council suggested that it was likely in anticipation of an adverse court ruling in the *Accokeek* case. Between January 2010 and the summer of 2010, at least twenty-three property owners in Subregions 5 and 6, including the Clagetts, filed ethics affidavits that had not been submitted during the 2009 Resolution review process.

The consolidated *Accokeek* cases were assigned to the Honorable Michele D. Hotten.[13] On July 26, 2010, Judge Hotten ordered that the 2009 Resolutions be remanded to the District Council (the "First Remand Order"). The remand was for the limited purpose of:

> providing this Court any affidavits and/or all records in possession of the [District Council] which indicate whether any property owner who participated in the adoption of CR-61-2009 or CR-62-2009, with the intent of intensifying the zoning category applicable to its property, tendered a "payment" to any member of the [District Council] . . . so that this Court may properly determine whether the [District Council] violated the substance of the provisions [in the Public Ethics Law][.][14]

Although the record is not entirely clear, the staff of the District Council apparently provided notice of the Court's order to some, but not all, of the possibly affected property

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[13] After serving as an associate judge of this Court from 2010 through 2015, Judge Hotten is now a member of the Court of Appeals.

[14] As we will shortly explain, this order was later interpreted by another judge, specifically the Honorable Leo Green, Jr., to permit property owners to file untimely affidavits that would have a *nunc pro tunc* curative effect. There is nothing in Judge Hotten's order that addresses this issue. The District Council and some of the appellants have argued whether such a result was, or was not, intended by Judge Hotten. This debate is beside the point—what counted was Judge Green's interpretation because he entered the final judgment in the case.

owners. It is unclear why this occurred. In the period that followed, several property owners, including Robin Dale and ERCO, filed ethics affidavits.

On August 17, 2010, Judge Hotten was sworn onto the bench of this Court. The *Accokeek* cases were then transferred to the Honorable Leo Green, Jr. Shortly thereafter, the District Council's record, augmented by the various untimely-filed ethics affidavits,[15] was returned to the circuit court.

On September 7, 2012, Judge Green of the Circuit Court for Prince George's County entered an order in the *Accokeek* case that affirmed the zoning and plan designations of those properties for which ethics affidavits had been filed, and reversed the reclassifications for those properties for which no affidavits had been filed.[16] The September 7, 2012 order affirmed the 2009 Resolutions in all other respects.

Thereafter, several property owners, including Christmas Farm, moved to intervene in *Accokeek*, and filed motions to alter or amend the September 7 order. Many of the would-be intervenors asserted that they had not been notified by the District Council's attorney of the First Remand Order, and were thus unaware that they had an opportunity to file an affidavit. The movants argued that the September 7 order should be modified

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[15] The District Council asserts—without dispute from the appellants—that none of these affidavits were filed before the District Council acted on CR-61-2009 and CR-62-2009.

[16] The court also affirmed the zoning classification for MCQ Auto because the zoning for its property did not derive from the 2009 SMAs, but from a separate, and subsequent, revisory petition filed pursuant to PGCC § 27-228. We will discuss the significance of this part of the circuit court's September 7 order when we take up MCQ Auto's specific appellate contentions.

because it was unfair to use the ethics affidavits as the basis for affirming some rezonings and reversing others when the District Council failed to notify all affected landowners of the First Remand Order.

Judge Green held a hearing on these motions on October 5, 2012, and issued an opinion and order on the motions on October 26, 2012, which became the final judgment in that action (the "*Accokeek* Judgment"). First, the court granted the motions to intervene. Second, it granted the motions to alter or amend the September 7 order, concluding that the County's failure to notify all affected property owners of the opportunity to file an untimely ethics affidavit violated the procedural and substantive due process rights of those affected persons who were not notified. However, in lieu of considering the intervenors' untimely filed ethics affidavits, the circuit court concluded that the most appropriate remedy was to void the 2009 Resolutions and remand the SMAs and area master plans to the District Council. Judge Green explained (emphasis in original; some citations omitted):

> 1. The affidavit requirement in question is clearly stated by Md. State Gov't Code § 15-831 which provides, "After an application is filed, the applicant shall file an affidavit, under oath, stating to the best of the applicant's information, knowledge, and belief..." Md. State Gov't Code Ann, § 15-831(2012). The word "shall" has been interpreted to be mandatory.
>
> 2. This member of the bench was comfortable with Judge Hotten's order of July 26th, 2010 which provided for the late filing of affidavits during a limited remand period. This appeared to be a reasonable and appropriate remedy to an error in what is otherwise a clean record of the District Council.
>
> 3. In an order filed by this member of the bench on September 7th, 2012, it was decided that the court would affirm the zoning of the properties in which a late affidavit was filed but would reverse on properties which

> failed to file an affidavit for review of the recommendations of the Maryland National Capital Park and Planning Commission.
>
> The court has now learned that when the matter was remanded, only certain parties were informed by the District Council of the remand and the need to file late affidavits. This lack of action generated the difficult and untenable circumstance the court is now facing. Interveners' counsel have urged the court for another remand to the District Council and another extension of time for filing late affidavits. While it is the end of baseball season, three strikes are not available and this case needs finality for appeals or action by the District Council. To use another sports analogy, we have seen a "double fault".
>
> 4. The troubling ethical lapses in our County over the last decade are not lost on the court. . . . The District Council, [the former counsel][[17]] to the District Council and others were informed of the need for affidavits and turned a blind eye to the law. The court has heard the argument that it was "custom" in our County to handle applications without affidavits; custom is not law. The lack of affidavits on the first hearing before the District Council is certainly troubling and Judge Hotten provided a roadmap for cure. Unfortunately, the limited remand granted by Judge Hotten was met with a troubling disregard to the responsibility of notifying all interested persons of the need to file affidavits. The notification process was uneven and affected property owners and interested persons were not uniformly notified of the need or opportunity for late filing of affidavits. This endangers the fair play this court and the District Council is supposed to provide. To allow this matter to languish any longer would violate procedural and substantive due process rights established by the United States Constitution and the Maryland Declaration of Rights.
>
> 5. The court has considered and is troubled by the time, expense and toil that a myriad of applicants, citizens, public servants and professionals have taken to construct the master plan. The court concedes that the master plan is not directly related to the affidavit requirements of the SMA, but sees no fair and equitable way to divide these District Council actions. This weighs heavily upon the court. However, Judge Hotten provided the District Council with a remedy to this situation, and that remedy was administered in a disjointed and uneven manner. Fearing a similar result in the future, the court cannot allow this matter to bounce indefinitely between the court and Council in an attempt to secure a piecemeal, *nunc pro tunc* remedy.

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[17] The attorney for the District Counsel at the time of the circuit court's opinion is not the same lawyer who has represented the District Council in the present litigation.

> Therefore, with the exception of certain unobjectionable pieces of property, this court has no choice but to return the matter to the District Council for review of the recommendations of the Maryland National Capital Park and Planning Commission.
>
> 6. The District Council should expediently review this matter and give great weight to certain properties that have received approval in other resolutions and actions of the Council based upon the 2009 resolution and Master Plan. To change these already approved properties would be a grave injustice.[18]

Following the filing of the *Accokeek* Judgment, several parties filed motions to alter or amend the judgment. The circuit court held a hearing on these motions on May 3, 2013, and ultimately denied all of them. Two intervenors filed appeals from the court's judgment. The appeals were docketed in this Court as *Heathermore Associates, LP v. Prince George's Council, sitting as the District Council,* No. 1648, 2012 Term, and *Zachair, Ltd. v. Prince George's Council, sitting as the District Council,* No. 1358, 2013 Term. Heathermore dismissed its appeal in 2013; Zachair*,* after a tortuous procedural history that is beyond the scope of this opinion, did the same in 2016.

B. Subsequent Proceedings Before the District Council and the Planning Board

As a result of the *Accokeek* Judgment, the District Council remanded the matters back to the Planning Board. The District Council's November 13, 2012 orders specified that the remand to the Planning Board was "for the purposes of meeting the affidavit

[18] The court excepted three properties from its order, finding that the rezoning of those properties were "handled in proceedings outside the scope of CR-61-2009 and CR-62-2009." One of these properties was owned by Atta Moshkelgosha. As we will explain presently, the court's treatment of the Moshkelgosha property forms the basis of a contention raised by MCQ Auto.

requirements pursuant to Md. Code Ann., State Gov't § 15-831 and resubmittal of the [2009 Master Plans and SMAs.]" The orders listed conditions requiring the Planning Board to ensure compliance with the ethics affidavits law, which we will discuss in Part 6 of this opinion.

However, during the reconsideration process, the Planning Board did not limit itself to collecting ethics affidavits. Instead, it accepted new applications for zoning changes and updated its recommendations for previously considered applications. Additionally, the Planning Board's staff altered the record by removing testimony and other evidence submitted by property owners who had not timely filed ethics affidavits in the 2009 SMA and area master plan processes. Finally, the Planning Board changed some of its recommendations to the District Council regarding zoning classifications for certain properties.

The reconsideration of the Subregions 5 and 6 SMAs and Master Plans followed similar procedural paths. The District Council and Planning Board held a joint public hearing for each Subregion in April 2013. In June 2013, the Planning Board held a public work session for each subregion to consider the evidence presented at the public hearing. There was no public participation in these sessions. The Planning Board endorsed the Master Plans and SMAs for Subregions 5 and 6 at the end of June, at which point they were forwarded to the District Council. The District Council considered the Master Plan and SMA for each subregion at a July 8, 2013, work session. Appellants point out that no public participation occurred at the work session, but the District Council notes that its

Rules of Procedure provide that the work sessions, which provide "an opportunity to evaluate evidence contained in the record and to review staff recommendations related to record material[,]" limit public participation to responding to council members' questions. District Council Rule 2.8(a)-(b). On July 24, 2013, the District Council enacted the 2013 Resolutions, which approved the revised area master plans and enacted the revised SMAs for the two subregions.

C. The Current Litigation

A series of legal challenges followed, as parties who received different outcomes in the 2013 Resolutions than they had in the 2009 Resolutions petitioned for judicial review. The challenges were consolidated and assigned to the Honorable Maureen Lamasney. The circuit court held a series of hearings on the petitions from May 19-23, 2014. On June 18, 2014, the circuit court issued a separate decision on each case. The court dismissed two of the cases as moot. The court's opinions in all but one of the remaining appealed cases affirmed the District Council. [19] The opinions contained substantively the same conclusion:

> The language of Judge Green's October 26, 2012 Order does not limit the remand to only collecting affidavits and specifically says that 'this court has no choice but to return the matter to the District Council for review of recommendations of the Maryland National Park and Planning Commission.' Judge Green's Order to void [the 2009 Resolutions] was a final, valid circuit court order with the force of law. The District Council followed the procedure proscribed in Section 27-227, and [the 2013

[19] Several other orders were issued by the circuit court, including an amended opinion and order in *Christmas Farm*. However the amended opinion arrived at the same conclusion as the original opinion.

> Resolutions] are not a second master plan and sectional map amendment initiated within five years; the voidance of [the 2009 Resolutions] by Judge Green removed the 2009 master plan and sectional map amendment as law. A final judgment entered by a circuit court may be reversed or vacated only on motion to appeal or revise filed by the parties pursuant to Maryland Rule 2-535 and § 6-408 of the Courts and Judicial Proceedings Article. *See Kent Island, LLC v. DiNapoli*, 430 Md. 348, 366 (2013). Those provisions, when read together provide that 'after thirty days have passed since the entry of a final judgment, a court may modify only its judgment upon motion of a party to the proceeding proving, to the satisfaction of the court, fraud, mistake, or irregularity.' *Id.* Under *Kent Island*, this Court does not have the power to revise or overturn the orders entered by Judges Green and Shaw-Geter through Petitions for Judicial Review, and the orders entered by those Judges could only have been openly revised within thirty days of the entry of the judgments.
>
> Judge Green's [October 26] Order . . . states that the District Council should quickly review the matter and give great weight to certain properties that received zoning outside of the Sectional Map Amendment, and does not prohibit the District Council from making changes. Section 27-227(d)[[20]] requires that a resubmission of a Sectional Map Amendment contain the records of the previous hearings and incorporate those into the new record, so that there is not a brand new review of a remanded Sectional Map Amendment. The master plan and sectional map amendment process is a comprehensive one, and it is not within the power of the Court to engage in piecemeal zoning. This Court may not determine whether 'great weight' was given to previously zoned properties, but only whether there is substantial evidence to support the District Council's decision. There is substantial evidence to support the District Council's finding that approving Petitioner's property for commercial development is not in the best interest of the public welfare in a rural community, and this Court affirms the decision of the District Council as to Petitioner's property.

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[20] PGCC § 27-227(d) states:
Upon resubmission, the records of the previous hearings on the Sectional Map Amendment shall be incorporated into the record of the new hearing.

The court's decision in *Piscataway* differed from the other cases on appeal in that the circuit court found that the administrative record lacked substantial evidence to support the District Council's decision, and remanded the matter to the Council for further proceedings.[21]

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[21] Prior to oral argument, the Clerk of the Court of Special Appeals advised counsel of record of certain matters so that any party might object to the participation of one or more of the assigned panel members. At oral argument, counsel to all parties consented to the participation by the panel members. The matters were:

(1) Hina Z. Hussain, Esquire was a counsel of record to appellants in the Clagett appeals. After the briefs were filed but before oral arguments, Ms. Hussain became Associate Counsel for the Maryland Administrative Office of the Courts, and, in that capacity, served as counsel to the Judicial Ethics and the Retired and Recalled Judges Committees. During this time, Judge Kehoe was chair of the former committee and Judge Kenney was chair of the latter, as well as serving as a member of the Judicial Ethics Committee. (Judges Kehoe and Kenney remain in these capacities.)

Neither Judge Kehoe nor Judge Kenney had any communication with Ms. Hussain regarding these appeals and neither judge believes that his acquaintanceship with Ms. Hussain affects his ability to render fair and impartial decisions in these cases.

(2) Before her appointment to this Court, Judge Leahy was a member of the State Ethics Commission. In March, 2013, the Commission staff issued a memorandum addressing the application of the State Ethics Law to local land use proceedings in Prince George's County. The memorandum stated that, although it was based on staff discussions with the State Ethics Commission, it was "not an advisory opinion of the Commission." In the same month, the Executive Director of the Commission requested that the Attorney General issue an opinion regarding the application and meaning of the same statutory provisions. The Commission staff's memorandum and the resulting Opinion of the Attorney General (100 Op. Att'y Gen. 55 (2015)) dealt with some of the issues raised in the *Accokeek* litigation.

In light of the large number of matters considered by the Commission during its monthly meetings, Judge Leahy did not specifically recall any personal or substantial participation regarding the memorandum or the letter. Judge Leahy does not believe that her service on the Ethics Commission affects her ability to render fair and impartial decisions in these cases.

Part 3. The Parties' Contentions

The appellants advance a variety of legal theories as to why the 2013 Subregion 5 and 6 SMAs and master plans are invalid as to their particular properties. (We have reworded the statements of issues to conform to the terminology used in this opinion.)

The Clagetts:

1. Was the circuit court's September 7, 2012 order in the *Accokeek* action final as to the Clagetts' zoning changes?

2. Did the District Council fail to follow the SMA and Master Plan process in the County Code, thereby voiding CR-81-2013 and CR-80-2013?

3. Were the Clagetts' due process rights violated when the District Council did not follow the procedures in the County Code for amending the SMA and Master Plan?

4. Should the District Council's 2013 decision to downzone the Clagett properties from C-S-C to R-R be reversed because it was arbitrary and unlawful?

5. Did the circuit court's affirmance of the SMA/Master Plan in *O'Neal* remove the 2009 SMA/Master Plan from the District Council's jurisdiction?

6. Is the *Accokeek* Judgment void for lack of due process?

Christmas Farm:

1. Did the decision of the District Council not to restore the R-R zoning classification to the subject property exceed its statutory authority under PGCC § 27-227(a)?

2. Did the decision of the District Council not to restore the R-R zoning classification to Christmas Farm property violate the "mere change of mind" rule?

3. Was the District Council's authority to modify the prior decisions in CR-62-2009 limited solely to the issues set forth in its order of remand to the Planning Board?

4. Did the District Council violate the terms of the *Accokeek* Judgment, thereby rendering its decision not to restore R-R zoning to the subject property unlawful?

MCQ Auto:

1. Should the MCQ Auto property have been excepted from the District Council's remand to the Planning Board and was the District Council's 2013 downzoning of

> the MCQ Auto property a violation of Article 25 of the Maryland Declaration of Rights and the 14th Amendment to the United States Constitution?
>
> 2. Was the MCQ Auto property ever legally within the jurisdiction of the District Council as a result the *Accokeek* Judgment?
>
> 3. Did the District Council exceed its authority under PGCC § 27-227 when it downzoned the MCQ Auto property?
>
> 4. Was the action of the District Council in downzoning the MCQ Auto property illegal as a matter of law, contrary to the *Accokeek* Judgment, and unsupported by evidence?
>
> 5. Was the District Council's downzoning of the MCQ Auto property an impermissible change of mind, and did it also violate principles of res judicata?

ERCO:

> 1. Whether the District Council's decision to retain the ERCO's property in the Rural Tier and the R-A zone is supported by substantial evidence in the record?
>
> 2. Whether the District Council's decision to retain ERCO's property in the Rural Tier and the R-A zone in the 2013 SMA and master plan process was an impermissible change of mind in light of the fact there was no change in circumstances, facts or law from the District Council's 2009 decision to rezone the property to the R-E zone?

Robin Dale:

> 1. Was the District Council's decision to re-designate the appellant's property to the Rural Tier an impermissible change of mind in light of the fact there was no change in circumstances, facts, or law from the District Council's 2009 decision to designate the property to the Developing Tier?
>
> 2. Was the District Council's decision to re-designate the property to the Rural Tier supported by substantial evidence in the record?

Piscataway:

> Did the circuit court err when it remanded the Piscataway case back to the District Council for further proceedings despite finding that the administrative agency did not present sufficient evidence to support its decision to downzone the appellant's property?

The District Council vigorously disputes these contentions and, as to specific appellants, also presents various procedural arguments. Specifically, the District Council contends:

> (1) There are no final judgments in the Clagetts' injunction and declaratory judgment action.
>
> (2) This Court is without jurisdiction to consider the appeals of Christmas Farm and Robin Dale.
>
> (3) The Clagetts, Robin Dale, and ERCO did not have standing to file their judicial review actions.
>
> (4) Two of the appeals filed by the Clagetts, as well as the Robin Dale and ERCO appeals, are moot.
>
> (5) Christmas Farm and MCQ Auto failed to exhaust their administrative remedies before filing their judicial review actions.
>
> (6) Some of the appellate contentions raised by the Clagetts, Christmas Farm and MCQ Auto are not preserved for appellate review.

Part 4. The Standard of Review

In a judicial review proceeding, an appellate court must "look 'through the circuit court's . . . decisions, although applying the same standards of review, and evaluate the decision of the agency.'" *People's Counsel for Baltimore County v. Loyola College in Maryland*, 406 Md. 54, 66 (2008) (quoting *People's Counsel for Baltimore County v. Surina*, 400 Md. 662, 681 (2007)). Some of the parties disagree as to what that standard of review should be.

The District Council asserts that it was acting legislatively and that we should apply the deferential standard of review normally afforded to legislative acts. Christmas Farm, MCQ Auto, Piscataway, Robin Dale, and ERCO, on the other hand, argue that the District Council was acting in a quasi-judicial capacity when it enacted the resolutions at

issue. In order for us to identify the appropriate standard of review, we must first characterize the nature of the District Council's action when it adopted the 2013 Resolutions.

As the Court of Appeals explained in *Mayor & Council of Rockville v. Rylyns Enterprises,* 372 Md. 514, 535 (2002) (citations omitted):

> The requirements which must be met for an act of zoning to qualify as proper comprehensive zoning are that the legislative act of zoning must: 1) cover a substantial area; 2) be the product of careful study and consideration; 3) control and direct the use of land and development according to present and planned future conditions, consistent with the public interest; and, 4) set forth and regulate all permitted land uses in all or substantially all of a given political subdivision, though it need not zone or rezone all of the land in the jurisdiction.

The 2013 sectional map amendments clearly satisfy these criteria. *See also County Council for Prince George's County v. Carl M. Freeman Assoc.,* 281 Md. 70, 75 (1977) (stating, but not holding, that "SMA decisions" constitute comprehensive zoning); *Montgomery County v. Woodward & Lothrop*, 280 Md. 686, 713 (1977) ("The [sectional map amendment] procedure is fundamentally legislative and no significant quasi-judicial function is involved."). The District Council also acted in a legislative capacity when it approved the area master plans. *Friends of Frederick v. Town of New Market*, 224 Md. App. 185, 204 (2015) ("[T]he Town's planning commission acted in a quasi-legislative role in preparing the [comprehensive] Plan and that the town council exercised its legislative authority when it approved the Plan.").

"'Comprehensive rezoning is a vital legislative function, and in making zoning decisions during the comprehensive rezoning process, the [zoning authority] is exercising

what has been described as its 'plenary' legislative power.'" *Anderson House, LLC v. Mayor & City Council of Rockville*, 402 Md. 689, 723 (2008) (quoting *Stump v. Grand Lodge of Ancient, Accepted and Free Masons*, 45 Md. App. 263, 269 (1980) (bracketed material added by *Anderson House*)). As a result, courts afford a strong presumption of validity and correctness to comprehensive zoning and rezoning legislation. *See, e.g., id.*; *Rylyns*, 372 Md. at 535. As the Court of Appeals has explained:

> Legislative action by a local government or agency is still subject to review by the courts, though the standard of review is extremely narrow. Judicial scrutiny of legislative action under a court's ordinary jurisdiction "is limited to assessing whether [a government body] was acting within its legal boundaries."

Talbot County v. Miles Point, 415 Md. 372, 393 (2010) (quoting *County Council of Prince George's County v. Offen*, 334 Md. 499, 507 (1994)); *see also South Easton Neighborhood Ass'n. v. Town of Easton,* 387 Md. 468, 487 (2005) (The appropriate test for assessing the validity of a local government legislative action is generally whether the "actions were made within the legal boundaries of the [local legislature's] statutory authority.").

Among the "legal boundaries" that can restrict the scope of a local legislative body's discretion is the constitutionally-based principle that a local legislature may not enact a law that exceeds the police power.[22] In other words, a "comprehensive zoning must bear 'a substantial relationship to the public health, comfort, order, safety, convenience, morals and general welfare[.]'" *Anderson House*, 402 Md. at 707–08 n. 17 (quoting

[22] As we will explain in Part 6, another legal boundary that may constrain a legislative body is a court order.

Norbeck Village Joint Venture v. Montgomery County Council, 254 Md. 59, 65 (1969)). However, comprehensive zoning and rezoning legislation are cloaked with a "strong presumption of correctness and strong evidence of error is required to overcome that presumption." *Id.* at 723 (internal quotation marks and ellipses omitted). This presumption can be rebutted by a clear and convincing showing that the decision to assign a zoning classification to a particular property was "arbitrary, capricious, discriminatory or illegal." *Id.* at 724. This brings us to one of the appellants' arguments.

Christmas Farm and MCQ Auto contend that we should review the District Council's enactment of the 2013 Resolutions as if the Council was acting in a quasi-judicial capacity and that, accordingly, the Council's decisions as to individual zoning classifications would have to have been supported by substantial evidence.

For support, Christmas Farm and MCQ Auto point to PGCC § 27-246, which they assert "establishes a procedure for the processing of SMAs that requires the decision of the District Council to be based on a record of evidence." These appellants assert that "the process is very much treated as quasi-judicial, particularly [as] related to requests for . . . intensification[s] of zoning[.]"

Section 27-646 and the other relevant provisions of the Zoning Ordinance do not get Christmas Farm and MCQ Auto where they need to be for us to conclude that the District Council was acting in a quasi-judicial capacity when it enacted the 2013 Resolutions. Nonetheless, our analysis will highlight a self-imposed restriction upon the District

Council's exercise of its legislative discretion when it considers sectional map amendments.

How we treat MCQ Auto and Christmas Farm's contentions is driven in large part by our interpretation of the relevant provisions of the Zoning Ordinance. In construing a statute, our purpose is to "ascertain and effectuate the real and actual intent of the Legislature." *Employees' Ret. Sys. of City of Baltimore v. Dorsey*, 430 Md. 100, 112 (2013). "Intent" means "the legislative purpose, [that is] the ends to be accomplished, or the evils to be remedied" by the statute in question. *Id.* We identify the legislative purpose by considering the language of the statute "within the context of the statutory scheme to which it belongs, considering the purpose, aim, or policy of the Legislature in enacting the statute." *State v. Johnson,* 415 Md. 413, 421–22 (2010). Judges read statutes as a whole "within the context of the statutory scheme to which it belongs, considering the purpose, aim, or policy of the Legislature in enacting the statute." *Id.* at 421–22.

The cornerstone of Christmas Farm's and MCQ Auto's argument is PGCC § 27-646, which sets out the procedure by which the District Council approves a general plan, an area master plan, or a functional master plan after the plan has been adopted by the Planning Board or the Maryland-National Park and Planning Commission, as the case may be. The better place to start, however, is with PGCC § 27-226, which sets out procedures for District Council action on an SMA. Section 27-226 has a number of moving parts; the ones relevant to our inquiry can be summarized as follows:

First, the District Council must hold a public hearing on each proposed SMA. If, as was the case in both 2009 and 2013, the SMA is considered in conjunction with a concurrent area master plan, the public hearing must be held jointly with the Planning Board. PGCC § 27-226(b)(1)(A).

Second, the District Council "may propose changes, revisions, or amendments to the map or text of [an SMA after it has been] transmitted to the Council by the Planning Board, at any time prior to final action." PGCC § 27-226(c)(1). In the context of § 27-226, the terms "changes" and "revisions" appear to be synonymous and to have their ordinary dictionary meanings. "Amendment," however, is a term of art in § 27-226. Amendments are "are changes or revisions to the map or text which did not receive substantial staff and Planning Board review prior to the transmittal." PGCC § 27-226(c)(2). The statute is very clear as to what constitutes "substantial staff and Planning Board review":

> A change or revision does not constitute an amendment to the transmitted Sectional Map Amendment if:
>
> (A) At any time before close of the Sectional Map Amendment record after the initial public hearing, it was proposed in a published Sectional Map Amendment plan (from staff or Planning Board) or requested by . . . the property owner or other party in Sectional Map Amendment proceedings, including without limitation a member of either the Planning Department staff, the Planning Board, or the District Council;
>
> (B) It was reviewed and commented on in writing by staff, before Sectional Map Amendment transmittal; and
>
> (C) It was reviewed by the Planning Board and then approved or disapproved in the Planning Board resolution transmitting the Sectional Map Amendment to the District Council.

PGCC § 27-226(c)(3) (emphasis added).

Third, if an amendment is proposed after the record has been transmitted to the District Council, then the Council must hold an additional public hearing prior to adopting an SMA. PGCC § 27-226(c)(4).[23] Prior to holding such a hearing, the District Council must refer the amendment to the Planning Board for its written comments, which must be submitted to the District Council before the public hearing. PGCC § 27-226(c)(7). Evidence received during the public hearing becomes part of the SMA record. PGCC § 27-226(d)(1).

Fourth, after the public hearing, the District Council may approve the proposed SMA "with or without amendments." PGCC § 26-226(f)(1).

With one change, PGCC § 27-646, the Zoning Ordinance spells out essentially the same process for the District Council's approval a plan that has been adopted by the Planning Board.

The difference is § 27-646(c)(1)(B), which provides that the District Council may (emphasis added):

> Approve the adopted plan with changes, revisions or amendments based upon the record and, if included, the Sectional Map Amendment with changes, revisions or amendments as defined by Section 27-226(c) (this approval shall not require readoption by the Planning Board)[.]

[23] There is an exception to the public hearing requirement. The District Council may act on an amendment without a public hearing if the amendment is "only to retain the existing zoning of property." PGCC § 27-226(c)(4).

Christmas Farm and MCQ AUTO argue that the phrase "on the record" refers to both the District Council's approval of an area master plan and the Council's approval of an SMA. We do not agree.

In our view, the phrase "on the record" refers only to amendments to a master plan after the plan has been transmitted to the District Council by the Planning Board. "On the record" does not refer to the approval of an SMA. In any event, however, the phrase would be meaningless surplusage in the context of an SMA approval. This is because the District Council is barred from adopting a proposed "amendment"—as the term is defined in § 27-226(c)—to an SMA until the amendment has been reviewed and commented upon by the Planning Board and its staff and the Council holds a public hearing. The Board's "comments, if any, shall be submitted to the Council" prior to the Council's action on the amendment. PGCC § 27-226(c)(7). Additionally, the testimony at the hearing on the amendment "shall be transcribed and made part of the Sectional Map Amendment record." PGCC § 27-226(d)(1). Thus, as long as the District Council complies with § 27-226, it is impossible for the Council to act on an amendment unless there is something in the SMA record regarding the amendment.

Section 27-226 does not prohibit the District Council from approving an amendment to an SMA even if the Planning Board recommends against it and the evidence at the public hearing does not support it, but the statute does prohibit the Council from approving an amendment to an SMA unless and until the Planning Board considers it, transmits its recommendation to the District Council, and a public hearing is held.

Section 27-226 serves an important public purpose because it makes it impossible for the District Council to approve a last-minute change to an SMA without the opportunity for a recommendation from the Planning Board as well as public notice and comment.

The restriction upon the District Council's exercise of its legislative discretion is procedural rather than substantive, and does not transform the legislative function of enacting a comprehensive rezoning ordinance into a quasi-judicial one. But it is a restriction nonetheless. The District Council cannot approve a proposal to change an SMA transmitted to it unless the proposal has been reviewed by the Planning Board and subjected to a public hearing. This restriction will be significant in the resolution of the appeal by Piscataway

Finally, Piscataway, Robin Dale, and ERCO advocate that the substantial evidence rule normally applied in quasi-judicial decisions should apply in this case. For support, they cite to LU § 22-407 which governs judicial review actions in Prince George's County.

Pursuant to LU § 22-407(e)(3)(v), a court has the authority to reverse or modify the decision of the District Council if the Council's decision has prejudiced the "substantial rights of the petitioner," or if the Council's decision is "unsupported by competent, material, and substantial evidence in view of the entire record as submitted." But LU § 22-407(e)(3) also permits a reviewing court to reverse or to remand a District Council decision if the decision was "in excess of the statutory authority or jurisdiction of the district council, or "made on unlawful procedure," or "affected by other error of law."

The variety of grounds upon which a court may grant relief to a party who challenges a zoning decision of the District Council simply reflects the fact that the District Council conducts quasi-judicial proceedings on, for example, special exceptions. *See, e.g., County Council of Prince George's County v. Billings*, 420 Md. 84, 97 (2011).

In the present cases, the appellees do not contend that the District Council lacked authority to enact sectional map amendments and area master plans. However, as we will see in Part 6, they do assert that the District Council's scope of action was limited by the Prince George's County Zoning Ordinance, the Council orders remanding the SMAs and the area master plans to the Planning Board, and Judge Green's order remanding the SMAs and the master plans to the District Council.

Part 5. The District Council's Procedural Contentions

A. Finality of Judgment
(The Clagetts)

The District Council asserts that the Clagetts' appeal in the injunction action is premature because there is no final judgment in that action. The District Council's argument is based on Md. Rule 15-505(a), which the District Council asserts requires the circuit court to conduct a hearing on a request for a preliminary injunction. Because the circuit court never held such a hearing, the District Council argues that there is no final judgment in this case. The District Council is not correct.

Rule 15-505(a) states (emphasis added):

> **Notice.** A court <u>may not issue</u> a preliminary injunction without notice to all parties and an opportunity for a full adversary hearing on the propriety of its issuance.

While the Rule prohibits a court from issuing a preliminary injunction without providing an opportunity for a hearing, it does not require that a hearing be held if the court declines to issue a preliminary injunction. In the present case, the circuit court concluded, correctly in our view, that the Clagetts' request for preliminary and permanent injunctive relief was moot. A court order disposing of a party's claim constitutes a final judgment when the order has the "effect of putting the parties out of court and denying them the means of further prosecuting the case[.]" Kevin Arthur, FINALITY OF JUDGMENTS AND OTHER APPELLATE TRIGGER ISSUES 5 (2d ed. 2014). An order dismissing a case in its entirety as moot satisfies these criteria.

The District Council makes a similar contention with regard to the declaratory judgment action. The Council argues that there was no final judgment because the circuit court did not issue a written declaration of the parties' rights. The District Council cites *Jackson v. Millstone*, 369 Md. 575, 594–95 (2002), which stated that "when a declaratory judgment action is brought, and the controversy is appropriate for resolution by declaratory judgment, the trial court must render a declaratory judgment." (quoting *Harford Mutual v. Woodfin*, 344 Md. 399, 414–15 (1997)). While we acknowledge this as the general rule, there is no need to enter a declaratory judgment when the court has dismissed the case for mootness. *See Stevenson v. Lanham*, 127 Md. App. 597, 613 (1999) ("[W]hen the facts underlying a controversy do not exist, either because they have not yet arisen or because they have lapsed with the passage of time, a ruling on a request

for declaratory relief based on those facts is merely an academic exercise and will not be entertained.”).

B. Appellate Jurisdiction
(Robin Dale and Christmas Farm)

The District Council asserts that this Court is without jurisdiction to consider two issues raised by Christmas Farm and Robin Dale. Both of these parties challenge the 2013 master plans as they apply to their properties. (Christmas Farm also challenges the Subregion 6 SMA.) The Council presents two arguments, one unique to Robin Dale and the other applicable to both.

First, the District Council points out that Robin Dale stated in its petition for judicial review that it was seeking review of CR-**81**-2013, that is, the resolution that adopted the sectional map amendment for Subregion 5. However, continues the District Council, Robin Dale’s contentions, both at the circuit court and appellate level, are solely directed to CR-**80**-2013, which adopted the Subregion 5 Master Plan. Therefore, asserts the District Council, we are without jurisdiction to consider Robin Dale’s appellate contentions. We do not agree. The typographical error in Robin Dale’s petition appears to have gone unnoticed at the circuit court level and certainly confused no one. It is the sort of technical irregularity that should not, and in this case, does not, deprive a party of its right to assert its legal rights. *See Francois v. Alberti Van & Storage Co.,* 285 Md. 663, 667 (1985); *Border v. Grooms,* 267 Md. 100, 105 (1972).

Second, and as to both Robin Dale and Christmas Farm, the District Council asserts that we are without jurisdiction to reconsider challenges to the Subregion 5 and 6 master

plans. The Council argues that its approval of the master plans in 2013 were not "final decisions" within the purview of LU §22-407.[24]

The District Council cites to *Nottingham Village, Inc. v. Baltimore County*, 266 Md. 339 (1972), and the text of LU § 22-407(a) for support. The Council asserts that *Nottingham* stands for the proposition that a master plan is not "final" because plans are subject to modification. *See* 266 Md. at 354 (A land use plan "is in no sense a final plan and is continually subject to modification in the light of actual land use development. It serves as a guide rather than a strait-jacket." (quotation marks and citation omitted)). Thus, the District Council contends, a master plan is not a "final decision," of the District Council and is not reviewable pursuant to LU § 22-407.

Nottingham does not assist the Council. The relevant issue in that case was not whether a comprehensive or master plan was subject to judicial challenge by an affected property owner, but whether a comprehensive zoning ordinance enacted by the Baltimore County Council complied with a local law requirement that such ordinances "be made in accordance with a comprehensive plan." *Id.* at 353. More importantly, *Nottingham* was

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[24] LU § 22-407 provides in pertinent part (emphasis added):

> (a)(1) Judicial review of <u>any final decision</u> 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 . . . .

LU § 22-407 was amended while these cases were pending, *see* Acts 2014, c. 45, § 1; Acts 2015, c. 365, § 1, but these amendments did not affect the emphasized language.

decided forty-five years ago and the District Council's arguments discount the significance of master plans in current land use law.

Comprehensive plans "'are advisory in nature and have no force of law absent statutes or local ordinances linking planning and zoning. Where the latter exists, however, they serve to elevate the status of comprehensive plans to the level of true regulatory devices.'" *HNS Dev. v. Baltimore County,* 425 Md. 436, 457–58 (2012) (quoting *Mayor & Council of Rockville v. Rylyns,* 372 Md. 514, 530 (2002)); *see also Friends of Frederick County v. Town of New Market*, 224 Md. App. 185, 199–201 (2015) (noting that, as a result of the Smart and Sustainable Growth Act of 2009, "with respect to significant aspects of local government land use regulation, comprehensive plans have indeed been 'elevate[d] . . . to the level of true regulatory devices.'" (quoting *HNS Dev.,* 425 Md. at 457–58)).

In Prince George's County, area master plans are "true regulatory devices" in one context very relevant to Robin Dale and Christmas Farm. Subdivision plats must "conform to the area master plan, including maps and text, unless the Planning Board finds that events have occurred to render the relevant plan recommendations no longer appropriate." *National Capital Park & Planning Commission v. Greater Baden–Aquasco Citizens Association*, 412 Md. 73, 102 (2009); *see also Coffey v. Maryland–National Capital Park & Planning Commission*, 293 Md. 24, 25 (1982). The District Council is certainly correct that master plans are subject to amendment. But this does not mean that

an area master plan in Prince George's County does not have real and concrete effects upon property owners.

The District Council also contends that LU § 22-407 only authorizes judicial review of zoning matters. Since a planning document is not a zoning matter, the District Council asserts that LU § 22-407 does not authorize review of planning decisions by the District Council. The District Council cites to *Appleton Regional Community Alliance v. County Comm'rs of Cecil County*, 404 Md. 92, 102 (2008) for support. But the statute at issue in *Appleton* was former Article 66B, § 4.08, which has since been recodified as LU § 4-401.[25] The question in *Appleton* was whether a decision to amend the county master water and sewer plan was a "zoning action" for purposes of § 4-401, 404 Md. at 98–99, a question which the Court of Appeals answered in the negative. *Id.* at 106.

LU § 4-401, however, does not apply to Prince George's County; rather, the applicable statute is LU § 22-407.[26] The former statute permits judicial review of a "zoning action"; the latter, judicial review of a "final decision." Accordingly, the issue

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[25] LU § 4-401 states in pertinent part (emphasis added):

> (a) Any of the following persons may file a request for judicial review of a decision of a board of appeals or a <u>zoning action of a legislative body</u> by the circuit court of the county: (1) a person aggrieved by the decision or action; (2) a taxpayer; or (3) an officer or unit of the local jurisdiction.

[26] LU § 22-407(a)(1) states in pertinent part (emphasis added):

> Judicial review of <u>any final decision of the district council</u>, 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. . . .

before us is not whether the decisions of the District Council were "zoning actions," but rather whether they were "final decisions." We hold that the decisions of the District Council to adopt the Subregion 5 and Subregion 6 master plans were "final decisions for the purposes of LU § 22-407(a). *See Evans v. Prince George' s County Council*, 185 Md. App. 251, 264 (2009) ("Because the phrase 'zoning action' does not appear within" what is now LU§ 22-407, cases such as *Appelton* "are not controlling with respect to the statutory construction of the pertinent statute governing review of 'final decisions' of the Prince George's County District Council.").

C. Standing
(The Clagetts, Robin Dale and ERCO)

The District Council challenges the standing of the Clagetts, Robin Dale, and ERCO to bring the current actions.

The District Council's argument rests on two premises: first, that the SMA constituted comprehensive rezoning, and, second, that because SMAs are comprehensive rezonings, the Clagetts were required to establish that they had taxpayer standing, as that concept has been explained in *State Center, LLC v. Lexington Charles Ltd. P'ship,* 438 Md. 451, 591 (2014). We agree with the Council's first premise, that is, when the District Council enacts a sectional map amendment, it engages in comprehensive rezoning. *County Council for Prince George's County v. Carl M. Freeman Assoc.*, 281 Md. 70, 75 (1977).

The Council's argument that taxpayer standing is required to challenge a comprehensive rezoning is based on *Anne Arundel County v. Bell*, 442 Md. 539 (2015).

In that case, the Court held that, in order to challenge the validity of a comprehensive zoning ordinance, a party needed to demonstrate that it had "taxpayer standing." *Id.* at 575. The Court explained:

> Under the taxpayer standing doctrine, as well as the property owner standing doctrine, the complainant must have a special interest in the subject-matter of the suit distinct from that of the general public. . . .
>
> A party satisfies the "special interest," also called "special damage," standing requirement by alleging both 1) an action by a municipal corporation or public official that is illegal or ultra vires, and 2) that the action may injuriously affect the taxpayer's property, meaning that it reasonably may result in a pecuniary loss to the taxpayer or an increase in taxes.

Id. at 575–76 (quoting, among other cases, *State Center, LLC,* 438 Md. at 540) (citations and quotation marks omitted).

We assume, but need not decide, that the teachings of *Bell* apply to judicial reviews of sectional map amendments in Prince George's County.[27] We conclude without

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[27] *Bell* arose out of Anne Arundel County, which is not in the Regional District. In *Carl M. Freeman,* the Court stated that the former Article 28 § 8-106 demonstrated "a legislative intent that resolutions adopting SMA's [are] appealable in Prince George's County." 281 Md. at 75. Section 8-106 has been recodified as LU § 22-407. When the petitions for judicial review in the appeals before us were filed, LU § 2-407(a)(1) stated (emphasis added):

> 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*.

hesitation that the Clagetts, Robin Dale and ERCO have demonstrated that CR-81-2013, which enacted the Subregion 5 SMA, was a legislative act that "reasonably may result in a pecuniary loss" to each of them because the 2013 SMA amended the zoning classifications for their properties from more intensive to less intensive uses. *See Bell,* 442 Md. at 580 ("Challenges to comprehensive zoning ordinances are brought often by parties whose properties were rezoned, usually to categories less desirable[.]").[28]

D. Mootness
(The Clagetts, Robin Dale, and ERCO)

(1) The Clagetts

The District Council contends that the Clagetts' appeals in No. 1016 (the injunction action) and No. 1017 (the declaratory judgment action), and No. 1019 (the judicial review action) are moot. The test for mootness is "'whether, when it is before the court, a case presents a controversy between the parties for which, by way of resolution, the court can

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In 2015, § 22-407(a)(1) was amended to read as follows (emphasis added):

> (a)(1) Judicial review of any final decision of the district council, including . . . 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.

[28] It is true that the more intensive classifications were granted in the 2009 Resolutions, which were later declared to be void. But the Clagetts, Robin Dale and ERCO assert that the District Council's 2009 decisions should nonetheless apply to their properties.

fashion an effective remedy[.]'" *Hamot v. Telos Corp.*, 185 Md. App. 352, 360 (2009) (quoting *Adkins v. State*, 324 Md. 641, 646 (1991)). The District Council notes that an injunction is "a preventative and protective remedy, aimed at future acts, and is not intended to redress past wrongs." (quoting *Eastside Vend Distributors v. Pepsi Bottling Group,* 396 Md. 219, 240 (2006) (emphasis in original)). The District Council contends that, because CR-80-2013 and CR-81-2013 have already been enacted, an injunction cannot offer the Clagetts an effective remedy. The District Council is correct.

We reach the same conclusion as to the declaratory judgment action, but for a different reason. The circuit court concluded that the declaratory judgment action was moot because the court had affirmed the District Council's rezoning of the Clagetts' property. As we will discuss later, we will reverse the District Council's decision and remand the SMAs and the area master plans to it. Because the 2013 Resolutions are no longer of any force or effect, inasmuch as they relate to the Clagetts and their properties, there is no basis for a court to enter declaratory relief regarding them.

The District Council next argues that No. 1019 (the judicial review action) is moot because, even if the Clagetts obtained their requested relief—that the 2013 Resolutions be reversed insofar as they pertain to the Clagetts' property—their property would revert to its zoning classifications in place before the District Council enacted the 2009 Resolutions. The Council asserts that, because the *Accokeek* Judgment voided the 2009 Resolutions and the time to appeal that judgment has long since past, the District Council contends that this Court cannot fashion an effective remedy for the Clagetts' claims.

The District Council oversimplifies the contentions that lie at the heart of these appeals and the remedies available to the appellants. The Clagetts are not simply arguing that the District Council's adoption of the 2013 Resolutions was error and thus should be vacated. They also contend that the District Council failed to adhere to the circuit court's instructions in the *Accokeek* Judgment. If the appellants are correct, there are effective remedies that this Court can grant: we can reverse the decisions of the Council and remand the cases to the District Council for proceedings consistent with this opinion. Thus, the appeal of the judgment in the judicial review proceeding is not moot.

(2) Robin Dale and ERCO

In the 2009 version of the Subregion 5 Master Plan, ERCO's and Robin Dale's properties were designated in the Development Tier. In the 2013 Master Plan, Robin Dale's property was designated in the Rural Tier, as was a portion of ERCO's. Both parties challenge these master plan tier designations. The District Council asserts that these contentions are moot for two reasons.

First, it argues that the tier classifications contained in the 2013 Subregion 5 Master Plan reflect an independent mapping process carried out by the Commission in response to the General Assembly's passage of the Sustainable Growth and Agricultural Act of 2012 (the "Sustainable Growth Act"), which in part modified Md. Code Ann. (1987, 2014 Repl.) § 9-206 of the Environment Article ("EA").[29] The Sustainable Growth Act

[29]The relevant portions of EA § 9-206 state:

(f) On or after December 31, 2012, a local jurisdiction:

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(1) May not authorize a residential major subdivision served by on-site sewage disposal systems, community sewerage systems, or shared systems until the local jurisdiction adopts the growth tiers in accordance with § 5-104 of the Land Use Article; or

(2) If the local jurisdiction has not adopted the growth tiers in accordance with § 5-104 of the Land Use Article, may authorize:

(i) A residential minor subdivision served by on-site sewage disposal systems if the residential subdivision otherwise meets the requirements of this title; or

(ii) A major or minor subdivision served by public sewer in a Tier I area.

(g)(1) Except as provided in subsection (f)(2) of this section and subject to subsection (i) of this section, a local jurisdiction may authorize a residential subdivision plat only if:

(i) All lots proposed in an area designated for Tier I growth will be served by public sewer;

(ii) All lots proposed in an area designated for Tier II growth:

1. Will be served by public sewer; or

2. If the subdivision is a minor subdivision, may be served by on-site sewage disposal systems;

(iii) Except as provided in subsection (h) of this section, the subdivision is a minor subdivision served by individual on-site sewage disposal systems in a Tier III or Tier IV area; or

(iv) The subdivision is a major subdivision served by on-site sewage disposal systems, a community system, or a shared facility located in a Tier III area and has been recommended by the local planning board in accordance with § 5-104 of the Land Use Article.

(2) Any delay in the approval of a residential subdivision plat under this subsection may not be construed as applying to any deadline for approving or disapproving a subdivision plat under Division II or § 5-201 of the Land Use Article or a local ordinance.

(h)(1) The limitation of minor subdivisions in subsection (g)(1)(iii) of this section does not apply to a local jurisdiction, if the subdivision and zoning requirements in their cumulative Tier IV areas result in an actual overall yield of not more than one dwelling unit per 20 acres that has been verified by the Department of Planning.

requires local jurisdictions to adopt growth tier designations in accordance with LU § 5-104 in order for that jurisdiction to have the authority to approve certain residential subdivision applications. This may well be the case but, nonetheless, ERCO and Robin Dale are challenging tier classifications in the 2013 Master Plan as they apply to their properties. That the Council was acting in response to a state mandate does not mean that we are powerless to correct error on the Council's part.

Second, the District Council directs us to the Council's adoption in 2014 of "Plan Prince George's 2035," the County's current general plan. The Council notes the general plan also maps growth tiers and that both Robin Dale's and ERCO's properties are placed in the rural tier.

There is no doubt that a change in the law can moot land use appeals. *See, e.g.*, *Armstrong v. Mayor & City Council of Baltimore*, 409 Md. 648, 670 (2009) ("[B]ecause the present litigation was ongoing at the time [the zoning ordinance was amended], the substantive zoning textual amendment applies retrospectively to this case, with the result that Cresmont does not need [the ordinance at issue in the appeal] to sanctify the construction of the parking lot[.]"). However, the record is inadequate for us to decide whether the issue of ERCO's and Robin Dale's tier designations is moot.

> (2) A local jurisdiction may request, in writing, a verification of the actual overall yield from the Department of Planning.
>
> (3) The Department of Planning shall verify the actual overall yield after consultation with the Maryland Sustainable Growth Commission, established in § 5-702 of the State Finance and Procurement Article.

The District Council supports its contention by citing to the text of CR-26-2014 (the legislation that adopted Plan 2035) and to a PowerPoint presentation from one of the District Council's work sessions, which indicates that the Planning Board considered ERCO's and Robin Dale's requests to be removed from the Rural Tier, but decided to not remove them from the Rural Tier. Neither the resolution nor the PowerPoint presentation, however, included any information concerning the details of the District Council's reaffirmation of the tier designations from CR-80-2013 in CR-26-2014. In other words, it is not clear whether the District Council reconsidered and readopted a new tier map as part of its adoption of CR-26-2014, or whether it merely adopted by reference the tier designations included in CR-80-2013 with modifications. If the District Council did the latter, then our decision concerning ERCO's and Robin Dale's tier designations pursuant to CR-80-2013 might affect their tier designations pursuant to CR-26-2014. Additionally, it is not altogether clear from the very large scale maps that are included in the extract and the appendix that the properties are, in fact, in the rural tier. Thus, we are unable to conclude with confidence that ERCO's and Robin Dale's contentions are moot.

The County is free to renew its mootness contentions as to the tier classifications for Robin Dale and ERCO on remand.

E. Exhaustion of Administrative Remedies
(Christmas Farm and MCQ Auto)

As we have explained in Part 5.B of this opinion, LU § 22-407(a)[30] explicitly permits aggrieved parties to seek judicial review of final decisions of the District Council, including decisions to enact sectional map amendments. The statute authorizes the reviewing court to reverse a decision of the District Council if the court concludes, among other grounds, that the Council's decision was "made on unlawful procedure [or] affected by other error of law[.]" LU § 22-407(e)(3)((iii)–(iv).

The District Council contends that the judicial review otherwise permitted by LU § 22-407 is not available to Christmas Farm and MCQ Auto because they failed to exhaust available administrative remedies before filing their judicial review actions. The Council's arguments are not persuasive. We will provide a very brief summary of the relevant law before focusing on the Council's contentions.

The doctrine of administrative exhaustion is an aspect of "the relationship between legislatively created administrative remedies and alternative statutory, common law or equitable judicial remedies." *Prince George's County v. Ray's Used Cars*, 398 Md. 632, 644 (2007). Generally, there are three categories of relationships between administrative and judicial remedies: the administrative remedy may be "exclusive," "primary," or

[30] LU § 22-407 provides in pertinent part:

> (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 . . . .

"concurrent." *Falls Road Community Ass'n, Inc. v. Baltimore County*, 437 Md. 115, 135 (2014) (citing *Zappone v. Liberty Life Ins. Co.*, 349 Md. 45, 60-61 (1998)).

An "exclusive" administrative remedy is one that the legislature intends to be the sole avenue of relief—"there simply is no alternative cause of action[.]" *Id*. (internal quotation marks and citation omitted). A "primary" administrative remedy is one where "a claimant must invoke and exhaust the administrative remedy, and seek judicial review of an adverse administrative decision, before a court can properly adjudicate the merits of the alternative judicial remedy." *Id*. (internal quotation marks and citation omitted). Finally, a "concurrent" administrative remedy is one where "the plaintiff at his or her option may pursue the judicial remedy without the necessity of invoking and exhausting the administrative remedy." *Id.* at 135–36 (internal quotation marks and citation omitted).

When either an exclusive or primary administrative remedy is available to a complaining party, that remedy must be exhausted before a party can seek relief in the courts. *Id.* at 136 (citing *Renaissance Centro Columbia, LLC v. Broida*, 421 Md. 474, 483–85 (2011)). However, when a remedy is concurrent with a judicially available remedy, "the plaintiff at his or her option may pursue the judicial remedy without the necessity of invoking and exhausting the administrative remedy." *Ray's Used Cars*, 398 Md. at 644-45. Courts presume that the administrative remedies are primary. *United Insurance Co. v. Maryland Insurance Administration,* 450 Md. 1, 15 (2016) (citing *Zappone,* 349 Md. at 63).

As for Christmas Farm, the District Council cites to PGCC § 27-157(a),[31] which permits property owners to request that the Council change a zoning classification upon a showing that "[t]here has been a substantial change in the character of the neighborhood" since the most recent comprehensive rezoning or that a mistake was made in either the "the original zoning for property" or the current SMA. Section 27-157 is a codification of Maryland's long-established "change-mistake rule." *See Clayman v. Prince George's County,* 266 Md. 409, 417 (1972).

As to MCQ Auto, the District Council asserts that it should have filed (i) a map amendment application pursuant to PGCC § 27-157(a), or (ii) a revisory petition pursuant to PGCC § 27-228. The latter remedy appears to be unique to Prince George's County, and requires some explanation.

Section 27-228 permits aggrieved parties to file "revisory petitions" with the District Council within 30 days of the District Council's final action on an SMA. The District

[31] PGCC § 27-157 states in pertinent part:

> Map Amendment approval.
> (a) Change/Mistake rule.
> (1) No application shall be granted without the applicant proving that either:
> (A) There has been a substantial change in the character of the neighborhood; or
> (B) Either:
> (i) There was a mistake in the original zoning for property which has never been the subject of an adopted Sectional Map Amendment; or
> (ii) There was a mistake in the current Sectional Map Amendment.

Council can grant such a request if the applicant demonstrates either mistake or fraud on the Council's part. The statute defines "mistake" as:

> a factual error which could not have been corrected by the property owner, was contained in the record of the Sectional Map Amendment proceedings which may have caused an erroneous description of a specific property, and which is sufficient to justify making a different decision on the Sectional Map Amendment[.]

Property description and mapping errors are the sorts of "mistakes" that can warrant piecemeal rezoning under Maryland's change/mistake doctrine. *See Mayor & Council of Rockville v. Rylyns Enterprises, Inc*., 372 Md. 514, 538–39 (2002).[32] Section 27-228 is silent as to the meaning of "fraud." In the absence of a statutory definition, we will turn to Black's Law Dictionary, which provides two relevant definitions of fraud:

> (1) a knowing misrepresentation . . .or concealment of a material fact made to induce another to act or his or her detriment;" [or]
>
> (2) a reckless misrepresentation made without justified belief in its truth to induce another person to act.

BLACK'S LAW DICTIONARY 775 (10th ed. 2014).

As the Court explained in *United Insurance*:

> In determining whether the presumption that an administrative remedy is primary prevails, we consider the following four factors: 1) the comprehensiveness of the

[32] As Judge Harrell explained for the Court in *Rylyns*:

> The "mistake" option of the [change/mistake] rule requires a showing that the underlying assumptions or premises relied upon by the legislative body during the immediately preceding original or comprehensive rezoning were incorrect. In other words, there must be a showing of a mistake of fact. Mistake in this context does not refer to a mistake in judgment.

372 Md. at 538–39.

> administrative remedy in addressing an aggrieved party's claim; 2) the administrative agency's view of its jurisdiction over the matter; 3) the claim's dependence upon the statutory scheme; and 4) the claim's dependence upon the administrative agency's expertise. *Zappone*, 349 Md. at 64–66 (hereinafter "the *Zappone* factors")[.]

450 Md. at 15.

When we apply the *Zappone* factors to §§ 27-155 and 27-228, we reach the following conclusions:

(1) The administrative remedies are not comprehensive because neither statute would permit the District Council to change the zoning classifications of the Christmas Farm or MCQ Auto properties based on the contentions that they presented both to the circuit court and this court;

(2) We acknowledge that the District Council asserts that it has jurisdiction but because its assertion is not supported by any analysis as to how either statute is an avenue for relief based upon the contentions actually made by the appellants, we give very little weight to this factor;

(3) MCQ Auto's and Christmas Farm's appellate contentions are only partially dependent upon the provisions the Zoning Ordinance; and

(4) Resolution of the relevant appellant contentions turn on purely legal considerations unrelated to the Council's administrative expertise. We explain.

As we will set out later in more detail, at the core of Christmas Farm's and MCQ Auto's appellate arguments are contentions that the 2013 Resolutions were invalid as to them for legal reasons, including that the District Council violated the terms of the

Accokeek Judgment, that the District Council exceeded the scope of its statutory authority in enacting the 2013 Resolutions, and that the changes to the zoning classifications to their properties between the 2009 and 2013 Resolutions were premised on an unlawful "change of mind." These contentions of legal and procedural error are not the basis for rezoning under Maryland's change/mistake rule. *See, e.g., Rylyns*, 372 Md. at 538–39; *People's Counsel for Baltimore County v. Beachwood I Ltd. P'ship*, 107 Md. App. 627, 645 (1995) ("A conclusion based on a factual predicate that is incomplete or inaccurate may be deemed, in zoning law, a mistake or error; an allegedly aberrant conclusion based on full and accurate information, by contrast, is simply a case of bad judgment, which is immunized from second-guessing.").

Similarly, PGCC § 27-228 authorizes the District Council to grant a revisory petition only upon proof of a mapping or property description mistake or fraud on the part of the District Council. Neither Christmas Farm nor MCQ Auto assert that the District Council made such an error or acted fraudulently.

We conclude that neither Christmas Farm nor MCQ Auto was required to file applications for relief under either of the administrative remedies contained in the Zoning Ordinance before filing their petitions for judicial review.[33]

[33] Because Christmas Farm and MCQ Auto filed timely petitions for judicial review, their cases are distinguishable from the declaratory judgment actions that were at issue in *Prince George's County v. Ray's Used Cars*, 398 Md. 632, 647 (2007), and *Evans v. Price George's County,* 185 Md. App. 251, 262 (2009). In these cases, the parties challenged text amendments to the County's Zoning Ordinance. LU § 22-407(a) sets out the explicit statutory remedy established by the General Assembly to allow aggrieved parties to challenge sectional map amendments in Prince George's County.

F. Preservation

Finally, the District Council alleges that several of the issues raised by the Clagetts, Christmas Farm, and MCQ Auto are not preserved for our review pursuant to Rule 8-131(a). The Council's argument as to the Clagetts is based on the fact that, in the proceedings before the circuit court, the Clagetts' arguments varied between their injunction, declaratory judgment, and judicial review actions. The council is correct but, as we have explained, the injunction and declaratory judgment actions are moot. The contentions of the Clagetts that we will consider were raised in their judicial review action.

As regards MCQ Auto and Christmas Farm, the District Council argues that they were required to raise their appellate contentions to the District Council in order to preserve them for our review. But this principle is applicable to actions arising out of quasi-judicial administrative proceedings, *see, e.g., DLLR v. Boardley*, 164 Md. App. 404, 415 (2005)("[A]n appellate court will review an adjudicatory agency decision solely on the grounds relied upon by the agency") (quoting *Dept. of Health v. Campbell*, 364 Md. 108, 123 (2001)). The rule for preserving issues for judicial review in contested cases before an administrative agency does not apply when the litigants challenge a legislative decision or quasi-legislative decision by an agency or local legislature. *See, e.g.*, *Delmarva Power & Light Co. v. Pub. Serv. Comm'n of Maryland*, 370 Md. 1, 32 (2002) (The principle that an argument is waived if not presented to an administrative agency "has no application to actions . . . [concerning] the validity of regulations. The

cases in which a waiver has been found based on non-preservation have been in the nature of contested cases, as to which judicial review, either under statutory authority or by way of mandamus, is limited.”).

Part 6. The *Accokeek* Judgment

The appellants present a variety of arguments as to why the provisions of the 2013 SMAs or area master plans, or both, do not apply to their properties. We will eventually address them all but there is a common theme that it dispositive of several of the appeals before us. Although they articulate their contentions differently, the Clagetts, Christmas Farm, MCQ Auto, and ERCO assert that the District Council failed to adhere to the terms of the *Accokeek* Judgment in ways that were fundamentally prejudicial to them.[34]

The District Council disagrees. Its arguments are quite complex but boil down to the following essential points:

(1) Judge Green interpreted the First Remand Order as directing the District Council to notify the relevant property owners of the requirement to file ethics affidavits and then to transmit those affidavits to the circuit court. According to the District Council, Judge

[34] We recognize that Robin Dale and Piscataway did not raise these contentions to the circuit court or this Court. Ordinarily, we do not resolve appeals on grounds that were not raised to or decided by the trial court, Md. Rule 8-131(a), and were not briefed in this court. Md. Rule 8-504(6); *HNS Development, LLC v. People's Counsel*, 425 Md. 436, 459-60 (2012).

In these cases, however, there is another consideration. In light of the history of this dispute, we believe that it is particularly important to treat similarly-situated parties in the same way. Moreover, there is no prejudice to the District Council because it fully briefed these issues in response to contentions made by other parties.

Green was wrong. The District Council asserts that, in the First Remand Order, Judge Hotten did not remand the cases to the District Council so that applicants could file post hoc ethics affidavits but rather to give the Council an opportunity to check its records to make sure that all affidavits were included in the record transmitted to the circuit court.[35]

(2) Because the State Ethics Law requires the filing of ethics affidavits by those seeking intensified zoning classification, and no affidavits were filed, the 2009 Resolutions were nullities. Therefore, according to the District Council, although the result reached by Judge Green—reversal of the 2009 Resolutions—was correct, his reasoning was flawed.

(3) The District Council parses the language of the *Accokeek* Judgment. The Council concludes that the phrase: "this court has no choice but to return the matter to the District Council for review of the recommendations of the Maryland-National Park and Planning Commission" represented the court's holding. In contrast, the statement that "[t]he District Council should expediently review this matter and give great weight to certain properties that have received approval in other resolutions and actions of the Council based upon the 2009 resolution[s] and Master Plan[s and to] change these already

[35] As we have discussed, *see* note 14, *supra*, the First Remand Order neither directed the District Council to notify affected property owners and to accept untimely affidavits nor prohibited the District Council from doing so. The District Council's characterization of Judge Hotten's reasoning is entirely speculative.

approved properties would be a grave injustice" were "merely suggestions'" and constituted "dicta" that were not binding upon the District Council.[36]

(4) The District Council asserts that its orders remanding the SMAs and master plans to the Planning Board were "not limited solely to the collection of public ethics affidavits." Therefore, the Council could appropriately consider modifications to the proposed SMAs and master plans. The Council contends that this is especially true because its membership changed as a result of the 2010 general election.[37]

(5) The Council notes that it remanded the SMAs to the Planning Board pursuant to PGCC § 27-227(a). The District Council reads that statute as permitting it "to engage in an abbreviated process to correct procedural defects." Furthermore, even though neither it nor the Planning Board held public hearings, its approvals of the 2013 SMAs and area master plans were consistent with the law.

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[36] We do not agree with the distinction that the District Council seeks to draw. Dictum is a "statement in a judicial opinion that could have been deleted without seriously impairing the analytical foundations of the holding[.]" *Sarnoff v. American Home Products Corp.,* 798 F.2d 1075, 1084 (7th Cir. 1986). That the District Council is to "give great weight to certain properties that have received approval in other resolutions and actions of the Council based upon the 2009 resolution[s] and Master Plan[s]" is not part of the circuit court's analysis. It is, rather, a portion of the court's instructions to the District Council. Whether the phrase was intended as a mandate or a suggestion is significant in MCQ Auto's appeal, although, as we will explain, we will resolve that appeal on other grounds.

[37] Specifically, the members of the District Council in 2009 were: Marilynn M. Bland, Thomas E. Dernoga, William A. Campos, Eric C. Olson, Andrea C. Harrison, Ingrid M. Turner, Samuel H. Dean, Camille A. Exum, and Tony Knotts. After the 2010 election, the District Council Members were: Ms. Harrison, Mr. Olson, Mary A. Lehman, Mr. Campos, Ms. Turner, Leslie E. Johnson, Karen R. Toles, Obie Patterson, and James R. Franklin.

(6) Finally, the District Council emphasizes that, in enacting the SMAs and approving the area master plans, it was acting in a legislative capacity and its actions are therefore entitled to the deference traditionally afforded to legislative acts.

The District Council makes some valid points but, ultimately, its contentions are not persuasive. Judge Green's directions to the District Council contained in the *Accokeek* Judgment were clear. It is equally clear that the District Council did not adhere to them. The Council's argument that its own orders remanding the SMAs and area master plans to the Planning Board were "not limited solely to the collection of public ethics affidavits" is technically correct but beside the point. Even if the District Council had the authority to modify the terms of the *Accokeek* Judgment by unilateral fiat—and it did not—nothing in its instructions to the Planning Board authorized the kinds of modifications to the record that occurred in this case.

In the first part of our analysis, we will elaborate on the reasoning summarized in the previous paragraph. We will then explain why we conclude that the appropriate remedy for most of the appellants is a remand to the District Council for it to do what it should have done before. Because the appellants seek not a remand but restoration of the plan and zoning classifications for their properties from the 2009 SMA and master plan process, we will address their other contentions in Part 7.

A. Compliance With Court Orders

We begin our analysis with an inarguable premise. In a society that honors the rule of law, judicial directives must be obeyed. *See, e.g., W.R. Grace & Co. v. Local 759, Int'l*

Union of United Rubber Workers, 461 U.S. 757, 766 (1983) ("It is beyond question that obedience to judicial orders is an important public policy."); *Attorney Grievance Commission v. Garland*, 345 Md. 383, 398 (Md. 1997) ("'[A]ll orders and judgments of courts must be complied with promptly. If a person to whom a court directs an order believes that the order is incorrect, the remedy is to appeal, but, absent a stay, he must comply promptly with the order pending appeal.'" (quoting *Maness v. Meyers*, 419 U.S. 449, 458 (1975)). This is particularly true of orders that constitute final judgments, as did the *Accokeek* Judgment. *Furda v. State*, 194 Md. App. 1, 33 (2010), *aff'd,* 421 Md. 332 (2011) ("If the judgment of the Court is erroneous, the remedy is by appeal, and until reversed on appeal, the judgment is binding on the parties to the suit." (quoting *Roessner v. Mitchell*, 122 Md. 460, 466 (1914)). Even if an order is based upon erroneous findings of facts or legal error, "it must be obeyed until such time as it is stricken out on application, or reversed on appeal[.]" *Furda,* 194 Md. App. at 34 (quoting *Donner v. Calvert Distillers Corp*., 196 Md. 475, 489 (1950)). Accordingly, the only remedies available to a party who believes that a judgment is impractical, ill-considered, or just plain wrong, are to seek modification of the judgment in the proceeding in which it was entered, or to appeal. This is true even if, as the District Council suggests, the order raises issues of constitutional dimensions. *Walker v. City of Birmingham*, 388 U.S. 307, 320–21 (1967).[38]

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[38] For these reasons, and as will explain in more detail in Part 7 A., the *Accokeek* Judgment is immune to the collateral attacks mounted against it by the Clagetts.

The District Council was a party to the *Accokeek* action so it is bound by the judgment entered in that case. Actions taken by the District Council that are in violation of the *Accokeek* Judgment are illegal and beyond the scope of the Council's lawful authority. *See Board of Physician Quality Assurance v. Levitsky*, 353 Md. 188, 200 (1999) (Once a court ordered the Board of Physician Quality Assurance to issue a license and the Board's request for a stay pending appeal was denied, "the Board had no choice but to act in conformance with the circuit court's order; any further withholding of Dr. Levitsky's license would have been patently unlawful[.]").

B. The Proper Construction of the *Accokeek* Judgment

In deciding what the *Accokeek* Judgment required the District Council to do, our focus is on plain language as well as context. The Court of Appeals set out the appropriate analytical approach in *Taylor v. Mandel*:

> [C]ourt orders are construed in the same manner as other written documents and contracts, and if the language of the order is clear and unambiguous, the court will give effect to its plain, ordinary, and usual meaning, taking into account the context in which it is used. Ambiguity exists, however, if when read by a reasonably prudent person, it is susceptible of more than one meaning. We have stated that language can be regarded as ambiguous in two different respects: 1) it may be intrinsically unclear . . .; or 2) its intrinsic meaning may be fairly clear, but its application to a particular object or circumstance may be uncertain. Thus, a term which is unambiguous in one context may be ambiguous in another. If ambiguous, the court must discern its meaning by looking at the circumstances surrounding the order to shed light on the ambiguity, including the motion in response to which it was made.

402 Md. 109, 125–26 (2007) (citations and quotation marks omitted; ellipsis in original).

We have set out Judge Green's memorandum opinion and order verbatim earlier in this opinion. To summarize his reasoning, Judge Green reiterated his conclusions that: (1)

GP § 15-831 applies to sectional map amendment proceedings and requires property owners seeking an intensification of zoning or plan classification to file ethics affidavits; (2) he was "comfortable" with the First Remand Order, which he interpreted as providing for "the late filing of affidavits during a limited remand period"; and (3) this approach "appeared to be a reasonable and appropriate remedy to an error in what is otherwise a clean record of the District Council." Judge Green then discussed the procedural history of the *Accokeek* litigation. He noted that he had entered an order on September 7, 2012, affirming the 2009 Resolutions as to properties whose owners had filed ethics affidavits and reversing the resolutions as to those that did not. However, allegations contained in subsequent motions to intervene and for reconsideration convinced him that "only certain parties were informed by the District Council of the remand and the need to file late affidavits." Judge Green concluded that the District Council's actions to notify some, but not all, of the affected property owners placed the court in "difficult and untenable circumstances." He stated (emphasis added):

> The court has considered and is troubled by the time, expense and toil that a myriad of applicants, citizens, public servants and professionals have taken to construct the master plan. . . . Judge Hotten provided the District Council with a remedy to this situation, and that remedy was administered in a disjointed and uneven manner. Fearing a similar result in the future, the court cannot allow this matter to bounce indefinitely between the court and Council in an attempt to secure a piecemeal, nunc pro tunc remedy. Therefore, with the exception of certain unobjectionable pieces of property, this court has no choice <u>but to return the matter to the District Council for review of the recommendations of the Maryland-National Capital Park and Planning Commission</u>.
>
> The District Council should expediently review this matter and give great weight to certain properties that have received approval in other resolutions and actions of

> the Council based upon the 2009 resolution and Master Plan. To change these already approved properties would be a grave injustice.
>
> . . . .
>
> [It is] ORDERED, that the Order of Court . . . signed on September 12, 2012 is hereby STRICKEN, it is further
>
> [It is] ORDERED, the Court hereby declares VOID the adoption of the [2009 Resolutions] for failure to meet the affidavit requirement pursuant to [GP] § 15-831[.] Additionally,
>
> [It is] ORDERED, that this matter is REVERSED with the exception of the following properties which are specifically excluded from this order . . . .

We now turn to deciding what this order required the District Council to do. We will begin with the parts of the order that are not in dispute.

We conclude that, in the *Accokeek* Judgment, "void" means "of no legal effect." BLACK'S LAW DICTIONARY 1805 (10th ed. 2014). "Reverse" means "to overturn (a judgment or ruling), esp. on appeal." *Id.* at 1513. The memorandum opinion speaks of "returning" the "matter" to the District Council "for review of the recommendations of the Maryland National Capital Park and Planning Commission." We equate the term "return" with "remand." *See* BLACK'S at 1484 ("Remand" means "to send (a case or claim) back to the court or tribunal from which it came for some further action[.]"). "Matter" is a collective reference to the Subregion 5 and 6 SMAs and area master plans that had been approved by the 2009 Resolutions. There appears to be no significant dispute among the parties as to the interpretation of these terms.

The parties disagree, however, on the meaning of the phrase "for review of the recommendations of the Maryland-National Capital Park and Planning Commission." In

the District Council's view, this language left room for the Planning Board to modify its recommendations to the District Council and for the District Council to enact SMAs and area master plans reflecting those modifications. The Clagetts, Christmas Farm, MCQ Auto, and ERCO, however, assert that the language in question is a direction to the District Council to act on the SMAs and area master plans based upon the same record that was before the Council when it enacted the 2009 Resolutions. (For the reasons set out in footnote 35, we are attributing the same argument to Robin Dale and Piscataway).

In our view, the more reasonable interpretation of the phrase "for review of the recommendations of the Maryland-National Capital Park and Planning Commission," is that it refers to the then-existing recommendations of the Commission. The language of the order itself supports such an interpretation—had the circuit court intended to permit the District Council to remand the SMAs and the area master plans to the Planning Board so that the Board and its staff could formulate new recommendations, the court could have, and presumably would have, said so.

We can also look to "the circumstances surrounding the order to shed light" on the meaning of its terms. *Taylor*, 402 Md. at 126. As we will explain, those circumstances fully supports our interpretation. The relevant surrounding circumstances consist of the procedural history of the *Accokeek* litigation, as well as the District Council's own initial interpretation of the order. Finally, in the procedural context before it, the circuit court did not have the authority to remand the case to the District Council so that it could take additional evidence.

The Procedural History

On July 26, 2010, Judge Hotten issued the First Remand Order. In the court's opinion and order remanding the case to the District Council, she noted that "The Court found[] no other error in the record relative to the process of approving the Master Plans and Sectional Map Amendments for Subregions 5 and 6, save for the apparent failure to comply with the affidavit requirements[.]" On September 7, 2012, Judge Green affirmed "the [2009 Resolutions] in [their] entirety, to the extent that Council adoption of [the resolutions] did not require the filing of a [GP § 5-835] affidavit that is, those properties that did not request zoning intensification or were not reclassified to a more intense zoning district.

As part of the September 7 order, the court also affirmed the resolutions as to 26 properties, including the Clagetts, Robin Dale, and ERCO, whose owners had sought intensified zoning or area master plan classifications and whose owners, or their agents, had filed ethics affidavits stating that no contributions had been made to members of the District Council by them or on their behalf. With the exception of one property, all of these affidavits were filed after the District Council enacted the 2009 Resolutions.[39] The court reversed the reclassifications of properties, including Christmas Farm, whose owners had not filed affidavits. There is no indication in the court's analysis that it perceived any inadequacy in the Planning Board's recommendations or any impropriety

[39] The exception is Zachair, Ltd., whose applications were the subject of the *O'Neal* litigation.

in the SMA/area master plan process other than the failure of property owners to file timely affidavits.[40]

Of course, the circuit court struck its September 7th order less than two months later. The memorandum opinion and order, as well as the hearing transcript, makes it clear that Judge Green did not strike the earlier judgment because he thought it was wrongly decided, much less that he detected a previously-unrecognized flaw in the record before the District Council when it voted on the 2009 Resolutions. Judge Green struck the earlier judgment because he concluded that the District Council's staff had failed to notify affected property owners of the affidavit requirement in an even-handed and transparent fashion. To be sure, there might have been other ways for the circuit court to have handled the problems created by the disconnect between the way that the court interpreted the First Remand Order and what the District Council staff did in response to that order. However, there is nothing in the circuit court's analysis that suggests that the circuit court perceived any other invalidity in the 2009 SMA and area master plan processes. In fact, the court noted that permitting untimely filing of affidavits was an appropriate remedy "in what is otherwise a clean record of the District Council."

[40] The court also reversed the reclassification of a property whose owners had made contributions to the campaign committees of two council members. The property owners were George G. Troutman, Jr. and Dorothy B. Troutman. The circuit court noted that one of the recipients, Council Member Andrea Harrison, did not vote on the relevant resolution and the other, Thomas Dernoga, had voted against it. Nonetheless, the court concluded that: "[d]espite his opposition vote, Council Member Dernoga was prohibited from voting under §[GP] § 15-831. Therefore, this property will retain its original zone prior to the adoption [of the 2009 SMA]."

In short, there is nothing in the procedural history that suggests that the circuit court intended to permit the record to be changed in any way other than by filing ethics affidavits.[41]

[41] To further buttress their respective positions, the District Council, Christmas Farm, and MCQ Auto point to (different) portions of a colloquy between Judge Green and Rajesh J. Kumar, Esquire, Principal Counsel to the District Council that occurred during a hearing that took place on May 3, 2013, that is, after the date that the *Accokeek* Judgment was filed.

Christmas Farm and MCQ Auto assert that Judge Green made it very clear that he interpreted the *Accokeek* Judgment to mean much what the appellants contend that it means. The District Council, pointing to other another passage, claim that Judge Green recognized that that the District Council was not required to "rubberstamp" the predecessor Council's decisions in 2009.

The transcript supports both assertions. Judge Green made it clear that the members of the District Council in 2013 were not bound by their predecessors' decisions <u>and</u> that the decision of the Council in 2013 was to be based on the 2009 record. These are not mutually exclusive concepts. With that said, we are not inclined to place much weight in the exchanges between court and counsel.

Generally, courts interpret legal documents such as contracts and statutes according to the language of the documents together with, when necessary, the circumstances surrounding the document's execution. Typically, the subjective intentions of the author(s) does not play a part. *See, e.g., Ocean Petroleum v. Yanek*, 416 Md. 74, 86 (2010) (contracts); *Workers' Comp. Comm'n v. Driver,* 336 Md. 105, 118 (1994) ("[W]hen the judiciary reviews a statute or other governmental enactment, either for validity or to determine the legal effect of the enactment in a particular situation, the judiciary is ordinarily not concerned with whatever may have motivated the legislative body or other governmental actor."); *Maryland Dep't of the Environment v. Days Cove Reclamation Co.*, 200 Md. App. 256, 270 (2011) (same).

We see no reason why court orders should be treated differently, at least as regards the *Accokeek* Judgment, which was in writing and was filed with an extensive memorandum opinion that explained the court's reasoning.

The District Council's Actions After The Remand

We think it very significant that the District Council's initial interpretation of the *Accokeek* Judgment was precisely the same as ours. On November 13, 2012, the District Council issued orders remanding the Subregions 5 and 6 SMAs and area master plans to the Planning Board. These orders were issued pursuant to PGCC § 27-227(a), which states in pertinent part:

> (a) Where a Sectional Map Amendment is found by a court of competent jurisdiction to be invalid because of procedural defects in the advertising, processing, or approval, the District Council may (on its own motion) reconsider the Sectional Map Amendment. The Council may then reapprove the Sectional Map Amendment (including amendments) in accordance with the procedures which apply to the original approval (except the hearing notice requirements).
>
> (b) Prior to reapproval, the Council shall hold a public hearing on the matter.
>
> . . . .
>
> (d) Upon resubmission, the records of the previous hearings on the Sectional Map Amendment shall be incorporated into the record of the new hearing.

The remand orders noted that the circuit court had "voided and reversed" the 2009 Resolutions "and returned [these] matter[s] to the District Council for review of the recommendations of the Maryland-National Park and Planning Commission[.]" The District Council order stated that:

> pursuant to § 27-227(a) of the Zoning Ordinance, this matter is remanded to the Planning Board for purposes of meeting the affidavit requirements pursuant to [what is now GP § 5-835(c)] <u>and resubmittal of its January 2009 Preliminary Subregion [5 and 6] Master Plan[s] and Proposed Section Map Amendment[s]</u> to the District Council[.]

(Emphasis added.)

The District Council's remand was subject to several "conditions," which were in actuality additional instructions to the Planning Board as to procedures that it should follow in the remand proceedings. In summary, the Planning Board's staff was directed:

(1) to schedule a joint public hearing between the Planning Board and the District Council hearing on the proposed SMA and proposed area master plan for each subregion;

(2) to provide the public notices required by the Zoning Ordinance;

(3) to "identify and catalogue all properties on the January 2009 Preliminary [Subregion 5 and 6] Master Plan[s] and Proposed Sectional Map Amendments subject to zone intensification pursuant to § 27-109 of the Zoning Ordinance"[42] and to provide the owners of those properties with notice of their obligations to file ethics affidavits and disclosures of ex parte communications;[43]

(4) to notify owners of properties then subject to pending zoning map amendment applications or comprehensive design zone application of their obligations to file ethics affidavits and disclosures of ex parte communications. Additionally, the staff was to compile a list of properties that were subject to requests for more intensive zoning or plan

[42] PGCC § 27-109 lists the various zoning classifications permitted under the Zoning Ordinance.

[43] GP § 5-836 prohibits applicants from engaging in ex parte communications with members of the District Council and the County Executive regarding land use applications. It also imposes a duty on the applicant and the public official to disclose such communications with the clerk of the District Council within five business days of the day on which the communication was made or received.

treatment and to notify the owners of each property of their obligation to file ethics affidavits; and

(5) to include a list of the owners of properties subject to zoning intensification requests and to state whether each owner had filed the required ethics affidavits "[u]pon resubmission or retransmittal of its January 2009 Preliminary [Subregion 5 and 6] Master Plan[s] and Proposed Sectional Map Amendments to the District Council".[44]

The parties agree that the court vacated the 2009 Resolutions because of a procedural defect. The Clagetts *et al.* argue that the only amendments permitted by § 27-227(a) are

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[44] The District Council's remand orders also direct the Planning Board to incorporate pending comprehensive design zone applications and zoning map amendment applications into the proposed SMAs. This provision is the basis of the District Council's assertion that its remands were "not limited solely to the collection of public ethics affidavits."

The District Council is correct, but only in a very narrow sense that is not relevant to the issues raised by these appeals. The Council's remand orders instructed the Planning Board to include the Board's recommendations as to pending comprehensive design zone applications into a proposed SMA. It contains a similar provision for pending applications for zoning map amendments.

Comprehensive design zones are floating zones. *See Prince George's County Council v. Zimmer Development*, 444 Md. 490, 530 (2015). "Zoning map amendment" is the County's term for a piecemeal rezoning application based on change or mistake. *See* PGCC § 27-157(a) (stating that a zoning map amendment application may be granted only upon a showing of "substantial change in the character of the neighborhood," or a mistake in the current zoning classification).

Incorporating pending comprehensive design and map amendment applications into proposed SMAs is permitted by Zoning Ordinance. PGCC § 27-225.01(c).

In other words, the District Council's instructions to the Planning Board did not authorize the Board or its staff to modify their recommendations for specific properties that were contained in the 2009 preliminary master plans or the proposed 2009 SMAs, unless those properties were also subject to a pending amendment application. This was not the case for any of the properties that are subject to the present appeals.

amendments that correct the procedural problem(s). To put it another way, they posit an interpretation of § 27-227 that is consistent with their interpretation of the *Accokeek* Judgment. In contrast, the District Council asserts that § 27-227 authorizes it to consider substantive changes to the SMAs and area master plans.

It is not necessary for us to resolve this question. The court's judgment limited what the District Council could do on remand, just as the District Council's own remand orders to the Planning Board limited what that agency could do on remand. Assuming for purposes of analysis that the District Council's present interpretation of § 27-227 is correct, then, in order for the post *Accokeek* Judgment changes to the 2009 record to be lawful, the District Council needed to: (1) file a motion to amend the *Accokeek* Judgment; (2) prevail on that motion; and (3) modify its own instructions to the Planning Board accordingly. None of these events occurred.

The Significance of LU § 22-407(e)

Finally, a remand to the District Council for it to consider additional evidence would have been procedurally inapt. LU § 22-407(c) provides in pertinent part (emphasis added):

> (c)(1) The court shall order that additional evidence be taken before the district council on conditions the court considers proper if:
>
> (i) before the date set for the hearing on the petition for judicial review, the petitioner or any party in interest makes <u>a written application</u> to show cause to the court for leave to present additional evidence on the issues in the case; and
>
> (ii) it is shown to the satisfaction of the court after a hearing that the additional evidence is material and that there were good reasons for the failure to present the additional evidence in the proceedings before the district council.

There was no request from any party, in writing or otherwise, pending before the circuit court to remand the case to the District Council so that the Council could receive additional evidence regarding the merits of the SMAs and master plans.

C. What Actually Happened

Despite the terms of the *Accokeek* Judgment and the Council's own remand orders to the Planning Board, the process went badly awry in ways that we now explain.

First, the planning staff reviewed the 2009 record and, in the words of the District Council "purged . . . tainted testimony submitted by property owners. . . who requested zone intensification but did not file public ethics affidavits, because their testimony was unlawfully considered by the Planning Board and the District Council." Neither the *Accokeek* Judgment nor the District Council's own instructions to the Planning Board authorized the planning staff to revise the 2009 record in this manner.[45]

Second, the Planning Board changed its recommendations as to ERCO, for reasons entirely unrelated to ERCO's failure to file a timely ethics affidavit.

Third, the District Council exceeded the scope of its authority by modifying the Master Plans and SMAs in ways other than to address the procedural issue of the missing ethics affidavits.

[45] The "purging" of the record to delete testimony submitted by property owners in the 2009 proceedings who did not file ethics affidavits was without any legal justification. Not only was this process contrary to the terms of the *Accokeek* Judgment, but also there is no provision in the Public Ethics Law that establishes an exclusionary rule because evidence was submitted by a person who failed to file an ethics affidavit.

The District Council maintains its actions were not improper because: (a) the invalidated 2009 Resolutions, as voided laws, are inoperative; and (b) because PGCC § 27-227 explicitly authorizes it to readopt an SMA with amendments. Neither argument is convincing.

As to the District Council's first point, we acknowledge that the 2009 SMAs and area master plans are of no legal effect (at least with regard to the properties that are the subject of these appeals). However, the record developed before the Planning Board and the District Council formed the basis for the 2009 Resolutions. On the second point, our interpretation of PGCC § 27-227 does not render its language that the District Council may adopt amendments as part of its reconsideration of the SMAs nugatory. The statute certainly authorized the District Council to adopt amendments to cure the procedural defect, or that naturally arose from additional information gained from the cured procedural flaws. It does not mean that the Council could adopt any amendment that it wished.

These actions were all in error, as neither the court's judgment nor the Council's own order of remand authorized the changes to the record before the 2009 Council that occurred in this case, or the Planning Board and District Council's deviations from that record in its later reconsideration process.

D. Conclusion

In summary, we hold that, in enacting the 2013 versions of the Subregion 5 and 6 SMAs, the Council exceeded its powers insofar as those statutes affected the properties of

the appellants. We reach the same conclusions with regard to the Council's approval of the 2013 versions of the Subregion 5 and 6 area master plans. Accordingly we reverse the 2013 Resolutions of the District Council insofar as they relate to the properties at issue in these appeals—but only to those properties. We turn to the appropriate remedy.

The Clagetts, Christmas Farm, ERCO, and MCQ Auto ask that we restore the zoning and area master classifications assigned to their properties in the 2009 SMAs and area master plans. Robin Dale makes a similar request as regards the master plan tier classification for its property. However, these contentions overlook the fact that the circuit court declared the District Council legislation enacting the SMAs and approving the master plans to be "void." The District Council asserts that this ruling by the court in *Accokeek* is absolutely dispositive, citing *Johnson v. State*, 271 Md. 189, 195 (1974) ("A statute declared unconstitutional or otherwise invalid is not a law for any purpose, cannot confer any right . . . and is as inoperative as though it had never been passed.'' (citations and quotation marks omitted)). Although the rule enunciated in *Johnson* is not always applicable,[46] we conclude that it is in the present cases. None of the appellants assert that

[46] There is no single, all-encompassing rule as to the continuing effect, if any, of an invalid law upon actions that took place before the adjudication of invalidity. *See Chicot County Drainage Dist. v. Baxter State Bank*, 308 U.S. 371, 374 (1940) ("These questions are among the most difficult of those which have engaged the attention of courts, state and federal, and it is manifest from numerous decisions that an all-inclusive statement of a principle of absolute retroactive invalidity cannot be justified." (footnote omitted)); *Payne v. Prince George's County Department of Social Services*, 67 Md. App. 327, 334 (1986) ("Nor need we probe various theories as to what happens to a statute that is declared unconstitutional—is it void ab initio? Is it merely invalid for the future (after the declaration of invalidity)? Or may it retain some continuing effect for some purposes?" (citations omitted)).

they have vested rights in their properties that depend upon the 2009 SMAs and area master plans. *See Maryland Reclamation Associates v. Harford County,* 414 Md. 1, 44–45 (2010) (setting out Maryland's rules for vesting). Nor do the appellants present any arguments based upon estoppel or other equitable ground as to why we should give effect to the 2009 Resolutions.

We conclude that the errors committed by the District Council and the Planning Board that we have described in this part of the opinion do not necessarily entitle appellants to have their 2009 zoning and planning classifications restored to their properties. We hold that the *Accokeek* Judgment required the District Council to reconsider the 2009 Subregion 5 and 6 preliminary master plans and proposed SMAs based upon the record presented to the 2009 District Council, supplemented by updated information as to the filing of ethics affidavits. Once the ethics affidavits were updated, individual Council members, and the public, would know which members were barred from voting whether to approve the master plans and SMAs. This is the appropriate reading of the circuit court's order and was, beyond any cavil, the way that the District Council initially interpreted the court's order. Such an approach is also consistent with PGCC § 27-227(a), which sets out an expedited process for reconsideration of an SMA when a prior approval has been reversed for a procedural defect.

Part 7. The Individual Appellants

We will now turn to how our conclusions as to the District Council's failure to comply with the *Accokeek* judgment affects each appellant, and will also address their

other theories of relief. They assert that these contentions, if correct, would warrant restoration of the zoning and/or plan classifications from the 2009 SMAs and master plans.

A. The Clagetts

Between them, the Clagetts own a total of 48.2 contiguous acres of land near the intersection of Indian Head Highway (Maryland Route 210) and Livingston Road (Maryland Route 224), in Accokeek. These properties are located in Subregion 5. Before the 2009 SMA, these parcels were zoned Rural Residential (“R-R”). During the 2009 process, the Clagetts requested that their properties be reclassified to Commercial Shopping Center (“C-S-C”). The District Council approved the request. Because they sought intensifications to their zoning or plan classifications, the Clagetts were required to file ethics affidavits pursuant to GP § 5-835(c),[47] but they did not do so prior to the District Council’s consideration of the Subregion 5 SMA. However, they later filed the affidavits while the *O’Neal* and *Accokeek* judicial review actions were pending. The Clagetts’ affidavits stated that no campaign contributions were made to members of the District Council in the 36 months prior to the filing of their request for zoning reclassification or while the application was pending.

In his September 7, 2012 order, Judge Green specifically affirmed the reclassification of the Clagett parcels from R-R to C-S-C because ethics affidavits had been filed. However, the court’s October 26th order, which vacated the District Council’s decisions

[47] The text of GP § 5-835(c) can be found in footnote 10.

to approve the 2009 SMA and area master plans, did not except the Clagetts' properties. The Clagetts were not parties to either the *O'Neal* or the *Accokeek* actions and had no formal notice of the hearing that resulted in the October 26th order by Judge Green.

After the cases were remanded, first to the District Council by the circuit court, and then to the Planning Board by the District Council, several community organizations and individuals submitted comments to the planning staff regarding the proposed C-S-C classification for the Clagett properties, the need for additional retail development in the Accokeek area, or both. Eventually, the planning staff recommended that the Clagett properties should retain their R-R zoning classifications. In March 2013, the District Council enacted CR-81-2013, which approved an SMA for Subregion 5. The sectional map amendment classified the Clagett properties as R-R.

The Clagetts' opposition to these developments was energetic. First, they intervened in a pending action that sought to enjoin a joint public hearing before the District Council and the Planning Board to reconsider the District 5 master area plan and SMA.[48] The circuit court denied the request for preliminary injunctive relief.

After the District Council enacted the 2013 version of the Subregion 5 SMA, the Clagetts filed a judicial review proceeding asserting that the Council's decision to classify their properties as R-R instead of C-S-C was invalid on a variety of grounds. Finally, the Clagetts filed an action seeking a declaratory judgment to the effect that (i)

[48] This action was originally filed by Zachair, Ltd. and the Clagetts intervened as an additional plaintiff.

the District Council was without authority to enact resolutions CR-80-2013 (approving the amended Subregion 5 Master Plan) and CR-801-2013 (approving the amended Subregion 5 SMA); and (ii) the two resolutions were either void as matter of law or were inapplicable to the Clagetts. The circuit court affirmed the Council's decision in the judicial review proceeding and dismissed the injunction action and the declaratory judgment action as moot.

The Clagetts appeal from all of these judgments[49] and beyond the issues already addressed, raise the following additional issues:

(1) Was the circuit court's September 7, 2012 order final as to the Clagetts' zoning change?

(2) Was the Circuit Court's October 26, 2012 order remanding the Subregion 5 and 6 master plans and SMAs to the District Council void for lack of due process?

(3) Did the circuit court's affirmance of the 2009 Subregion 5 Master Plan and SMA in *O'Neal* remove the 2009 SMA/Master Plan from the District Council's jurisdiction?

(4) Were the Clagetts' due process rights violated when the District Council did not follow the procedures in the County Code for amending the SMA and Master Plan?

The first contention is an attempt to employ the doctrine of offensive non-mutual collateral estoppel. As we will explain, collateral estoppel in any form is procedurally

[49] Appeal No. 1019, September Term, 2014, is the appeal from the judgment in the judicial review proceeding.

Appeal No. 1016, September Term, 2014, is the appeal from the injunction action.

Appeal No. 1017, September Term, 2014, is the appeal from the judgment in the declaratory judgment action.

impermissible in these cases and factually inapt in the Clagetts' appeal. Arguments (2) and (3) constitute collateral attacks upon the final judgment in the *Accokeek* action. We agree with Judge Lamasney that such an effort is inconsistent with Maryland law. Our resolution of the appellants' state and local law arguments in Part III makes it unnecessary for us to consider the Clagetts' constitutionally-based contentions.

(1)

The Clagetts assert that (1) the judgment of the circuit court in the *O'Neal* action was "the final resolution for the purposes of judicial review in this Court, and the order voiding the SMA/Master Plan was without effect under the doctrine of res judicata" because "the *O'Neal* and *Accokeek* cases raised the same issue."[50]

The judgment in the *O'Neal* litigation is of no assistance whatsoever to the Clagetts. They are attempting to apply the concept of non-mutual collateral estoppel to prevent the County from asserting that Judge Green did not err when he vacated the 2009 Resolutions and remanded the SMAs and master plans to the District Council. *See Shader v. Hampton Imp. Ass'n, Inc.,* 217 Md. App. 581, 608 (2014); *aff'd,* 443 Md. 148 (2015) ("Offensive use of nonmutual collateral estoppel occurs when a plaintiff seeks to foreclose a

[50] In this regard, and as we will explain, the Clagetts are incorrect. The failure to file ethics affidavits was not addressed in the memoranda filed by the parties in *O'Neal*. O'Neal's counsel attempted to raise the issue for the first time at the hearing before the circuit court and Judge Shaw Geter refused to consider it. Judge Shaw Geter did not err. *See* Md. Rule 7-207(a) (A petitioner's memorandum shall "set[] forth a concise statement of the questions presented for review. . . ."). As the Rules Committee's commented in its note to Rule 7-207, "all issues and allegations of error [should] be raised in the memoranda, and that ordinarily an issue not raised in a memorandum should not be entertained at argument."

defendant from relitigating an issue the defendant has previously litigated unsuccessfully in another action against a different party[.]”). However, as this Court explained in *Shader,*

> Maryland has adopted a four-pronged test that must be satisfied in order to apply collateral estoppel: 1. Was the issue decided in the prior adjudication identical with the one presented in the action in question? 2. Was there a final judgment on the merits? 3. Was the party against whom the plea is asserted a party or in privity with a party to the prior adjudication? 4. Was the party against whom the plea is asserted given a fair opportunity to be heard on the issue?

Id. at 605.

O’Neal did not assert that the failure of property owners to file the ethics affidavits was a basis to invalidate the SMA. Because the issue was never raised, the District Council did not have an opportunity to be heard on the ethics affidavit issue, and the *O’Neal* court did not address possible violations of Maryland Public Ethics Law in its decision. There was no basis for the Clagetts to raise collateral estoppel in their judicial review action.

(2) and (3)

The Clagetts also present two conceptually-related arguments regarding the *Accokeek* case.

First, they note that Judge Green’s order of September 7, 2012, affirmed the reclassification of the Clagett properties to C-S-C. They argue that this order was a final judgment to them and no party filed an appeal of that judgment within thirty days of its entry. They argue that this order satisfied all of the requirements of a final order because “it was intended by the trial court as an unqualified, final, disposition of the matter in

controversy, it completed adjudication of all claims against all parties, and it was recorded by the clerk as a final judgment on the docket." *See Forward v. McNeily*, 148 Md. App. 290, 301 n. 4 (2002).

Second, the Clagetts assail the *Accokeek* Judgment, which struck the September 7th order, for a variety of reasons. They assert that they had no notice of the hearing and, even if they had, none of the five property owners who filed motions to alter or amend the judgment "sought the relief of invalidating the entire SMA." Moreover, they point out that the District Council's approach to the *Accokeek* litigation was not consistent because its initial position was that the 2013 Resolutions were valid but did not appeal from the circuit court's judgment vacating the 2009 Resolutions. They assert that "when a plaintiff challenges the validity of a zoning, other property owners do not necessarily need to intervene in judicial review because the municipal corporation defends its own enactment."

We agree with Judge Lamasney that the Clagetts' efforts to undermine the validity of the *Accokeek* Judgment by asserting that the court committed procedural errors in earlier action are impermissible collateral attacks on that judgment. The appropriate mechanism to attack the validity of a final judgment is Courts and Judicial Proceedings Article § 6-

408[51] and Md. Rule 2-535(b),[52] which implements the statute. The remedies contained in § 6-408 and Rule 2-535(b) are restricted to parties and those who attempt to intervene as parties. *Kent Island, LLC v. DiNapoli,* 430 Md. 348, 366–67 (2013). The Clagetts were not parties to *Accokeek*, and never attempted to intervene. As such, their attempt to impeach the *Accokeek* judgment in the current action fails. *Id.* at 367 ("Respondents offer no support for their contention that a stranger to litigation, not involved in any way as a party, may file a suit later seeking to impeach the final judgment.").

(4)

Because we will reverse the District Council's decision on state and local law grounds, it is not necessary for us to consider their constitutional contention. We will "adhere to the established principle that a court will not decide a constitutional issue when a case can properly be disposed of on a non-constitutional ground." *Christopher v. Montgomery County Dep't of Health & Human Services*, 381 Md. 188, 217 (2004)

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[51] CJP § 6-408 states:

> For a period of 30 days after the entry of a judgment, or thereafter pursuant to motion filed within that period, the court has revisory power and control over the judgment. After the expiration of that period the court has revisory power and control over the judgment only in case of fraud, mistake, irregularity, or failure of an employee of the court or of the clerk's office to perform a duty required by statute or rule.

[52] Rule 2-535(b) states:

> On motion of any party filed at any time, the court may exercise revisory power and control over the judgment in case of fraud, mistake, or irregularity.

(brackets omitted) (citing *Murrell v. Mayor & City Council of Baltimore*, 376 Md. 170, 191 n. 8 (2003)).

Finally, we have not lost sight of the fact that AMP is also a party to the Clagetts' appeal. In its brief filed to this court, it states that its "primary objective . . . is to squelch [the Clagetts'] obvious attempt to re-litigate" the *Accokeek* case. AMP has indeed prevailed on that issue; its remaining appellate contentions track some of the arguments raised by the District Council and we have addressed them in our analysis.

Accordingly, and for the reasons set out in Part 6, we hold that the decisions of the District Council to classify the Clagetts' properties as R-R in the 2013 Subregion 5 SMA is reversed and their case is to be remanded to the District Council for proceedings consistent with this opinion.

B. Christmas Farm

Christmas Farm, LLC owns approximately 117 acres of land adjacent to Rosaryville Road in Upper Marlboro, Maryland. The property is in planning Subregion 6. Prior to the District Council's adoption of the 2009 SMA, the Christmas Farm property was zoned Residential Agricultural ("R-A"). The R-A regulations permit residential development on lots of a minimum area of two acres. During the 2009 SMA process, Christmas Farm requested that its property be reclassified from R-A to Rural Residential ("R-R"), which allows residential development on half-acre lots. Both the M-NPPC staff and the Planning Board recommended against approval of Christmas Farm's request, based primarily on concerns about traffic congestion on surrounding roads. Nonetheless, at the

completion of the public study/public hearing and comment process undertaken by the District Council with regard to the 2009 SMAs and master plans, the District Council reclassified the Christmas Farm property to R-R. Christmas Farm did not timely file an ethics affidavit.

As we have related, on July 26, 2010, Judge Hotten issued the First Remand Order in the *Accokeek* judicial review action remanding the resolutions adopting the Subregion 5 and 6 master plans and SMAs, to the District Council so that it could provide the circuit court with any affidavits or other records in its possession "which indicate whether any property owner who participated in [the MSA/area master plan process] with the intent of intensifying the zoning category applicable to its property, tendered a 'payment' to any member of the [District Council]." The District Council notified some, but not all, of the possibly affected property owners. Christmas Farm was not notified and did not file an affidavit. In his September 7, 2012 order, Judge Green specifically reversed the reclassification of the Christmas Farm Parcel because no ethics affidavits had been filed. Christmas Farm then intervened in the *Accokeek* litigation but did not file an appeal of the final judgment entered in that case.

The Subregion 6 SMA adopted by the District Council in 2013 classified the Christmas Farm property as R-A, a zone that is less intense that the R-R granted to the property in 2009. Christmas Farm filed a petition for judicial review and, on June 18, 2014, Judge Lamasney affirmed the Council's decision.

In addition to its contentions that are addressed in Part 6, Christmas Farm argues that the 2013 decisions of the District Council regarding their properties were based upon a legally impermissible "mere change of mind" from the actions of the 2009 District Council**.** The difficulty with this argument is two-fold. First, as Christmas Farm acknowledges in its brief, application of the impermissible change of mind principle is usually confined to quasi-judicial administrative decisions. *See Cinque v. Planning Board*, 173 Md. App. 349, 361–66 (2007) (collecting representative cases). In this case, both the 2009 and 2013 decisions of the District Council were made in the context of comprehensive rezonings, which is an exercise of the Council's legislative authority. Second, the action of the District Council that Christmas Farm asserts should control, that is, the 2009 action by the District Council, was declared void by the circuit court in *Accokeek.*

For these reasons, and those set out in Part 6, we hold that the decision of the District Council to classify Christmas Farm's property as R-A in the 2013 Subregion 6 SMA is reversed and its case is to be remanded to the District Council for proceedings consistent with this opinion.

C. ERCO Properties

One of ERCO's appellate contentions involves the concept of "development tiers." In the Prince George's County 2002 General Plan, the county outlined a set of three development tiers that it uses to guide land use and development planning. "[T]he Developed Tier included areas that were largely developed. The Developing Tier

included areas where most new development would occur. The Rural Tier included agricultural, open space, and low-density housing areas, where little development would occur." *Archer Glen Partners, Inc. v. Garner*, 176 Md. App. 292, 297-98 (2007), *aff'd*, 405 Md. 43 (2008). During the comprehensive planning process, the county assigns properties to the various tiers. In addition to being targeted for growth, Developed and Developing Tiers are prioritized over the Rural Tier for expansion of transportation infrastructure and water and sewer systems.

Following the passage of the Sustainable Growth and Agricultural Preservation Act of 2012, counties are required to assign properties into one of four growth tiers as part of their comprehensive planning process. *See* Land Use Article ("LU") §§ 1-501–509; Environment Article § 9-206. Tier I and Tier II areas are served by the public sewer system or designated for growth. LU § 1-508(a)(1)-(2). Tier III and Tier IV areas are not planned for public sewer service, with Tier IV dominated by its rural, forested, or agricultural characteristics. LU § 1-508(a)(1)-(2). Prince George's County took steps to implement the Act, including developing a map reflecting the assignment of tiers to properties in the county ("SGA Tier Map").

ERCO Properties, Inc. owns approximately 284 acres of land to the south of Floral Street and west of South Springfield Road in Brandywine, Maryland. The property is located in Planning Subregion 5. The ERCO tract is composed of two parcels, 207 acres of which was located in the Rural Tier and 77 acres of which was located in the

Developing Tier. Prior to the District Council's adoption of the 2009 SMA, the entire ERCO Property was zoned Residential Agricultural ("R-A").

In 2009, the staff recommendation was that the Rural Tier portion of the ERCO property be rezoned from the R-A Zone to the Open Space ("O-S") Zone.

ERCO instead requested that the zoning for the entire property be changed from the R-A Zone to the Residential Estate ("R-E") Zone. ERCO also requested that the portion of the property in the Rural Tier be moved to the Developing Tier. As a party requesting intensification of its designation, ERCO was required to file an affidavit pursuant to the Public Ethics Law, GP § 5-835(c).[53] As with many other participants in the process, it did not do so at the time of its application, although it did ultimately file an untimely ethics affidavit dated January 29, 2010. The affidavit indicated that no campaign contributions were made by ERCO to members of the District Council in the relevant time period.

The Planning Board declined to recommend to the District Council that the ERCO property should be downzoned to O-S, as staff suggested. However, Board also declined to grant ERCO's request, and recommended that the property retain its existing zoning and tier designations.

The 2009 Subregion 5 Master Plan and SMA enacted by the District Council partially granted ERCO's request. The Council changed the zoning classification of approximately 46 acres from R-A to R-E. This acreage was located in the Developing Tier portion of the property. Following 2009 reclassification, ERCO was successful in

[53] The text of GP § 5-835(c) can be found in footnote 10.

changing the water and sewer categories for the 46 acre portion from Category 5 to Category 4. The property was also reclassified from Tier IV to Tier III in the county's Sustainable Growth Act planning. As ERCO's counsel later noted in testimony before the District Council, these changes show the property "was moving for development."

After entry of the *Accokeek* Judgment and the subsequent remand to the Planning Board, the planning staff recommended that the zoning and tier designations for the ERCO property remain as they were prior to 2009, that is, that the entire property should be zoned as R-A and the Rural Tier portion retaining that designation. ERCO reiterated its previous request that the entire property be zoned R-E and placed in the Developing Tier. The Planning Board adopted the staff recommendation, which carried through into the 2013 Subregion 5 Master Plan and SMA and resulted in the 46 acre portion of ERCO's property that had been rezoned to R-E reverting to R-A.

ERCO presents two arguments: first, that the 2013 District Council's decision to classify its property as R-A was not supported by substantial evidence and was arbitrary and capricious; and second, that the decision to classify the 46 acres as R-A constituted an impermissible change of mind from the decision of the 2009 Council.

As to ERCO's first contention, the District Council was acting in a legislative capacity when it passed the 2013 Resolutions and, in any event, there was substantial evidence in the record in the form of the recommendation by the planning staff. ERCO's impermissible change of mind contention is the same as that raised by Christmas Farm and is unpersuasive for the same reasons.

For these reasons, and those set out in Part 6, we hold that the decision of the District Council to classify ERCO's property as R-A in the 2013 Subregion 5 SMA is reversed and its case is to be remanded to the District Council for proceedings consistent with this opinion.

D. Robin Dale Land, LLC

Robin Dale Land, LLC owns 175 acres to the east of McKendree Road in Brandywine, Maryland, located within Subregion 5. Prior to the 2009 Master Plan and SMA, the Robin Dale property was classified in the Rural Tier and was zoned R-A.

As part of the 2009 Master Plan and SMA process, Robin Dale requested that its property be moved to the Developing Tier and that the zoning designation be changed to R-R. As a party requesting intensification of its designation, Robin Dale was required to file an ethics affidavit. As with many other participants in the process, Robin Dale did not do so at the time of its application, although it did ultimately file an ethics affidavit dated April 28, 2010, which indicated that Robin Dale had made no campaign contributions to members of the District Council.

The staff recommendation was that the property be downzoned from R-A to O-S. The Planning Board declined to do so, instead recommending that the property retain its tier and zoning designations. The District Council partially granted Robin Dale's request. It placed the property in the Developing Tier in the 2009 Master Plan for Subregion 5, but it did not rezone the property.

After the 2012 remands, first from the circuit court to the District Council and then from the District Council to the Planning Board, Robin Dale requested that its property be reclassified from R-A to R-R and removed from the Rural Tier and placed in the Developing Tier. However, the staff recommendation was again that the property be downzoned from R-A to O-S and retain its Rural Tier designation. The Planning Board agreed with these recommendations, which were apparently based in part upon events that occurred after the 2009 SMA and Master Plan were enacted.

Robin Dale presented its requests at the April 11, 2013 joint public hearing held by the District Council and the Planning Board. The District Council declined to grant them, and instead downzoned the property from R-A to O-S and reinstated the Rural Tier designation.

On appeal, Robin Dale asserts that the District Council's decision to designate its property in the Rural Tier was based upon an impermissible change of mind, and was not supported by substantial evidence. We have addressed identical contentions in our discussions of Christmas Farm's and ERCO's appeals and we adopt them by reference here.

For the reasons set out in Part 6, we hold that the decision of the District Council to designate Robin Dale's property in the Rural Tier in the 2013 Subregion 5 Area Master Plan is reversed and its case is to be remanded to the District Council for proceedings consistent with this opinion.

E. MCQ Auto

MCQ Auto owns a 1.7 acre parcel in Accokeek, Maryland. Before the 2009 SMA process, the property was "split-zoned," that is, a portion was classified as Rural Residential ("R-R") and the remainder as Commercial Miscellaneous ("C-M"). The property was the site of a filling station and automobile repair shop until a fire that occurred in 2006. After the fire, what was left of the building was demolished, except for the footings, which are still in place. Filling stations are a permitted use in the C-M District.

In the 2009 SMA process, the Commission's planning staff recommended that the C-M portion of the property be down-zoned to R-R. The initial draft public release document for Subregion 5 reflected this recommendation. One of the owners of MCQ Auto, José Mararac, testified against this change, and its counsel filed written comments opposing the reclassification. Nonetheless, the 2009 Subregion 5 SMA reclassified the C-M part of the property to R-R. MCQ Auto was not required to file an ethics affidavit in the 2009 SMA process because it was not seeking a zoning intensification but was instead seeking to retain its existing C-M zoning classification.

MCQ Auto then filed a revisory petition with the District Council pursuant to PGCC § 27-228 of the Zoning Ordinance.[54] After a public hearing, the District Council voted to

[54] Section 27-228 permits the Council to revise a zoning classification upon a showing of "fraud or mistake," upon a request by an aggrieved person filed within thirty days of the passage of the SMA. "Mistake" is defined in § 27-228(c) as:

approve the petition, and, on March 8, 2010, enacted Zoning Ordinance No. 3 – 2010, which reclassified the entirety of MCQ Auto's property to C-M. This ordinance became final on April 21, 2010.

While this was going on, AMP and other parties filed the judicial review petitions that were eventually consolidated in the *Accokeek* action. MCQ did not participate in the *Accokeek* litigation. In the September 7, 2012 order, Judge Green specifically affirmed the zoning classification for the MCQ Auto property (identified in the opinion as "Mararac") because it had not been required to file an ethics affidavit in the 2009 master plan/SMA process. Footnote 5 of Judge Green's opinion stated that the MCQ property "was rezoned to R-R, which was subsequently rezoned back to C-M after the filing of a Revisory Petition by the property owner."

However, Judge Green later struck the September 7, 2012 order as part of the *Accokeek* Judgment. Judge Green excepted certain properties in Subregions 5 and 6 from the operation and effect of that order, specifically, properties owned by Atta Moshkelgosha, Cedarville Road, LLC, and an assemblage of parcels identified as "CPI Properties/The Hamptons." As to these, Judge Green found "that the rezoning of these properties was handled in proceedings outside the scope of CR -61-2009 and CR-62-6009. These properties shall retain their current zoning designations[.]" Although MCQ

A factual error, which could not have been corrected by the property owner, was contained in the record of the Sectional Map Amendment proceedings which may have caused an erroneous description of a specific property, and which is sufficient to justify making a different decision on the Sectional Map Amendment.

Auto's then-current zoning classification had also been the result of a separate zoning proceeding, and had been specifically referenced in the court's earlier order, MCQ Auto was not included among the class of properties exempted from the *Accokeek* Judgment. The court provided no explanation for its decision to remove MCQ Auto's property from the list of exempted properties.

After the Subregion 5 SMA was remanded to the District Council, the planning staff again recommended that the MCQ Auto property be downzoned from C-M to R-R. MCQ Auto objected to the proposed downzoning and reminded the Planning Board and District Council that the property had been rezoned to the C-M Zone pursuant to the approval of the 2010 revisory petition. Additionally, MCQ Auto asserted that in view of this fact, the property should not be part of the SMA reconsideration process. All this was to no avail.

In its summary of testimony, the planning staff reported:

> The R-R Zone is consistent with the designated land use. The intent is to consolidate commercial development at strategic, planned locations rather than to allow the commercial development to occur on a haphazard way throughout residential areas. The location is both rural and residential. An automotive use is inappropriate at this location. It should be noted that there was a gas station on this site. It burned down seven years ago and the remains sat until one of the buildings was razed. The owners says that he must retain the commercial zoning of this property . . . but he has had commercial zoning and has left the property as an eyesore and vacant for nearly ten years. That is why the proposal was made to rezone the site consistent with the surrounding land use. The Council rezoned the property to R-R in 2009 but then the Council approved a revisory petition in 2010 that returned the zoning to the C-M zone. Nothing has changed since the original SMA recommendations were made in the 2009 SMA.

In the 2013 Subregion 5 SMA, the property is zoned R-R. The 2013 Subregion 5 Master Plan recommended that the MCQ Auto parcel be used for residential uses. MCQ

Auto filed a petition for judicial review and the circuit court affirmed the actions of the District Council.

To this court, MCQ Auto argues that:

(1) Its property should have been excepted from the District Council's remand to the Planning Board and the Council's failure to do so violated its equal protection rights.

(2) The MCQ Auto property was not within the jurisdiction of the District Council as a result the *Accokeek* Judgment.

(3) The District Council exceeded its authority under PGCC § 27-227 when it downzoned the MCQ Auto property.

(4) The action of the District Council in downzoning the MCQ Auto property was illegal as a matter of law, contrary to the *Accokeek* Judgment, and unsupported by evidence.

(5) The District Council's downzoning of the MCQ Auto property was an impermissible change of mind, and violated principles of administrative res judicata.

We have addressed MCQ Auto's contentions that the 2013 action of the District Council as to its property was illegal in Part 6 of this opinion. The problem before us now is whether any of MCQ Auto's other contentions are a basis for us to grant any relief other than a remand to the District Council.

We are troubled by the circuit court's unexplained failure to include MCQ Auto in the list of properties excepted from the *Accokeek* Judgment. It is difficult to attribute this to anything other than oversight. But the proper way for MCQ Auto to have addressed

that issue was to intervene in the *Accokeek* action and seek appropriate relief. MCQ Auto's jurisdictional argument is, in effect, a collateral attack on the *Accokeek* judgment. As we have explained with regard to similar contentions made by the Clagetts, such an effort must fail under Maryland law. MCQ Auto's contention that there was no evidence before the 2013 Council to classify its property as R-R is incorrect because the planning staff recommended reclassification to R-R and explained why in some detail. This leaves us with MCQ Auto's impermissible change of mind argument.

MCQ Auto points out that its C-M zoning was restored to it by the District Council in 2010 through a revisory petition, which was a quasi-judicial proceeding. It argues that the District Council in 2013 should have been bound by that result. Maryland law is clear that an agency in a quasi-judicial proceeding may not grant relief and then deny it based upon "a mere change of mind." *See, e.g., Cinque v. Montgomery County Planning Board,* 173 Md. App. 349, 361 (2007). But MCQ Auto points to no authority for the proposition that the findings of fact and conclusions of law contained in a local legislature's decision rendered in a quasi-judicial proceeding are binding upon the legislature in a subsequent comprehensive rezoning.

The appropriate remedy for MCQ Auto is for us to remand its case to the District Council for action based upon a consideration of the 2009 record—which is what Judge Green ordered—as well as the record of the revisory petition proceeding—which fairness requires.

F. Piscataway

Piscataway Road-Clinton MD, LLC owns an assemblage of smaller parcels of land that make up a 272.12-acre tract to the east of Windbrook Drive and the west of Thrift Road near Clinton, Maryland. This property is sometimes referred to as "Bevard East." The property is located in Subregion 5. Prior to the 2009 Subregion 5 SMA, the area was zoned Residential-Low Development ("R-L").

Piscataway did not file an ethics affidavit in 2009 because it did not seek a more intense zoning classification. In 2009, neither the Planning Board nor the planning staff recommended that the R-L zoning classification be changed. Unsurprisingly, the 2009 Subregion 5 SMA retained R-L zoning for the Piscataway property.

After the *Accokeek* Judgment in 2012, the District Council remanded the Subregion 5 and 6 Master Plans and SMAs to the Planning Board. Once again, Piscataway did not seek to change its property's R-L zoning and neither the Planning Board nor the planning staff recommended rezoning the property. The Piscataway property was not the subject of specific discussion at the April 11, 2013 joint public hearing held by the Board and the District Council. However, individuals at that hearing testified in opposition to the proposed commercial development of Hyde Field,[55] which is within a mile of the Piscataway Property. On April 26, 2013, the day that the record for the Subregion 5 hearing was to close, County Councilmember Franklin forwarded a memorandum to the Planning Board stating in relevant part:

[55] Hyde Filed is the property which is the primary focus of the *O'Neal* litigation.

> In light of the testimony from the April 11, 2013, Joint Public Hearing and a review of the Planning Board's transmittal of the Preliminary Subregion 5 Master Plan and Proposed Sectional Map Amendment, I recommend and request, pursuant to Prince George's County Code Subtitle 27, Section 27-226, the following changes or revisions, prior to final action, to the Preliminary Subregion 5 Master Plan and Proposed Section Map Amendment for the public health, comfort, order, safety, convenience, morals, and general welfare:
>
> (a) Make the following changes to the subregion V Section Map Amendment (SMA):
>
> * * *
>
> (3) Rezone the Property known as Bevard East (the property governed by Basic Plan A-9967) in the Tippet area from the R-L zone to the R-E zone.

The regulations for the R-L district permit development at a greater density than do the R-E regulations.

The Planning Board held a public work session on June 13, 2013 to consider the testimony from the public hearing. No public participation occurred at this session. The Planning Board then endorsed the Subregion 5 Master Plan and SMA and transmitted them to the District Council for its review. In the document the Planning Board prepared as a digest of testimony and summary of its recommendations, and actions, the Planning Board's 2013 recommendation was that the property retain the R-L zoning, and it lists that as its action taken in 2013.

On July 8, 2013, the District Council held a public work session to review the Subregion 5 Master Plan and SMA transmitted to it by the Planning Board. There was no public participation at that work session. The District Council adopted CR-81-2013, enacting the revised Subregion 5 Master Plan and SMA, on July 24, 2013. The enacted

version of the SMA changed the zoning for the Piscataway property from R-L to R-E, as Mr. Franklin had requested.

Piscataway filed a judicial review petition challenging the District Council's decision as to its property. By an opinion and order dated June 18, 2014, Judge Lamasney framed the dispositive issue before the court as whether there was "'was substantial evidence in the record as a whole to support the agency's findings and conclusions[.]'" (quoting *Board of Physician Quality Assurance v. Banks*, 354 Md. 59, 67-68 (1999)).[56] From this premise, the court concluded:

> The District Council did not present sufficient evidence to support its decision to rezone [Piscataway's] property [to] R-E. Staff and Planning Board recommended that the land retain its R-L zoning and the only evidence provided by the District Council was a letter by Councilman Franklin requesting R-E zoning for the property without further explanation. This is not sufficient evidence and, as such, the case is remanded to the District Council for further proceedings and analysis on [Piscataway's] property's appropriate zoning.

Piscataway has appealed the judgment, asserting that a remand was inappropriate and that it was entitled to a judgment reversing the District Council's action. We agree.

We have held that the *Accokeek* Judgment directed the District Council to reconsider the Subregion 5 and 6 SMAs and master plans based upon the record that was before the

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[56] In its brief, the District Council notes that, in enacting an SMA, it is acting in a legislative, and not a quasi-judicial capacity. The Council implies, but does not explicitly assert, that the circuit court employed an incorrect standard of review. However, the District Council did not file a cross-appeal and, subject to rather narrow exceptions that aren't applicable in this case, a party that does not file an appeal (or cross-appeal as the case may be) is precluded from challenging the trial court's judgment. *See Cottman v. State*, 395 Md. 729, 738 n.6 (2006); *Joseph H. Munson Co. v. Secretary of State,* 294 Md. 160, 168 (1982).

Council in 2009. There is nothing in the 2009 record that would give the District Council the authority to revise the Subregion 5 SMA because neither the Planning Board nor the District Council addressed the issue in any fashion in the 2009 SMA proceedings. Thus, a reclassification of the Piscataway property would be an "amendment" to the SMA, in the parlance of PGCC § 27-226(c) As we have explained in Part 6 of this opinion, § 27-226(c) does not permit the District Council to adopt an amendment without a recommendation of the Planning Board, an analysis by the planning staff, and a public hearing. This cannot occur because the District Council is restricted to the 2009 record. Therefore, remanding this case to the District Council would be an exercise in futility. *See Prince George's County Council v. Zimmer*, 444 Md. 490, 581 (2015) (A court "need not remand, however, if the remand would be futile." (citing, among other authorities, *Anne Arundel County v. Halle*, 408 Md. 539, 557, (2009)).

We reverse the District Council's action in reclassifying the Piscataway property from R-L to R-E.

Part 8. Our Holdings

We dismiss the Clagetts' appeal of the injunctive relief action and the declaratory judgment action as moot.

We reverse the judgments of the circuit court entered in the judicial review proceedings. The circuit court should remand the proceedings as to the Clagetts, Christmas Farm, ERCO, MCQ Auto, and Robin Dale to the District Council with instructions for the Council to assign zoning and/or master plan classifications to the

properties based upon the unredacted record that was before the Council in 2009. The only additions to the record shall be appellants' updated affidavits as required by GP § 5-835, disclosures of any ex parte communications as required by GP § 5-836, and any other documents necessary to comply with Part V of the Maryland Public Ethics Law.

We reverse the circuit court's judgment entered in the *Piscataway* case, and remand it to the circuit court for entry of a judgment reversing the District Council's 2013 action in downzoning the Piscataway property.

Our holdings are restricted to the properties subject to this appeal.[57]

No. 1016, September Term, 2014, *Bazzarre et al. v. Prince George's County Council, Sitting as the District Council* (Circuit Court Case No.: CAL 13-09817):

Appeal Dismissed. Appellants to pay costs.

No. 1017, September Term, 2014, *Bazzarre et al. v. Prince George's County Council, Sitting as the District Council* (Circuit Court Case No.: CAL 13-27127):

Appeal Dismissed. Appellants to pay costs.

No. 1019, September Term, 2014, *Bazzarre et al. v. Prince George's County Council, Sitting as the District Council* (Circuit Court Case No.: CAL 13-23420):

The judgment of the Circuit Court for Prince George's County is reversed and this case is remanded for proceedings consistent with opinion. Appellees to pay costs.

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[57] In *O'Neal v. Prince George's County Council, Sitting as the District Council, et al.,* No. 259, September Term, 2012, a panel of the Court held that the *Accokeek* Judgment, as well as the resulting 2013 Subregion 5 SMA, did not apply to the properties that were the subject of that appeal. The panel's holding is based upon reasons unrelated to any of the contentions raised by the parties in the present appeals.

No. 1023, September Term, 2014, *Christmas Farm, LLC. v. Prince George's County Council, Sitting as the District Council* (Circuit Court Case No.: CAL 13-24864):

The judgment of the Circuit Court for Prince George's County is reversed and this case is remanded for proceedings consistent with opinion. Appellee to pay costs.

No. 1024, September Term, 2014, *MCQ Autoservicecenter, Inc. v. Prince George's County Council, Sitting as the District Council* (Circuit Court Case No.: CAL 13-24866):

The judgment of the Circuit Court for Prince George's County is reversed and this case is remanded for proceedings consistent with opinion. Appellee to pay costs.

No. 1061, September Term, 2014, *Robin Dale Land, LLC v. Prince George's County Council, Sitting as the District Council* (Circuit Court Case No.: CAL 13-24870):

The judgment of the Circuit Court for Prince George's County is reversed and this case is remanded for proceedings consistent with opinion. Appellee to pay costs.

No. 1062, September Term, 2014, *ERCO Properties, Inc. v. Prince George's County Council, Sitting as the District Council* (Circuit Court Case No.: CAL 13-24869):

The judgment of the Circuit Court for Prince George's County is reversed and this case is remanded for proceedings consistent with opinion. Appellee to pay costs.

No. 1426, September Term, 2014, *Piscataway Road-Clinton MD, LLC v. Prince George's County Council, Sitting as the District Council* (Circuit Court Case No. 13-24868):

The judgment of the Circuit Court for Prince George's County is reversed and this case is remanded to the circuit court for entry of a judgment in favor of appellant that is consistent with this opinion. Appellee to pay costs.