Circuit Court for Prince George's County
Case No. CAL 09-31386

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 259

September Term, 2012

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PATRICIA MUGG O'NEAL

v.

PRINCE GEORGE'S COUNTY COUNCIL, SITTING AS THE DISTRICT COUNCIL, ET AL.

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Graeff,
Kehoe,
Zarnoch, Robert A.,*
(Senior Judge, Specially Assigned)
JJ.

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Opinion by Kehoe, J.

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Filed: May 30, 2017

*Judge Zarnoch participated in the oral argument of this case as a member of this Court and in the adoption of this opinion as a senior judge, specially assigned.

**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. *See* Md. Rule 1-104

In 2009, Patricia Mugg O'Neal filed a petition for judicial review of a decision of the County Council of Prince George's County, sitting as the District Council, which (i) enacted a sectional map amendment, that is, a comprehensive rezoning ordinance for the County's Subregion 5; and (ii) approved an area master plan for the same area. Ms. O'Neal argued that the District Council's action was invalid as a matter of law. The Circuit Court for Prince George's County, the Honorable Melanie Shaw Geter[1] presiding, denied the petition, reasoning that Ms. O'Neal did not have standing to challenge the sectional map amendment and that, looking past the standing issue, Ms. O'Neal's substantive contentions were not persuasive.

On appeal, Ms. O'Neal presents two issues for our review, which we have rephrased:

> I. Did the circuit court err by concluding that Ms. O'Neal lacked standing to challenge the rezoning of Hyde Field?
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> II. Did the circuit court err by affirming the District Council's rezoning of Hyde Field?

The appellees are Zachair, Ltd.,[2] the owner of "Hyde Field," the property that is the focus of Ms. O'Neal's concerns, and the District Council itself. Zachair contends that the judgment of the circuit court should be affirmed. The District Council asserts that the

[1] Judge Shaw Geter is now an associate judge of this Court.

[2] In proceedings before the Prince George's County Planning Board and the Prince George's County District Council, FCD Development, LLC, was a co-applicant with Zachair. FCD is not a party to this appeal. The interests of the two entities appear to have been identical, at least as regards the issues raised in this appeal. We will refer to them collectively as "Zachair."

circuit court decided the case before it correctly but that the appeal is moot and should be dismissed.

The appeal is not moot. We will assume for purposes of analysis that Ms. O'Neal has standing but conclude that the circuit court was correct when it affirmed the action of the District Council as it pertained to the Hyde Field property. We will limit our holding to the Hyde Field Property.

## Background

### A. Statutory Overview

Prince George's County derives its authority to engage in land use regulation from the 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).[3] Many of the provisions of the RDA are implemented in Prince George's County through the Prince George's County Zoning Ordinance, which is codified as Title 27 of the County Code.

[3] When this case was decided at the circuit court level, the RDA was codified as Article 28 of the Maryland Annotated Code. In 2012, the RDA was recodified as Division II of the Land Use Article ("LU"). We will refer to the recodified version of the RDA in this opinion.

The RDA divides land use control into three broad categories: land use planning, zoning, and subdivision regulation.[4] We are primarily concerned with the first two aspects of governmental regulation in these appeals.[5]

The RDA assigns the primary responsibility for planning functions to the Maryland-National Capital Park and Planning Commission (the "Commission"), a non-partisan body of ten members, with five chosen from Montgomery County and five from Prince George's County. LU § 15-102.[6] 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

[4] *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 reflects this tripartite structure: the provisions of the statute pertaining to the preparation and approval of general and master plans is found in Title 21 of the Land Use Article, zoning in Title 22, and subdivision regulation in Title 23.

[5] 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.

[6] 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).

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).

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, which are termed "subregions." The Commission, or the relevant members of the Commission sitting as a planning board, prepare area master plans for each planning area. LU § 21-105(b) and (c).[7] 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.'" *Maryland-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)). In Prince George's County, master plans include recommendations for "zoning, the staging of development and public improvements[.]" LU § 21-105(c)(2).

After the Commission or the appropriate planning board adopts a plan, it must be approved by the relevant district council before it becomes effective. LU § 21-216(a)(1) (Prince George's County). The Prince George's County District Council must consider

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

whether to direct the Commission to update each local planning area master plan on at least a sexennial basis. LU § 21-105(c)(1)(i).

The RDA allocates responsibility for zoning to the county council of each county, sitting as the district council. LU § 22-101(b) (Prince George's County). The Prince George's District Council is authorized to: (1) "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 typically include the Commission's recommendations for the zoning classifications for specific areas, and sometimes even individual parcels, the District Council may enact comprehensive rezoning legislation, called "sectional map amendments," or "SMAs," on a subregional basis in conjunction with consideration and approval of updated area master plans for the same subegion. *See* Prince George's County Code ("PGCC") § 27-225.01.05.

Zoning Map Amendments

In addition to comprehensive zoning and rezoning, the RDA authorizes a district council to amend its zoning laws, including its zoning maps, "in accordance with procedures established in [each county's] zoning laws." LU § 22-104(a). In Prince George's County, the District Council must hold a public hearing, either by itself or

jointly with the Planning Board, before acting on a proposed SMA. PGCC § 27-226(b)(1)(A).

In the Zoning Ordinance, Prince George's County has established four different ways that the zoning classification of a particular parcel may be changed.

The first is through comprehensive rezoning, that is, the sectional map amendment process. As we will explain later, this is a legislative function of the District Council. We will discuss the County's SMA adoption procedures later.

The second is by what the Zoning Ordinance terms a "revisory petition," which is, in effect, an adjunct to the sectional map amendment process. *See* PGCC § 27-228(b). The revisory petition process does not concern us in this appeal.

The third is by means of a map amendment application for a specific parcel on the basis that there has been a change in the neighborhood since the most recent comprehensive rezoning that renders the current zoning inappropriate or that there was a "mistake" in the relevant comprehensive zoning. PGCC § 27-176(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). This is a codification of Maryland's "change/mistake" rule. *See, e.g., Clayman v. Prince George's County,* 266 Md. 409, 417 (1972). These proceedings are often termed "piecemeal" rezonings. A district council may grant a piecemeal rezoning application only after a quasi-judicial proceeding. *Montgomery County v. Woodward & Lothrop, Inc.,* 280 Md. 686, 712 (1977).

Finally, the District Council can change a property's zoning classification through the floating zoning process. Floating zone provisions are intended to provide some degree of flexibility to local governments in land use control. A floating zone proceeding is also quasi-judicial in nature, although the focus is not on "change" or "mistake," but rather whether the proposed development project satisfies express standards, set out either in the zoning ordinance or a general or master plan. *Richmarr Holly Hills, Inc. v. Am. PCS, L.P.*, 117 Md. App. 607, 638–41 (1997); *Floyd v. County Council of Prince George's County*, 55 Md. App. 246, 259 (1983).

Among Prince George's County's panoply of floating zones are comprehensive design zones. *See Prince George's County Council v. Zimmer Development*, 444 Md. 490, 530 (2015). Zachair filed comprehensive design zone applications for its property, which were eventually approved by the District Council as part of the 2009 SMA approval process. Ms. O'Neal's contentions that the Council acted illegally in doing so form the heart of this appeal. Therefore, some additional information regarding the County's procedures for the review and approval of comprehensive design zone applications will be useful in putting the parties' contentions in perspective.[8]

In very brief summary, a comprehensive design process is initiated when a property owner or developer submits a conceptual plan—termed a "basic plan" in the Zoning Ordinance—showing the proposed eventual development, together with supporting data

[8] The comprehensive design procedures are contained in §§ 27-179–198 of the Zoning Ordinance.

to the Planning Board. PGCC § 27-179. The supporting data must address a variety of environmental, development, infrastructure, and planning issues.[9]

[9] Among other issues, a basic plan submission must address:

> (i) Existing streams and their associated buffers; nontidal wetlands and their associated buffers; slopes greater or equal to fifteen percent (15%); and the one-hundred (100) year floodplain;
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> (ii) The general types of land uses proposed (such as residential, commercial-retail, commercial-office, institutional, and industrial), the delineation of general development envelopes, and in the Village Zones, designation of the required land use areas;
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> (iii) The range of dwelling unit densities and commercial or industrial intensities proposed;
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> (iv) General vehicular and pedestrian circulation pattern and general location of major access points;
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> (v) Areas not proposed to be developed with residential, commercial, institutional, or industrial uses;
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> (vi) The relationship of the proposed development on the subject property to existing and planned development on surrounding properties; and
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> (vii) A forest stand delineation prepared in conformance with Division 2 of Subtitle 25 and the Woodland and Wildlife Habitat Conservation Technical Manual.
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> (E) Where the application requests the M-A-C, L-A-C, V-L, V-M, or E-I-A Zone, or is for rezoning of one hundred (100) or more acres to the R-L, R-S, R-M, or R-U Zone,[ ] the applicant shall submit an estimated construction schedule setting forth the following:
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> (i) The proposed construction expected to occur within the first six (6) years after the Map Amendment is approved. Supporting evidence shall also be submitted which shows that the proposed construction will not exceed the capacity of existing public facilities, and public facilities scheduled for construction within the six (6) year period, to reasonably accommodate the development; [and]
>
> (ii) The estimated construction which is proposed to occur beyond the first six (6) years. Supporting evidence shall be submitted which shows what additional public facilities (not scheduled for construction within the first six (6) years) will be necessary for the ultimate development of the project. The applicant shall evaluate the public facilities shown on the Adopted and Approved Master Plan or

The application is reviewed by the Board's technical staff, which prepares a report and recommendations, § 27-189, as well as by interested public agencies, § 27-190, and finally by the Planning Board after a public hearing. PGCC §§ 27-189–91. At the conclusion of this process, the Planning Board makes a recommendation to the District Council as to whether the application should be granted. PGCC § 27-192. Before a comprehensive design application can be approved, and among other criteria, the applicant must demonstrate to the Council's satisfaction that the project complies with recommendations of the general plan and applicable master plans, is economically viable, is consistent with the County's environmental resource protection policies, and that roads, sewers, schools, and other public facilities will be adequate to meet the needs of the project during the course of the project's build-out period.[10]

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> any Functional Master Plan for the area, for the full development of the area as recommended by the Plans, and shall take into consideration any known changes that have taken place in development since the Plans were approved. The applicant shall also consider the probability of public facilities being available within the first twenty (20) years after the requested zoning is approved, or the estimated completion date if less than twenty (20) years[.]

PGCC § 27-179(c)(1)(D)-(E) (footnote omitted).

[10] PGCC § 27-195(b) provides that the District Council must conclude that:

> (A) The proposed Basic Plan shall either conform to:
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> (i) The specific recommendation of a General Plan map, Area Master Plan map; or urban renewal plan map; or the principles and guidelines of the plan text which address the design and physical development of the property, the public facilities necessary to serve the proposed development, and the impact which the development may have on the environment and surrounding properties; or(ii) The principles and guidelines described in the Plan (including the text) with

If a comprehensive design zone application is approved, the basic plan, together with its narrative text and any conditions imposed by the District Council, becomes the basis for the development of the subject property. Basic plan approval is step one of a three-

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respect to land use, the number of dwelling units, intensity of nonresidential buildings, and the location of land uses.

(B) The economic analysis submitted for a proposed retail commercial area adequately justifies an area of the size and scope shown on the Basic Plan;

(C) Transportation facilities (including streets and public transit) (i) which are existing, (ii) which are under construction, or (iii) for which one hundred percent (100%) of the construction funds are allocated within the adopted County Capital Improvement Program, within the current State Consolidated Transportation Program, or will be provided by the applicant, will be adequate to carry the anticipated traffic generated by the development based on the maximum proposed density. The uses proposed will not generate traffic which would lower the level of service anticipated by the land use and circulation systems shown on the approved General or Area Master Plans, or urban renewal plans;

(D) Other existing or planned private and public facilities which are existing, under construction, or for which construction funds are contained in the first six (6) years of the adopted County Capital Improvement Program (such as schools, recreation areas, water and sewerage systems, libraries, and fire stations) will be adequate for the uses proposed;

(E) Environmental relationships reflect compatibility between the proposed general land use types, or if identified, the specific land use types, and surrounding land uses, so as to promote the health, safety, and welfare of the present and future inhabitants of the Regional District.

. . . .

(3) In the case of an L-A-C Zone, the applicant shall demonstrate to the satisfaction of the District Council that any commercial development proposed to serve a specific community, village, or neighborhood is either:

(A) Consistent with the General Plan, an Area Master Plan, or a public urban renewal plan; or

(B) No larger than needed to serve existing and proposed residential development within the community, village, or neighborhood.

step process. Before actual development begins, an applicant must obtain approval of a comprehensive design plan and a specific design plan. *See* PGCC §§ 27-516–532.

Procedures for Sectional Map Amendments and Area Master Plans

The sectional map amendment process is initiated by a resolution of the District Council directing the Planning Board to prepare a proposed SMA. PGCC § 27-224. PGCC §§ 27-225 and 27–226 detail the specific procedures that the Planning Board and District Council must follow during the process of considering and adopting a new SMA. Section 27-225 states that, after it receives authorization from the District Council, the Planning Board is responsible for preparing a proposed zoning map. PGCC § 27-225(c). During the process, "any person may request that specific zones . . . be considered for specific properties during the Sectional Map Amendment process." PGCC § 27-225(a)(1). PGCC § 27-225.01.05 permits the Planning Board and the District Council to consider an SMA and an area master plan in conjunction with one another. This is what happened in the present case.

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). At the conclusion of the review process, the Planning Board "endorses" the proposed SMA and "transmits" it to the District Council for the Council's consideration and action. PGCC § 27-225.01.05(d).

When the SMA and area master plan processes are combined, the Planning Board is authorized to incorporate comprehensive design zone applications that have been considered, but not acted upon, by the Board into the proposed SMA. PGCC § 27-225.01(c).

The District Council is required to hold a public hearing on the proposed sectional map amendment. PGCC§ 27-226(b)(1)(A). If, as occurred in the present case, the SMA and area master plans are processed in conjunction with one another, the public hearing must be a joint one before both the District Council and the Planning Board. *Id.* Now we turn to the provisions of the Zoning Ordinance that govern the District Council's adoption of 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. PGCC § 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 section 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 an 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).

The Maryland Public Ethics Law

The last piece of the statutory background is Part V of Subtitle 8 of the Maryland Public Ethics Law, that is, §§ 5-833–839 of the General Provisions Article ("GP"), contains provisions specifically applicable to land use proceedings before the Prince George's County District Council. Specifically, GP § 5-835(a) prohibits an "applicant" (a defined term in Part V), to a land use "application" (another defined term) from making campaign contributions to members of the District Council while its land use application is pending. Second, GP § 5-835(b)(1) 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)

requires all applicants to file what is generally termed in Prince George's County an "ethics affidavit," stating (a) whether the applicant contributed funds to any council member's campaign within the 36 months preceding the application, and (b) if the answer to the former question is "yes," identifying the council member who received the contribution. The 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.").

These provisions of the Maryland Public Ethics Law do not directly affect the outcome of this appeal. Zachair and FCD were indeed "applicants" pursuing an "application" during the period in which the District Council was considering CR-61-2009, but both entities filed affidavits stating that neither they nor any of their agents made political campaign contributions to any member of the District Council during the relevant period. However, as we shall explain, violations of Part V's affidavit requirements by other property owners and developers became an issue in some of the judicial challenges to CR-61-2009.

### B. The 2009 Subregion 5 SMA and Area Master Plan and Zachair's Comprehensive Design Zone Applications

In 2007, the District Council enacted a resolution directing the Planning Board to prepare a new area master plan and a proposed sectional map amendment for Subregion 5 in order to implement the recommendations and policies of the County's then-current general plan, which had been approved by the District Council in 2002. In response to this directive, and in accordance with the state and local law provisions which we have previously summarized, the Planning Board and its staff prepared a proposed area master plan and a proposed SMA. As required by law, on March 31, 2009, the District Council and the Planning Board held a joint public hearing on these documents. On June 18, 2009, the Planning Board held a workshop to consider suggested revisions to the area master plan and the sectional map amendment that had arisen as a result of the joint public hearing. On June 25th, the Planning Board adopted a revised version of the area master plan and recommended that the District Council approve it. At the same time, the Planning Board recommended that the District Council approve a revised version of the SMA. The revisions consisted of changes to the zoning classifications of various properties that were proposed as a result of the joint public hearing. In addition, the Planning Board recommended that the proposed SMA be revised to include "comprehensive design zone proposals . . . A-10009 and A-10017." These comprehensive design zone applications pertained to Hyde Field.

The Comprehensive Design Zone
Applications for Hyde Field

"Hyde Field" is a term used by the parties to refer to a collection of contiguous parcels, totaling approximately 423 acres, which is located in Subregion 5 on Piscataway Road, near Clinton, Maryland. The Washington Executive Airpark, a private airport, occupies part of the property. There have been sand and gravel operations on other portions of the property. Hyde Field is owned by Zachair which proposes to close the airfield and to redevelop the entire property as a mixture of commercial and residential uses.

Hyde Field has been rezoned several times over the last twenty-five years. In the early 1990s, the field was zoned for E-I-A (Employment and Institutional Area) use. The E-I-A district regulations are intended "to provide concentrated nonretail employment or institutional (medical, religious, educational, recreational, and governmental) uses which serve the County, region, or a greater area" and "for uses which may be necessary to support these employment or institutional uses." PGCC § 27-500(a). This zoning classification was intended to allow for the eventual expansion of Hyde Airport, a plan that never materialized.

In 1993, the District Council revamped its plans for Hyde Field by adopting a revised area master plan for Subregion Five which led to a rezoning of portions of Hyde Field from E-I-A to R-E (Residential-Estate) and R-R (Rural-Residential) uses. Both the R-E and R-R districts permit one-family detached residences on lots of various sizes. PGCC §§ 27-424(a) and 27-428(a).

In 2002, the Commission adopted a revised General Plan, which designated the Hyde Field area as fit for the development of low-to-moderate-density suburban residential communities, distinct commercial centers, and employment areas—a balanced mixture of residential and non-residential uses.

The recommendations of the general plan and the area master plans notwithstanding, Hyde Field remained zoned as E-I-A, R-E, and R-R until the events that gave rise to the instant case, which we will now describe.

In June of 2008, Zachair filed two comprehensive design zone applications with the Planning Board regarding Hyde Field. The first application, A-10009, proposed to rezone approximately 90 acres from E-I-A, R-E, and R-R to L-A-C (Local Activity Center), a use designed to promote a mixed use development of residential, office and commercial uses. *See* PGCC § 27-494. The application suggested that the rezoned parcels could accommodate the development of 368 residential dwellings and 350,000 to 609,147 square feet of commercial development.

The second application, Application A-10017, proposed to rezone the remaining 334 acres of Hyde Field from E-I-A and R-E to R-M (Residential Medium Development), a use designed to "[e]ncourage amenities and public facilities to be provided in conjunction with residential development." PGCC § 27-507. According to the application, this rezoning would permit the development of approximately 2,000 residential dwellings.

On April 23, 2009, the Planning Board held a public hearing on both of these applications. Based on concerns voiced by the Board's staff and the evidence produced at

the hearing, the Board concluded that the proposals did not conform to the 2002 General Plan or the 1993 Master Plan. To reconcile the discrepancies, the Board recommended that Zachair make various changes to the applications, including changing the proposed R-M zone to the lower density R-S (Residential Suburban Development) zone. This change would reduce the total number of dwelling units permitted on the property by approximately 1,000. Zachair revised its applications accordingly. On May 20, 2009, the Board's planning staff recommended that the revised applications be granted, subject to a total of twenty-four conditions intended to address traffic, environmental, and infrastructure concerns raised by the applications.

On May 28, 2009, the Planning Board held a public hearing on the amended applications. The primary focus of this hearing was on whether, and if so what, conditions should be imposed on the applications in the event that they were ultimately approved. On June 18, 2009, the Planning Board issued Resolutions 9-90 and 9-91, which recommended that the amended applications be granted, subject to the various conditions recommended by the Board's staff. These resolutions, together with the record of the proceedings before the Planning Board, were forwarded to the District Council. The Council then held two public work sessions to discuss the Hyde Field application and other proposed revisions to the area master plan and SMA. The District Council did not hold an additional public hearing.

On September 9, 2009, the District Court enacted CR-61-2009, which approved the Planning Board's suggested revisions to the Sectional Map Amendment and the area

master plan. In the resolution, the Council found the Hyde Field comprehensive design zone applications "to be in general conformance with the land use recommendations of the Adopted Subregion 5 Master Plan." The Council's approval was made subject to the conditions recommended by the Planning Board.

CR-61-2009 also amended the zoning classifications to a number of other properties, most of whose owners sought zoning intensification. None of these owners timely filed the ethics affidavits required by GP § 5-835(c). The lack of compliance with the requirements of the Public Ethics Law had far-reaching implications.

**C. The Legal Challenges to CR-61-2009**

On October 9, 2009, Ms. O'Neal filed a petition for judicial review in the Circuit Court for Prince George's County challenging CR-61-2009 in general and the rezoning of Hyde Filed in particular. Zachair moved to intervene in the suit and was granted permission to do so by the circuit court. Nearly two years later, on August 16, 2011, Ms. O'Neal filed her memorandum in support of the petition, arguing, in pertinent part, that the Prince George's County Code permitted "the District Council to pass [amendments to a Master Plan or Sectional Map Amendment] without notice or the opportunity for public comment" and that this "create[d] a secret unfair planning and zoning process which violates [the Regional District Act]." We will explore these claims later in the opinion.

The circuit court held hearings on the petition on May 26, July 25, and October 26, 2011. On February 2, 2012, the circuit court issued a memorandum opinion and order affirming the decision of the District Council. The court concluded that:

> [T]he District Council's procedures and processes in applying the zoning ordinances were in accord with the Regional District Act and the Prince George's County Zoning Ordinances. This Court finds that Respondent acted within the confines of its legal authority in accepting amendment applications, notifying the public and allowing adequate public comment and participation. After careful review of the accompanying records, this Court is not persuaded that unlawful policies were utilized by [the] District Council. There is simply no evidence to support Petitioner's assertions.
>
> Further, Petitioner does not contend that [the District Council] failed to publicize its required hearing; she merely offers that she was unaware of the hearing. Under such circumstances, this Court cannot mandate [the District Council] to notify individual members of the public prior to acting. The statutory requirements are reasonably related to the needs and interests of the community and were carried out in a manner allowing fair input, positive and negative, from the community. In sum, the District Council permissibly acted within its authority when adopting CR-61-2009, and its actions were not arbitrary, capricious, unreasonable, or unlawful.

Alternatively, the circuit court found that Ms. O'Neal lacked standing to bring the instant challenge. On this point, the court stated:

> [T]his Court is not convinced that Petitioner has standing. There are two ways by which proper standing to obtain Judicial Review may be obtained. A Petitioner may prove that he or she is an adjacent property owner to land in dispute, in which case, there is prima facie standing. A Petitioner may also argue standing as a taxpayer [citing *120 W. Fayette Street, LLP v. Mayor and City Council of Baltimore,* 407 Md. 253 (2009)].
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> ***
>
> Petitioner does not contend that she is an adjacent property owner, which would afford her prima facie proof of standing, nor does she proffer that she will suffer a loss distinct from members of the public. She contends that there is a separate exception, which removes the requirement that she demonstrate damages in a manner different from members of the general public in order to seek Judicial Review. This Court disagrees. However, she has failed to establish that she even falls within that exception.
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> In sum, the actions taken by the [District Council] were in full accordance with the dictates required by the [RDA] and the Prince George's [Zoning

> Ordinance]. For the reasons stated above, this Court affirms the decisions of the [District Council] regarding approval and adoption of CR-61-209 in its entirety.

Ms. O'Neal was not the only person who challenged the Subregion 5 SMA. The Accokeek Mattawoman Piscataway Communities Council, the Greater Baden Aquasco Citizens Association, and several individuals also filed petitions for judicial review challenging both the Subregion 5 Master Plans and SMAs.[11] These actions were consolidated, and we will discuss them when we take up the District Council's mootness argument later in this opinion.

## Analysis

### I. 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)).

The District Council asserts that it was acting legislatively and that we should apply the deferential standard of review normally afforded to legislative acts. We agree.

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

[11] At the same time that it enacted CR-61-2009, the District Council also approved an SMA and an area master plan for Subregion 6. The *Accokeek* petitioners also challenged the Subregion 6 plan and SMA.

> 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 2009 SMA clearly satisfies 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.").

Courts afford a strong presumption of validity and correctness to comprehensive zoning and rezoning legislation. *See, e.g., id.*; *Rylyns*, 372 Md. at 535. The same presumptions apply to land use plans. *Friends of Frederick*, 224 Md. App. at 193. 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 [the 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)).

**II. The District Council's Mootness Argument**

"A case is moot when there is no longer an existing controversy when the case comes before the Court or when there is no longer an effective remedy the Court could grant." *Suter v. Stuckey*, 402 Md. 211, 219-20 (2007). There is no doubt that a change in the law while a case is pending can moot a land use appeal. *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[.]").

The District Council asserts that the present case is moot because it enacted a sectional map amendment and approved an area master plan for Subregion 5 in 2013. That SMA assigned zoning classifications to Hyde Field that are different from the L-A-C and R-S classifications that Hyde Field received in the 2009 SMA. The District Council argues that the current classification of Hyde Field derives from its 2013 legislative action. Therefore, there is no meaningful relief that we can grant Zachair at this juncture. We do not agree. Explaining why requires us to delve into the complicated history of the other challenges to the 2009 Subregion 5 SMA and master plan. This story is told in detail by another panel of this Court in *Bazzarre v. County Council of Prince*

*George's County, Sitting as the District Council, et al.,* No. 1016, September Term, 2014, and we summarize it here.[12]

As we related previously, in addition to Ms. O'Neal, the Accokeek Mattawoman Piscataway Communities Council, the Greater Baden Aquasco Citizens Association, and several individuals also filed petitions for judicial review challenging the Subregion 5 Master Plan and SMA. These actions were consolidated and we will refer to the consolidated action as "*Accokeek.*"

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 ethics affidavits had not been filed for many of the affected properties.[13]

In 2010, and before the circuit court had dealt with the *Accokeek* litigation in any sort of substantive fashion, the District Council re-opened the administrative records for the 2009 Resolutions to enable property owners who had obtained more intense zoning classifications to file ethics affidavits. Between January 2010 and the summer of 2010, at least twenty-three property owners in Subregions 5 and 6 filed the ethics affidavits that had not been timely submitted during the 2009 Resolution review process.

[12] The opinion in *Bazzarre* is filed simultaneously with this opinion. Because the outcome of *Bazzarre* might have had a bearing on the District Council's mootness contention raised in this case, we stayed proceedings in this case until *Bazzarre* was decided.

[13] This issue was not raised in the present appeal, presumably because Zachair and FCD filed the required affidavits.

The consolidated *Accokeek* cases were assigned to the Honorable Michele D. Hotten.[14] On July 26, 2010, Judge Hotten ordered that the 2009 Resolutions be remanded to the District Council so that the Council could:

> provid[e] 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][.]

After this order was received by the Council, it notified some, but not all, of possibly affected property owners of the Court's order. There is no indication in the record as to why the District Council staff did this. Several property owners who were notified 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, was returned to the circuit court.

On September 7, 2012, Judge Green 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

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

affidavits had been filed. Judge Green's order did not mention Zachair, FCD, or Hyde Field. This order affirmed the 2009 Resolutions in all other respects.

Thereafter, additional property owners 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 of the opportunity to file affidavits. They argued that the September 7 order should be modified because it was unfair to use the ethics affidavits as the basis for affirming some properties and reversing others when the District Council failed to notify all affected landowners.

Judge Green held a hearing on these motions on October 5, 2012, and issued an opinion and order that eventually became the final judgment on *Accokeek.* The court granted the motions to intervene. Second, it granted the motions to alter or amend the September 7 order, although the remedy granted by the court was very different from what the intervenors sought. The court concluded 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 property owners. The circuit court found that the enactment of the resolutions had been tainted by a pervasive failure on the part of property owners to file ethics affidavits and that efforts to remedy the situation in ways other than a blanket reversal had been frustrated by the staff of the District Council. The court concluded that, under the circumstances, the most appropriate remedy was to void the 2009 Resolutions and remand the SMAs and area master plans to the District Council for the Council to straighten out the affidavit problems and then to

"review . . . the recommendations of the Maryland National Capital Park and Planning Commission." The court excepted certain properties from the effect of its judgment but did not mention Zachair or Hyde Field.

Thereafter, Zachair filed a motion to intervene and alter or amend the judgment. The circuit court held a hearing on these motions, together with other motions to alter or amend, on May 3, 2013, and ultimately denied all of them. Zachair and Heathermore Associates, LP, filed separate 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 voluntarily dismissed its appeal in 2013; Zachair did the same in 2016.

While all of this was unfolding, the District Council remanded the Subregion 5 and 6 SMAs and master plans to the Planning Board, and thereafter enacted four resolutions[15] enacting SMAs and approving area master plans for Subregions 5 and 6. With this as background, we return to the Council's mootness argument, which we find is unpersuasive.[16]

[15] District Council resolutions CR-80- 2013 through CR-83-2013.

[16] The *Bazzarre* panel reversed the 2013 resolutions by the District Council as they pertained to the properties of the appellants. *See Bazzarre*, slip op. at 108. Zachair, however, was not a party to those appeals by the time that the opinion in *Bazzarre* was issued.

To the extent that the judgment entered by the circuit court in *Accokeek* purported to affect Zachair's rights under the 2009 SMA and area master plan—and it is not at all clear that *Accokeek* court contemplated such a result—the *Accokeek* judgment constituted an improper exercise of the circuit court's authority. At the time that the circuit court entered its judgment in *Accokeek,* Ms. O'Neal's appeal was pending. A circuit court maintains "fundamental jurisdiction over a matter despite the pendency of an appeal." *Kent Island, LLC v. DiNapoli,* 430 Md. 348, 361 (2013) (citing *Cottman v. State*, 395 Md. 729, 739 (2006); *Carroll County Commissioners v. Carroll Craft Retail, Inc*., 384 Md. 23, 44–45 (2004); *Pulley v. State*, 287 Md. 406, 417–18 (1980)). But this jurisdiction can properly be exercised only so long "as the court does not exercise its jurisdiction in a manner affecting the subject matter or justiciability of the appeal." *Kent Island,* 360 Md. at 361. As then Associate Judge, and now Chief Judge, Woodward explained for this Court:

> In sum, when an appeal is pending, the trial court retains its fundamental jurisdiction over the case, but its right to exercise such power is limited. The Court of Appeals has articulated this limitation in a variety of ways that are substantively the same: the trial court can "not exercise its jurisdiction in a manner affecting the subject matter or justiciability of the appeal," the circuit court "was certainly prohibited from exercising its jurisdiction in a way that would affect the subject matter of the appeal or appellate proceeding," the trial court may not exercise its jurisdiction in a manner that, "in effect, precludes or hampers the appellate court from acting on the matter before it," "a trial court may not act to frustrate the actions of an appellate court," and "the trial court may continue to act with reference to matters not relating to the subject matter of, or matters not affecting, the appellate proceeding[.]"

*Brethren Mutual Insurance Co. v. Suchoza*, 212 Md. App. 43, 65–66 (2013) (citations omitted).

In the present case, the circuit court affirmed the decision of the District Council as to Hyde Field "in its entirety." When Ms. O'Neal filed her notice of appeal, jurisdiction over the substance of the case passed from the circuit court to this Court. It is for this Court, and not the circuit court, and particularly not the circuit court in a separate proceeding, to decide the merits.

**III. Standing**

The circuit court concluded that, in order to have standing to challenge the sectional map amendment, Ms. O'Neal had to demonstrate that she: (1) was either an "aggrieved" adjacent property owner as that concept was enunciated in *Byniarski v. Montgomery County Board of Appeals*, 247 Md. 137, 143-46 (1967), and honed in a long series of subsequent appellate decisions, most recently, *Ray v. Mayor and City Council of Baltimore,* 430 Md. 74, 81–97 (2013), or (2) could demonstrate "taxpayer standing," as that concept was articulated in *120 West Fayette Street, LLP v. Mayor and City Council of Baltimore*, 407 Md. 253, 266-68 (2009). The circuit court concluded that Ms. O'Neal could not meet either standard. This area of the law has been refined significantly since the circuit court entered its judgment in 2012. First, the Court of Appeals restated the concept of taxpayer standing in *State Center, LLC v. Lexington Charles LP,* 438 Md. 451, 538–47 (2014). Second, and more to the point, the Court held that taxpayer standing is the only basis for a challenge to a comprehensive zoning or rezoning ordinance. *Anne Arundel County v. Bell*, 442 Md. 539, 576–579, 589 (2015).

*Bell* arose out of Anne Arundel County, which is not in the Regional District. Although, as a general rule, a judicial review proceeding is not an appropriate vehicle to challenge a comprehensive zoning statute, *Anderson House, LLC v. Mayor and City Council of Rockville,* 402 Md. 689, 706-07 (2008), the case is different in Prince George's County. In *County Council for Prince George's County v. Carl M. Freeman Assoc*., 281 Md. 70, 75 (1977), the Court stated that former Article 28 § 8-106, demonstrated "a legislative intent that resolutions adopting SMA's [are] appealable in Prince George's County." The statute was recodified in 2012 as LU § 22-407(a), and was amended in 2015. Laws of Maryland of 2015, Ch. 365. Whether the teachings of *Bell* apply within the Prince George's County portion of the Regional District is, at least arguably, an open question and is certainly one that was neither briefed nor argued by the parties.[17] We will assume for purposes of analysis that Ms. O'Neal has standing. This assumption will not change the outcome of this appeal because Ms. O'Neal's challenges to the District Council's decision are not persuasive.

**IV. Ms. O'Neal's Substantive Contentions**

First, Ms. O'Neal asserts, in essence, that the County's comprehensive design zones are floating zones; that, under normal circumstances, floating zone applications are decided through a quasi-judicial proceeding. We agree. She also contends that the

[17] Both the Court of Appeals and this Court have addressed standing issues in the context of LU § 22-407's statutory predecessor, Art. 28 § 8-106. But these cases involved quasi-judicial proceedings. *Gosain v. County Council of Prince George's County*, 420 Md. 197, 205-10 (2011); *Egloff v. County Council of Prince George's County*, 130 Md. App. 113, 116–17 (2000).

procedure employed in this case, in which there were two Planning Board hearings but no hearing before a zoning hearing examiner in which parties would have the right of cross-examination, was not quasi-judicial. She is correct.

From the premises, Ms. O'Neal argues that, because there was no quasi-judicial hearing, "it was impossible to determine whether the statutory conditions required to be met before placing the floating zone on the Hyde Field property were indeed met or to develop findings of fact and conclusions of law." She contends that such a procedure "is not discernable in the zoning regulations and is thus fundamentally unfair." Here, we part company with her.

What Ms. O'Neal overlooks is that the sectional map amendment process is legislative, not quasi-judicial. She points to no authority to support the contention that, in Maryland generally or in Prince George's County in particular, zoning changes effected by a comprehensive zoning ordinance must be based on evidence adduced through a quasi-judicial hearing process. In fact, the rule is to the contrary. *See, e.g., Montgomery County v. Woodward & Lothrop*, 280 Md. at 713 ("The [sectional map amendment] procedure is fundamentally legislative and no significant quasi-judicial function is involved."). In cases such as this, our role "is limited to assessing whether [the District Council] was acting within its legal boundaries." *Talbot County v. Miles Point*, 415 Md. at 393. As to those boundaries, PGCC § 27-226(a) provides, in pertinent part:

> (a) Pending Zoning Map Amendment applications.
>
> ***

> (2) A Comprehensive Design Zone application for which the Planning Board has made a recommendation may be included by the District Council in a Sectional Map Amendment, even if the Zoning Hearing Examiner has not held a public hearing. The Council may include in the Sectional Map Amendment record evidence submitted for the Comprehensive Design Zone application.
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> (3) The District Council's approval of a zoning application in the Sectional Map Amendment shall constitute final action on the application.

Because the Zoning Ordinance expressly permits the District Council to act upon a pending comprehensive design zone application in precisely the way that the District Council did in this case, we conclude that the Council was "acting within its legal boundaries."

Second, Ms. O'Neal argues that the procedure followed by the Planning Board and the District Council in this case violated what is now LU § 21-216, which requires the District Council to adopt procedures for plan amendments. Specifically, LU § 21-216(b)(2) requires that the County's procedures require the District Council and the Planning Board to hold at least one joint public hearing on the proposed plan. Her argument on this point is a bit puzzling. PGCC § 27-644(b) does mandate a joint public hearing by the District Council and the Planning Board before a new area master plan can be approved by the District Council. The joint hearing was held on March 31, 2009. The District Council complied with the requirements of both the state and the local laws.

Ms. O'Neal also argues that a second public hearing was required at the District Council level because the Hyde Field comprehensive design zone applications were not part of the proposed SMA at the time of the joint hearing. We do not agree.

PGCC § 27-226(c) requires the District Council to hold an additional public hearing on an SMA if, after the initial public hearing, the District Court proposes "amendments" to the proposed Sectional Map Amendment. *See* PGCC §§ 27-226(c)(2) and (c)(4). The term "amendment" in the context of § 27-226 is defined as a "change[] or revision[] to the map or text which did not receive substantial staff and Planning Board review prior to the transmittal." PGCC § 27-226(c)(2).[18] The Hyde Filed applications received substantial staff and Planning Board review before the Planning Board transmitted them to the District Council as part of the proposed SMA. Thus, no additional hearing was required.[19]

[18] PGCC § 27-226(c)(3) provides:

> A change or revision does not constitute an amendment to the transmitted Sectional Map Amendment if:
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> (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 memorandum or testimony (oral or written) from 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;
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> (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.

[19] O'Neal additionally argues that this process is confusing and that members of the public "did not know how the process worked and thus could not prepare for it." Land use control is, admittedly, a complicated process. This does not, however, make the zoning process fundamentally unfair.

Next, Ms. O'Neal asserts that the Zoning Ordinance does not permit a sectional map amendment to be approved with conditions. In support of this, she cites what is now LU § 22-214(a), which states in pertinent part:

> (a) In approving any zoning map amendment, the district council may consider and adopt any reasonable requirements, safeguards, and conditions that:
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> (1) may be necessary to protect surrounding properties from adverse effects that might accrue from the zoning map amendment; or
>
> (2) would further enhance the coordinated, harmonious, and systematic development of the regional district.

Ms. O'Neal does not explain how LU § 22-214(a), which clearly authorizes the District Council to amend a zoning map with conditions, actually prohibits it from doing so.

Finally, Ms. O'Neal argues that the circuit court erred in granting a motion by the District Council to supplement the record originally transmitted to the circuit court to include material that had been inadvertently omitted. She does not point to any authority to support her contention and we will not address it further. *See, e.g. HNS Development, LLC v. People's Counsel for Baltimore County*, 425 Md. 436, 459 (2012) (As to one issue, HNS's "brief provides only sweeping accusations and conclusory statements. [W]e are disinclined to search for and supply HNS with authority to support its bald and undeveloped allegation.").

For the aforesaid reasons, Ms. O'Neal has failed to overcome the "strong presumption of correctness and validity" in favor of the District Council's decision as stated in Resolution CR-61-2009. *See Rylyns*, 372 Md. at 535.

We affirm the judgment of the circuit court. Our holding is limited to the Hyde Field properties.

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