Circuit Court for Prince George's County
Case No. CAL18-41277

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 887

September Term, 2019

VARSITY INVESTMENT GROUP, LLC, ET AL.

v.

PRINCE GEORGE'S COUNTY, MARYLAND

Fader, C.J.,
Nazarian,
Wilner, Alan M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Fader, C.J.

Filed: September 8, 2020

We must decide whether the appellants, Varsity Investment Group and 6009 Oxon Hill Road, LLC (collectively, "Varsity"), were required to pay Prince George's County's school facilities surcharge in connection with their conversion of a derelict office building into rental residential apartments. Varsity sued the appellee, Prince George's County (the "County"), in the Circuit Court for Prince George's County, seeking injunctive relief and a declaratory judgment that Prince George's County Code § 10-192.01 (a State law that requires the County to impose a school facilities surcharge) and § 4-352(n) (a County ordinance that implements the surcharge) did not authorize collection of the surcharge. Varsity also argued that, even were the surcharge authorized, the County was estopped from collecting it because of an agreement entered by a County official. The circuit court rejected both of Varsity's arguments and entered judgment in favor of the County. We agree that the school facilities surcharge applies to Varsity and that the County was not estopped from collecting it. We will, therefore, affirm.

BACKGROUND

Local Government Law

Because the issues in this case implicate the County's home rule powers, we begin with a brief overview of the relationship between Maryland's State and local governments. In Maryland, "[c]ounties are the principal unit of local government." 6 Md. Dep't Legis. Servs., Legislative Handbook Series, *Maryland Local Government* 5 (2018) (hereinafter *Maryland Local Government*). Along with Baltimore City, Maryland's 23 counties "have traditionally exercised wide governmental powers in the fields of education, welfare, police, taxation, roads, sanitation, health and the administration of justice." *Md. Comm.*

for Fair Representation v. Tawes, 229 Md. 406, 412 (1962), *rev'd on other grounds*, 377 U.S. 656 (1964). Notwithstanding their important role in government, however, Maryland's counties—unlike the State—"are not sovereign bodies, having only the status of municipal corporations." *Id.* Historically, "counties were considered to be mere administrative instrumentalities of state government, . . . subject at all times to the plenary control of the Legislature and possessing only those limited powers which had been delegated by the General Assembly." *Ritchmount P'ship v. Bd. of Supervisors of Elections*, 283 Md. 48, 54-55 (1978). As a result of that limited autonomy, throughout Maryland's early history, the General Assembly devoted "significant time" to predominantly local matters. *See Maryland Local Government* 60.

By the early twentieth century, that structure had produced an "enormously inefficient system of performing local law-making functions at the state level." *Chesapeake Bay Found. v. DCW Dutchship Island*, 439 Md. 588, 600 (2014) (quoting *Ritchmount P'ship*, 283 Md. at 56). In response to that inefficiency—as well as "public indignation over excessive legislative interference with and insensitivity toward local problems and concerns"—a "'Home Rule' movement" arose to demand that local governments be "giv[en] . . . the power to legislate as to local matters free from undue encroachment by state legislatures." *DCW Dutchship Island*, 439 Md. at 600 (quoting *Ritchmount P'ship*, 283 Md. at 55-56). The reformers soon persuaded Marylanders to make the State the second (after California) to enact a constitutional amendment that granted counties home rule powers. *See* M. Peter Moser, *County Home Rule: Sharing the State's Legislative Power with Maryland Counties*, 28 Md. L. Rev. 327, 331 (1968).

Article XI-A of the State Constitution, ratified on November 2, 1915,[1] "enabled counties, . . . which chose to adopt a home rule charter, to achieve a significant degree of political self-determination." *Tyma v. Montgomery County*, 369 Md. 497, 504 (2002). "Its purpose was to [ ] transfer the General Assembly's power to enact many types of county public local laws to the Art. XI-A home rule counties." *Id.* (quoting *McCrory Corp. v. Fowler*, 319 Md. 12, 16 (1990), *superseded by statute on other grounds as stated in Wash. Suburban Sanitary Comm'n v. Phillips*, 413 Md. 606 (2010)).

Section 2 of Article XI-A directs "the General Assembly to provide a grant of express powers" that the charter counties could exercise without the need for particularized authorization by the State. *See Tyma*, 369 Md. at 505. The General Assembly complied by enacting the Express Powers Act (currently, Title 10 of the Local Government Article), which "endows charter counties with a wide array of legislative and administrative powers over local affairs." *DCW Dutchship Island*, 439 Md. at 600 (quoting *Ritchmount P'ship*, 283 Md. at 57). Under the Express Powers Act, charter counties may, among other things: (i) issue bonds, Md. Code Ann., Local Gov't § 10-203 (2013 Repl.; 2019 Supp.); (ii) purchase, lease, or dispose of property, *id.* § 10-312; (iii) levy a property tax, *id.* § 10-313; (iv) enact zoning and land use ordinances, *id.* § 10-324; and (v) "provide for the prevention, abatement, and removal of nuisances," *id.* § 10-328. In addition, charter

[1] Article XI-A was ratified on the same day as Article XVI, which authorizes voters to approve or reject Acts of the General Assembly by referendum. Both amendments were championed by the Progressives, *see* Dan Friedman, *The Maryland State Constitution* 307 & n.1081 (2011), and both "respon[ded] 'to the public outcry over corruption in state government and alleged abuses of legislative power,'" *see Kelly v. Marylanders for Sports Sanity*, 310 Md. 437, 450 (1987) (quoting *Ritchmount P'ship*, 283 Md. at 60 nn.9-10).

counties "may pass any ordinance, resolution, or bylaw not inconsistent with State law that: (1) may aid in executing and enforcing any power in [the Express Powers Act]; or (2) may aid in maintaining the peace, good government, health, and welfare of the county." *Id.* § 10-206(a).

Section 3 of Article XI-A authorizes a charter home rule county, "[f]rom and after the adoption of a charter," to exercise "full power to enact local laws . . . including the power to repeal or amend local laws . . . enacted by the General Assembly, upon all matters covered by the express powers granted." *See also* Local Gov't § 10-202(a) ("A county may enact local laws and may repeal or amend any local law enacted by the General Assembly on any matter covered by the express powers in this title."). A "local law" "applies to only one subdivision" of the State "and pertains only to a subject of local import." *Tyma*, 369 Md. at 507. Thus, "the county council of a chartered county has full power to enact local laws and to repeal or amend local laws of the General Assembly applicable solely to the county, so long as the county legislation is covered by one or more of the express powers enumerated in [the Express Powers Act]." *Ritchmount P'ship*, 283 Md. at 57.

The flip side of the authorization provided in § 3 to counties is § 4 of Article XI-A, which prohibits the General Assembly from legislating with respect to a single charter county "on any subject covered by the express powers granted." But the General Assembly may still "pass local legislation not within the express powers." *Castle Farms Dairy Stores v. Lexington Mkt. Auth.*, 193 Md. 472, 485 (1949). In addition, the General Assembly may "enlarge, diminish or change the express powers," *id.*, and may enact "public general

laws"—that is, laws that "pertain[] to two or more geographical subdivisions within the State, and 'deal[] with the general public welfare,'" *Tyma*, 369 Md. at 507 (citing Md. Const. art. XI-A, § 4) (quoting *Cole v. Sec'y of State*, 249 Md. 425, 435 (1968))—that are applicable to charter counties.

Following ratification of Article XI-A, Baltimore City adopted a home rule charter almost immediately (in 1918), but the counties were slow to follow suit. *Maryland Local Government* 61. By the mid-1960s, only four counties had adopted home rule: Montgomery County (in 1948), Baltimore County (in 1956), Anne Arundel County (in 1964), and Wicomico County (in 1964). *Id.* To encourage more counties to adopt home rule, the General Assembly proposed two additional constitutional amendments. The first, ratified in 1966 as Article XI-F, created a second class of home rule, known as "code home rule," which was easier for counties to adopt. *See* Dan Friedman, *Magnificent Failure Revisited: Modern Maryland Constitutional Law from 1967 to 1998*, 58 Md. L. Rev. 528, 579 (1999); Moser, 28 Md. L. Rev. at 336. Under the Express Powers Act, code counties enjoy most of the same home rule powers as charter counties, though not the "police power" granted to the latter by § 10-206(a) of the Local Government Article. *See* Local Gov't §§ 10-102(b) & 10-201. The second constitutional amendment, ratified in 1970 as § 1A of Article XI-A, simplified the process through which counties could enact a home rule charter. *See* Dan Friedman, *The Maryland State Constitution* 309 & n.1082 (2011). Following those changes, many more counties have embraced home rule. As relevant here, Prince George's County did so in 1970. *See Maryland Local Government* 65.

Authorization to Impose Excise Taxes

As "a chartered home rule county under Article XI-A," Prince George's County possesses home rule powers under the Express Powers Act. *See Edwards Sys. Tech. v. Corbin*, 379 Md. 278, 287-90 (2004). The Express Powers Act "does not, however, grant general taxing powers to charter counties." *E. Diversified Props. v. Montgomery County*, 319 Md. 45, 50 (1990). Apart from the property tax permitted by § 10-313 of the Local Government Article, any other tax imposed by Prince George's County must be authorized specifically by the General Assembly.[2] *See id.* at 49 ("[C]ounties . . . do not have the power to tax on their own authority, but may do so only if the power has been granted by the State."). That requirement includes excise taxes characterized as "development impact fee[s]," *see id.* at 55, such as the fee at issue in this appeal.

An "impact fee" has been defined as "a fee that is tied to the approvals required for a new development and that is . . . imposed to offset the cost of infrastructure or public facilities necessary to support new development." 89 Op. Att'y Gen. 212, 213 (2004). Because impact fees are not necessarily tethered to a particular development, they are treated in Maryland as excise taxes and, therefore, must be authorized by the General Assembly. *See E. Diversified Props.*, 319 Md. at 49-50, 55.[3]

[2] The General Assembly separately has granted Baltimore City, Baltimore County, and Montgomery County—but not Prince George's County—broader "powers to tax to the same extent as the state has or could exercise such power as a part of its general taxing authority." Balt. County Code § 11-1-102(a); *see also* Balt. City Charter art. II, § 40 (same); Montgomery County Code § 52-17(a) (same).

[3] The General Assembly has enacted various public general and local laws applicable to other counties that authorize or require the imposition of development impact

Prince George's County Code § 10-192.01

The school facilities surcharge at issue in this appeal is authorized by § 10-192.01 of the Prince George's County Code. Although codified in the County Code, § 10-192.01 is a public local law that the General Assembly enacted in 1995 to authorize—and later, mandate—the County to impose the surcharge. Since 1995, the General Assembly has amended § 10-192.01 many times, often to change the amount of the surcharge or to add specific exemptions or reductions, several of which we discuss below. The full version of § 10-192.01 that was in force during 2018, when the relevant events took place, is included in the appendix to this opinion.[4] Briefly summarized:

- Subsection (a)(1) provides that "[t]he County Council, by ordinance, shall impose a school facilities surcharge on new residential construction for which a building permit is issued on or after July 1, 2003."
- Subsection (b)(1) establishes the amount of the "school facilities surcharge imposed on a single-family detached dwelling, townhouse, or dwelling unit for any other building containing more than a single dwelling unit." The amount, which is adjusted each year for inflation, was initially set for fiscal year 2004 at $7,000 for properties that are inside the Capital Beltway or in specified areas abutting mass transit rail station sites, and $12,000 for all other properties.
- Subsections (b)(2) through (b)(6) and (c)(2) exempt from the surcharge:
    - "[A] mixed retirement development or elderly housing" (subsection (b)(2));

fees or excise taxes. *See* Fiscal & Policy Note to S.B. 451, at 1 (2019); Fiscal & Policy Note to H.B. 135, at 5 (2015).

[4] Section 10-192.01 was again amended in 2019 by Chapter 351 of the 2019 Laws of Maryland. Those amendments did not alter either of the provisions directly at issue in this appeal. Unless otherwise specified, all references in this opinion to § 10-192.01 are to the version that was in effect during 2018.

- "[A] single-family detached dwelling that is to be built or subcontracted by an individual owner in a minor subdivision and that is intended to be used as the owner's personal residence" (subsection (b)(3));

- "[M]ulti-family housing that is located in [a specified] area within the campus of Capitol Technology University" (subsection (b)(4));

- "[M]ulti-family housing that is located in the City of College Park and designated as graduate student housing by the City of College Park" (subsection (b)(4));

- "[A] single-family dwelling unit that is to be built or subcontracted by an individual owner to replace on the same lot a previously existing single-family dwelling unit that was destroyed by fire, explosion, or a natural disaster," but only if similar to the previous unit and owned and occupied by the same person (subsection (b)(5));

- "[A] single-family attached dwelling unit" that is "[l]ocated in a residential revitalization project" in specified regions of the County, and is both "[l]ocated on the same property as previously existing multi-family dwelling units" and "[d]eveloped at a lower density than the previously existing multi-family dwelling units" (subsection (b)(6)); or

- "[A] dwelling unit that is a studio apartment or efficiency apartment if the dwelling unit is located" within specified regions of the County designated for pedestrian- or mass transit-focused development (subsection (c)(2)).

- Subsections (c)(1) and (c)(3) require or permit, respectively, a 50% reduction in the amount of the surcharge for "multifamily housing" constructed in specified areas near mass transit;

- Subsection (d) provides that "[t]he school facilities surcharge shall be paid by the seller at the time a building permit is issued for the dwelling unit. The school facilities surcharge may not be construed to be a settlement cost";

- Subsection (e) clarifies that payment of the surcharge does not eliminate the County's "authority to apply any test concerning the adequacy of school facilities"; and

- Subsections (f) and (g) provide that revenues generated from the surcharge: (1) must be segregated from other revenues; (2) must be used only to add or

> expand public school facilities; and (3) are "intended to supplement funding for public school facilities and may not supplant other . . . funding for school construction."

The provisions at the center of this appeal are subsections (a)(1) and (d). As originally enacted in 1995, subsection (a)(1) was permissive—stating that the County Council "may impose a school facilities surcharge"—and applied to "new residential construction for which a building permit is applied for on or after July 1, 1996." 1995 Md. Laws ch. 66, § 1. Apart from those changes, the two provisions were substantively the same when originally enacted (then as subsections (a) and (c)) as they were in 2018.

Prince George's County Code § 4-352(n)

Shortly after § 10-192.01 took effect, the Prince George's County Council implemented the school facilities surcharge by enacting what is now § 4-352(n) of the County Code. *See* County Council Bill 83-1995. As originally enacted (then-codified as § 4-352(a)(32)), the provision read, in pertinent part:

> Upon the issuance of a building permit for new residential construction for which a building permit application has been made on or after July 1, 1996, with the exception of a permit that is issued pursuant to a valid preliminary plat of subdivision originally approved prior to October 1, 1995, the applicant shall pay a school facilities surcharge.

Like § 10-192.01, § 4-352(n) has been amended several times, generally to update the ordinance to set the amount of the surcharge and to reflect amendments to the State law.[5] However, the language most central to this case remains essentially unchanged:

[5] Since 2005, the amount of the surcharge has been indexed to inflation. *See* 2003 Md. Laws ch. 431, § 1. The County Council passes resolutions each year that set the amount of the surcharge accordingly. For Fiscal Year 2018—the year relevant to the events

> Upon the issuance of a building permit for new residential construction for which a building permit application has been made on or after July 1, 1996, the applicant shall pay a school facilities surcharge . . . .

Id. § 4-352(n)(1).

Varsity and The Oxford

Varsity is a real estate developer based in Bethesda. Around 2017, Varsity—through a subsidiary, 6009 Oxon Hill Road, LLC—purchased the Constellation Office Building in Oxon Hill with the intent of converting it into a residential building. At the time, the Constellation Office Building had been vacant for two years and was in poor condition. According to Varsity, its plan to convert the building was the first time an office building had been converted to residences in Prince George's County.

In January 2018, the County Council was considering whether to enact an ordinance, Council Bill CB-6-2018, that purported to exempt Varsity's project from the school facilities surcharge.[6] During that time, a Varsity representative met with Haitham Hijazi, the Director of the County's Department of Permitting, Inspections and

of this case—the school facilities surcharge was $9,317 per unit for buildings in certain geographic areas in which The Oxford is not located, and $15,972 per unit for "[a]ll other buildings." *See* Editor's Note to County Code § 4-352(n).

[6] Council Bill CB-6-2018 proposed to add a provision to County Code § 4-352(n) that would exempt from the surcharge:

> Multifamily housing dwelling units, or multifamily dwelling units created through the conversion of an office building, provided that the multifamily uses are located on property within a Regional Transit District or Local Center within an applicable General Plan, as designated by Resolution of the County Council.

Enforcement ("DPIE"). Mr. Hijazi and Varsity ultimately entered into an agreement (the "Agreement") that, in pertinent part:

- Acknowledged explicitly that "as part of the issuance of the [Building] Permit, [Varsity] would otherwise be required to pay the School Facilities Surcharge pursuant to Sections 4-352 and 10-192.01 of the County Code";
- Provided that, in light of the pendency of Council Bill CB-6-2018, the County agreed to issue the building permit without payment of the surcharge, conditioned on Varsity's agreement "that the applicable School Facility Surcharge shall be paid prior to the issuance of a Use and Occupancy Permit, unless CB-6-2018 (or some other applicable legislative action) is enacted that exempts the Property from having to pay the School Facility Surcharge"; and
- Provided that, if the bill were enacted, the County would issue the use and occupancy permit "without requiring the payment of the School Facility Surcharge."

On March 1, 2018, Varsity's managing member signed the Agreement. DPIE issued the building permit eight days later. Varsity then began to convert the Constellation Office Building—now known as The Oxford—into residences. Although, according to Varsity, "the building foundation [] remained unchanged" and "no substantial changes [were] made to the building's exterior," "Varsity renovated the interior of the office building into apartment units." The conversion required the "[i]nstallation of bathrooms, kitchens, bedrooms, and living rooms," as well as changes to the building's "plumbing, electrical, fire suppression, mechanical, and HVAC systems."

On September 18, 2018, the County Council passed Bill CB-6-2018, which amended § 4-352 to exempt certain "multifamily dwelling units created through the conversion of an office building" from payment of the school facilities surcharge. The County Executive vetoed the bill on October 1, 2018, based on the County Attorney's

advice that the bill was "beyond the scope of the County Council's authority" because the County "d[id] not have the authority to . . . waive taxes established in state law." The County Council overrode the veto by a two-thirds vote the following day. On October 16, the County Council adopted Resolution CR-80-2018, which purported to reduce by 50% the amount of the school facilities surcharge "for development of multifamily dwelling units through the conversion of an office building" in a geographic area that included The Oxford.

On October 22, presumably pursuant to the County Executive's view that Bill CB-6-2018 exceeded the County Council's authority, Mr. Hijazi informed Varsity that "[t]he issuance of th[e] building permit without payment of the school surcharge was in error" and that "seven (7) days from today Prince George's County will be issuing a stop work order . . . unless a payment of the school surcharge is made in full." On October 29, DPIE posted a stop work order and a correction order at the construction site.

Procedural History

On November 1, 2018, Varsity filed a complaint and a motion for a temporary restraining order in the Circuit Court for Prince George's County. After initially reserving ruling on Varsity's motion, the circuit court issued a preliminary injunction on November 29. Conditioned on Varsity posting a surety bond with the Clerk in the amount of $2,651,000—the alleged total amount of the surcharge[7]—the court enjoined the County

[7] The Oxford has 187 units and the surcharge, if it applies, is $15,972 per unit. 187 multiplied by $15,972 is $2,986,764. The circuit court ordered Varsity to pay the surcharge in an amount of $2,651,000, which was the amount that Varsity claimed to be at issue in

from (1) "issuing and/or enforcing a stop work order for failure to pay mandated school facilities surcharge fees as to the building permit that was issued to" Varsity, and (2) "refusing issuance of a use and occupancy permit for this project based solely on [Varsity's] non-payment of the disputed school facilities surcharge fee." In January 2019, while the case was pending, Varsity completed construction of The Oxford, and it subsequently opened the building to tenants.

Both parties moved for summary judgment. After a hearing, the circuit court issued a written order in which it denied Varsity's motion, granted the County's motion, and ordered Varsity to pay the full amount of the school facilities surcharge. The court reasoned that the surcharge applied to Varsity because "[t]he legislative intent was to require the surcharge to be paid by the entity applying for the building permit." It also concluded that Varsity's conversion of the office building entailed "new residential construction" because "[t]he General Assembly and the County Council intended that . . . the surcharge fee shall apply to the creation of a new residential unit" whenever "demand was created for new educational facilities." The court ruled that the Agreement did not prevent the County from enforcing the surcharge because, "[w]ithout authorization from the General Assembly or the County Council, the Director of DPIE could not defer payment of the surcharge." Finally, the court held that Varsity was not entitled to the benefit of CB-6-2018 or CR-80-2018, concluding that those enactments were ultra vires

its complaint. It is not apparent how that number was calculated, but the County has not contested it.

because, "[a]bsent express authority from the Legislature, the surcharge cannot be waived [in whole or in part] by the County Council."

Varsity timely appealed. In its brief, Varsity expressly waived its prior arguments that it is entitled to the benefit of CB-6-2018 and CR-80-2018, but continues to argue that the school facilities surcharge does not apply to its conversion of The Oxford and that the County is estopped from enforcing the surcharge because of the Agreement.

DISCUSSION

"A court may grant summary judgment in favor of the moving party 'if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law.'" *Chateau Foghorn LP v. Hosford*, 455 Md. 462, 482 (2017) (quoting Rule 2-501(f)). Because "[t]he question of whether a trial court's grant of summary judgment was proper is a question of law," *Hosford*, 455 Md. at 482 (quoting *Boland v. Boland*, 423 Md. 296, 366 (2011)), this Court reviews the trial court's decision "without deference," *Kennedy Krieger Inst. v. Partlow*, 460 Md. 607, 632 (2018). "[W]e independently review the record to determine whether the parties properly generated a dispute of material fact, and, if not, whether the moving party is entitled to judgment as a matter of law." *Hosford*, 455 Md. at 482 (quoting *Boland*, 423 Md. at 366). "We review the record in the light most favorable to the nonmoving party and construe any reasonable inferences that may be drawn from the facts against the moving party." *Id.* Here, Varsity does not allege the existence of any factual disputes, so we are concerned only with the circuit court's legal determinations.

I. RULES OF STATUTORY CONSTRUCTION

"The goal of statutory interpretation . . . is to discern and carry out the intent of the Legislature." *Aleman v. State*, 469 Md. 397, 421 (2020). To achieve that goal, "[w]e begin with an examination of the text of a statute within the context of the statutory scheme to which it belongs, then typically review the legislative history to confirm conclusions or resolve ambiguities, and finally may consider the consequences of alternative interpretations of the statute." *Id.*

We "first look[] to the normal, plain meaning of the language of the statute, reading the statute as a whole to ensure that no word, clause, sentence or phrase is rendered surplusage, superfluous, meaningless or nugatory." *Berry v. Queen*, ___ Md. ___, Nos. 10M and 63, Sept. Term 2019, 2020 WL 4282307, at *5 (July 27, 2020) (quoting *Brown v. State*, 454 Md. 546, 550-51 (2017)). In doing so, "[o]ur inquiry is not confined to the specific statutory provision at issue on appeal. Instead, '[t]he plain language must be viewed within the context of the statutory scheme to which it belongs, considering the purpose, aim or policy of the Legislature in enacting the statute.'" *Berry*, 2020 WL 4282307, at *5 (internal citation and quotation marks omitted) (quoting *Johnson v. State*, 467 Md. 362, 372 (2020)). That context may include "the statute's relationship to earlier and subsequent legislation, and other material that fairly bears on the fundamental issue of legislative purpose or goal, which becomes the context within which we read the particular language before us in a given case." *Berry*, 2020 WL 4282307, at *5 (quoting *Blackstone v. Sharma*, 461 Md. 87, 114 (2018)).

A statute may be ambiguous, requiring us to consider legislative history, in two ways. One is "[w]hen the 'words of a statute are . . . subject to more than one reasonable interpretation." *Blackstone*, 461 Md. at 113 (quoting *State v. Bey*, 452 Md. 255, 266 (2017)). The other is "where the words are clear and unambiguous when viewed in isolation, but become ambiguous when read as part of a larger statutory scheme." *Id.* In either case, "a court must resolve the ambiguity by searching for legislative intent in other indicia," *id.*, which may include

> the structure of the statute, including its title; how the statute relates to other laws; the legislative history, including the derivation of the statute, comments and explanations regarding it by authoritative sources during the legislative process, and amendments proposed or added to it; the general purpose behind the statute; and the relative rationality and legal effect of various competing constructions.

Lillian C. Blentlinger, LLC v. Cleanwater Linganore, 456 Md. 272, 295 (2017) ("*Blentlinger*") (quoting *Bellard v. State*, 452 Md. 467, 482 (2017)). In addition, we must "consider the consequences resulting from one meaning rather than another, and adopt that construction which avoids an illogical or unreasonable result, or one which is inconsistent with common sense." *Blackstone*, 461 Md. at 114 (quoting *Spangler v. McQuitty*, 449 Md. 33, 50 (2016)).

Because § 10-192.01 imposes a tax, we also consider the general rule that "a reviewing court may not extend the reach of a tax statute 'beyond the clear import of the language employed,' and where there is doubt as to such a statute's scope, it should be construed 'most strongly' in favor of the taxpayer." *Comptroller of the Treasury v. J/Port, Inc.*, 184 Md. App. 608, 622 (2009) (quoting *Dir. of Fin. v. Charles Towers P'ship*, 104

Md. App. 710, 717 (1995), *aff'd*, 343 Md. 567 (1996)). Thus, "any ambiguity within the statutory language must be interpreted in favor of the taxpayer." *Comptroller of the Treasury v. Citicorp Int'l Commc'ns*, 389 Md. 156, 165 (2005) (quoting *Supervisor of Assessments v. Hartge Yacht Yard*, 379 Md. 452, 461 (2004)). But "[a] strict construction must nonetheless be fair, reasonable, and consistent with the legislative intent. The canon in favor of strict construction is not an inexorable command to override common sense and evident statutory purpose." *J/Port*, 184 Md. App. at 622 (quoting *Charles Towers P'ship*, 104 Md. App. at 717). "The governing rule is always to ascertain the true intent of the legislature, and, when that is possible, one should not employ a contrary-pointing presumption . . . to disallow imposition of a tax meant to be imposed." *United States v. Montgomery County*, 761 F.2d 998, 1002 (4th Cir. 1985) (internal footnote omitted) (applying Maryland law). As the Court of Appeals explained almost nine decades ago:

> "[I]t may be conceded that no tax can be levied without express authority of law, but the statutes are to receive a reasonable construction with a view to carrying out their purpose and intent." And in Maryland, as elsewhere, . . . considerations such as a known general purpose of a statute have led the court to find and give effect to legislative intentions in tax . . . statutes, not entirely conforming to words used. The whole rule for ascertaining the effect of a statute is still that the plain intention of the Legislature must prevail, however that plain intention is made to appear.

Darnall v. Connor, 161 Md. 210, 215 (1931) (quoting *Scottish Union & Nat'l Ins. v. Bowland*, 196 U.S. 611, 629 (1905)) (internal citations omitted).

II. VARSITY'S CONVERSION OF A COMMERCIAL OFFICE BUILDING INTO NEW RESIDENTIAL DWELLING UNITS FALLS WITHIN THE SCOPE OF THE SCHOOL FACILITIES SURCHARGE.

The primary issue in this appeal is whether the surcharge mandated by Prince George's County Code § 10-192.01 and implemented by § 4-352(n) of the County Code applies to Varsity's conversion of The Oxford from a commercial office building into residential dwelling units. Varsity argues that its project falls outside the scope of the surcharge, both because the conversion does not constitute "new residential construction," for purposes of § 10-192.01(a)(1) and § 4-352(n)(1), and because Varsity is not a "seller" obligated to pay the surcharge under § 10-192.01(d). Our review convinces us that the General Assembly (1) intended the surcharge to apply to a conversion project like Varsity's that results in the creation of new residential dwelling units where none previously existed, and (2) did not intend to exclude rental housing units from the scope of the statute. We will address each of Varsity's arguments in turn.

A. The Conversion of the Constellation Office Building to The Oxford Entailed "New Residential Construction."

Section 10.192.01(a)(1) requires the County Council to "impose a school facilities surcharge on new residential construction for which a building permit is issued on or after July 1, 2003." Stripped of context, the term "new residential construction" is susceptible to more than one interpretation. But read in the context of the statute as a whole and considering the General Assembly's purpose in enacting it, we conclude that the only reasonable interpretation of the phrase is that it encompasses the conversion of office space into new residential dwelling units.

1. Removed from Its Statutory Context, the Phrase "New Residential Construction" Is Ambiguous.

"We begin with the plain language of the statute." *Deville v. State*, 383 Md. 217, 223 (2004). "Our analysis begins by discerning the ordinary and popular meaning of the words we seek to interpret," *Berry*, 2020 WL 4282307, at *5, that is, "new residential construction." We consider the dictionary definitions of the words "to derive their common understanding as those words are used in the English language. This is an essential starting point because the 'ordinary, popular understanding of the English language dictates interpretation of [the statute's] terminology.'"[8] *Id.* at *6 (quoting *Johnson*, 467 Md. at 372).

[8] Sometimes, terms or phrases are "terms of art" with special meaning that a court should apply in reading a statute. *See Air Wis. Airlines Corp. v. Hoeper*, 571 U.S. 237, 248 (2014) ("[W]hen Congress employs a term of art, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it is taken." (quoting *FAA v. Cooper*, 566 U.S. 284, 292 (2012))); *accord Armstrong v. Mayor & City Council of Baltimore*, 410 Md. 426, 448 (2009) ("When interpreting a statute or ordinance, courts presume that the enacting legislative body uses 'familiar legal expressions in their familiar legal sense,' unless the legislature indicates a contrary intent." (quoting *Trinity Assembly of God of Balt. City, v. People's Counsel*, 407 Md. 53, 92 (2008))). Here, Varsity suggests that we apply the particular technical definition of "new residential construction" used by the United States Census Bureau's Building Permits Survey, which expressly excludes "housing units created in an existing residential or nonresidential structure." *See* U.S. Census Bureau, *Building Permits Survey—Definitions*, *available at* https://www.census.gov/construction/bps/definitions/ (accessed Aug. 27, 2020). There is no evidence, however, that the Census Bureau's definition of "new residential construction" was before the General Assembly at the time it enacted § 10-192.01, or that the General Assembly intended to adopt that definition. *Cf. Health Servs. Cost Review Comm'n v. Holy Cross Hosp. of Silver Spring*, 290 Md. 508, 516 (1981) ("[T]he trade or commercial meaning of a term is treated as a fact to be proved in each case." (quoting 2A Sutherland, *Statutory Construction* § 47.31 (C. Sands ed., 4th ed. 1973))). Moreover, given that the Census Bureau's task of tracking new construction

The parties do not dispute that The Oxford is "residential" or that the work Varsity undertook to convert the building was "construction."[9] Instead, their dispute centers on whether that "residential construction" was "new." Merriam-Webster identifies several definitions of "new," some of which suggest something created out of whole cloth—e.g., "having recently come into existence"—and others which suggest something that had previously existed but took on a new condition or recently was discovered—e.g., "having been in a . . . condition but a short time" and "having been seen, used or known for a short time." "New," *Merriam-Webster's Collegiate Dictionary* 834 (11th ed. 2014). Similarly, Black's Law Dictionary defines "new" as "recently come into being," but also as "recently discovered," and "changed from the former state." "New," *Black's Law Dictionary* (11th ed. 2019); *see also* "New," *New Oxford American Dictionary* 1180 (3d ed. 2010) (defining "new" as "not existing before," "already existing but seen, experienced, or acquired

activity is not similar to the General Assembly's purpose in adopting § 10-192.01, we do not think the Census Bureau's definition reflects the General Assembly's intent.

[9] "Residential" means "designed for people to live in," "Residential," *New Oxford American Dictionary* 1485 (3d ed. 2010); *see also* "Residential," *Merriam-Webster's Collegiate Dictionary* 1060 (11th ed. 2014) ("used as a residence or by residents"), while construction means "[t]he act of building by combining or arranging parts or elements; the thing so built," "Construction," *Black's Law Dictionary* (11th ed. 2019), or "the building of something, typically a large structure," "Construction," *New Oxford American Dictionary* 373; *see also* "Construct" and "Construction," *Merriam-Webster's Collegiate Dictionary* 268 (defining "construct," as relevant here, as "to make or form by combining or arranging parts or elements," and "construction," as relevant here, as "the process, art, or manner of constructing something"). Using these definitions, the work Varsity undertook to convert the building was "residential construction."

recently or now for the first time," and "just beginning or beginning anew and regarded as better than what went before").

On the one hand, those definitions could support Varsity's interpretation that to constitute new construction, the building must be entirely new—i.e., having "recently come into being" and "not existing before." The Oxford was, of course, not *entirely* new, as the building's foundation and exterior existed previously. On the other hand, the definitions could also support the County's interpretation that new construction encompasses the conversion of a dilapidated commercial building into new residential units—an undoubtedly significant "change[] from its former state" and a "beginning anew [that was] regarded as better than what went before."[10] Our dictionary definitions are therefore of little help in resolving whether Varsity's work to convert The Oxford constitutes *new* residential construction. Consequently, we next turn our attention to the use of the phrase in the context of the statute in which it appears.

[10] The County emphasizes that, regardless whether the construction on the Oxford was entirely "new," there is no dispute that it was "new *residential* construction." That is, the County suggests that we construe the word "new" to modify the term "residential," rather than "construction." Under that interpretation, the conversion of the Constellation Office Building into the Oxford would constitute "new *residential* construction" because the project created residential units where they did not exist previously. Although we agree that that is a reasonable construction of the terms, it is not the only reasonable construction, and so does not resolve the ambiguity at this stage of our analysis.

2. The Statutory Context Supports the County's Interpretation that the Phrase "New Residential Construction" Applies to Projects that Create New Residential Dwelling Units Where None Previously Existed.

"[T]he meaning of the plainest language is controlled by the context in which it appears." *Blentlinger*, 456 Md. at 295 (quoting *Bellard*, 452 Md. at 482). Here, that context demonstrates that the overarching legislative purpose behind § 10-192.01 is to offset the increased burden that new residential dwelling units that are open to families with school-age children impose upon the County's public school system by creating an excise tax on the creation of such units.

Section 10-192.01(a)(1) requires a school facilities surcharge to be imposed on "new residential construction for which a building permit is issued." The amount of the surcharge, in turn, is determined by subsection (b)(1). The remaining provisions of subsection (b) create exemptions from the surcharge for:

- "[A] mixed retirement development or elderly housing," § 10-192.01(b)(2);
- "[A] single-family detached dwelling that is to be built or subcontracted by an individual owner in a minor subdivision and that is intended to be used as the owner's personal residence," § 10-192.01(b)(3);
- "[M]ulti-family housing . . . located in [an] area within the campus of Capital Technology University," § 10-192.01(b)(4)(A), and "multi-family housing that is located in the City of College Park and designated as graduate housing by the City of College Park," § 10-192.01(b)(4)(A), except that if the housing is converted to "multi-family housing for the general population," the surcharge must be paid at the time of conversion,[11] § 10-192.01(b)(4)(C);

[11] In 2019, the General Assembly added exemptions for multi-family housing: (1) "[d]esignated as student housing by Bowie State University and the governing body of Prince George's County that is located within 1 mile of Bowie State University"; and (2) at

- "[A] single-family dwelling unit that is to be built or subcontracted by an individual owner to replace on the same lot a previously existing single-family dwelling unit that was destroyed by fire, explosion, or a natural disaster if the single-family dwelling unit is" both similar to the former unit and owned by the same person, § 10-192.01(b)(5); or

- "[A] single-family dwelling unit" that is located in certain areas, offered for sale in fee simple, "on the same property as previously existing multi-family dwelling units," and "[d]eveloped at a lower density than the previously existing multi-family dwelling units." § 10-192.01(b)(6).

Notably, housing specifically designated for the retired or elderly (subsection (b)(2)) or for students (subsection (b)(4)) would not generally be expected to have an impact on the public school system. Neither would housing that replaces other residential units of the same or higher density (subsections (b)(3), (b)(5), & (b)(6)).[12]

Subsections (c) and (d) will be discussed in detail below.[13] Subsection (f) requires that revenue from the surcharge "be deposited in a separate account" and used "only to pay

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the discretion of the County, "undergraduate student housing built west of U.S. Route 1, North of Knox Road and south of Metzerott Road." 2019 Md. Laws ch. 351, § 1.

[12] Although not explicit in the statute, the exemption in subsection (b)(3) for single-family detached dwellings in minor subdivisions seems intended to address a homeowner's construction of a new personal residence when subdividing property on which that owner previously had a single personal residence. *See* Agenda Item Summary for CB-48-2000, at 2-3 (2000) (summarizing Planning Board's interpretation). The exemption thus operates to require payment of the surcharge only on the additional residential units created by the subdivision.

[13] Subsection (e) further protects the County's public schools by permitting the County to apply an "adequacy of school facilities test," under which the County may regulate development based on the adequacy of available public schools. § 10-192.01(e); *see id.* § 24-122.01(a) ("The Planning Board may not approve a preliminary plan of subdivision if it finds that adequate public facilities do not exist or are not programmed for the area within which the proposed subdivision is located."). When originally enacted, this provision—then denoted subsection (d)—forbade the County from applying such a test, *see* 1995 Md. Laws ch. 66, § 1, presumably on the theory that the surcharge would provide

for: (1) Additional or expanded public school facilities such as renovations to existing school buildings or other systemic changes; or (2) Debt service on bonds issued for additional or expanded public school facilities or new school construction." And subsection (g) specifies that the revenue "is intended to supplement funding for public school facilities and may not supplant other County or State funding for school construction."

Taken together, these provisions show that the General Assembly intends the surcharge to (1) apply generally to new residential dwelling units that may impose an additional burden on public schools, and (2) generate supplemental funding that will be directed to improving or expanding the public schools that are so burdened. That legislative purpose strongly favors the County's interpretation that "new residential construction" includes projects such as The Oxford, in which new residential units are created where none previously existed.

Of course, competing policy concerns may cause the General Assembly to include provisions in a statute that may appear not to aid, or even to impede to some extent, the overarching purpose of the statute. For example, § 10-192.01 contains or has contained several provisions that reduce—and, in one case, eliminate—the surcharge for certain types of housing built in certain locations, presumably to further other County development goals. As originally enacted, subsection (b)(2) authorized the County Council to "provide

sufficient revenue to offset the new development. In 1997, the General Assembly reversed course and allowed the County to continue to apply the test. *See* 1997 Md. Laws ch. 500, § 1.

a full or partial credit against the school facilities surcharge for moderately priced dwelling units." *See* 1995 Md. Laws ch. 66, § 1. That authorization was removed in 2000, *see* 2000 Md. Laws ch. 456, but provisions subsequently added to the statute continued to encourage certain types of development, primarily in higher-density regions and areas centered around mass transit. For example: (1) the surcharge is approximately 40% lower for units located inside the Capital Beltway or near certain "rail station site[s]," § 10-192.01(b)(1)(A)(ii)-(iii); (2) the surcharge is or may be reduced by 50% for multi-family housing in certain other transit zones, *id.* § 10-192.01(c)(1) & (3); and (3) the law excludes from the surcharge "a studio apartment or efficiency apartment if the dwelling unit is located" within certain other transit zones, *id.* § 10-192.01(c)(2).[14]

Varsity posits that the redevelopment of dilapidated commercial properties into productive, multi-family residential housing provides numerous social and economic benefits, and so should similarly be exempt or subject to a reduced surcharge. Although we take no issue with Varsity's policy argument, that is for the consideration of the General Assembly. As the statute is written, we see no indication that the General Assembly has made a choice to exempt such redevelopment projects. When the General Assembly has wanted to create a full or partial exemption from the surcharge, it has done so explicitly, as

[14] The provisions in subsection (c) expired on September 30, 2018. *See* 2013 Md. Laws ch. 685, § 2. In 2019, the General Assembly revived those provisions until June 30, 2021. *See* 2019 Md. Laws ch. 351 §§ 2 & 4.

catalogued above.[15] Indeed, given the care with which the General Assembly has crafted exemptions only for housing units that would not be expected to add to the burden on public schools, it would be illogical to read into the statute an implicit exemption for projects that will add a substantial number of unrestricted residential units. Moreover, it seems apparent that the General Assembly did not intend to create such an implicit exemption when it adopted the phrase "new residential construction" in 1995 because, as Varsity tells us, "[c]onversions of office buildings into residential buildings were not being done when §§ 10-192.01 and 4-352(n) . . . were [first] enacted."

In sum, the language of § 10-192.01, taken as a whole, strongly supports the County's interpretation of "new residential construction" as the *only* reasonable construction of the statute. Indeed, we are tempted to conclude on that basis that the statute is unambiguous when read in context. *See Blackstone*, 461 Md. at 113 ("words of a statute are ambiguous" when they are "subject to more than one *reasonable* interpretation" (emphasis added) (quoting *Bey*, 452 Md. at 266)). Nonetheless, we will proceed to "review the legislative history to confirm [our] conclusions." *Aleman*, 469 Md. at 421.

3. Other Indicia of Legislative Intent Also Support the County's Interpretation of "New Residential Construction."

The legislative bill file for House Bill 460 of the 1995 Session, which became § 10-192.01, contains little that sheds light directly on the meaning of "new residential

[15] We also note that, as discussed, the General Assembly typically has *exempted* from the surcharge only properties that would not be expected to increase the burden on public schools. When promoting other development priorities, the General Assembly typically has reduced the surcharge, not eliminated it.

construction." The only history provided by the parties—the Senate Budget and Taxation Committee's Floor Report—identified the surcharge as being "on new residential construction," without elaboration. *See* Bill File for H.B. 460, at 17. Consistent with the statute itself, the Floor Report stated that "revenues from the surcharge may only be used for additional or expanded public school facilities."[16] *Id.* The bill file does not discuss explicitly whether the surcharge would apply to residential units created in an existing structure that had previously been used only for commercial purposes.

We think the circumstances surrounding the adoption of § 10-192.01 are more enlightening regarding the Legislature's purpose. In 1995, the same year in which § 10-192.01 was enacted, the General Assembly established a Task Force on Education Funding to "[e]xplore all possible options and approaches for increasing funding for the public schools in Prince George's County." 1995 Md. Laws ch. 612, § 1. The Task Force's report, issued in March 1996, sheds light on the funding crisis in the County's public school system at the time.[17] *See* Prince George's County Task Force on Education Funding, *Report* (1996) (hereinafter "*Task Force Report*").

[16] Also consistent with the statute, the Fiscal Note to a 1997 bill that amended § 10-192.01 described the purpose of the original legislation as having been "to defray the cost of additional school construction." *See* Fiscal Note to H.B. 938, at 1 (1997).

[17] Although the Task Force's report followed the enactment of § 10-192.01, and "subsequent legislative history is not dispositive," *Zipes v. TWA*, 455 U.S. 385, 394 (1982), we may rely on the report to illustrate "the context in which the statute appear[ed]," *Blackstone*, 461 Md. at 135; *see also id.* at 123-24 (citing an administrative "evaluation report" issued "[t]hree years after the General Assembly passed" legislation for its "insight into the purpose of the original . . . statute"). In particular, we can conclude from the Legislature's authorization of the report in 1995 that it was generally aware of the financial crisis facing the County's school system.

According to the Task Force, the origins of the crisis could be traced to 1978, when the County electorate voted to adopt the Tax Reform Initiative by Marylanders ("TRIM") Amendment to the Prince George's County Charter. *See id.* at 11 & n.7; *see also* Prince George's County Charter § 812(a) (2002 Repl.) (TRIM Amendment). Called "one of the strictest tax freezes of all the initiatives nationwide that followed California's Proposition 13," Rachel Chason, *Facing a looming budget crisis, Prince George's lawmakers spark a debate on taxes*, Wash. Post, July 17, 2020, *available at* https://www.washingtonpost.com/local/md-politics/facing-a-looming-budget-crisis-prince-georges-lawmakers-spark-a-debate-on-taxes/2020/07/17/e0560aec-c60b-11ea-8ffe-372be8d82298_story.html (accessed Aug. 27, 2020), the TRIM Amendment prohibited the County from raising property taxes beyond the rate prevailing in fiscal year 1979, *Task Force Report* 11 n.7; *see also Granahan v. Prince George's County*, 326 Md. 346, 348-50 (1992) (discussing history of the TRIM Amendment).

The Task Force concluded that "[s]ince the advent of TRIM in fiscal year 1979, the Prince George's County School System has suffered from a severe funding problem." *Task Force Report* vi. Before TRIM, per-pupil funding for the County's public schools was higher than the average among Maryland's six largest school systems. By 1995, only Baltimore City ranked below Prince George's County. *Id.* at 6-7, 12. Meanwhile, the proportion of the County's unrestricted own-source revenues devoted to the school system dropped from 51.2% to 43.6%. *Id.* at 11.

In November 1994, the Task Force observed, County voters "exacerbated the situation by imposing a stringent limitation on assessment growth." *Id.* at 103.

Specifically, the County limited the increase in homeowner property assessments on a primary residence to no more than the lesser of "the percentage increase in the Consumer Price Index for the previous twelve months" or five percent. Prince George's County Charter § 812(d). Because annual inflation since 1995 often has been less than five percent, the increase in property assessments has been held below that level. *See* Prince George's County Council, Blue Ribbon Comm'n on Addressing Prince George's County's Structural Deficit, *Final Report* 14 (2017) (hereinafter *Blue Ribbon Comm'n Report*).

Initially, the State compensated for the County's budget problems by increasing the State's support for the local school system. But when the State suffered its own budget crisis, it reduced contributions to the County's public schools. *See Task Force Report* 26-27, 35, 126. In the years immediately before the enactment of § 10-192.01, the Task Force found, the State "shifted some $132 million in education costs over to Prince George's County." *Id.* at 27. At the same time, the State anticipated further belt-tightening as it projected that federal budget cuts could cost Maryland as much as $2.8 billion over a seven-year period. *Id.* at 48.

As the County's budget failed to keep pace with other jurisdictions, the Task Force concluded that "basic critical needs of the school system . . . continue[d] to go unmet." *Id.* at vi. In 1995, the Task Force found "approximately $180 million of critical needs" that were not funded, including (1) reduced class sizes; (2) more instructional materials; (3) new furniture and equipment; (4) upgraded technology; and (5) "much needed improvements in services for disabled and special education students." *Id.* at 17-19. The

Task Force estimated that almost two-fifths of the system's buildings "require[d] systemic renovations, . . . such as roof replacements, boiler replacements, chillers, etc." *Id.* at 21.

The Task Force also noted that the school system "face[d] tremendous student enrollment growth over the next 10 years," which would require the County to build "10 new elementary schools and one new high school." *Id.* at 19. On top of that, the school system needed an additional 14 new buildings to implement the Board of Education's Neighborhood School Desegregation Plan, which was projected to cost $375 million over six years. *Id.* at 20-21.

Confronted with strict limits on its ability to raise property taxes, declining support from the State, and growing educational needs, the County pursued what the Task Force described as an "aggressive[]" strategy of "seek[ing] additional taxing authority from the [L]egislature." *Id.* at 110. In 1987, the County obtained authority from the General Assembly to tax energy used to heat homes, the revenue from which was dedicated to public schools. *See* 1987 Md. Laws ch. 700. In 1995, the County obtained authority to enact a gross receipts tax on charitable "casino nights."[18] 1995 Md. Laws ch. 557. And,

[18] Although commercial gambling remained illegal in Maryland, *cf.* 2007 Md. Laws (Spec. Sess.) ch. 5, charitable gambling was legal in the County in 1995. In that year, at least 15 charitable casinos operated in the County, and they collectively handled some $360 million in wagers. *See* Charles Babington, *Businesses Would Lose Little to Casinos, Md. Report Says*, Wash. Post, Sept. 29, 1995, *available at* https://www.washingtonpost.com/archive/local/1995/09/29/businesses-would-lose-little-to-casinos-md-report-says/d3967835-e39d-46f0-834c-3290181d3770/ (accessed Aug. 27, 2020); David Montgomery & Michael Abramowitz, *P.G.'s Charitable Casinos May Have Lost Their Stake*, Wash. Post, Apr. 12, 1995, *available at* https://www.washingtonpost.com/archive/local/1995/04/12/pgs-charitable-casinos-may-

as of the date of the Task Force's report, the County was seeking authority to tax telecommunications services. *Task Force Report* at 110-11.

The General Assembly thus enacted § 10-192.01 in the context of the County's "deteriorating fiscal capacity," resulting from limits on property taxes, declining State and federal budget contributions, and growing infrastructure needs, all of which left the County's "school system . . . significantly underfunded."[19] *Id.* at 125, 128.

Subsequent legislative history is also informative. In addition to the targeted, explicit exemptions and reductions we have already discussed, we find enlightening a provision the General Assembly added to § 10-192.01 in 2011, which expired in 2013 pursuant to a sunset provision.[20] The provision stated that "[i]n this section, 'new

have-lost-their-stake/a61d46ae-13c1-4b2c-aba9-27d8b58a9705/ (accessed Aug. 27, 2020).

[19] Shortly after the Task Force's report was issued, the County's voters both (1) rejected an attempt to repeal the TRIM Amendment, and (2) approved a new measure, Question I, that requires the County to obtain the electorate's approval for any local tax increase. Terry M. Neal & Manuel Perez-Rivas, *Prince George's Caps Taxes Even Tighter*, Wash. Post, Nov. 6, 1996, *available at* https://www.washingtonpost.com/wp-srv/local/reglelex/results/stories/mdballot.htm (accessed Aug. 27, 2020).

[20] Notwithstanding that the provision in question expired as of May 31, 2013, *see* 2011 Md. Laws ch. 612, § 2, "courts may consider . . . repealed and expired statutes relating to the same subject to help determine legislative intent," 2B Sutherland, *Statutes & Statutory Construction* § 51:4 (N. Singer & S. Singer eds., 7th ed. 2019) (hereinafter *Sutherland on Statutory Construction* (7th ed.)); *see, e.g.*, *Stewart v. State*, 275 Md. 258, 263 (1975) (relying on "language formerly used" in previous version of statute to interpret extant version); *Sch. Comm'rs v. State Bd. of Educ.*, 26 Md. 505, 517 (1867) ("[T]he language and purposes of [a] section [of the State Constitution], . . . though now repealed, can be consulted in the interpretation of other provisions . . . ."); *Rosser v. Prem*, 52 Md. App. 367, 373 n.8 (1982) (observing "that certain cases decided under [a] former statute . . . have some value in interpreting the present statutes"); *accord Soto v. Bushmaster Firearms Int'l*, 202 A.3d 262, 318 (Conn. 2019) ("[R]epealed statutes may be construed in

residential construction' does not include the improvement, renovation, or expansion of: (1) An existing dwelling; or (2) An existing dwelling unit." 2011 Md. Laws ch. 612, § 1. That provision is notable for multiple reasons. First, if the General Assembly interpreted § 10-192.01 to apply only to the construction of entirely new buildings, this provision would have been superfluous, which is an outcome we strive to avoid. *See Berry*, 2020 WL 4282307, at *5 (stating that courts are to "read[] the statute as a whole to ensure that no word, clause, sentence or phrase is rendered surplusage, superfluous, meaningless or nugatory" (quoting *Brown*, 454 Md. at 550-51)). Second, the perceived need for the exemption indicates that the General Assembly believed that the statute otherwise applied to the "improvement, renovation, or expansion" of a dwelling unit within an existing building. *See Sutherland on Statutory Construction* (7th ed.) § 47:11) ("Exceptions . . . exempt something which would otherwise be covered by an act."). Third, even while it lasted, the provision exempted only changes to *existing dwelling* units, not the creation of new dwelling units within a previously commercial building. In short, the General Assembly's adoption of this exemption, temporary though it was, is wholly inconsistent with an interpretation of "new residential construction" as applying only to entirely new buildings.

Furthermore, although not necessarily indicative of the intent of the General Assembly, we observe that both the Prince George's County Council's enactment of CB-6-2018 and the County Executive's veto of that provision (as inconsistent with

pari materia to assist in interpreting ambiguous legislation." (citing *Sutherland on Statutory Construction* (7th ed.) § 51:4)).

§ 10-192.01) reflect an understanding that "new residential construction" encompasses the conversion of office space into new residential units. If it did not, neither the exemption nor the veto would have been necessary. And, of course, Varsity itself acknowledged in the Agreement its understanding that the surcharge applied to it in the absence of a legislative change.

In sum, the language of § 10-192.01, the historical context in which it was enacted, and subsequent legislative history all indicate that the General Assembly intended the statute to offset an anticipated increased burden on public schools by imposing a surcharge on the creation of new residential units that are open to occupancy by the general public. Varsity's proposed construction of the phrase "new residential construction" would allow it to avoid paying the surcharge despite its creation of 187 new residential units that are open to the general public. In the absence of any applicable exemption, we conclude that construing "new residential construction" to exclude The Oxford would be contrary to the General Assembly's purpose in enacting the statute.

4. The Rule of Construction that Requires Resolving Ambiguities in Favor of the Taxpayer Does Not Apply.

Varsity claims support from the principle that "when specifically interpreting tax statutes, . . . any ambiguity within the statutory language must be interpreted in favor of the taxpayer." *Comptroller of the Treasury v. Citicorp Int'l Commc'ns*, 389 Md. 156, 165 (2005) (quoting *Supervisor of Assessments v. Hartge Yacht Yard*, 379 Md. 452, 461 (2004)). That principle, however, "permits a fair interpretation in order to effectuate the legislative purpose, and 'it does not require that an unusual or unreasonable meaning be

given to the words used.'" *Supervisor of Assessments v. Trs. of Bosley Methodist Church Graveyard*, 293 Md. 208, 213 (1982) (quoting *Md. State Fair & Agric. Soc'y v. Supervisor of Assessments*, 225 Md. 574, 588 (1961)).

In this case, we need not place our thumb on the scale in favor of Varsity's favored interpretation of "new residential construction," because, for the reasons already discussed, Varsity's "interpretation is not a reasonable or logical one." *Goshen Run Homeowners Ass'n v. Cisneros*, 467 Md. 74, 110-11 (2020). To the contrary, that interpretation would "override common sense and evident statutory purpose." *Dir. of Fin. v. Charles Towers P'ship*, 104 Md. App. 710, 717 (1995); *see also* 16 E. McQuillin, *The Law of Municipal Corporations* § 44:14 (3d ed. 2019) ("The rule that tax laws are to be construed strictly . . . in favor of the taxpayer does not take precedence over other fundamental rules of statutory construction."). Therefore, we hold that the phrase "new residential construction," as used in § 10-192.01(a)(1), applies to Varsity's construction of new residential dwelling units through the conversion of what was previously commercial office space.

B. The School Facilities Surcharge Applies to Rental Buildings Such as The Oxford.

Varsity further contends that it is not required to pay the surcharge because § 10-192.01(d) states that "[t]he school facilities surcharge shall be paid by the seller at the time a building permit is issued for the dwelling unit." Latching onto the phrase "by the seller," Varsity asserts that it "ha[s] not sold, nor do[es] [it] intend to sell, any of the residences in The Oxford. Instead, Varsity acts as a landlord and, as such, seeks to lease

out The Oxford's apartments, not sell them." Because it is not a "seller," Varsity reasons, it need not pay the surcharge under § 10-192.01(d).

The County responds with several arguments. First, in order to "harmonize[] the provisions" of the statute, the County urges that "[t]he term 'seller' in § 10-192.01(d) must be read synonymously with . . . 'applicant' as th[at] terms [is] used in . . . § 4-352(n)." Second, the County avers that this Court should "read the terms 'applicant' and 'seller' synonymously" because doing so "is the only way to effectuate the statutory intent." Construing § 10-192.01(d) not to apply to Varsity would, the County insists, "thwart the reach and objectives of the law." Finally, the County asserts that even if the surcharge were only chargeable to a "seller," Varsity "can be considered a 'seller'" because it "conveys interest in real property in exchange for a bargained for consideration." Although we do not agree with all of the County's arguments, we conclude that the only reasonable interpretation of the provision in the context of the entire statute requires Varsity to pay the surcharge.

1. The Statute's Structure, Other Provisions, and Purpose All Indicate that the Phrase "By the Seller" Does Not Exempt Rental Buildings from the School Facilities Surcharge.

Once again, "[w]e begin with the plain language of the statute," *Deville*, 383 Md. at 223, "read . . . in context and in relation to all of its provisions," *F.D.R. Srour P'ship v. Montgomery County*, 407 Md. 233, 245 (2009). Varsity urges us to interpret § 10-192.01(d) as severely restricting the scope of the surcharge, even though that scope is otherwise set forth broadly in subsection (a)(1), subject to the exclusions and reductions identified in subsections (b) and (c). In context, we agree with the County that subsection

(d) is intended to identify the time at which the surcharge must be paid, not to limit the obligation to pay only to "sellers" of property.

Although the phrase "by the seller" is not intrinsically ambiguous when considered in isolation,[21] it is "when read as part of a larger statutory scheme." *See Blackstone*, 461 Md. at 113 (quoting *Bey*, 452 Md. at 266). The ambiguity arises both from the structure of the statute and from the several other provisions therein that would be rendered superfluous by Varsity's interpretation. As an initial matter, interpreting "by the seller" to dramatically diminish the scope of the surcharge is at odds with § 10-192.01's framework. The statute follows a logical structure: subsection (a)(1) defines the scope of the surcharge by requiring the County Council to "impose a school facilities surcharge on new residential construction for which a building permit is issued"; subsection (b)(1) establishes the amount of the surcharge; the remainder of subsection (b) establishes various exemptions to the surcharge; and subsection (c) identifies an additional exemption and reductions in

[21] We discern no ambiguity in the term "seller" itself. The term is not defined in the statute or elsewhere in the County Code, and so should be construed as having its ordinary and commonly accepted meaning." *Quotron Sys. v. Comptroller of the Treasury*, 287 Md. 178, 186 n.5 (1980). Black's Law Dictionary defines "seller" as "[g]enerally, a person who sells anything; the transferor of property in a contract of sale," or, under the Uniform Commercial Code, as "[s]omeone who sells or contracts to sell goods; a vendor." "Seller," *Black's Law Dictionary* (11th ed. 2019). Merriam-Webster defines "seller" simply as "one that offers for sale." "Seller," *Merriam-Webster's Collegiate Dictionary* 1129 (11th ed. 2014).

The County asserts that Varsity could be construed as a "seller" in a very broad sense, because it "sells" leasehold interests in the Oxford's apartment units. But that is not the ordinary understanding of the word "seller," which, in the real estate context, is distinct from a lessor. *Cf.* "Lessor," *Black's Law Dictionary* (11th ed. 2019) (defining "lessor" as "[s]omeone who conveys real or personal property by lease").

the amount of the surcharge for buildings located in certain areas, *id.* § 10-192.01(c).[22] If the General Assembly intended the scope of the surcharge to be limited to properties offered for sale, we would expect such a broad limitation to appear in subsection (a) or, perhaps, as an exemption in subsection (b). We would not ordinarily expect it to appear in subsection (d), which otherwise appears to be a paragraph addressing the timing of the payment and precluding it from being considered a "settlement cost."

Even more telling, several provisions in the statute are wholly inconsistent with Varsity's interpretation. For example, three categories of exemptions would be entirely superfluous if only "sellers" had to pay the surcharge:

- Subsection (b)(3) exempts from the surcharge a single-family dwelling built "by an individual owner . . . to be used as the owner's personal residence";
- Subsection (b)(4) exempts certain student housing from the surcharge;[23] and

[22] This order appears to have been deliberate. When the General Assembly added the provisions that are now in subsection (c), *see* 2013 Md. Laws ch. 685, it placed them before what is now subsection (d). Indeed, in all the versions of this statute, subsection (d) has followed the provisions creating exemptions from and reductions in the surcharge.

[23] A student housing exemption has appeared in § 10-192.01 in some form since 2002. *See* 2002 Md. Laws ch. 254, § 1 (currently codified at Prince George's County Code § 10-192.01(b)(4)). Although the student housing provisions do not use the term "rental," *see* § 10.192.01(b)(4)(A) & (B), subsection (b)(4)(C) provides that if such housing is later converted to "multi-family housing for the general population, the *owner of the property* shall pay, at the time of the conversion, the school facilities surcharge. § 10-192.01(b)(4)(C) (emphasis added). The clear implication is that prior to the conversion, "the owner of the property" had been renting dwelling units to students. *See id.* Moreover, it is common knowledge that student housing units generally are rentals. *See, e.g.*, Prince George's County Surcharge Exemptions for Projects Near Transit Properties Workgroup, *Report* 87-88 (2018) (noting that "the market would support more than 1,200 new housing units" near the University of Maryland, "with approximately 90 percent as rental to meet the college student demand").

- Subsection (b)(5) exempts a new dwelling unit built "by an individual owner to replace on the same lot a previously single-family unit that was destroyed."

No "seller" is typically involved in any of these circumstances.[24] *See Simpson v. Moore*, 323 Md. 215, 228 (1991) ("[T]his Court, whenever possible, will construe a statute to avoid an interpretation that renders any part of the statute nugatory or makes it surplusage[.]"); *see also Sutherland on Statutory Construction* (7th ed.) § 47:11 ("Exceptions . . . exempt something which would otherwise be covered by an act."). In addition:

- Subsection (b)(6) exempts from the surcharge single-family dwellings that replace multi-family dwellings of the same or greater density, but only if the new homes are "[o]ffered for sale on a fee simple basis." That condition would be unnecessary, at least as applied to the sales of most single-family dwellings, if the surcharge applied only to sellers in the first instance; and

- Subsection (c)(2) reduces the amount of the surcharge for "a dwelling unit that is a studio apartment or efficiency apartment" located in certain areas. The term "apartment," unlike "condominium," typically refers to dwelling units that are leased rather than sold. *Compare* "Apartment," *Merriam-Webster's Collegiate Dictionary* 57 ("a room or set of rooms fitted especially with housekeeping facilities and usually leased as a dwelling"), *with* "Condominium," *id.* at 259 ("individual ownership of a unit in a multiunit structure (as an apartment building) . . . ; *also*: a unit so owned"); *see also Rockville Grosvenor, Inc. v. Montgomery County*, 289 Md. 74, 114 (1980) (Davidson, J., concurring in part and dissenting in part) (noting that the term "apartment buildings" generally refers to structures "in which the units are rented by the residents," and

[24] At oral argument, Varsity contended that exemptions in the current statute are not indicative of the General Assembly's intent when it adopted the phrase "by the seller" in 1995 because they were added after the initial passage of § 10-192.01. "[A] subsequent legislative amendment of a statute is not controlling as to the meaning of the prior law," of course, but such an amendment "can be considered helpful to determine legislative intent." *Comptroller of the Treasury v. Two Farms, Inc.*, 234 Md. App. 674, 683 (2017) (quoting *Chesek v. Jones*, 406 Md. 446, 462 (2008)). Here, the exemptions for student housing were first added in 2002, *see* 2002 Md. Laws ch. 254, and have been modified and reenacted several times since, *see* 2007 Md. Laws ch. 166; 2014 Md. Laws ch. 637; 2016 Md. Laws ch. 733. Those longstanding exemptions constitute "strong evidence of what the legislature intended by the first statute." *Connolley v. Collier*, 39 Md. App. 421, 427 (1978) (quoting 2A *Sutherland on Statutory Construction* (4th ed.) § 49.11), *aff'd*, 285 Md. 123 (1979).

"condominium buildings" generally refers to structures "in which the units are owned by the residents").

Finally, as discussed above, the overarching purpose of § 10-192.01 is to offset the burden placed on public schools by the creation of new residential units that are open to occupancy by the general public through a surcharge on the creation of those units. Varsity's interpretation of § 10-192.01 as containing an implicit exemption for all rental units is inconsistent with the statutory purpose.

In sum, the statute's structure, context, and overarching purpose all conflict with Varsity's reading of the phrase "by the seller" as a limit on the scope of the school facilities surcharge. We continue our inquiry by consulting other indicia of legislative intent.

2. Legislative History Demonstrates that the General Assembly Did Not Intend § 10-192.01(d) to Exempt Rental Housing from the School Facilities Surcharge.

As discussed above, § 10-192.01 was passed to respond to a funding crisis in the County's public schools. *See generally Task Force Report*. Unable to raise property or income taxes, the County "s[ought] alternative revenue sources." *See id.* at 113. One revenue source the General Assembly provided was the school facilities surcharge. Against that legislative backdrop, Varsity has not offered any reason why the General Assembly would have chosen deliberately—yet indirectly—to exempt all rental units from the school facilities surcharge. New residential rental units, no less than new residential condominiums, create an increased need for school facilities that the surcharge is intended to meet.

As we have noted, little legislative history is available for the first version of § 10-192.01, but at least one piece of evidence suggests that legislators were aware that the statute was understood to apply to rental units. Prince George's County's official legislative position statement on House Bill 460, which became § 10-192.01, stated that the amount of the school facilities surcharge "may not exceed $1500 for single family detached dwellings, $800 per townhouse or $400 for other than single family dwelling units (*apartments or condominiums*)."[25] Bill File for H.B. 460, at 21 (emphasis added); *cf. Prince George's County v. Maringo*, 151 Md. App. 662, 677 (2003) (relying on "the

[25] At oral argument, Varsity asserted that the parenthetical describes an earlier version of the bill that was not enacted by the General Assembly. That does not appear to be the case, however. Varsity seems to refer to the fact that subsection (c) (now subsection (d)) of House Bill 460, when first introduced, read:

> The school facilities surcharge shall be paid:
>
> (1) In the case of a transfer of title to the property before the dwelling unit is occupied, by the seller at the time of settlement; or
>
> (2) In any other situation, by the owner of property before initial occupancy of the dwelling unit.

See Bill File for H.B. 460, at 27. Pursuant to an amendment adopted March 20, 1995, after the first reading of the bill, the language in subsections (c)(1) and (2) was removed and replaced with the language that originally appeared in § 10-192.01(c) (now (d)). *See id.* at 13. The change preceded the reference to "apartments" in the County's official legislative position, which states that it was "REVISED 3/28/95." *Id.* at 21. Thus, even after the amendment, the County continued to express its belief—unchallenged in the legislative record—that the surcharge would apply to "apartments."

Nothing in the bill file explains why the language in the original subsection (c) was altered. In light of the other considerations we have discussed, and in the absence of any explanation in the legislative record, we do not interpret that change to evince an intent to silently create an exclusion for rental properties.

County's legislative position paper" as an indicator of legislative intent). The bill file does not contain any documents that are inconsistent with that interpretation.

We find even more persuasive the General Assembly's longstanding acquiescence in the County's codified interpretation of § 10-192.01 as authorizing a tax on "applicants." *See* Prince George's County Code § 4-352(n). Shortly after § 10-192.01 was first enacted, the County Council implemented the surcharge by enacting what is now § 4-352(n)(1). *See* County Council Bill 83-1995. As relevant here, that subsection provides—in language that has not changed since 1995—that "[u]pon the issuance of a building permit for new residential construction . . . , *the applicant* shall pay a school facilities surcharge." *See* Prince George's County Code § 4-352(n)(1) (emphasis added). Thus, for 25 years, the Code provision that implements the school facilities surcharge has required that it be paid by all "applicants" for a building permit. The General Assembly's apparent acquiescence in the County's construction of § 10-192.01 weighs strongly in favor of the County's interpretation.

We do not mean—contra the County's suggestion—that § 4-352(n)(1) actually controls the meaning of § 10-192.01(d) or somehow supersedes it. Notwithstanding that both provisions appear in the County Code,[26] § 10-192.01(d) is a State law, whereas

[26] Many "local laws enacted by the [L]egislature" are, like § 10-192.01, codified in "each County's Code." *Montgomery County v. Eli*, 20 Md. App. 269, 271 (1974) (internal quotation marks omitted). Others may be found "scattered throughout the Code" of Maryland. *Id.* Still others were never codified and "appear[] only in the Session Laws for the year[s] in which [they] w[ere] enacted." *Wash. Suburban Sanitary Comm'n v. Elgin*, 53 Md. App. 452, 453-54 (1983). As a result, to distinguish County ordinances from local laws enacted by the General Assembly sometimes requires a bit of investigation.

§ 4-352(n) is a County ordinance. Maryland local governments "may levy only such type of tax, license fee, franchise tax or fee that is *specifically authorized* by the General Assembly." *See River Walk Apts. v. Twigg*, 396 Md. 527, 544 (2007) (emphasis in *Twigg*) (quoting *Tidewater/Havre de Grace, Inc. v. Mayor & City Council of Havre de Grace*, 337 Md. 338, 343 (1995)). Thus, no County ordinance can expand the scope of the school facilities surcharge beyond what is authorized by § 10-192.01, just as no County ordinance can make the surcharge more restrictive than what the General Assembly has mandated.

Nonetheless, for two reasons, it is significant that the County has interpreted and applied § 10-192.01 consistently for so long, and in a codified provision of its Code. First, § 4-352(n)(1) represents a "contemporaneous interpretation of a statute" by the County that is "charged with its administration,"[27] which "has been applied consistently and for a long period of time." *Balt. Gas & Elec. Co. v. Pub. Serv. Comm'n*, 305 Md. 145, 161 (1986). Because such an interpretation "derive[s] from a familiarity with the very circumstances which engendered the underlying enactment," *Sutherland on Statutory Construction* (7th ed.) § 49:7, it "is entitled to great deference," *Balt. Gas & Elec. Co.*, 305 Md. at 161; *see also Blondell v. Balt. City Police Dep't*, 341 Md. 680, 698 n.15 (1996) ("[T]he view taken

[27] Although a county is a local government, not a State agency,

> [w]e examine how much weight to give the County's interpretation based on Maryland's standards of administrative deference to agencies. Under *Falik v. Prince George's Hosp*[*ital*] *& Med*[*ical*] *C*[*en*]*t*[*e*]*r*, [322 Md. 409, 415-16 (1991),] both "legislative acquiescence" to long-standing interpretations of statutory provisions and long-standing administrative interpretations "established at the same time as the legislative enactment and continued uniformly thereafter" are accorded persuasive authority.

Dugan v. Prince George's County, 216 Md. App. 650, 665 (2014).

of a statute by administrative officials soon after its passage is strong, persuasive influence in determining the judicial construction and should not be disregarded except for the strongest and most urgent reasons." (quoting *Holy Cross Hosp. v. Health Servs.*, 283 Md. 677, 685 (1978))).

Second, the General Assembly has amended § 10-192.01 several times since 1995, *see* 2007 Md. Laws ch. 166; 2008 Md. Laws ch. 108; 2011 Md. Laws ch. 612; 2013 Md. Laws ch. 685; 2014 Md. Laws ch. 637; 2016 Md. Laws ch. 733; 2017 Md. Laws ch. 455; 2019 Md. Laws ch. 351, and has not altered the language of § 10-192.01(d) to override the County's imposition of the school facilities surcharge on all "applicants." That is particularly notable because "the General Assembly is presumed to be aware of existing local law when it legislates."[28] *Ad + Soil, Inc. v. County Comm'rs*, 307 Md. 307, 333 (1986); *see also Bd. of Exam'rs in Optometry v. Spitz*, 300 Md. 466, 477 (1984) (when the Legislature revises a statute that has been given an administrative interpretation, it "must

[28] In fact, prior to at least one amendment to § 10-192.01, the General Assembly was told that the County had levied the school facilities surcharge on a rental housing development. The Fiscal & Policy Note to House Bill 1048, enacted as Chapter 637 of 2014, mentioned that the proportion of "total school facilities surcharge revenues" derived "from new multifamily construction" had recently increased. Fiscal & Policy Note to H.B. 1048, at 4 (2014). The Note explained that "[m]uch of this gain [was] attributed to one-time revenues from large multifamily development projects, including a 262-unit apartment building located near National Harbor." *Id.* The building to which the Note referred was "the Esplanade, . . . [a] 262-unit apartment building" that consisted of "rental housing." *See* Daniel J. Sernovitz, *Bozzuto to break ground on National Harbor apartments*, Wash. Bus. J., May 7, 2013, *available at* https://www.bizjournals.com/washington/breaking_ground/2013/05/bozzuto-to-break-ground-on-national.html (accessed Aug. 27, 2020).

be presumed to have known, of this interpretation" (quoting *Valentine v. Bd. of License Comm'rs*, 291 Md. 523, 534 (1981))).

Here, because the General Assembly has not overridden the County's existing interpretation of the statute, it may presumptively have "adopt[ed] that interpretation when it re-enact[ed] [the] statute without change." *See Comptroller of the Treasury v. Clyde's of Chevy Chase*, 377 Md. 471, 501 n.26 (2003) (quoting *Lorillard v. Pons*, 434 U.S. 575, 580-81 (1978)); *AT&T Co. v. State Dep't of Assessments & Taxation*, 345 Md. 596, 614 (1997) ("The absence of any change by the legislature . . . evidences that the administrative interpretation and application of the statute has been, and is, correct."). That principle has even greater force here, where, as discussed above, the General Assembly has adopted several exemptions that would be superfluous if the County's longstanding interpretation were incorrect.

Other materials likewise show that the school facilities surcharge was and is generally understood to be a tax on residential development, rather than a tax on sales. *See Sutherland on Statutory Construction* (7th ed.) § 49:3 ("The long-continued contemporaneous and practical interpretation of a statute by executive officers charged with its administration and enforcement, courts, and the public is an invaluable aid to construction." (citing, *e.g.*, *Hofmeister v. Frank Realty Co.*, 35 Md. App. 691 (1977))). In 1997, for example, when the General Assembly was considering whether to again permit the County to use an adequate public facilities test, the Department of Legislative Services explained that the change would allow the County "to deny certain building permits, even though the developer is willing to pay the surcharge." *See* Fiscal Note to H.B. 938, at 2.

Media reports consistently have described the surcharge as raising revenue "from . . . residential developers."[29] *E.g.*, Rachel Chason, *In Prince George's, a battle over whether developers must fund school construction*, Wash. Post, Oct. 15, 2018, *available at* https://www.washingtonpost.com/local/md-politics/in-prince-georges-a-battle-over-whether-developers-must-fund-school-construction/2018/10/15/9865195e-c742-11e8-b1ed-1d2d65b86d0c_story.html (accessed Aug. 27, 2020); *see also* Bill File for H.B. 749, at 38 (1998) (letter from the Prince George's Chamber of Commerce stating that the Chamber "agreed with . . . [the original] tiered fee structure for single family, townhouses and *condominiums and apartments*," but believed that a shift to a single flat fee "w[ould] have a devastating effect on any future *apartment or condominium construction* in Prince George's County" (emphasis added)).

Varsity points to other State statutes that authorize counties to impose development impact fees on "applicant[s]," rather than "seller[s]," *e.g.*, Montgomery County Code § 52-54 (stating that "*applicant*[*s*] for a building permit for a residential development" are to pay the development impact tax (emphasis added)); *see also* Anne Arundel County Code § 17-11-203(b) (providing that "[*a*]*ny person* who subjects an existing use to a change of use or improvement that causes any impact on public schools" is to pay the tax (emphasis added)), and suggests that the variation is meaningful. That is, Varsity invokes the "common rule of statutory construction that, when a legislature uses different words, . . . it

[29] Varsity itself, by entering into the Agreement and supporting the passage of the ordinance exempting it from the surcharge, revealed that it, too, believed it would otherwise have been required to pay the surcharge.

usually intends different things." *See Toler v. Motor Vehicle Admin.*, 373 Md. 214, 223 (2003). That presumption "readily yields to context," however, *see Util. Air Regulatory Grp. v. EPA*, 573 U.S. 302, 320 (2014) (quoting *Envtl. Defense v. Duke Energy Corp.*, 549 U.S. 561, 574 (2007)), and here, for the many reasons already discussed, the use of the term "seller" in § 10-192.01(d) appears to be the result of a drafting error, not an intentional choice, *cf. United States v. Rast*, 293 F.3d 735, 737 (4th Cir. 2002) (concluding that a phrase in a federal statute "simply makes no sense in the context of this statute, and [so] its presence must be the result of a drafting error"); *see also Walker v. Montgomery County Council*, 244 Md. 98, 102 (1966) ("[W]hen a word in a statute appears to have been inserted by way of inadvertence or mistake, . . . the rule is that it should be rejected as surplusage."); *Yim, LLC v. Tuzeer*, 211 Md. App. 1, 29 (2013) ("[W]e do not permit a 'patent drafting error' to frustrate the goal of a statute." (quoting *Kaczorowski v. Mayor & City Council of Baltimore*, 309 Md. 505, 520 (1987))).

3. The Rule of Construction that Requires Resolving Ambiguities in Favor of the Taxpayer Does Not Apply.

Relying again on the principle that "where there is doubt as to [] a [tax] statute's scope, it should be construed 'most strongly' in favor of the taxpayer," *see Comptroller of the Treasury v. J/Port, Inc.*, 184 Md. App. 608, 622 (2009) (quoting *Charles Towers P'ship*, 104 Md. App. at 714), Varsity contends that the County's efforts to levy the surcharge against it constitute an impermissible "enlarge[ment] [of] the statute's operation of 'seller' to impose a tax upon parties who have not sold and do not intend to sell any

residences, in clear disregard of § 10-192.01." Again, we do not think that principle applies here.

Like its interpretation of "new residential construction," Varsity's reading of "by the seller" as excluding all rental buildings from the surcharge "is not a reasonable or logical one." *Cisneros*, 467 Md. at 110-11. Because the rule of strict construction "permits a fair interpretation in order to effectuate the legislative purpose," *Trs. of Bosley Methodist Church Graveyard*, 293 Md. at 213 (quoting *Md. State Fair & Agric. Soc'y*, 225 Md. at 588), we are not required to adopt Varsity's interpretation when it conflicts with "other fundamental rules of statutory construction," *see* 16 E. McQuillin, *supra*, § 44:14. *Cf. Darnall v. Connor*, 161 Md. 210, 215 (1931) ("[C]onsiderations such as a known general purpose of a statute have led the court to find and give effect to legislative intentions in tax . . . statutes, not entirely conforming to words used.").

Moreover, the principle that ambiguities must be construed in favor of the taxpayer applies only to disputes over the applicability of a tax statute. *New Parkman Hous. Ltd. P'ship v. State Dep't of Assessments & Taxation*, 98 Md. App. 431, 441 (1993). "Where . . . we are construing a tax *exemption*," conversely, "we are to construe it strictly in favor of the state." *Id.*; *see Chesapeake & Potomac Tel. Co. of Md. v. Comptroller of the Treasury*, 317 Md. 3, 11 (1989) (stating that "statutory tax exemptions are strictly construed in favor of the taxing authority"). Here, although Varsity characterizes § 10-192.01(d) as limiting the scope of the school facilities surcharge set forth in subsection (a)(1), it is really treating "by the seller" as an exclusion. Even under Varsity's construction

of the statute, therefore, any ambiguity in the statutory language would need to "be resolved in favor of the State," not Varsity. *Chesapeake & Potomac Tel. Co.*, 317 Md. at 11.

For all of these reasons, we hold that the phrase "by the seller," as used in § 10-192.01(d), does not exclude Varsity's construction of new rental dwelling units from the school facilities surcharge.

III. THE COUNTY IS NOT ESTOPPED FROM IMPOSING THE SCHOOL FACILITIES SURCHARGE ON VARSITY.

The second issue Varsity presents is comparatively straightforward. Varsity contends that even if it would otherwise be required to pay the school facilities surcharge, the County is estopped from collecting it by operation of the Agreement that Varsity entered with Mr. Hijazi—the director of the County's permitting department, DPIE—in which the County agreed to issue a building permit before the surcharge was paid. The County responds that equitable estoppel does not apply for a number of reasons, chief among them that Mr. Hijazi lacked authority to defer payment. We agree with the County.

"Equitable estoppel operates as a technical rule of law to prevent a party from asserting his rights where it would be inequitable and unconscionable to assert those rights." *Salisbury Beauty Schs. v. State Bd. of Cosmetology*, 268 Md. 32, 62 (1973) (quoting *Savonis v. Burke*, 241 Md. 316, 319 (1966)). "Three essential and related elements are generally necessary to establish equitable estoppel: (1) voluntary conduct or representation; (2) reliance; and (3) detriment." *Gregg Neck Yacht Club v. County Comm'rs*, 137 Md. App. 732, 773 (2001). "Generally, wrongful or unconscionable conduct . . . is an element in the application of equitable estoppel," *id.*, but "equitable

estoppel may apply 'even in the absence of any fraud or wrongful intent' to mislead, if 'the actions or the inaction of the party estopped . . . cause a prejudicial change in the conduct of the other,'" *id.* (quoting *Zimmerman v. Summers*, 24 Md. App. 120-21 (1975)).

"[E]quitable estoppel is available as against a municipal corporation," including a county.[30] *Gregg Neck Yacht Club*, 137 Md. App. at 774; *see Anne Arundel County v. Muir*, 149 Md. App. 617, 636 (2003) ("[F]or purposes of the doctrine of equitable estoppel, the chartered counties of Maryland are treated as municipal corporations."). But in such circumstances "the doctrine . . . has been applied 'narrowly.'" *Muir*, 149 Md. App. at 636 (quoting *Permanent Fin. Corp. v. Montgomery County*, 308 Md. 239, 249 (1986)). "A municipality may be estopped to deny the actions of its officers when they were taken within the scope and course of their actual authority." *Muir*, 149 Md. App. at 636. "[E]quitable estoppel may not be invoked," however, "to preclude a governmental entity from asserting a defense . . . in those cases where the act of an agent or employee purportedly binding the governmental entity was an act that such agent or employee was not authorized to take." *Alternatives Unltd. v. New Balt. City Bd. of Sch. Comm'rs*, 155 Md. App. 415, 428 n.1 (2004).

Equitable estoppel is not available in the latter context because "[e]veryone dealing with officers and agents of a municipality is charged with knowledge of the nature of their duties and the extent of their powers, and therefore such a person cannot be considered to have been deceived or misled by their acts when done without legal authority." *Marzullo*

[30] By contrast, "[o]rdinarily, the doctrine of estoppel does not apply against the State." *ARA Health Servs. v. Dep't of Pub. Safety & Corr. Servs.*, 344 Md. 85, 96 (1996).

v. Kahl, 366 Md. 158, 195 (2001) (quoting *Lipsitz v. Parr*, 164 Md. 222, 228 (1933)). In addition, "[t]he public interest will not accommodate [the] notion" that "the public can be deprived of public property contrary to their authority, based merely on a course of conduct, perhaps improper, followed by a public employee." *Schaefer v. Anne Arundel County*, 17 F.3d 711, 714 (4th Cir. 1994) (applying Maryland law). Thus, unlike the rule "[i]n the context of private contract law"—where "apparent authority will bind the principal to a third party according to the principal's manifestations to the third party," *id.*—"the scope of a [public] official's authority is co-extensive with his or her actual authority," *ARA Health Servs.*, 344 Md. at 95.

Here, the County could not defer payment of the surcharge, and therefore Mr. Hijazi could not promise to do so on its behalf. Section 10-192.01(a)(1) provides that the County "shall impose a school facilities surcharge on new residential construction," and § 10-192.01(d) requires the surcharge to be paid "at the time a building permit is issued." Those provisions are mandatory. Although other subsections of the statute require or allow the surcharge to be "reduced" in certain circumstances, *see* § 10-192.01(c)(1) & (3), those provisions did not apply to The Oxford. Nothing in § 10-192.01 allows the County to waive or defer the surcharge.[31]

[31] By contrast, in other public local laws, the General Assembly has authorized the County to "provide for deferral or abatement of [a] tax" under certain conditions, *see* Prince George's County Code § 10-187(c) (transfer tax on real property), or to "waive any surcharge imposed" on property in certain areas, *id.* § 10-192.11(b)(3) (public safety surcharge on new residential construction). Section 10-192.01 contains no such authorizations.

Notwithstanding that Mr. Hijazi, as DPIE Director, was "responsible for the administration and enforcement of the County's permitting functions," Prince George's County Charter § 17, he had no authority to act inconsistently with the law he was charged with administering. *See Bd. of Liquor License Comm'rs v. Hollywood Prods.*, 344 Md. 2, 11 (1996). "[N]o administrative officer is vested with the power to abrogate the statute law of the State, nor to grant to an individual an exemption from the general operation of the law." *Salisbury Beauty Schs.*, 268 Md. at 64 (quoting *Comptroller of the Treasury v. Atlas Indus.*, 234 Md. 77, 84 (1964)). Even if Mr. Hijazi believed that he could defer payment of the surcharge, "equitable estoppel 'cannot be . . . invoked to defeat the municipality in the enforcement of its ordinances, because of an error or mistake committed by one of its officers or agents.'"[32] *Marzullo*, 366 Md. at 195 (quoting *Lipsitz*, 164 Md. at

Moreover, legislative history reveals that when the General Assembly was considering amending the statute to require—rather than permit—the County to impose the surcharge, a member of the County's delegation sought legal advice regarding whether "the [C]ounty could exempt a developer . . . from the surcharge." *See* Bill File for H.B. 1094, at 19 (2000) (letter from Richard E. Israel, Assistant Attorney General, to Sen. Gloria Lawlah (Apr. 7, 2000)). An Assistant Attorney General responded that "the [C]ounty could not grant such an exemption," because "the power delegated to the subdivisions to tax does not include the power to grant exemptions," and "[n]either the existing law nor the law as it would be amended . . . expressly authorizes the [C]ounty to exempt a developer." *Id.* at 19-20.

[32] The leading case in this area is *Gontrum v. Mayor & City Council of Baltimore*, 182 Md. 370 (1943), in which a landowner (Gontrum) deeded Baltimore City a portion of his land based on two city officials' promise that he would soon be compensated when the remainder was condemned through eminent domain. After years passed and the land was never condemned, Gontrum sued on a theory of estoppel. The Court of Appeals held the doctrine inapplicable, *id.* at 378, for the reason that "[e]very person is presumed to know the nature and extent of the power of municipal officers, and therefore cannot be deemed to have been deceived or misled by acts done without legal authority," *id.* (quoting *Reese*

228); *see also River Walk Apts. v. Twigg*, 396 Md. 527, 548 (2007) ("A municipality is not bound by those actions which transcend its authority and the authority of those allegedly acting on its behalf; those actions are *ultra vires*."); *id.* (stating that whenever public officials "transcend" the "specifically defined and limited" powers with which they have been entrusted, "their acts, although done *colore officii*, and upon pretense of law, are no more binding upon the [municipality] than the acts of an agent in any other case can bind his principal, when done beyond the scope of the authority conferred" (quoting *Horn v. Mayor & City Council of Baltimore*, 30 Md. 218, 222 (1869))).

Varsity's assertion that "[i]t was the regular practice of DPIE to agree to hold harmless agreements" is of no moment. First, the Agreement was unlike any of the agreements the DPIE had entered before (or at least any of those placed in the record). Varsity presented evidence that, since 2014, the County had entered into at least 43 "hold harmless agreements" with applicants for building permits. Almost all of those agreements, however, merely allowed the applicants to begin construction "prior to final and complete review of the Electrical, Fire, systems and Building Code requirements" or before they obtained necessary permits from other government entities. The applicants, in turn, agreed to hold the County harmless by compensating it for any costs that it might incur if the applicants failed to obtain the necessary permits. The DPIE Director's authority to enter those types of agreements is not before us. The record contains only one other

on Ultra Vires ¶ 192). Because Gontrum was "charged with knowledge of the nature of [the City officials'] duties and the extent and limitations of his powers," the City was not "estop[ped] [] to assert the invalidity of a contract where such officers were without power to enter into such a contract on behalf of the corporation." *Id.* at 377-78.

agreement similar to the one at issue here, which the County entered subsequent to its agreement with Varsity.

Second, and more importantly, even if the DPIE Director had a regular practice of agreeing to defer the school facilities surcharge, that could not give rise to estoppel "[b]ecause the limitations on the [DPIE Director]'s power . . . are a matter of public record." *Md. Comm'n on Human Relations v. Balt. City Dep't of Recreation & Parks*, 166 Md. App. 33, 42 (2005). For example, in *City of Hagerstown v. Long Meadow Shopping Center*, 264 Md. 481 (1972), the trial court "found as a matter of fact that a policy existed whereby the City waived the requirement for a building permit in those cases where the major portion of the proposed structure would be outside the City limits." *Id.* at 490. The Court of Appeals held that even if "such a policy existed," it could "not . . . serve as the basis on which to predicate estoppel," because "such a policy would be running contrary to the duly ordained section of the City Code."[33] *Id.* at 491. The same principle applies here.

Mr. Hijazi did not have authority to defer payment of the school facilities surcharge, and his commitment to do so in the Agreement was void and of no effect. *See Baltimore*

[33] The Court in *City of Hagerstown* noted that there is an exception to this rule when the policy in question amounts to "a long standing administrative interpretation." 264 Md. at 493. That exception does not apply here because, as discussed above, "[t]here is no evidence here of any long standing and consistent administrative interpretation." *See Salisbury Beauty Schs.*, 268 Md. at 66 (internal quotation marks omitted). Furthermore, the exception "must be bottomed on the need for the interpretation or clarification of an ambiguous statute or ordinance." *Long Meadow*, 264 Md. at 493. In this case, it is clear and unambiguous that the DPIE Director lacks authority to defer collection of a State-mandated surcharge.

County v. Aecom Servs., 200 Md. App. 380, 414 (2011). Therefore, the doctrine of equitable estoppel does not preclude the County from collecting the school facilities surcharge.[34]

CONCLUSION

In summary, we hold:

(1) Under Prince George's County Code §§ 10-192.01 and 4-352(n), Varsity is required to pay the school facilities surcharge for its construction of new residential dwelling units through the conversion of commercial office space; and

(2) The County is not equitably estopped from collecting the school facilities surcharge by operation of the Agreement.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.

[34] Assuming, arguendo, that equitable estoppel did apply, the County also argues that the "[A]greement . . . affords Varsity no relief." The County notes that the Agreement only deferred payment of the school facilities surcharge until the County Council enacted the proposed exemption from the surcharge. Although the County Council enacted the proposed exemption, the circuit court held that the exemption was illegal under State law, and Varsity has not challenged that aspect of its ruling. It is thus unclear what benefit Varsity believes it would get from a determination that the agreement is enforceable. Because we are not persuaded by Varsity's estoppel argument, however, we need not reach that issue.

APPENDIX

PRINCE GEORGE'S COUNTY CODE § 10-192.01

(a) (1) The County Council, by ordinance, shall impose a school facilities surcharge on new residential construction for which a building permit is issued on or after July 1, 2003.

(2) (A) Except as provided under subparagraph (B) of this paragraph, the County Council may impose a school facilities surcharge on new residential construction for which a building permit is issued on or after July 1, 2003, by a municipal corporation in Prince George's County with zoning authority and the authority to issue building permits.

(B) The County Council may not impose a school facilities surcharge on new residential construction for which a building permit is issued by a municipal corporation if Prince George's County has collected a surcharge on issuance of a County permit for the same new residential construction.

(b) (1) (A) For Fiscal Year 2004, a school facilities surcharge imposed on a single-family detached dwelling, townhouse, or dwelling unit for any other building containing more than a single dwelling unit shall be in the amount of:

(i) Except as provided in items (ii) and (iii) of this subparagraph, Twelve Thousand Dollars ($12,000);

(ii) Seven Thousand Dollars ($7,000) if the building is located between Interstate Highway 495 and the District of Columbia; and

(iii) Seven Thousand Dollars ($7,000) if the building is included within a Basic Plan or Conceptual Site Plan that abuts an existing or planned mass transit rail station site operated by the Washington Metropolitan Area Transit Authority or by the Maryland Transit Administration.

(B) For Fiscal Year 2005 and each succeeding fiscal year, the facilities surcharge established in subparagraph (A) of this paragraph shall be adjusted for inflation in accordance with the Consumer Price Index for all urban consumers published by the United States Department of

Labor, for the fiscal year preceding the year for which the amount is being calculated.

(2) The school facilities surcharge does not apply to a mixed retirement development or elderly housing.

(3) The school facilities surcharge does not apply to a single-family detached dwelling that is to be built or subcontracted by an individual owner in a minor subdivision and that is intended to be used as the owner's personal residence.

(4) (A) The school facilities surcharge does not apply to multi-family housing that is located in the area within the campus of Capitol Technology University located adjacent to and east of Springfield Road in Parcels 1 and 2 in the subdivision of land known as "Parcels 1 and 2, Capitol Institute of Technology", as per plat recorded in Plat Book NLP 115 at Plat 31 among the Land Records of Prince George's County, Maryland.

(B) (i) Subject to subsubparagraph (ii) of this subparagraph, the school facilities surcharge does not apply to multi-family housing that is located in the City of College Park and designated as graduate student housing by the City of College Park.

(ii) The County Council may, by Resolution, reverse a designation by the City of College Park of multi-family housing as graduate student housing within 60 days of the designation.

(C) If the housing is converted from student housing or graduate student housing to multi-family housing for the general population, the owner of the property shall pay, at the time of the conversion, the school facilities surcharge in accordance with the laws at the time of the conversion.

(5) The school facilities surcharge does not apply to a single-family dwelling unit that is to be built or subcontracted by an individual owner to replace on the same lot a previously existing single-family dwelling unit that was destroyed by fire, explosion, or a natural disaster if the single-family dwelling unit is:

(A) Similar to the previously existing single-family dwelling unit; and

(B) Owned and occupied by the same individual who owned and occupied the previously existing single-family dwelling unit.

(6) The school facilities surcharge does not apply to a single-family attached dwelling unit if the single-family dwelling unit is:

(A) Located in a residential revitalization project;

(B) Located in the Developed Tier as defined in the Prince George's County General Plan;

(C) Located in a Transforming Neighborhoods Initiative (TNI) Area;

(D) Located on the same property as previously existing multi-family dwelling units;

(E) Developed at a lower density than the previously existing multi-family dwelling units;

(F) Offered for sale only on a fee simple basis; and

(G) Located on a property that is less than 6 acres in size.

(c) (1) The school facilities surcharge under this section shall be reduced by 50% for multifamily housing constructed:

(A) within an approved transit district overlay zone;

(B) where there is no approved transit district overlay zone, within one-quarter mile of a metro station; or

(C) within the Bowie State Marc Station Community Center designation area, as defined in the approved Bowie State Marc Station Sector Plan and Sectional Map Amendment.

(2) The school facilities surcharge under this section does not apply to a dwelling unit that is a studio apartment or efficiency apartment if the dwelling unit is located:

(A) within the County Urban Centers and Corridors, as defined in § 27A-106 of the County Code;

(B) within an approved transit district overlay zone; or

(C) where there is no approved transit district overlay zone, within one-quarter mile of a Metro station.

(3) The County Council may reduce the school facilities surcharge by a percentage not exceeding 50% for dwelling units in multifamily housing constructed where there is no approved transit district overlay zone, within one-quarter mile of a Purple Line Station.

(d) The school facilities surcharge shall be paid by the seller at the time a building permit is issued for the dwelling unit. The school facilities surcharge may not be construed to be a settlement cost.

(e) Payment of the school facilities surcharge does not eliminate any authority to apply any test concerning the adequacy of school facilities under the County's adequate public facility ordinance.

(f) Revenue collected under the school facilities surcharge shall be deposited in a separate account and may only be used to pay for:

(1) Additional or expanded public school facilities such as renovations to existing school buildings or other systemic changes; or

(2) Debt service on bonds issued for additional or expanded public school facilities or new school construction.

(g) Revenue collected under the school facilities surcharge is intended to supplement funding for public school facilities and may not supplant other County or State funding for school construction.

(h) The County Executive of Prince George's County shall prepare an annual report on the school facilities surcharge on or before August 31 of each year for the County Council of Prince George's County, the Prince George's County Senate Delegation, and the Prince George's County House Delegation, to include:

(1) A detailed description of how fees were expended; and

(2) The amount of fees collected.

(i) This Section does not apply to any property located in an infrastructure finance district approved before January 1, 2000.

Prince George's County Code § 10-192.01 (2017 Repl.).