Circuit Court for Baltimore County
Case No. C-16-10242

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 02139

September Term, 2017

IN THE MATTER OF: GREATER GREENSPRING ASSOCIATION, et al.

Meredith,
Reed,
Adkins, Sally D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Adkins, Sally D., J.

Filed: May 3, 2019

*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.

The present case concerns a developer, Associated Jewish Charities ("AJC"), and a development plan for the Owings Mills property known as "Associated Way." The development was challenged by one community group, the Greater Greenspring Association, and individuals Joel Marcus, Helen Marcus, Amy Hott, Morton Hott, and Beverly Hott (collectively, "GGA").

On appeal, GGA challenges the Administrative Law Judge's ("ALJ") determinations regarding the approval of the development plan.[1] We rephrased the issues presented as follows:

[1] The Greater Greenspring Association ("GGA") presents the following nine questions for review:

> (1) Baltimore County entered into illegal contract zoning in October 15, 1992 during the Comprehensive Rezoning process with the Associated Jewish Charities. (See, Protestants' Exhibit 2 "A-l". Protestants' 2 "A-1;" in April 5, 1993; Protestants "2-B;" in February 15, 1994; Protestants' "C;" and, Protestants "D"). The Zoning for this property should be declared null and void.
>
> (2) The ALJ and Board erred in *not* deciding this issue as required by Maryland case law.
>
> (3) The ALJ and Board erred in their reliance on *Blakehurst Life Care Community v. Baltimore County, Maryland, et al.*, 146 Md. App. 509 (2002), to avoid deciding the jurisdiction to hear the "illegal contract zoning" issue.
>
> (4) The ALJ and Board erred in failing to require the County departments to review the County's Agreement in 1992 and thereafter while conducting their review to approve the instant request for fifty-six (56) single-family homes.

(Continued…)

> (1) Whether the ALJ's decision to approve the development plan for Associated Way was supported by substantial evidence and correct as a matter of law; and
>
> (2) Whether the ALJ committed an error of law in concluding that he lacks authority to consider GGA's argument that private agreements between AJC and Baltimore County constitute contract zoning.

For the reasons set forth below, we conclude that the record contained substantial evidence for the ALJ to conclude that, notwithstanding the applicability or interpretation of the 1992 and 1993 Agreements and Supplemental Agreements (together, "Agreements"), the Associated Way development plan should be approved. Moreover,

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> (5) The County failed to abide by its Agreement to notify and acknowledge community concerns.
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> (6) The County failed to count and confirm the available density of the whole site to support the fifty-six (56) proposed homes.
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> (7) During multiple Amendments to the original Associated Jewish Charities' plan, additional density was used and overlapping of parcels occurred which Appellants alleged resulted in "double dipping." The ALJ failed to require Baltimore County Department Reviewers to address improper density on site.
>
> (8) The ALJ and Board erred in not finding that only thirty-eight (38) lots were available for development, not fifty-six (56).
>
> (9) There are overlapping areas of use on the total tract Which were not clarified nor considered by the County Department Reviewers. The ALJ and CBA failed to require an analysis of these conflicts which affected the proposed fifty-six (56) lot plan.

GGA has not shown that, even if those Agreements were illegal contract zoning, the County's approval of the development plan for Associated Way would be affected. Accordingly, we need not decide the second issue in the context of this case.

FACTUAL OVERVIEW AND PROCEDURAL POSTURE

Development Plan Approval Process

The development plan approval process in Baltimore County is governed by Article 32, "Planning, Zoning, and Subdivision Control," of the Baltimore County Code, §§ 32-1-101–7-504 (2004) and the Baltimore County Zoning Regulations. The process begins with the submission of a concept plan, Code § 32-4-213, which is filed with various County agencies, *id.* § 32-4-214(a), and reviewed at a Concept Plan Conference wherein the applicant receives comments from the agencies, *id.* § 32-4-216(a). The Conference is followed by a Community Input Meeting ("CIM") which "provides a forum for: (1) discussion; and (2) resolution of community concerns," among other things. *Id.* § 32-4-217(a). Once the developer has participated in the CIM, it can file the development plan. *Id.* § 32-4-221(a).

Once filed, the development plan is again subjected to review by up to eleven County agencies. *Id.* § 32-4-226(b). When review is complete, the parties schedule a Development Plan Conference, which the developer, County agencies, and CIM participants may attend. *Id.* § 32-4-336(c). This is followed by a "public quasi-judicial hearing before a Hearing Officer"—in this case an ALJ—wherein the hearing officer considers "any comments or conditions submitted by the county agency." *Id.* § 32-4-

227(a), (e)(1). The developer must specifically note any comments from the CIM unresolved at the time of filing, *id.* § 32-4-221(b)(3), and these comments are submitted to the ALJ along with any agency response, *id.* § 32-4-226(d)(1)(ii).

The ALJ then conducts the public quasi-judicial hearing, at which he or she takes testimony and receives evidence. *Id.* § 32-4-228(a)(1). The ALJ's powers are constrained by the Baltimore County Code, Article 3, Title 12 (2011). After the hearing, the ALJ renders a final decision approving or denying the development plan, citing the "basis" of the decision. *Id.* § 32-4-229(a). "The [ALJ] shall grant approval of a Development Plan that complies with [the] development regulations and applicable policies, rules and regulations . . . ." *Id.* § 32-4-229(b)(1).

Associated Way Development Plan Hearings

The AJC submitted its development plan for Associated Way seeking to develop a portion of its larger 157-acre property in the Owings Mills section of Baltimore County. The development plan proposed the construction of 56 single-family homes. The tract already included a 25.5-acre property devoted to a senior residential community ("Weinberg Village") and a 43-acre property consisting of the Rosenbloom Owings Mills Jewish Community Center ("JCC"). The remaining area is approximately 88.5 acres. The appropriate breakdown and permissible uses for this remaining acreage is the central issue in this case, with GGA suggesting that there is not sufficient density to support 56 single-family homes and AJC insisting that the density is sufficient.

The ALJ conducted three days of public quasi-judicial hearings regarding the Associated Way development plan. At the hearing, both GGA and AJC introduced evidence, presented witnesses, and examined and cross-examined these witnesses. We review the most significant evidence elucidated at the hearing below.

The AJC introduced the following witnesses in its case-in-chief: Jean Tansey, Development Plans Review; Brad Knatz, Office of Real Estate Compliance; Dennis Kennedy, Development Plans Review; Jeff Livingston, Department of Environmental Protection and Sustainability; Brett Williams, Department of Planning; and Gary Hucik, Office of Zoning Review. Each County employee was examined and cross-examined and described the elements of the development plan that fell under their purview. Each also recommended approval of the development plan.

During his testimony on the first day of the hearing, the Office of Zoning Review representative, Hucik, explained how he determined that the development plan met the appropriate density calculations. Presuming that the density requirements for Associated Way were mixed, he identified 45.86 acres of the development plan space zoned at D.R. 1—meaning an available density of one dwelling unit per acre. He explained that AJC could develop 45 units in the space, but was only requesting 32. Hucik identified another portion of the development plan map containing D.R. 2 zoning—allowing two dwelling units per acre—and stated that no units were planned for that area. Finally, he explained that the remaining 10-acre portion of the development was zoned O.R. 1, which is "reviewed as basically like a 5.5 dwelling" units per acre area. He explained that AJC

was requesting to build 24 units in this section, which was under the 56-unit maximum for the space. Thus, he concluded that the Associated Way development plan met the appropriate density calculations and should be approved.

On the second day of the hearing, occurring approximately two months after the first hearing date, GGA called many of the same County witnesses, and other representatives from the same departments, as adverse witnesses, to further evaluate the Associated Way development plan. The GGA also introduced several witnesses from community associations and the general public. Significantly, GGA introduced a 1992 Development Agreement and 1993 Agreement, along with supplements to such agreements, to support its argument that the Associated Way site lacked sufficient density.[2]

A brief overview of the Agreements is warranted. The 1992 Agreement between the AJC and Baltimore County concerns the 157-acre tract owned by the AJC. It purports to designate portions of the overall tract as Parcel A—a 25.5-acre section zoned at D.R. 16 for elderly housing known as Weinberg Village—and Parcel B—a 12.5-acre section zoned at O.R. 1 "for office uses in support of administrative and social services for the Jewish Community . . . ." A portion of Parcel B is being used for Associated Way. The Agreements contain a provision allowing that, "in the event that [AJC] fails to comply with the provisions set forth in [the] Agreement," the zoning will "revert back to the uses

[2] The Administrative Law Judge ("ALJ") tentatively admitted the Agreements with the understanding that he would determine their ultimate applicability and relevance at a later time. During the hearing, GGA specifically proffered that the Agreements were relevant to the topic of available density.

permitted in D.R. 1 zone at the time of this Agreement" for any section not already improved. The Agreements also state that, "if at any time a transfer of Parcel A or Parcel B is made to a third party whose purpose is not to accomplish the AJC's mission to the Jewish community," any portion not yet improved "will revert back to the uses permitted in the D.R. 1 zone at the date of [the] Agreement." In a 2008 Second Supplemental Agreement, the parties agreed to increase Parcel A's allotted units for Weinberg Village from 400 to 450.

Teresa Moore, former Executive Director of the Valley's Planning Council ("VPC"), testified that she was involved in the initial discussions surrounding the Associated Way development as part of her role with VPC. She testified that she was only able to identify an available 25-acre space for the development, and that she did not "quite see how [the AJC was] getting to 88 acres . . . ." Moreover, she worried that density was being "borrowed" from other already-developed portions of land and used to improperly add units to Associated Way. But she did not offer any concrete information or opinion testimony to support her concern.[3] Regarding the Agreements, she also testified that the "community had been told that if [the property] was to be sold . . . for a profit[, then] it would go back to D.R. 1 uses."

The current Executive Director of the VPC, Elizabeth Buxton, also testified about Associated Way and the Agreements. She stated that she believed that the Agreements

[3] In calling Teresa Moore to testify, counsel for GGA stated that she was not being offered as an expert witness.

provided that the land in question would revert to D.R. 1 zoning if it were ever sold or "used for a non-[A]ssociated Jewish [C]harity mission related purpose . . . ." Finally, Tom Finnerty, President of the Greater Greenspring Association, testified about the Agreements. The ALJ characterized his testimony as insisting that "the AJC [was] unfairly trying to maximize its return from the property by crowding too many homes on the site."

The GGA also called two expert witnesses to testify about Associated Way and the Agreements. The first, Chris Jakubiak, was admitted as an expert on "Planning and the Zoning and Development Process." Jakubiak testified that AJC did not have sufficient density to build on the 10-acre portion of the development that was zoned O.R. 1. Pursuant to his interpretation of the Agreements, he believed that the "intent of this agreement" was for AJC to use the 10 acres for "[o]ffice use in support of the Jewish community." Absent such a use, the density should revert to the original D.R. 1 zoning, which would only allow for 10 units on the 10-acre plot.

Next, GGA called James Patton, admitted as an expert in civil engineering, land planning, zoning, development regulations, and land development. Patton explained that later Supplemental Agreements increased the Weinberg Village unit allotment from 400 units to 450 units, even though the property consisted of 25.5 acres zoned at D.R. 16.[4] He stated that there was "no identification anywhere" as to where the additional density came from to allow for the additional 50 units, and thus, there was no way to know whether there

[4] This would allow for approximately 408 units.

was any "overlapping" with the density now being used for Associated Way. Patton also expressed concern that the Agreements constituted impermissible contract zoning.

Rebutting GGA's witnesses, County officials continued to insist that Associated Way met all applicable density requirements, notwithstanding the Agreements. Jeffery Perlow, a 31-year veteran of the Office of Zoning Review, provided additional detail about the density calculations for Weinberg Village and explained that the development plan appropriately addressed any concerns he had at the time he reviewed it. When asked about the dwellings added to Weinberg Village in 2008, he stated that the additional density for the apartment project was supported by "a stormwater management area" across the street from Weinberg Village. Thus, Perlow concluded that the additional density used for that project was "not drawn from this development"—meaning Associated Way. For this reason, he was not concerned about approving the Associated Way project. Jeff Mayhew, Deputy Director of the Department of Planning, also stated that he believed that the development plan complied with the Agreements.

Also in rebuttal, the AJC offered David Thaler as an "expert Professional Engineer with specific knowledge and expertise in Civil Engineering, Land Planning and in the laws and regulations applicable to Baltimore County's development, review and approval process . . . ." First, Thaler, using an "Area Exhibit" his office had prepared, described the density breakdown of the overall development. He explained that, after removing the Weinberg Village area (25.5 acres) and the JCC area (42.92 acres), there were approximately 88 acres remaining. The Associated Way development is demarcated on

the Area Exhibit as consisting of 56.61 acres—45.86 acres zoned D.R. 1; 10.65 acres zoned O.R. 1; and 0.1 acres zoned D.R. 2. First, Thaler opined that Associated Way conforms with the available density, assuming that the density is a mix of D.R. 1 and O.R. 1. He showed that the development plan places 32 dwelling units within a D.R. 1 zone that accommodates 45 units and places 29 units within an O.R. 1 zone that accommodates 58 units.[5] More significantly, Thaler testified that Associated Way would also conform with available density, even if it consisted *entirely* of D.R. 1 zoning. He explained that the development contains 56 total dwelling units on 56.61 acres of land, which, at one unit per acre, would accommodate 56 units. Thaler also produced a map titled "Layout Configured for DR-1 Zoning"—treating the entire area as if it were zoned as D.R. 1—explaining that the project would still be compliant with all zoning and development regulations.

In March 2016, the ALJ issued his final decision. He explained that the AJC had "satisfied its burden of proof" and was "entitled to approval" of the development plan. The ALJ stated that he was "convinced by the testimony of [Perlow] and [Thaler] that the project is supported by sufficient density." Specifically, he relied on the AJC's plat map exhibits. Regarding the Agreements, the ALJ stated that he did "not believe that [he had] 'jurisdiction' to consider and construe" them. Because the Agreements were "not incorporated into any prior administrative orders," he stated that they could only be interpreted by the circuit court in a separate action, relying on *Blakehurst Life Care Community v. Baltimore County*, 146

[5] Five dwelling units were required to be counted in both D.R. 1 and O.R. 1 zones because those five lots straddle the two different zones. This explains why these numbers total 61, and not 56—though there are 56 individual dwelling units.

Md. App. 509, 520 (2002). He also concluded that, "even if the [Agreements were] enforceable in this venue[, he was] convinced by Mr. Thaler's testimony and the exhibits he introduced that sufficient density for the 56 single[-]family dwellings would exist by application of D.R. 1 zoning . . . ."

The GGA appealed the ALJ's decision to the Board of Appeals of Baltimore County. The Board reviewed the record and determined that "it is clear that the ALJ made an independent evaluation of density issue[s] raised by the [GGA] and his decision is supported by substantial and credible evidence. As such the Board is not in a position to disturb the ALJ's findings concerning density." The Board also affirmed the ALJ's determination regarding his authority to interpret or apply the Agreements. It reasoned that "to address the constitutional issues raised by the [GGA], the ALJ would have had to interpret the [Agreements] . . . ." Yet, under *Blakehurst*, he had "no authority to interpret or to enforce a private restrictive covenant agreement unless the agreement is incorporated into an order" or there is statutory authority for such an act. As neither are present, "the ALJ correctly applied the law by refraining from ruling upon or interpreting the [Agreements] . . . ."

The GGA again appealed to the Circuit Court for Baltimore County. The court affirmed the ALJ's reasoning on both issues. First, it concluded that, under *Blakehurst*, "the ALJ and the Board of Appeals did not err in deciding not to address illegal contract zoning since both entities were without authority to address such arguments." The court

also determined that "there was an abundance of evidence presented to both the ALJ and the Board of Appeals" to support their decision to approve the development.

DISCUSSION

Standard of Review

Our review "is limited to determining if there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law." *United Parcel Serv., Inc. v. People's Counsel for Balt. Cty.*, 336 Md. 569, 577 (1994). As a general proposition, the courts review administrative agency legal conclusions without deference to the agency or other reviewing bodies. *See Cty. Council of Prince George's Cty. v. Zimmer Dev. Co.*, 444 Md. 490, 553 (2015). We endeavor not to "substitute [our] judgment for the expertise of those persons who constitute the administrative agency[.]" *UPS*, 336 Md. at 576–77 (citations omitted). Yet, we are "under no constraints in reversing an administrative decision which is premised solely upon an erroneous conclusion of law." *Younkers v. Prince George's Cty.*, 333 Md. 14, 19 (1993) (citations omitted).

Factual determinations receive a much higher degree of deference from reviewing courts. *See Wilson v. Md. Dep't of Env't*, 217 Md. App. 271, 283 (2014). In reviewing factual conclusions, "we may not substitute our judgment for that of the [ALJ]," unless the conclusions "were not supported by substantial evidence . . . ." *People's Counsel for Balt. Cty. v. Elm Street Dev., Inc.*, 172 Md. App. 690, 700–01 (2007) (citations omitted).

"Substantial evidence is merely such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Id.* at 704 (internal quotations omitted).

In the development plan review process, "it [is] up to appellants to produce evidence rebutting the [County departments'] recommendations." *Id.* at 703 (citation omitted). "[T]he development plan is deemed Code-compliant in the absence of evidence to the contrary," *id.*, and "administrative officers are presumed to have properly performed their duties and to have acted regularly and in a lawful manner," *id.* at 705 (cleaned up).

Substantial Evidence

The overarching theme of GGA's substantial evidence argument is that the County failed to accurately determine the number of allowable units for Associated Way. First, GGA points to Patton's testimony that the County did not account for the use of the overall 157 acres among the various projects. Specifically, they argue that the County must clarify the source of the additional density used to increase Weinberg Village from 400 to 450 units in 2008 and demonstrate that land does not "overlap[]" with Associated Way. Additionally, GGA contends that due to "double dipping" and provisions in the 1992 and 1993 Agreements, only 38 lots should be permitted in Associated Way, not 56. They insist that the County clarify the "overlapping areas of use on the total tract," to the extent they have not done so.

The AJC responds that "approval of the development plan is supported by substantial evidence and it is correct as a matter of law." First, they note that *Elm Street*, 172 Md. App. at 703, creates a presumption that a development plan complies with land

use laws. The AJC argues that the approval by all County officials, the ALJ's crediting the testimony of the AJC's two expert witnesses, and the ALJ not finding GGA's experts persuasive, all work to provide substantial evidence for the decision reached. Additionally, they point out that the ALJ considered the "double-dipping" theory and rejected it, concluding that the development complies with all land use laws. The AJC further notes that "the ALJ correctly determined that the Development Plan would need to be approved," even if it had authority to interpret and apply the 1992 and 1993 Agreements. This is the case, according to AJC, because the ALJ concluded that the tract contained enough space for the development, even if it were all zoned at D.R. 1.

The present case only concerns the allowable density for the portions of AJC's property constituting Associated Way. As discussed at length above, the ALJ heard from many County employees who review and assess the code compliance of various concept and development plans as part of their job. Further, these administrators unanimously recommended approval of the Associated Way development plan. Once the County administrators made these recommendations, "it [was] up to appellants to produce evidence rebutting the [County departments'] recommendations." *Elm Street*, 172 Md. App. at 703. The ALJ specifically noted that he "[did] not believe [GGA] presented sufficient evidence" to rebut the findings of the County reviewers or AJC's experts.

We first address GGA's argument that AJC violated the Agreements and, thus, the unimproved portions of the property should revert to D.R. 1 zoning, pursuant to the terms of the Agreements. While recognizing that some of GGA's witnesses "expressed concern"

about the allowable density, the ALJ highly credited Perlow and Thaler's testimony that the project was supported by sufficient density. Importantly, although the ALJ did not believe he had "jurisdiction" to "consider or construe" the Agreements, he also ruled that, "even if the agreement[s] w[ere] enforceable, . . . sufficient density for the 56 single[-]family dwellings would exist by application of D.R. 1 zoning, without utilizing the higher density available under the O.R. 1 zoning." So, the ALJ did consider the Agreements, despite questioning his own authority to do so, and the ALJ's determination was based on his reading of the Agreements.

The Agreements contain a provision allowing that, "in the event that [AJC] fails to comply with the provisions set forth in [the] Agreement," the zoning will "revert back to the uses permitted in D.R. 1 zone at the time of this Agreement" for any section not already improved. Both parties agree that a portion of Parcel B, referenced in the Agreements, is being used in the Associated Way development. Significantly, GGA's witnesses repeatedly testified that a breach or invalidation of the agreement would result in Parcel B reverting to D.R. 1 zoning, per the Agreements. For example, Buxton asserted it was her understanding that the area would "revert back to the D.R. 1" zoning if it was sold or used for non-AJC purposes. Jakubiak also based his testimony on the fact that, were the property not being used for the purposes specified in the Agreements, it would be treated as a D.R. 1 zone.

The GGA's challenge to the County's approval rests largely on evidence that raises only generalized concerns by certain witnesses over potential "double dipping." Moore

merely testified that she had "a concern that things **might** be double counted," (emphasis added), and Buxton, too, testified only to general concerns rather than specific shortcomings in the development plan. Even GGA's expert testimony lacked meaningful specifics. For example, Patton opined that "[t]he Development Plan as presented rezoned does not identify comprehensively what has happened to that 157 acres," but not that the density allocated for Associated Way had previously been used in or promised for any other development. He complained that "[w]e have a community center which is not identified as to what acreage is encompassed . . . over this 1992 to the present," but gave no expert opinion that the density used for the community center somehow duplicated or overlapped with that committed to Associated Way.

In sum, GGA's experts raised questions and expressed opinions about what specifics AJC should have included on its expert's drawings and testimony—but such limited testimony does not warrant a reversal of the ALJ's decision. If GGA wanted to attack the County's approval of the development plan for Associated Way based on the Agreements, it needed to present more definitive and concrete testimony about how the land constituting the proposed Associated Way had insufficient acreage to support the development plan.

Again, "the development plan is deemed Code-compliant in the absence of evidence to the contrary." *Elm Street*, 172 Md. App. at 703. The ALJ stated that,

> as noted by [AJC], even if the [Agreements were] enforceable in this venue[,] I am convinced by Mr. Thaler's testimony and the exhibits he introduced that sufficient density for the 56 single[-]family dwellings would exist by

> application of D.R. 1 zoning, without utilizing the higher density available under the O.R. 1 zoning.

The above testimony, and the development plans, provided substantial evidence for the ALJ to reasonably determine that GGA did not adequately rebut Thaler's testimony and the unanimous recommendations of County departments. Thus, the ALJ did not err in concluding, and the Board did not err in affirming, that Associated Way complied with D.R. 1 zoning and, therefore, should have been approved even assuming the applicability of the Agreements.[6]

GGA has one final argument—maintaining that the County should not have approved the development plan because the plan would not be viable absent the 1992 and 1993 Agreements increasing the density for Weinberg Village—more specifically, Parcels A and B—and those Agreements constituted illegal contract zoning.[7] In other words, GGA

[6] The GGA also argues that, even assuming the 1992 and 1993 Agreements were valid, the County failed to abide by its agreement to notify and acknowledge community input. Yet, the Supplemental Agreements specifically confirm that a community input committee was indeed formed. Moreover, the GGA's only evidence to support this claim was the opinion of one witness who believed that there was "supposed to be quite a bit more give and take" than there was. This opinion was not sufficient evidence to justify a decision, on our part, that the ALJ's decision was not supported by substantial evidence.

[7] Contract zoning "occurs when an agreement is entered between the ultimate zoning authority and the zoning applicant . . . which purports to determine contractually how the property in question will be zoned, in derogation of the legal prerequisites for the grant of the desired zone." *Mayor and Council of Rockville v. Rylyns Enters., Inc.*, 372 Md. 514, 547 (2002). Such zoning is impermissible, "[a]bsent valid legislative authorization . . . ." *Id.* (citations omitted). "In such circumstances, the Maryland cases have not hesitated to hold such contract zoning to be null and void." *People's Counsel for Balt. Cty. v. Beachwood I Ltd. P'ship*, 107 Md. App 627, 668 (1995).

asked the ALJ, and now asks us in review of his discretionary decision, to set aside a final zoning decision regarding Weinberg Village made 27 years ago and declare the zoning "null and void." GGA asks us to take this unusual step notwithstanding that it produced no witness who was able to give an opinion, based on reasonable examination of the pertinent records, that proposed Associated Way depended—for its density—on some advantage gained from the higher density allowed when Parcels A and B were rezoned to D.R. 16 and O.R. 1 pursuant to the Agreements. We have already said that there was sufficient evidence to allow the ALJ to infer that the Associated Way development met the county standards, applying D.R. 1 density. Given that, showing Weinberg Village and proposed Associated Way are both part of the original 157 acres owned by AJC does not suffice to defeat the approvals given here. There is nothing either in the Agreements or in zoning law to justify a conclusion that the balance of AJC's land that was not classified in a higher zone should be more restricted (with a lower density) than the original D.R. 1 density allowed.[8] Thus, we see no reason why the County or the ALJ was required to

[8] When an agreement amounts to unlawful contract zoning, "the subject property retains the zoning classification it enjoyed prior" to the unlawful agreement. *Rylyns*, 372 Md. at 547 (concluding that the property reverted to its prior zoning classification, specifically disagreeing with the argument that voiding a contract zoning should result in the property being "unzoned"). Consequently, if the Agreements were "null and void," as GGA insists, the property would revert to the zoning in place before the Agreements were made. There is substantial evidence in the record to conclude that the 157-acre tract of land at issue was previously zoned D.R. 1. For example, both the 1992 and 1993 Agreements provide that violation of the agreement will cause portions of the property to "revert **back** to the uses permitted in the D.R. 1 zone at the time of this Agreement as to all portions of Parcels A and B not improved or upon which construction has not commenced." (Emphasis added.) This suggests that Parcels A and B were previously

(Continued…)

consider whether the Agreements constituted or depended on illegal contract zoning in approving the development of Associated Way.

"[I]t was . . . up to appellants to produce evidence rebutting the Directors' recommendations." *Elm Street*, 172 Md. App. at 703 (citations omitted). Thus, it was GGA's burden, as the protestant, to demonstrate that the development plan for Associated Way suffered from some fatal flaw, and they failed to do so. Therefore, we conclude that the ALJ's decision to approve the development plan for Associated Way was supported by substantial evidence.[9]

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

zoned D.R. 1. Additionally, the Agreements state that "AJC reserves the right to use the **balance of the Property for uses contemplated by present** and future **regulations** of Baltimore County under the D.R. 1 zone and permissible as a matter of right . . . ." (Emphasis added). Again, this strongly suggests that the entire property was zoned D.R. 1 prior to the 1992 and 1993 Agreements. AJC's expert, David Thaler, too, testified that the property "was zoned D.R .1 in 1992. And as a result . . . of the 1992 [Agreement] . . . part of it went to D.R. 16 and part of it went to [O.R. 1]."

[9] The GGA also argues that, even were the 1992 and 1993 Agreements valid, the ALJ should have required the County departments to review them before approving the project. As stated above, the ALJ had substantial evidence to conclude that, were the Agreements valid, the most extreme possible result would be that the undeveloped portions of Parcel B that are part of Associated Way would revert to D.R. 1 zoning. This was enough to support the ALJ's conclusion and his decision not to require the County departments to review this decision, assuming, *arguendo*, he even had the power to do that.