

Circuit Court for Baltimore County  
Case No. 03-C-16-009301

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 01479

September Term, 2017

---

LOREN STAPLES, ET AL.

v.

BALTIMORE COUNTY, MARYLAND, ET AL.

---

Meredith,  
Kehoe,  
Arthur,

JJ.

---

Opinion by Arthur, J.

---

Filed: December 7, 2018

\* This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

A number of citizens challenged the comprehensive zoning ordinance for Baltimore County's Second Councilmanic District. After the citizens had amended their complaint three times, the Circuit Court for Baltimore County ruled that they had not adequately alleged taxpayer standing, which is a prerequisite for challenging legislation that affects land-use rights. *See Anne Arundel County v. Bell*, 442 Md. 539, 575 (2015). The court nonetheless proceeded to decide the merits of the case and to enter a declaration in which it rejected the citizens' contentions. The court later rejected a post-judgment request to permit the citizens to amend their complaint for a fourth time. The citizens appealed.

We shall hold that the citizens could not and did not adequately allege taxpayer standing. Because the citizens lacked standing, we shall also hold that the circuit court should not have addressed the merits of the case. Finally, we shall hold that the circuit court did not abuse its discretion in declining to permit a fourth amended complaint.

#### **FACTUAL AND PROCEDURAL HISTORY**

This appeal is the second incarnation of a zoning dispute concerning a .34-acre sliver of land just north of the Baltimore Beltway in Pikesville. The sliver is located at the rear of a 9.54-acre commercial development at 1777 Reisterstown Road, which is known as Commerce Center.

In early 2013, Commerce Center wrote to the Director of the Baltimore County Department of Planning and requested that the County initiate the procedures for correcting the zoning map under Baltimore County Code ("BCC") §§ 32-3-231 to 32-3-326. Commerce Center alleged that the property at 1777 Reisterstown Road had been

improperly split-zoned: most of the parcel was zoned Business Roadside (“BR”), but a toothpick-shaped sliver toward the rear had been mistakenly zoned Residential Office (“RO”). *Reservoir Ltd. P’ship v. Baltimore County*, No. 2370, Sept. Term 2015, 2018 WL 4191009, at \*1 (Md. Ct. Spec. App. Aug. 31, 2018). BR zoning allows for more intensive uses than RO.

After the County conducted its own archival research, it agreed that the property had been mistakenly split-zoned in 1970. At that time, the former owners of the parcel at 1777 Reisterstown Road had obtained a ruling by which the County Board of Appeals ordered that the entire parcel was to be rezoned BR. Despite the order, however, a small slice of the parcel was incorrectly mapped and remained zoned as RO. *Reservoir Ltd. P’ship v. Baltimore County*, 2018 WL 4191009, at \*2.

On June 27, 2014, the Director of the Department of Planning wrote to Commerce Center and stated that the County would seek a zoning map amendment to correct the error. The County filed its petition for a zoning map correction with the Board of Appeals of Baltimore County on August 15, 2014. A number of persons, including Greene Tree Homeowners Association, Inc., opposed the amendment.

On February 2, 2015, the Board of Appeals ordered that 1777 Reisterstown Road be reclassified from a combination of RO and BR to BR alone. The Board also ordered the Department of Planning to make the necessary changes and corrections on the latest Comprehensive Zoning Map for Baltimore County. A nearby landowner, Reservoir Limited Partnership, filed a petition for judicial review of the Board of Appeals’ decision.

Coincidentally, 2015 was the year in which Baltimore County was to initiate the

quadrennial Comprehensive Zoning Map Process (“CZMP”) and update the zoning maps. As part of the CZMP, the County gathered zoning requests from the public and other county departments from September through November 2015. In accordance with the Board of Appeals’ decision, the County added the rezoning of the .34-acre sliver to the CZMP.

From December 2015 to February 2016, the County mailed letters to affected property owners and compiled the proposed changes into an initial log of issues. The Planning Board gave public notice for district public hearings that were held in March 2016, followed by Planning Board work sessions that were held in April 2016. Following these sessions, the Planning Board sent a proposed revised version of the map to the Baltimore County Council in May 2016. The Council held initial public hearings during June; the public hearing for the Second District, where the Commerce Center property is located, was held on June 21, 2016.

The Council introduced Bill 55-16 on August 1, 2016, to change the zoning map for the Second District. The proposed changes are shown on the Second District Zoning Map, which is accessible through the County’s “zoning geodatabase” and is used “to depict the zoning lines and zoning districts map in electronic and printed formats.” BCC § 32-3-202(d)(1)-(2). The changes included the rezoning of the .34-acre sliver from RO to BR.

The Council met on August 30, 2016, to vote on a total of 37 proposed changes, affecting 1443.98 acres of land, in the Second District. The Baltimore County Planning Board had recommended 25 of the changes (including the change to the .34-acre sliver),

and they were accepted in whole by the Council. The Council voted separately on the remaining 12 changes that had not been recommended by the Baltimore County Planning Board. Bill 55-16 passed unanimously following a final confirmatory vote on all 37 changes.

On September 8, 2016, appellants Loren Staples, Ruth Hoffman, and David Braitman<sup>1</sup> filed suit in the Circuit Court for Baltimore County, seeking a declaration that Bill 55-16 was unconstitutional, null, void, and ultra vires. Among other things, appellants alleged that the Council had failed to comply with Art. III, § 308(e), of the Baltimore County Charter and Rule 16 of the Baltimore County Council Rules of Procedure, which require printed copies of bills to be placed in libraries at the time of introduction and upon passage. Appellants also alleged that the bill improperly addressed multiple subjects, in violation of the single-subject rule imposed by Art. III, § 29, of the Maryland Constitution and Art. III, § 308(c), of the Baltimore County Charter. Appellants named Baltimore County as the sole defendant.

People's Counsel for Baltimore County, which defends the County's comprehensive zoning maps, successfully intervened. With Baltimore County, People's Counsel filed a joint motion to dismiss or for summary judgment on October 27, 2016.

Appellants filed amended complaints on January 25, 2017; March 13, 2017; and April 14, 2017. People's Counsel and the County adapted their dispositive motion to

---

<sup>1</sup> As previously noted, Greene Tree Homeowners Association, Inc., participated in the circuit court proceedings, but did not participate in the appeal. Staples, Hoffman, and Braitman all live in the general vicinity of the .34-acre sliver.

address the various amendments. In brief, the motion argued both that appellants lacked standing to challenge the legislation and that, even if they had standing, their contentions had no merit.

Following a hearing, the circuit court issued a memorandum opinion and order, in which it agreed that appellants lacked standing to challenge the legislation. The court nonetheless went on to declare that appellants' substantive allegations had no merit.<sup>2</sup>

Appellants filed a timely motion to alter or amend the judgment and for leave to file a fourth amended complaint. The court denied that motion on August 23, 2017, and the appellants noted a timely appeal. The appeal centers around the rejection of the third amended complaint and the denial of leave to file a fourth amended complaint.

Meanwhile, on November 30, 2015, the Circuit Court for Baltimore County had affirmed the Board of Appeals' 2015 decision to correct the error in the zoning of the .34-acre sliver; this Court affirmed that decision on August 31, 2018 (*Reservoir Ltd. P'ship v. Baltimore County*, 2018 WL 4191009, at \*13); and the aggrieved parties did not petition for certiorari. Consequently, even if Bill 55-16 were held to be completely invalid, its

---

<sup>2</sup> The circuit court incorporated its declaration of rights into its opinion. Since the 1997 amendment to Md. Rule 2-601(a), however, it has not been permissible for a declaratory judgment to be part of a memorandum. *See, e.g., Allstate Ins. Co. v. State Farm Mut. Auto. Ins. Co.*, 363 Md. 106, 117 n.1 (2001). Rule 2-601(a) "requires that '[e]ach judgment shall be set forth on a separate document.'" *Id.* (quoting Md. Rule 2-601(a)). "When entering a declaratory judgment, the court must, in a separate document, state in writing its declaration of the rights of the parties, along with any other order that is intended to be part of the judgment." *Id.* "Although the judgment may recite that it is based on the reasons set forth in an accompanying memorandum, the terms of the declaratory judgment itself must be set forth separately." *Id.*

invalidity would have no effect on the zoning of the .34-acre sliver: because the sliver had been properly rezoned to BR even before the Council passed Bill 55-16, it will retain that zoning status.

### **QUESTIONS PRESENTED**

Appellants present the following questions for our review, which we have condensed and rephrased as follows:<sup>3</sup>

1. Have appellants satisfied the requisite standing criteria for citizen challenges to comprehensive zoning legislation?
2. Did the trial court correctly conclude that the County substantially complied with the notice requirements and did not violate the single-subject rule when passing Bill 55-16?
3. Did the trial court correctly deny the motion to alter or amend, thereby denying appellants the opportunity to file a fourth amended complaint?

For the reasons discussed below, we shall affirm the circuit court's conclusion that appellants lacked standing. Because appellants lacked standing, however, we shall vacate the declaration of the parties' rights and remand the case with directions that it be dismissed. Finally, we shall affirm the court's discretionary decision to deny appellants yet another opportunity to amend their complaint.

### **DISCUSSION**

#### **I. Standing**

Over the course of an original complaint and three subsequent amendments, appellants continuously averred that they were taxpayers and, as such, had taxpayer

---

<sup>3</sup> The questions presented, as formulated by appellants, are attached as an appendix to this opinion.

standing. Appellants were correct in proceeding as though they needed to show taxpayer standing to challenge a comprehensive rezoning ordinance such as Bill 55-16. *See Anne Arundel County v. Bell*, 442 Md. 539, 575 (2015). However, appellants cannot and did not plead sufficient facts to establish taxpayer standing.

Taxpayer standing is a “common law standing doctrine [that] ‘permits taxpayers to seek the aid of courts, exercising equity powers, to enjoin illegal and *ultra vires* acts of public officials where those acts are reasonably likely to result in pecuniary loss to the taxpayer.’” *Id.* at 576 (quoting *State Ctr., LLC v. Lexington Charles Ltd. P’ship*, 438 Md. 451, 538 (2014)). It is to be distinguished from property-owner standing, in which a person may challenge quasi-judicial land-use decisions, such as decisions to re-zone a single property, if he or she is “[a]n adjoining, confronting or nearby property owner” (*Bryniarski v. Montgomery Cnty. Bd. of Appeals*, 247 Md. 137, 145 (1967)) or is in very close proximity to the affected property and can point to other bases for aggrievement, such as increased traffic, decreased property values, or problems with lights, noise, and refuse. *See generally Ray v. Mayor & City Council of Baltimore*, 430 Md. 74, 83-84 (2013). Property-owner standing will not support a challenge to a legislative enactment, such as a comprehensive zoning ordinance. *Anne Arundel County v. Bell*, 442 Md. at 575.

“To establish eligibility to maintain a suit under the taxpayer standing doctrine, a ‘complainant must allege two things: (1) that the complainant is a taxpayer and (2) that the suit is brought, either expressly or implicitly, on behalf of all other taxpayers.’” *Id.* at 577 (quoting *State Ctr., LLC v. Lexington Charles Ltd. P’ship*, 438 Md. at 547).



According to the Court of Appeals, there is some “tension” (*id.*) between the requirement that the suit be brought on behalf of all taxpayers and an additional requirement, that “the complainant must have a special interest in the subject-matter of the suit distinct from that of the general public.” *Id.* at 576 (quoting *State Ctr., LLC v. Lexington Charles Ltd. P’ship*, 438 Md. at 519). A party satisfies the “special interest” requirement by alleging (1) that a municipal corporation or public official took some action that is illegal or ultra vires, and (2) that the action may injuriously affect the taxpayer’s property, “meaning that it reasonably may result in a pecuniary loss to the taxpayer or an increase in taxes.” *120 W. Fayette St., LLLP v. Mayor & City Council of Baltimore*, 407 Md. 253, 267 (2009); accord *Anne Arundel County v. Bell*, 442 Md. at 577; *Kendall v. Howard County*, 431 Md. 590, 605 (2013).

“Naturally, there must be a ‘nexus’ between the showing of potential pecuniary damage and the challenged act.” *Anne Arundel County v. Bell*, 442 Md. at 579. “[T]he taxpayer must be asserting a challenge and seeking a remedy that, if granted, would alleviate the tax burden on that individual and others; otherwise, standing does not exist.” *Id.* (quoting *State Ctr., LLC v. Lexington Charles Ltd. P’ship*, 438 Md. at 572). “There must be therefore a connection between the alleged illegal or *ultra vires* act, the harm caused to the taxpayer, and the potential for the remedy to alleviate the harm incurred.” *Id.* at 579.

Turning to this case, we shall assume, solely for the sake of argument, that Bill 55-16 is somehow illegal or ultra vires. Even if that were so, appellants could not possibly show any resulting harm or the potential for any remedy to alleviate that harm.

In light of this Court’s affirmance of the Board of Appeals’ 2015 decision to rezone the .34-acre sliver because of a longstanding error in the zoning maps, the appellants would have suffered whatever harm they claim to have suffered even if Bill 55-16 had never been introduced. Furthermore, a court could not alleviate the alleged harm by invalidating Bill 55-16, because the harm has a separate and distinct cause – the Board of Appeals’ decision to correct the zoning maps, which is now final and essentially unassailable. In short, appellants cannot establish the requisite connection between the allegedly illegal or ultra vires legislative enactment and the harm that they claim to have suffered; therefore they cannot establish taxpayer standing.

Even if we were to ignore the effect of the Board of Appeals’ decision to rezone the .34-acre because of the error in the maps, we would still affirm the circuit court’s conclusion that appellants did not adequately plead taxpayer standing.

In the third amended complaint – the complaint that was before the circuit court when it rendered its decision – appellants made a number of general allegations concerning the potential effect of rezoning all 37 of the properties covered by Bill 55-16. For example, they alleged that the changes would “allow for more intense uses that may require additional county resources that may cost county funds that result in pecuniary loss to plaintiffs as well as additional taxes to them and all taxpayers.” In addition, they alleged that the changes had “the potential to cause them pecuniary loss (including, but not limited to[,] a decrease in their property values) and increase their tax burden in the district.” Appellants’ general allegations do not establish standing, because none of the allegations attempt to show how appellants “have a special interest in the subject-matter

of the suit distinct from that of the general public.” *Anne Arundel County v. Bell*, 442 Md. at 576 (quoting *State Ctr., LLC v. Lexington Charles Ltd. P’ship*, 438 Md. at 519). If allegations such as those were sufficient to confer standing, then any taxpayer in the Second District would have the right to challenge a comprehensive zoning ordinance, such as Bill 55-16.

In the third amended complaint, appellants made only two allegations of specific interest. First, they alleged that because of the rezoning of the .34-acre sliver, the owner may add 40,000 square feet of office space “to an area that may not have the adequate public facilities to accommodate” it. Second, they alleged that “there are not adequate facilities” to “accommodate the additional construction” and that, “as a result, the County may have to provide [the facilities] at the expense of its taxpayers.”

In our judgment, these vague and unspecific allegations are wholly insufficient to establish taxpayer standing. *See, e.g., Shenker v. Laureate Educ., Inc.*, 411 Md. 317, 335 (2009) (“[m]ere conclusory charges that are not factual allegations need not be considered”); *Bobo v. State*, 346 Md. 706, 708-09 (1997) (“[b]ald assertions and conclusory statements by the pleader will not suffice”). Most notably, the complaint makes no effort to describe the necessary public facilities that are allegedly absent from what is already one of the most intensively developed areas in all of Baltimore County. The allegations stand in marked contrast to the allegations that the Court of Appeals has held to be sufficient to allege taxpayer standing.

For example, in *120 W. Fayette Street, LLLP v. Mayor & City Council of Baltimore*, 407 Md. at 268-69, an adjacent landowner challenged a project to redevelop

the so-called “Superblock” – several square blocks of real estate in downtown Baltimore City. The taxpayer alleged that the City would send more than \$2 million a year to a nonprofit corporation that would serve as the City’s agent, that a land development agreement ““call[ed] for the City’s taxpayers to foot more than \$21 million for acquisition of properties for disposition and additional millions to bankroll relocation and the proposed undefined mixed uses to be developed”” (*id.* at 268) (quoting the taxpayer’s complaint), and that the City had ““offered to deduct more than \$10 million from the sale price” if its chosen developer ““agreed to improve the ‘Superblock’ properties by performing public works on or near them.”” *Id.* at 268-69. The Court of Appeals held that these allegations were “sufficient to establish taxpayer standing as a matter of law.” *Id.* at 269.

Similarly, in *Boitnott v. Mayor & City Council of Baltimore*, 346 Md. 226, 230-32 (1999), the taxpayers challenged an ordinance that amended the urban renewal plan for the Harbor East area of Baltimore City, to allow for the construction of a large hotel on public land. The taxpayers alleged that the City had already expended \$20 million in developing Harbor East. *Id.* at 234. The Court of Appeals held that that allegation was sufficient to establish “potential pecuniary damage by way of tax increase to withstand a standing challenge.” *Id.*

We recognize that *Boitnott* and *120 W. Fayette* do not represent a floor below which any other allegations of taxpayer standing are necessarily insufficient. Nonetheless, the chasm between the allegations in those cases and the allegations here is too great to ignore. Appellants do not claim to be challenging a project that has cost or

will cost specific amounts of taxpayer money by way of documented expenditures in the past or likely expenditures in the future; they are challenging a zoning change for a sliver of land, which may, in some unspecified way, result in the need at some unspecified time for some unspecified expenditures on some unspecified public improvements. The circuit court correctly concluded that those vague, general, and conclusory allegations did not establish taxpayer standing.<sup>4</sup>

Although the circuit court correctly concluded that appellants did not have standing, it did not dismiss the case, but proceeded to address the merits and to declare the parties' rights. The court should not have declared the parties' rights. Because appellants did not adequately allege that they had standing to challenge Bill 55-16, the decision to address the merits amounted to the issuance of an advisory opinion, ““a long forbidden practice in this State.”” *See State v. G & C Gulf, Inc.*, 442 Md. 716, 719 (2015) (quoting *State Ctr., LLC v. Lexington Charles Ltd. P'ship*, 438 Md. at 491). Consequently, to the extent that the judgment addressed the merits, it must be vacated. On remand, the court should dismiss the case for lack of standing. *See Anne Arundel County v. Bell*, 442 Md. at 586.

---

<sup>4</sup> Rather than discuss how they have satisfied *Bell's* requirements for taxpayer standing, appellants urge us to follow the dissenting opinion in *Bell*, which advocated the use of property-owner standing in challenges to comprehensive zoning legislation. *Anne Arundel County v. Bell*, 442 Md. at 586 (Adkins, J., dissenting). Obviously, however, this Court is obligated to follow the majority opinion, which requires allegations that establish taxpayer standing.

## II. The Fourth Amended Complaint

After failing to plead taxpayer standing in an initial complaint and three subsequent amendments, appellants filed a motion to alter or amend the judgment, in which they requested permission to try again and in yet another amended complaint. The court denied the motion. We affirm.

In general, an appellate court reviews the denial of a motion to alter or amend a judgment for abuse of discretion. *RRC Northeast, LLC v. BAA Maryland, Inc.*, 413 Md. 638, 673 (2010). The Court of Appeals has held that a circuit court did not abuse its discretion when it declined to permit a plaintiff to file a second amended complaint after the court had dismissed the amended complaint with prejudice. *Id.* at 675. The Court reasoned that the amendment would be futile and would result in undue delay. *Id.*

The same could be said about the proposed amendment in this case. Appellants had four chances to plead taxpayer standing. They even had the opportunity to expand and develop their allegations in response to the deficiencies that their opponents had identified. Yet, after the circuit court had found their allegations wanting and had disposed of their claims on the merits, they still requested yet another chance. Like the circuit court in *RRC Northeast*, the court in this case did not abuse its discretion in concluding that if appellants had not succeeded in pleading taxpayer standing in four tries even though they had been told what they needed to say, they were unlikely ever to succeed.

**JUDGMENT OF THE CIRCUIT COURT  
FOR BALTIMORE COUNTY  
AFFIRMED IN PART AND VACATED IN  
PART; CASE REMANDED TO THE  
CIRCUIT COURT FOR BALTIMORE  
COUNTY WITH DIRECTIONS TO  
DISMISS THE PROCEEDINGS FOR  
LACK OF STANDING. APPELLANTS  
TO PAY ALL COSTS.**

**APPENDIX**

1. Did the Circuit Court err by declaring that **BC**'s actions of: placing computer terminals in public libraries to access Baltimore County *website*, and in carrying out the **CZMP** requirements of the Baltimore County Code *substantially complied* with **§308(e)** (p.36), and **CRule 16** (p.40) requiring that upon introduction of the **Bill**, a printed copy must be placed in every public library to give the public **notice** thereof?
  - a. Did the Circuit Court err in issuing a declaration of rights to sustain the constitutionality of the **Bill** based upon the lack of evidence in the record?
    1. Did the Circuit Court err in granting summary declaratory judgment based upon the trial judge's reliance upon irrelevant and immaterial facts in the record?
    2. Did the Circuit Court err in granting summary judgment and a declaration of rights based upon the trial judge's reliance upon her conjecture of facts that were irrelevant, immaterial and beyond the reasonable bounds of judicial notice?
2. Did the Circuit Court err in concluding: that the **3<sup>rd</sup> Comp** lacked sufficient allegations for taxpayer standing?
  - a. Did the Circuit Court err in concluding that the **3<sup>rd</sup> Comp** required allegations for taxpayer standing when, **BC**'s actions were so blatantly detrimental to the public welfare, that the dissenting opinion in *Anne Arundel County v. Bell*, supporting proximity standing, may have sufficed in this case?



- b. Did the Circuit Court err in relying upon a Supreme Court case interpreting federal law cited in its Memorandum Opinion (“**OP**”) that set forth the nexus needed for pleading standing?
3. Did the Circuit Court err in finding that the Council did not violate the **Single Subject Rule** of the Constitution (p. 41) and Charter Art. III, § 308(a) (p.35) when it took 14 votes to incorporate the 37 Issues addressed by the **Bill**?
4. Did the Circuit Court err by abusing its discretion and unreasonably denying Appellants’ Motion to Alter or Amend Judgment and file an Amended Complaint?
  - a. after the Judge set forth a scenario of allegations upon which she would have found taxpayer standing, and after Appellants’ *proffered* such allegations at the hearing and in their motion?
  - b. in derogation of the Md. Rule 2-322 and case law allowing for liberal allowance of amended complaints?