UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2028

September Term, 2013

RUTH SHERRILL, *et al.*

v.

CBAC GAMING, LLC, *et al.*

Leahy,
Reed,
Rodowsky, Lawrence F.
(Retired, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: February 16, 2016

Appellants Ruth Sherrill, Sherry Moore-Edmonds, Elizabeth Arnold, Merab Rice, Tim Bull, and Julia Dinkins (collectively, "Appellants") filed suit in the Circuit Court for Baltimore City seeking a declaratory judgment, mandamus, and a permanent injunction against any construction activities on several lots of waterfront property in Baltimore City—on which the Horseshoe Casino now stands. Appellants argued that developer CBAC Gaming, LLC's ("CBAC") Voluntary Cleanup Program ("VCP") application and amended Response Action Plan ("RAP") were never properly approved by the Maryland Department of the Environment ("MDE") in accordance with the public notice requirements of Maryland Code (1982, 2007 Repl. Vol.), Environment Article ("Envir."), § 7-509, and that the improperly approved RAP amounted to a public nuisance.[1] Thereafter, MDE voluntarily conducted an additional public hearing and comment period, which resulted in a RAP revised to address public concerns.

After a hearing on motions to dismiss filed by Appellees CBAC, MDE, and the Mayor and City Council of Baltimore (collectively, "Appellees"), the circuit court dismissed Appellants' complaint. The circuit court found, *inter alia*, that the enforcement provisions of the Voluntary Cleanup Program as set forth in Envir. § 7-501 *et seq*. do not

[1] Appellants were parties in two additional cases against the City of Baltimore challenging the construction of the Horseshoe Casino: *Sherrill, et al. v. Mayor and City Council of Baltimore, et al.*, U.S. Dist. Ct. Md. Civ. A. No. RDB-13-2768 (dismissing Resource Conservation and Recovery Act claims), and *Robinson, et al. v. Md. Dep't of Envir., et al.* U.S. Dist. Ct. Md. Civ. A. No. RDB-13-cv-2234 (dismissing civil rights claims). Two other related cases were also dismissed: *Richardson v. Mayor and City Council of Baltimore,* U.S. Dist. Ct. Md. Civ. A. No. RDB-13-cv-1924 (dismissed for lack of standing), and *Richardson v. Mayor and City Council of Baltimore,* Circuit Court for Baltimore City, Case No. 24-C-13-003180 (voluntarily dismissed by plaintiffs).

create a cause of action for private citizens for any of the alleged violations, that Appellants had sufficient opportunity to participate in a public information meeting and to submit both oral and written comments, and that Appellants' complaint for public nuisance failed to articulate special damages. The circuit court also determined that Appellants' request for a declaratory judgment was moot.

Appellants noted a timely appeal and present the following questions:

1. Whether the Circuit Court erred in dismissing the declaratory judgment claim in the Amended Complaint as "moot" based on the public information meeting that was held by MDE after Appellants' lawsuit was filed where the relief requested in the Amended Complaint more broadly sought a declaration regarding the rights and obligations of the parties under the VCP statute and where the Amended Complaint also challenged the lawfulness and validity of MDE's after-the-fact public information meeting?

2. Whether the Circuit Court erred in dismissing the mandamus claim in the Amended Complaint as "too sparse and conclusory" to support an actionable claim where the grounds for dismissal [were] raised *sua sponte* by the Circuit Court, where the wrong legal standards were applied[,] and where the Amended Complaint more than sufficiently plead[ed] all three elements necessary to establish a cognizable mandamus claim under the governing jurisprudence?

3. Whether the Circuit Court erred in dismissing Appellants[']claims for declaratory and mandamus relief without providing Appellants with an opportunity to engage in discovery and present materials made pertinent to its ruling as required by Maryland Rule 2-322(c)?

We determine that Appellants' claims do not assert anything greater than an "abstract, generalized interest" in enforcing their interpretation of the public participation process set out in Envir. § 7-509, and that they have not established that they "'suffered some special damage from such wrong differing in character and kind from that suffered by the general public.'" *See Kendall v. Howard Cnty.*, 431 Md. 590, 593 (2013) (quoting

Weinberg v. Kracke, 189 Md. 275, 280 (1947)). Thus, we hold that Appellants' general statutory interest is not sufficient to confer standing in this case. Similarly, we hold that Appellants' amended complaint fails to meet the requirements to establish taxpayer standing. Because we determine that Appellants lack standing to bring their claims before the courts of Maryland, the circuit court was correct in granting Appellees' motions to dismiss, and we do not reach the remaining issues presented on appeal.

BACKGROUND

Maryland's Voluntary Cleanup Program and Brownfields Revitalization Program was created by the General Assembly in 1997 to "encourage[] [] the investigation of eligible properties with known or perceived contamination, accelerat[e] [] the cleanup of eligible properties, and provid[e] participants with predictability and finality to the cleanup of eligible properties." Floor Report, Bill Summary Senate Bill 340, 1997; *see also* 1997 Maryland Laws Ch. 1 (S.B. 340). Envir. § 7-503 established the VCP and provides:

> (b) The purpose of the Voluntary Cleanup Program is to:
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> (1) Encourage the investigation of eligible properties with known or perceived contamination;
>
> (2) Protect public health and the environment where cleanup projects are being performed or need to be performed;
>
> (3) Accelerate cleanup of eligible properties; and
>
> (4) Provide predictability and finality to the cleanup of eligible properties.

Approval of the Initial VCP Applications and RAP

On April 25, 2008 and June 4, 2009, Baltimore City submitted, through its agent the Baltimore Development Corporation ("BDC"), Voluntary Cleanup Program applications to MDE for the parcels of real estate known as the Gateway South Phase I properties and

the Warner Street Properties (collectively the "site").[2] BDC's applications included eight environmental site assessments for the properties. In accordance with Envir. § 7-506(d),[3] MDE published notice of the applications on its website. On December 22, 2009, and March 18, 2010, MDE accepted the properties for participation in the VCP. On May 2, 2011, BDC submitted a proposed combined RAP for the properties pursuant to Envir. § 7-508.

After the submission of BDC's RAP in 2011, MDE issued informational reports for the proposed site. Regarding the Gateway South Phase I properties, the report noted that the site was formerly home to industrial manufacturers American Cyanamid, Maryland Chemical Company, and Eastfield Container Corporation and stated:

> **Environmental Investigations and Actions**
>
> In June 1998, a Phase II environmental site assessment (ESA) was completed on the property. The ESA identified the presence of free-phase petroleum

[2] The Gateway South Phase I properties were lots located at 1501, 1525 and 1551 Russell Street. The Warner Street Properties were lots located at 1501, 1601, 1629, 1633 and 1645 Warner Street as well as 2119 Haines Street, 2104 Worcester Street, and 2102 Oler Street.

[3] Envir. § 7-506(d) provides:

> (1) On submission of the application, the Department shall publish a notice of the application on its website and the applicant shall post notice at the property that is the subject of the application.
> (2) The notices required under paragraph (1) of this subsection shall include:
> (i) The name and address of the applicant and the property;
> (ii) The name, address, and telephone number of the office within the Department from which information about the application may be obtained; and
> (iii) The time period during which the Department will receive and consider written comments from the public.

hydrocarbons in the subsurface soil and groundwater in the vicinity of the former boiler located at 1501 Russell Street. The ESA also identified the presence of PCE beneath the asphalt storage yard located at 1551 Russell Street and suggested that if there had been no release on the property the plume was likely coming from an upgradient source. An October assessment further investigated the extent of the petroleum contaminated groundwater and found that i[t] was limited to the most shallow water bearing zone from 7 to 9 feet [below ground surface ("bgs")].

In December 2000, a Phase II ESA was completed on the Maryland Chemical Company property. The report indicated that a spill of 900 pounds of trichloroethene (TCE) occurred in 1993 on the asphalt driveway between the warehouse and the covered storage canopy near the Russell Street property boundary. The spill was reportedly cleaned up with absorbent clay material. Six groundwater samples and six subsurface soil samples were collected that identified the presence of tetrachloroethene (PCE) and TCE in the soils beneath the area of the TCE spill and elevated levels in the groundwater extending from Russell Street to Warner Street.

In April 2004, the Maryland Department of the Environment (MDE) conducted a Phase I ESA of the Warner Street corridor as part of its Brownfield Site Assessment Initiative. MDE identified the storage and sale of industrial chemicals and the previous use of the property as American Cyanamid as potential environmental concerns.

In June 2004, MDE conducted a follow[-]up Brownfields Assessment of the Maryland Chemical Company property that included collection of seven surface soil and seven subsurface soil samples and one groundwater sample. Three surface water samples were collected from the nearest surface water body. The Brownfields assessment included a toxicological evaluation for commercial use of the property that identified elevated levels of risk from ingestion of surface soil and dermal contact of groundwater; the risk drivers were arsenic and chromium, arsenic, PCE and TCE, respectively.

In May 2007, a Phase I ESA identified a past petroleum release at 1501 Russell Street as a recognized environmental condition (REC). The ESA also identified the presence of two permanently out-of-use underground storage tanks (USTs) at 1501 Russell Street. One was a 7,000-gallon gasoline UST and the other was a 3,000-gallon heating oil UST. At 1551 Russell Street, the ESA identified one 6,000-gallon gasoline UST and one 4,000-gallon diesel UST. The Oil Control Program (OCP) issued a Notice of Compliance letter for the two USTs at 1551 Russell Street on September 7, 1994.

> In 2007, a Phase II ESA of the entire area that identified the presence of fill material up to 20 feet bgs and identified the presence of semi-volatile organic compounds and metals throughout the area. The ESA also included a geophysical investigation of one UST at 1501 Russell Street. Soil samples confirmed that chlorinated solvents were present in the subsurface and soil gas samples were collected for screening purposes only.
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> In May, 2009, MDE received an updated Phase II ESA for the Maryland Chemical property that included collection of surface and subsurface soil samples and groundwater samples based on an MDE-approved work plan. The samples collected confirmed the presence of PCE, TCE, and petroleum related compounds and metals in the soil and groundwater at the property. In November 2009, additional soil gas samples were collected to evaluate the vapor intrusion pathway that identified tetrachloroethene, trichloroethene and other contaminants in the soil gas beneath the property.
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> **Current Status**
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> On April 25, 2008, Baltimore Development Corporation, on behalf of the City of Baltimore, the property owner, submitted an application to the Voluntary Cleanup Program (VCP) seeking a Certificate of Completion for future commercial use of the property. The property was accepted for participation in the VCP on December 22, 2009. The proposed RAP for the property was submitted on May 2, 2011 and a public informational meeting is scheduled for June 1, 2011 at 6:30 p.m. in the Baum Room at Harbor Hospital, which is located at 3001 S. Hanover Street in Baltimore, Maryland.[4]

Regarding the Warner Street properties, the MDE informational report provided, in part:

> **Environmental Investigations and Actions**
>
> In January 2006, the Maryland Department of the Environment (MDE) conducted a Phase I environmental site assessment (ESA) of the Warner Street Business Center corridor as part of its Brownfield Site Assessment

[4] MDE amends the VCP property fact sheets posted on its website as progress at the site continues. The reports for Gateway South and the Warner Street Properties in the record were last updated in May 2011 and early 2013, respectively. MDE's current consolidated fact sheet for the properties is available at http://www.mde.maryland.gov/programs/Land/MarylandBrownfieldVCP/mapping/Documents/Gateway%20South%20and%20Warner%20%20Factsheet_9-2014.pdf (last visited Jan. 29, 2016).

Initiative. MDE identified the previous uses of the property for paint and varnish manufacturing, commercial printing, as a brass foundry as potential environmental concerns and recommended that a Phase II ESA be completed.

In May 2007, a Phase I ESA Update summarized seven recognized environmental concerns (RECs) in the entire Warner Street corridor including the presence of underground storage tanks (USTs), previously identified contamination by metals, volatile organic compounds (VOCs), semi-volatile organic compounds (SVOCs) in soil and groundwater, and the presence of approximately 120 drums at 1633 Warner Street. The report also identified green staining at the base of an interior wall at 1645 Warner Street.

In October 2008, MDE completed a Preliminary Assessment of the Gordon Carton property, which identified the past uses of the property as a potential environmental concern.

In January 2008, a Phase II ESA of the entire Warner Street corridor was completed that did not include access to the interior of the buildings. Soil samples identified elevated levels of metals and SVOCs on the property. Petroleum contamination was identified between 1645 Warner Street and 2102 Oler Street near the location of an abandoned UST. SVOC contamination was identified in one groundwater sample location at the northwest corner of the 1629 Warner Street property.

In October 2008, once access was granted, an additional Phase II ESA investigation was completed at the property that included a geophysical survey, characterization and staging of drums from the 1501 Warner Street warehouse. The geophysical survey identified five possible USTs; a sixth possible UST location was identified by fill and vent pipes. Fifty-nine of the 122 drums on the property contained hazardous liquid, which was removed.

In April 2009, a Phase I of the Warner Street corridor identified the unknown location of the historic USTs of chlorinated solvents in 1601 Warner Street property as a data gap in the 2007 Phase I and recommended participation in the VCP to address the RECs identified in the 2007 and 2009 assessments.

In April 2009, an additional Phase II ESA investigation was completed on the Warner Street, Inc. owned properties that confirmed the presence of TCE, SVOCs and metals (arsenic, lead and total mercury) in soil and SVOCs, GRO and DRO in groundwater. In May 2009, soil samples confirmed the presence of elemental mercury in soil at the property.

> In November 2009, an additional investigation at the property included the collection of soil samples from the 1645 Warner Street and 2119 Haines Street lots and soil gas samples from across the property to meet VCP requirements. The soil samples identified the presence of SVOCs in soil of the 1645 Warner Street property.

Appellants acknowledged, in their amended complaint in the circuit court, that MDE published notice of the BDC VCP Applications in accordance with Envir. § 7-506(d) and that public notice of BDC's proposed RAP for the combined Gateway South and Warner Street properties was published in the Baltimore Sun on May 14 and 21, 2011. On May 21, 2011, the public comment period opened, and on June 1, 2011, MDE held a public hearing on BDC's proposed RAP. None of the Appellants attended the public meeting or submitted comments.[5] MDE approved the RAP on September 15, 2011.

CBAC Takes Over Development at the Site

In 2007, the General Assembly passed legislation to add Article XIX to the Maryland Constitution authorizing video lottery terminal gaming at certain locations within the State for the primary purpose of providing funds for public education. 2007 Md. Laws, ch. 5; 2007 Md. Laws (Sp. Sess.), ch. 4 (HB 4). On November 4, 2008, Article XIX – Video Lottery Terminals was ratified by Maryland voters. Pursuant to Maryland Code (1984, 2009 Repl. Vol.) State Government Article § 9-1A-36(h), one of the authorized gaming locations is

> (v) a location in Baltimore City that is:
> 1. located:

[5] Although Appellants later disputed the technical sufficiency of BDC's VCP applications and RAP, Appellants did not argue that MDE and BDC failed to comply with statutory notice requirements for the 2008 to 2011 applications and approvals.

A. in a nonresidential area;
B. within one-half mile of Interstate 95;
C. within one-half mile of MD Route 295; and
D. on property that is owned by Baltimore City on the date on which the application for a video lottery operation license is submitted; and

2. not adjacent to or within one-quarter mile of property that is:
A. zoned for residential use; and
B. used for a residential dwelling on the date the application for a video lottery operation license is submitted[.]

After identifying the Gateway South/Warner Street site as a potential location, on or about July 7, 2012, CBAC Gaming submitted an application to the Maryland Video Lottery Facility Location Commission requesting a license for a proposed facility at the site containing 3,750 video lottery terminals. On July 31, 2012, the Video Lottery Facility Location Commission approved CBAC's application contingent on CBAC's negotiating a Land Disposition Agreement with the land owner, Baltimore City.

On July 7, 2012, CBAC Gaming submitted an application for participation in the VCP for the properties. CBAC's application referenced the already approved RAP for the property submitted by BDC but proposed amending the RAP. From July 2012 through October 2012, MDE conducted several rounds of review and issued numerous comments on CBAC's proposed RAP amendment. On August 10, 2012, MDE approved CBAC's application to participate in the VCP and stated that it was "currently reviewing the proposed RAP amendment."

On or about October 31, 2012, Baltimore City entered into a Ground Lease Agreement and Land Disposition Agreement for the site with CBAC, and those agreements were later approved by the Baltimore City Board of Estimates. In the Ground Lease

Agreement and Land Disposition Agreement, CBAC agreed to participate in the VCP and acknowledged receipt of the City's approved RAP which was noted as "provid[ing] a blueprint for conducting the required environmental remediation of the Property." In an affidavit submitted to the circuit court, MDE project manager Richelle Hanson stated:

> 8. It frequently happens that the developer of a VCP site has a plan for the site that is different from the general proposal made by the original applicant. Normally, the developer of the property will also apply to the VCP, as happened in this case. Such details as change in location and type of structures may mean that some change in the RAP is necessary. By longstanding practice, when a later applicant proposes a RAP that is generally the same plan as was approved after going through the public notice and comment process by an earlier applicant, [MDE] considers the second RAPwithout repeating the full process, provided nothing has changed at the site in the interim. That is exactly what happened in this case.
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> * * *
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> 13. On July 10, 2012, [MDE] received a second VCP application for the aggregate parcels from CBAC Gaming. The applicant posted a sign at the property that included the name and address of the applicant and the property, my name, address and telephone number, as the person at [MDE] from whom information about the application could be obtained, and the period of time during which [MDE] would receive and consider written comments from the public. [MDE] posted most, but not all, of the same information on its website. The formal dates for receipt of comments were inadvertently not added. The website did not contain my contact information specifically, though it did contain contact information for [MDE], and any inquiry about the site would have been routed to me as the project manager. . . .
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> * * *
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> 16. CBAC Gaming submitted a "Response Action Plan Amendment." The RAP Amendment was the same as the RAP already considered and approved, but with minor modifications intended to suit the specific design of the structures CBAC proposed to build. **It was, in all material respects, the same plan and equally as protective of public health and the environment.** I was personally familiar with the site, and knew that no substantial activity had taken place there since the original RAP was approved. In accordance with its normal practice, [MDE] considered and

> approved the RAP Amendment without requiring a repeat of the public meeting process.

(Emphasis added). Attached to her affidavit, Ms. Hanson provided photographs of the sign posted at the site.

On November 27, 2012, after several plan revisions, MDE issued a final approval letter to CBAC for its amended RAP. MDE did not, however, hold a public information meeting on CBAC's proposed RAP amendment prior to that approval. On January 7, 2013, MDE received a letter from Appellants' counsel challenging the RAP approval, which MDE "treated [] as a public comment."

Opposition to CBAC's Approved RAP in the Circuit Court

On February 20, 2013, Appellants filed a complaint against MDE, the Mayor and City Council of Baltimore City, and CBAC for mandamus, declaratory relief, and injunctive relief in the Circuit Court for Baltimore City.[6] Appellants argued that MDE failed to post notice of CBAC's VCP application on its website, failed to require new environmental assessment reports where the earlier submitted reports were more than a year old, and failed to issue a public notice and comment period or hold a public information hearing. Appellants requested that the court enjoin further remediation of the site and any construction on the site until the entire application and approval process was re-done. On March 1, 2013, Appellants also filed a motion for a temporary restraining

[6] The named Plaintiffs on the February 20, 2013 Complaint were Ruth Sherrill, Priscilla Sykes, Elizabeth Arnold, Merab Rice, and Tim Bull. However, the amended complaint, filed April 22, 2013, lists the named plaintiffs as Ruth Sherrill, Elizabeth Arnold, Merab Rice, Sherry Moore-Edmonds, Tim Bull and Julia Dinkins.

order and preliminary injunction and requested that the court "prohibit[] any activity that disturbs impervious surfaces or breaks ground at the proposed CBAC Gaming, LLC casino site." Less than a week later, on or about March 6, CBAC obtained permits and final approval, and construction activities commenced at the site.[7]

On March 12, 2013, MDE filed its response and opposition to the motion for a temporary restraining order and preliminary injunction. MDE argued that it had substantially complied with the requirements of Envir. §§ 7-501 *et seq.*, that Appellants had failed to allege any prejudice resulting from MDE's actions or omissions, and that approval of the VCP and RAP was independent of the permits allowing construction on the site. MDE attached an affidavit from Robert M. Summers, Secretary of the Maryland Department of the Environment, in which Secretary Summers affirmed:

> [MDE] believes it has fully discharged its duty in the actions taken to approve the RAP at the subject site. Nevertheless, in light of public interest recently expressed by [Appellants], and in the interest of transparent and open process, I have directed the staff of the Voluntary Cleanup Program to take all steps necessary to comply with the directives of Environment Article § 7-509, Public Participation, with reference to a Response Action Plan submitted by participant CBAC Gaming, whether these steps have already been taken or not.

On March 19, 2013, Appellants' motion for a temporary restraining order and injunction was denied. Thereafter, notices of a public information meeting and comment period for CBAC's amended RAP were published in the Baltimore Sun on March 23 and 30, 2013,

[7] As the parties acknowledged during oral argument, by the time this case was argued before this Court, construction on the site was complete and the Horseshoe Casino had been open to the public for just over a month. Indeed, a use and occupancy permit for the Casino was issued by Baltimore City well before, on August 7, 2014.

and notice information was added to the MDE website indicating that the formal comment period would remain open until April 23, 2013, and directing inquiries to MDE project manager Richelle Hanson.

The public information meeting mandated by Secretary Summers was held on April 11, 2013. The meeting attendance sheet reflects that Appellants Ruth Sherrill, Elizabeth Arnold, Merab Rice, and Julia Dinkins attended the April 11 meeting. At the meeting, members of the public offered comments and asked questions. Many of the public comments concerned dust, truck traffic, noise and soil deposition and disposal. MDE also received written comments from counsel for Appellants on April 23, 2013.

On April 22, 2013, Appellants filed an amended complaint in the circuit court acknowledging that MDE had conducted the public notice process at the direction of Secretary Summers. Nevertheless, they maintained that MDE had "unlawfully and covertly" approved CBAC's RAP, and that MDE was required to begin the VCP and RAP approval process anew. Appellants also added a complaint for public nuisance arguing that MDE and Baltimore City knew or should have known that "CBAC Gaming's proposed RAP allows and likely exacerbates the release and or threatened release of hazardous substances[.]" Regarding each of the Appellants, the amended complaint averred the following:

> 6. Plaintiff Ruth Sherrill is, and at all times relevant to this lawsuit was, a resident of Baltimore City. Ms. Sherrill resides at 2631 Waterview Avenue.
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> 7. Plaintiff Sherry Moore-Edmonds is, and at all times relevant to this lawsuit was, a resident of Baltimore City. Ms. Moore-Edmonds resides at 2631 Waterview Avenue.

8. Plaintiff Elizabeth Arnold is, and at all times relevant to this lawsuit was, a resident of Baltimore City. Ms. Arnold resides at 2210 Annapolis Road.

9. Plaintiff Merab Rice is, and at all times relevant to this lawsuit was, a resident of Baltimore City. Ms. Rice resides at 2309 Annapolis Road.

10. Plaintiff Tim Bull is, and at all times relevant to this lawsuit was, a resident of Baltimore City. Mr. Bull resides at 2039 Annapolis Road.

11. Plaintiff Julia Dinkins is, and at all times relevant to this lawsuit was, a resident of Baltimore City. Mrs. Dinkins resides at 2609 Carver Road.

* * *

118. Plaintiff, Ms. Sherrill, is a resident of [] Baltimore City and user of the Gwynns Falls Trail at the adjacent Waterfront Parcels. Ms. Sherrill has a special interest in CBAC Gaming's proposed RAP and is entitled to notice and the ability to participate in the review process associated with CBAC Gaming's VCP application.

119. Plaintiff, Ms. Rice, and her family, residents of Baltimore City, recreate along Annapolis Road and on the Gwynns Falls Trail. Ms. Rice and her family have a special interest in CBAC Gaming's proposed RAP and is entitled to notice and the ability to participate in the review process associated with CBAC Gaming's VCP application.

120. Plaintiff, Ms. Moore-Edmonds, is a resident of Baltimore City and recreates on the Gwynns Falls Trail. Ms. Moore-Edmonds has a special interest in CBAC Gaming's proposed RAP and is entitled to notice and the ability to participate in the review process associated with CBAC Gaming's VCP application.

121. Plaintiff, Mr. Bull, is a resident of Baltimore City and recreates in the Middle Branch of the Patapsco River for recreational purposes, including fishing and boating activities. Mr. Bull has a special interest in CBAC Gaming's proposed RAP and is entitled to notice and the ability to participate in the review process associated with CBAC Gaming's VCP application.

122. Plaintiff, Ms. Arnold, is a resident of Baltimore City and has a special interest in CBAC Gaming's proposed RAP. Ms. Arnold is entitled to notice and the ability to participate in the review process associated with CBAC Gaming's VCP application.

> 123. Plaintiff, Ms. Dinkins, is a resident of Baltimore City and has a special interest in CBAC Gaming's proposed RAP. Ms. Dinkins is entitled to notice and the ability to participate in the review process associated with CBAC Gaming's VCP application.
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> * * *
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> 154. The public nuisance caused, contributed to and/or maintained by [Appellees] continues to threaten, migrate into and/or contaminate the public resources and public right-of-way on the adjacent Waterfront Parcels and waters of the State.
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> 155. As residents in the surrounding neighborhood, Plaintiffs have suffered special damages as a proximate result of [Appellees] acts and omissions at the Subject Properties including but not limited to: (i) the loss of the ability to freely use and enjoy the public resources in Plaintiffs' neighborhood including the public resources and public right-of-way on the Waterfront Parcels and the Middle Branch of the Patapsco River; (ii) the diminished value of Plaintiffs' properties in an amount to be determined at trial; and (iii) the significant time and resources incurred in investigating, assessing and challenging the unreasonable and inadequate "cleanup" measures proposed in [Appellee] CBAC Gaming's RAP [] unlawfully and covertly approved by [Appellee] MDE.

On May 6, 2013, after considering the public comments, MDE sent a letter to CBAC advising the entity to "submit a revised RAP Amendment to address the attached comments prepared in response to questions asked at the public meeting on April 11, 2013 and comments received during the comment period that ended on April 23, 2013." Subsequently, CBAC revised the RAP accordingly on May 21, 2013, and MDE issued its approval of that revised RAP on May 23, 2013. The revised RAP clarified that a vapor mitigation system would underlie the entire proposed building, and, in response to the public comment, added, *inter alia*, supplementary soil gas sampling and analysis, additional dust monitoring during demolition and earth-moving activities, and more extensive soil control measures.

On May 10 and 14, 2013, MDE and CBAC filed motions to dismiss the amended complaint, and Baltimore City filed a motion to dismiss or, in the alternative, for summary judgment. MDE argued that Appellants' amended complaint failed to present a justiciable controversy and failed to allege sufficient harm for their public nuisance claim.[8] CBAC and Baltimore City additionally argued that Appellants lacked standing to bring an action seeking to redress a public wrong where they had alleged no special damages and there was no basis for taxpayer standing.

Appellants filed their opposition to the motions to dismiss on May 28, 2013. Appellants argued that, because they were seeking review of an agency action to ensure agency compliance with required procedures and the failure to follow such procedures would result in there being no valid RAP, they had presented a justiciable controversy. Appellants also maintained that they had standing based on their statutory rights conferred by the VCP statute and as taxpayers of Baltimore City.

[8] We also note MDE's argument on appeal that Appellants' continuation of this suit, after receiving the substantive relief they requested voluntarily from MDE, was primarily "an attempt to delay the opening of a casino that they oppose on grounds that have nothing to do with the technical merits of [the Response Action Plan]." Indeed, the record indicates that the environmental concerns presented at the site would be substantially similar for any construction of the same scale at that site. As discussed *supra*, however, Appellants did not participate in the public comment process for the original Response Action Plan. Rather, Appellants only became involved when CBAC Gaming took over the site and it was clear that the planned construction was a casino. Numerous other, and more appropriate, opportunities and avenues certainly existed to oppose the construction of a casino in Baltimore City, as evidenced by the additional cases discussed *supra* at fn. 1, and the opportunity to oppose the enacting legislation and voter ratification of Maryland Constitution Article XIX discussed *supra*.

On June 14, 2013, the circuit court held a hearing on Appellees' motions. Counsel for Appellants addressed the issue of standing to challenge the approved RAP and the following colloquy took place:

> THE COURT: I may totally disagree with the RAP. I may think it's totally inadequate. But if they've gone through the right process, do I have recourse?
>
> [APPELLANTS' COUNSEL]: Yes, under public nuisance . . . .
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> * * *
>
> [APPELLANTS' COUNSEL]: But special damages could come in the form, different forms based on the type of standing that is being alleged. If it's taxpayer standing, the special damages is in [the] form of a potential for tax increase. Special damages if you're challenging it based solely on your proxim[ity] as a property owner would be based on some special injury different from someone from the public.
>
> For example . . . a decrease in property values. Special damage component is distinct based on the type of standing the plaintiffs are attempting to satisfy in bringing the case.
>
> * * *
>
> [APPELLANTS' COUNSEL]: . . . Here we're bringing it under our statutory rights[.]

However, Appellants filed a notice voluntarily dismissing their public nuisance claim on October 2, 2013.

On October 31, 2013, the circuit court dismissed Appellants amended complaint and made numerous findings. The circuit court's order provided:

> **FOUND** that all enforcement provisions of the Voluntary Cleanup Program as set forth in Md. Environment Code § 7-501 et seq. are assigned to the Department of the Environment and do not create a cause of action for private citizens for any alleged violations, and it is further
>
> **FOUND** that §7-510(c) of the Environment Article provides that "the failure of the Department to adopt final regulations under this subtitle may

not prevent the Department from approving a response action plan on an individual plan basis," and it is further

FOUND that the Plaintiffs acknowledge that they failed to participate in the public notice and comment period in 2011 prior to the Maryland Department of the Environment's approval of the Response Action Plan filed by the City of Baltimore; and it is further

FOUND that the Plaintiffs have had an opportunity to participate in a public information meeting, and to submit both oral and written comments in April 2013, during the pend[e]ncy of this matter, and it is further

FOUND that CBAC Gaming, LLC is an inculpable person within the meaning of §7-501(j) of the Environment Article, and it is further

FOUND that the complaint for mandamus alleges failures of the Department of the Environment with respect to its discretionary acts in approving the original and amended Response Action Plans as submitted by the City of Baltimore and CBAC Gaming, LLC, and it is further

FOUND that the complaint for declaratory judgment alleges failures of the Department of the Environment to provide the Plaintiffs with an opportunity for public participation pursuant to §7-509 of the Environment Article, and it is further

FOUND that the complaint for public nuisance fails to articulate special damages as opposed to a generalized interest in the area surrounding the site subject to the Response Action Plan, and it is further

ORDERED that Count I of the Amended Complaint, Mandamus, is **DISMISSED**, as the allegations are too sparse and conclusory to support a claim that officials at the Maryland Department of the Environment acted arbitrarily and capriciously. *See Homes Oil Company, Inc. v. Maryland Department of the Environment*, 135 Md. App. 442 (2000), and it is further

ORDERED that Count II of the Amended Complaint, Declaratory Judgment, is **DISMISSED** as **MOOT**, as the Plaintiffs have been provided with at least two opportunities for public participation pursuant to §7-509 of the Environment Article, and it is further

ORDERED that COUNT III of the Amended Complaint, Public Nuisance, is **DISMISSED**, as the allegations fail to allege particularlized harm or a special interest which is distinct from that of the general public. *See Kendall v. Howard County*, 431 Md. 590 (2013)[.]

Appellants filed a timely notice of appeal on November 26, 2013. We will discuss additional facts as necessary and relevant to our discussion below.

DISCUSSION

Our review of the circuit court's grant of a motion to dismiss is *de novo. Reichs Ford Rd. Joint Venture v. State Rds. Comm'n of the State Highway Admin.*, 388 Md. 500, 509 (2005) (citation omitted). We may affirm a dismissal "on any ground adequately shown by the record, whether or not relied upon by the trial court." *City of Frederick v. Pickett*, 392 Md. 411, 424 (2006) (quoting *Berman v. Karvounis*, 308 Md. 259, 263 (1987)). In conducting our review, "we must assume the truth of the well-pleaded factual allegations of the complaint, including the reasonable inferences that may be drawn from those allegations." *Adamson v. Corr. Med. Servs., Inc.*, 359 Md. 238, 246 (2000) (citations omitted).

Standing Generally

In *State Center, LLC v. Lexington Charles Limited. Partnership* ("*State Center*"), the Court of Appeals clarified that, although in the federal courts "the concepts of jurisdiction, standing, cause of action, and remedy [are] treated separately[,]" the appellate courts of Maryland have adopted an "alternative approach, sometimes referred to as 'cause of action' standing, [that] simply asks whether governing law confers on the plaintiff a right to bring the claim to the courts." 438 Md. 451, 499 (2014) (citing Anthony J. Bellia, Jr., *Article III and the Cause of Action*, 89 Iowa L. Rev. 777, 779 (2004)), *reconsideration denied* (May 16, 2014). "Cause of action" standing "groups the traditionally distinct concepts of standing and cause of action into a single analytical construct," under the rationale that "standing and cause of action are so interrelated that it is difficult to analyze one without the other creeping into the analysis." *Id.* at 502 (citing *Kendall*, 431 Md. at

593). Through this concept of standing the Court looks to determine whether "the plaintiff [has] show[n] that he or she 'is entitled to invoke the judicial process in a particular instance.'" *Kendall*, 431 Md. at 593 (quoting *Adams v. Manown*, 328 Md. 463, 480 (1992)). "For purposes of standing, the claimant alone is responsible for raising the grounds for which his right to access to the judiciary system exists." *State Center*, 438 Md. at 517 (citing *Kendall*, 431 Md. at 607-08 (refusing to address taxpayer standing because petitioners did not assert it)).

Before the circuit court, Appellants relied primarily on their assertion that the VCP statute confers standing through its provisions for public participation; however, they also argued that the individual Appellants had standing as taxpayers of Baltimore City.

I.

Standing Conferred by Statute

Appellants maintain that the public participation process in Envir. § 7-509 confers a legal right on Appellants (as members of the public) establishing their standing to bring a declaratory judgment claim. Envir. § 7-509 provides:

> (a) Upon submission of a proposed response action plan, the participant:
>
> (1) Shall publish a notice of a proposed response action plan once a week for 2 consecutive weeks in a daily or weekly newspaper of general circulation in the geographical area in which the eligible property is located that shall include:
>
> (i) A summary of the proposed response action plan;
> (ii) The name and address of the participant and eligible property;
> (iii) The name, address, and telephone number of the office within the Department from which information about the proposed response action plan may be obtained;
> (iv) An address to which persons may submit written comments about the proposed response action plan;

> (v) A deadline for the close of the public comment period by which written comments must be received by the Department; and
> (vi) The date and location of the public informational meeting; and
> (2) Shall post at the eligible property a notice of intent to conduct a response action plan at that property.
> (b) The Department shall receive written comments from the public for 30 days after publication and posting required under this section or 5 days after the public informational meeting required under this section, whichever is later.
> (c) The Department shall hold a public informational meeting on the proposed response action plan at the participant's expense within 40 days after the publication of the notice in accordance with subsection (a)(1) of this section.

They argue that because their declaratory judgment claim presents an actual controversy between the parties regarding their rights and obligations under the VCP statute, they have presented a cognizable legal interest consistent with Maryland Code (1973, 2013 Repl. Vol.) Courts and Judicial Proceedings Article ("CJP"), § 3-406, which provides, in pertinent part:

> Any person . . . whose rights, status, or other legal relations are affected by a statute, municipal ordinance, administrative rule or regulation, contract, or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, administrative rule or regulation, land patent, contract, or franchise and obtain a declaration of rights, status, or other legal relations under it.

Appellees counter that Appellants' allegation that MDE failed to follow the VCP public participation process is merely a generalized interest which does not confer standing.

Moreover, Appellee MDE argues that Appellants failed to establish that the MDE had a duty to repeat the public participation process in the first place.[9]

Even assuming that the VCP statute can be interpreted (because it does not so state) to impose a requirement that MDE repeat the public participation process for an amended RAP, and even if we then ignored the fact that MDE actually did repeat the public participation process in this case pursuant to the Secretary's directive, Appellants' case was properly dismissed for lack of standing because they failed to demonstrate that they were specially aggrieved. "When . . . a plaintiff seeks to redress what is claimed to be a public wrong, the plaintiff must also demonstrate that he or she has 'suffered some special damage from such wrong differing in character and kind from that suffered by the general public.'" *Kendall*, 431 Md. at 593 (quoting *Weinberg*, 189 Md. at 280). "[S]tanding to bring a judicial action generally depends on whether one is 'aggrieved,' which means whether a plaintiff has an interest such that he [or she] is personally and specifically affected in a way different from . . . the public generally." *Id.* at 603 (citations omitted) (alteration in original). *See also Evans v. State*, 396 Md. 256, 328 (2006) ("[A]n individual or an organization has no standing in court unless he has also suffered some kind of special

[9] We note that the statute specifically provides that RAP approval letters and/or certificates of completion may be transferred to another applicant under § 7-514(c). There is no corollary provision that requires public comment or a hearing prior to or upon transfer. Appellee MDE contends, therefore, that the statute did not require any public participation on the RAP amendment in this case. To the extent that the new applicant, Appellee CBAC, made some adjustments to the RAP, MDE asserts that post-approval adjustments that require amendments will inevitably arise during the process of cleaning up a property. Therefore, MDE argues, the circuit court properly concluded that the VCP statute does not address the process for evaluating RAP amendments and that the Department's practice for considering them is an implementation procedure within the discretion of the agency.

damage from such wrong differing in character and kind from that suffered by the general public." (quoting *Medical Waste Assocs., Inc. v. Md. Waste Coalition, Inc.*, 327 Md. 596, 612 (1992) (internal quotation marks omitted))). Where a plaintiff maintains that his or her protected interest arises from a statute, that plaintiff must also satisfy the court that "the interest sought to be protected by the complainant is arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question." *Kendall*, 431 Md. at 603-04 (quoting *Ass'n of Data Processing Serv. Orgs., Inc. v. Camp*, 397 U.S. 150, 153 (1970); and citing *120 West Fayette St., LLLP v. Mayor of Baltimore*, 407 Md. 253 (2009)).

Appellants cite to *Boyds Civic Association v. Montgomery County Council*, 309 Md. 683, 698 (1987) ("*Boyds*"), for the proposition that the denial of a statutory right to participate, via a public hearing, is sufficient to confer standing for a declaratory judgment action. However, the Court of Appeals in *Boyds* never addressed the issue of standing; rather, the court stated that "[t]he sole issue before us is whether a justiciable controversy exists[,]" where the appellants challenged an amendment to a zoning master plan *prior to the adoption of the recommended zone* for any specific area covered by the plan. *Id.* at 686. The Court defined a justiciable controversy as one in which "there are interested parties asserting adverse claims *upon a state of facts which must have accrued* wherein a legal decision is sought or demanded." *Id.* at 690 (emphasis in original) (quoting *Patuxent Co. v. Commissioners*, 212 Md. 543, 548 (1957)). Thus, the Court of Appeals provided a lengthy analysis of the ripeness doctrine in the context of a declaratory judgment action. *See Id.* at 690-96. It was in that context that the Court determined that, because "the

challenged plan amendment was initiated, approved, and adopted in furtherance of an actual, pending application to amend the local zoning map," and "the designation of an area on the applicable master plan as suitable . . . was a condition precedent to the granting of an application for zoning[,] . . . this case present[ed] a practical rather than a theoretical question." *Id.* at 697.

Notably, the challenged zoning master plan in *Boyds* covered the entire community, which included the appellant landowners, and not merely the landowner seeking the zoning revision. *Id.* at 687. Additionally, the Court of Appeals has since recognized that, *in zoning cases*, "a party's proximity to the area affected by a local land use decision may, **under certain circumstances**, satisfy th[e] 'specially damaged' standing requirement." *Kendall*, 431 Md. at 605 (2013) (emphasis added) (citing *Ray v. Mayor of Baltimore*, 430 Md. 74, 85 (2013)). In *Ray v. Mayor of Baltimore*, the Court of Appeals stated:

> In sum, Maryland courts have accorded standing **to challenge a rezoning action** to two types of protestants: those who are *prima facie* aggrieved and those who are almost *prima facie* aggrieved. A protestant is *prima facie* aggrieved when his proximity makes him an adjoining, confronting, or nearby property owner. A protestant is specially aggrieved when she is farther away than an adjoining, confronting, or nearby property owner, but is still close enough to the site of the rezoning action to be considered almost *prima facie* aggrieved, *and* offers "plus factors" supporting injury. **Other individuals are generally aggrieved.**

430 Md. at 85 (emphasis added). This is not a zoning case, and Appellants are not adjoining landowners aggrieved by rezoning.[10] Appellants' reliance on *Boyds* to establish standing is misplaced.

[10] In zoning cases, a property owner may demonstrate agrievement sufficient to convey standing if they are *prima facie* aggrieved or "almost" *prima facie* (continued…)

In *Kendall v. Howard County*, the petitioners, two residents of Howard County, sought a declaratory judgment that "a variety of County resolutions, ordinances, zoning decisions, and administrative actions violated the Howard County Charter." 431 Md. at 593. They claimed that, by acting through resolution or administrative decision, rather than passing an original bill, the County denied them the opportunity to petition those acts to referendum under the County Charter. *Id.* at 593-94. Notwithstanding the general right to public participation through referendum provided by the County Charter, the Court of

aggrieved and demonstrate a "plus factor" of being specially and adversely affected. *Ray v. Mayor & City Council of Baltimore*, 430 Md. 74, 81, 85 (2013); *see also State Center, LLC v. Lexington Charles Ltd. Partnership*, 438 Md. 451, 527-28 (2014). Property owners are considered *prima facie* aggrieved where their property is adjoining, confronting, or nearby the property subject to a contested zoning change. *Id.* at 85. Although, there is no bright-line rule, there have been no cases in Maryland where a property owner more than 1000 feet away from the subject property has been considered aggrieved. *Id.* at 91(citing *Shore Acres Imp. Ass'n v. Anne Arundel Cnty. Bd. of Appeals,* 251 Md. 310, 312, 317-18 (1968) (not specially aggrieved when 3760 feet and out of sight of subject property); *White v. Major Realty, Inc.*, 251 Md. 63, 64 (1968) (not specially aggrieved when 0.5 miles from site, even though asserting an increase in traffic, increase in use of water system, and overcrowded schools); *DuBay v. Crane,* 240 Md. 180, 182–84, 185–86 (1965) (three protestants—1500 feet, 0.4 miles, and 0.9 miles—who were separated by beltway or could not see site, not specially aggrieved); *Marcus v. Montgomery Cnty Council,* 235 Md. 535, 537–38, 541 (1964) (protestant living 0. 75 miles away who could not see subject property denied standing); *Comm. For Responsible Dev. On 25th Street v. Mayor and City Council of Baltimore,* 137 Md. App. 60, 86, 89 (2001) (protestant two blocks west and three blocks north, without sight of, or sound from, subject property, denied standing)).

Pursuant to SG § 9-1A-36(h)(v)(2) any Baltimore City casino cannot be "adjacent to or within one-quarter mile of property that is . . . used for a residential dwelling . . . ." Indeed, the record before this Court reflects that Appellants reside (from closest to most distant) 0.46 miles (2,450 feet), 0.61 miles (3,250 feet), 0.72 miles (3,800 feet), 0.97 miles (5,100 feet), and 1.57 miles (8,300 feet) from the perimeter of the Site. Plainly, even if this were a situation where asserting property owner standing was appropriate, all of the Appellants in this case live well beyond the limits of what the appellate courts of Maryland have considered close enough to be *prima facie* aggrieved.

Appeals reiterated that "a plaintiff must allege with specificity precisely 'how he is *specially damaged*[.]'" *Id.* at 604-05 (emphasis in original) (quoting *Bryniarski v. Montgomery Cnty. Bd. of Appeals*, 247 Md. 137, 144 (1967)).

The petitioners in *Kendall* argued that the right of referendum over legislative acts, was itself sufficient to confer standing. *Id.* at 602. However, the Court of Appeals noted that the petitioners had "alleged no specific and personal injuries stemming from the County's action[,]" beyond the "denial of the right to petition legislative acts to referendum, which is shared by all persons in Howard County." *Id.* at 613. Nevertheless, the petitioners in *Kendall* sought to frame their alleged injuries as a denial of their individual rights under the County Charter as well as their rights under the Constitution of the United States. *Id.* at 602. In response, the Court of Appeals stated:

> Petitioners have taken great pains to characterize their grievance as a deprivation of the right to referendum, the right to vote, and related free speech and association rights. Yet, at its core, Petitioners' complaint is grounded in one thing and one thing only: the allegation that the County's methods for accomplishing certain decisions violate its own Charter. As our colleagues on the Court of Special Appeals observed, this amounts to nothing more than "an abstract, generalized interest in the County's compliance with § 202(g) of the Charter," which is shared by all members of the general public in Howard County. On this ground alone, Petitioners have not established standing.

Id. at 614-15 (internal citations omitted).

Here, Appellants contend in their complaint that, because they live near the site subject to CBAC's RAP and use the surrounding area for general recreational purposes, they have been specially harmed through (1) the loss of the ability to freely use and enjoy the public resources in their neighborhood; (2) an unspecified diminution in property value;

and (3) by the expenditure of unspecified resources challenging "the unreasonable and inadequate 'cleanup' measures proposed in [Appellee] CBAC Gaming's RAP." Like the petitioners in *Kendall*, Appellants here have taken great pains to characterize their grievance as a deprivation affecting their individual property and safety, created by an "inadequate RAP [] exacerbating the contamination at the Subject Properties" and "causing unsafe and likely unlawful human exposure to [] hazardous substances." However, at its core, Appellants complaint is grounded only in the allegation that MDE's public participation process for approving an amended RAP was insufficient. Indeed, Appellants plainly acknowledged this in their reply brief to this Court when they stated:

> Appellants' case is not premised on injuries to Appellants' properties of "their use of public spaces in the vicinity of the Casino Site." [] This is a case about Appellants' statutory rights to meaningful public participation under the VCP statute and about their status as taxpayers and residents of Baltimore City."

That Appellants' claims are premised solely on the alleged inadequacy of the public participation process in the first approval of CBAC's amended RAP is made all the more clear where MDE voluntarily undertook a second public hearing and comment process (in which Appellants participated) and the RAP was revised to address public concerns.[11] Yet

[11] Although our decision in this case is based on Appellants' lack of standing to bring their claims, we note that by the time the case reached this court MDE had voluntarily conducted the new public participation process sought by Appellants, a new amended RAP had been approved based on the public comments received, that RAP had been implemented, and construction at the site had been completed. Thus, Appellants have already received the remedy they sought (the opportunity for meaningful public participation in the approval of the RAP) and there is no further effective relief that the court can provide. *See, e.g., Alleghany Corp. v. Aldebaran Corp.*, 173 Md. 472, 477-78 (1938) (stating that where "[t]he appellants have by their own acts, done after the cases were argued in this court, completely satisfied the demands made by the (continued…)

Appellants still maintain that the actual implementation of the statutory process they seek to compel adherence to is insufficient to redress their grievance.

Although Appellants may believe the RAP approved by MDE to be insufficient, they have failed to "allege with specificity precisely 'how [they were] *specially damaged*,'" *Kendall*, 431 Md. at 604-05 (citation omitted; emphasis added), as a proximate result of the manner in which MDE conducted the public participation process for BDC's and, subsequently, CBAC's RAP. As noted already, Appellants do not live close enough to the site to be considered *prima facia* aggrieved (if this were a zoning case), and we conclude the circuit court did not err in declining to accept Appellants' contention that they were specially aggrieved because they were denied use of the property for "general recreational purposes." The descriptions of the property contained in the MDE reports, along with the very necessity for a RAP render this contention to be without merit. Rather, Appellants have alleged and rely only on an "abstract, generalized interest [in ensuring statutory compliance] . . . which is shared by all members of the general public[,]" and such an interest is not sufficient to confer standing in this case. *Id.* at 615.

appellees in their respective bills of complaint, and have made these proceedings wholly nugatory and ineffectual" and "no action which the court might take in these suits could possibly give to the appellees any relief more adequate and complete than that which they have already received as a result of the appellants' acts[,]" the case is moot.) "A case is moot when there is no longer an existing controversy between the parties at the time it is before the court so that the court cannot provide an effective remedy." *Coburn v. Coburn*, 342 Md. 244, 250 (1996) (citing *Robinson v. Lee*, 317 Md. 371, 375 (1989)). Where the relief requested has been received and no justiciable controversy exists between the parties necessitating a declaration of the rights of the parties, a complaint for declaratory judgment may also be dismissed as moot. *See Bailer v. Erie Ins. Exch.*, 344 Md. 515, 519 (1997).

II.

Taxpayer Standing

The courts of Maryland have long recognized rights of "citizens and property-holders residing or holding property within the limits of a municipal corporation . . . to prevent the injury and damage which might result to them from the unauthorized or illegal acts of the municipal government, and its officers and agents." *City of Baltimore v. Gill*, 31 Md. 375, 395 (1869). Accordingly, a property owner or taxpayer may have standing to bring a claim when injured by an alleged *ultra vires* or illegal governmental act. *State Center*, 438 Md. at 517.

The common law taxpayer standing doctrine in Maryland permits a taxpayer, under certain circumstances, to enjoin the alleged illegal acts of a government agency or public official where those acts are reasonably likely to result in pecuniary loss to the taxpayer. *Id.* at 538 (citing *120 West Fayette Street, LLLP*, 407 Md. at 267). Notably, taxpayer suits do not require private causes of action. *Id.* at 542. They do require, however, a number of other factors articulated by the Court of Appeals in *State Center.*

a) Taxpayer Status and Derivative Complaint

For taxpayer standing to exist, the Appellants must have alleged sufficient facts to prove that they are, in fact, taxpayers. *See id.* at 548. The Court in *State Center* stated:

> For purposes of taxpayer standing doctrine, the conceptual basis of the doctrine is that the action is brought by complainants, *as taxpayers and on behalf of all other similarly situated taxpayers.*

Id. at 547 (emphasis in original). Thus, even where the plaintiff is a taxpayer, if their claim is private in nature and not brought "explicitly as a class representative of other taxpayers

. . . the doctrine of taxpayer standing w[ill] not confer standing[].” *Id.* at 552. This key distinction between the complaint of an individual and a derivative complaint brought on behalf of similarly situated taxpayers has long been a foundational principle of taxpayer standing in Maryland. *See id.* (citing *Kelly v. City of Baltimore*, 53 Md. 134 (1880)). The suit must be “brought, either expressly or implicitly, on behalf of all other taxpayers.” *Id.* (citing *Holt v. Moxley*, 157 Md. 619, 622-26 (1929)). Where a party has failed to allege, either expressly or implicitly, that the action is brought on behalf of all similarly situated taxpayers, taxpayer standing fails as a basis to maintain the suit. *See id.* (“[A] complainant's standing rests upon the theoretical concept that the action is brought not as an individual action, but rather as a class action by a taxpayer on behalf of other similarly situated taxpayers.”). The appellate courts of Maryland have long acknowledged this principle. In *Kelly v. City of Baltimore*, the Court of Appeals stated:

> In exceptional cases, where great principles or large public interests are involved, citizens or corporators may sue in behalf of themselves, and their fellow-citizens to arrest some projected violation of constitutional law or abuse of corporate authority.

53 Md. at 139.

Here, although the amended complaint characterizes Appellants as residents of Baltimore City, rather than property owners, it does state that Appellants are taxpayers. However, their complaint does not, on its face, indicate that the action was brought as a derivative action on behalf of all similarly situated taxpayers. Rather, Appellants repeatedly allege “a denial of [their own] statutory right to participate[.]”

b) Illegal or *Ultra Vires* Action

"An additional requirement for the taxpayer standing doctrine to confer standing upon a plaintiff is that the complainant must be challenging an action by a public official that is asserted to be illegal or *ultra vires.*" *State Center,* 438 Md. at 555-56. "So long as the plaintiffs allege, in good faith, an *ultra vires* or illegal act by the State or one of its officers . . . such allegations are sufficient[.]" *Id.* at 556. In the context of reviewing a motion to dismiss, as is the case here, "[t]his requirement has been applied leniently and seems rather easy to meet." *Id.* Because we assume that the well-pleaded facts in the amended complaint are true, we also assume (for our limited purpose) the truth of the allegations regarding MDE's failure to adhere to statutorily mandated procedures and "unlawfully and covertly" approving the CBAC's RAP. *See, e.g., Id.* at 556; *RRC Ne., LLC v. BAA Maryland, Inc.*, 413 Md. 638, 643-44 (2010).

c) Special Interest or Injury

Just as in alleging standing conferred by statute, "[i]t is well-settled that the taxpayer must allege also a special interest distinct from the general public." *State Center,* 438 Md. at 556 (citing *Harlan v. Employers' Ass'n of Maryland,* 162 Md. 124, 131 (1932)). The Court of Appeals has interpreted this as requiring "a showing that the action being challenged results in a pecuniary loss or an increase in taxes." *Id.* at 556-57 (quoting *Citizens Planning & Hous. Ass'n v. Cnty. Executive of Baltimore Cnty.*, 273 Md. 333, 339 (1974), *superseded by statute on other grounds as stated in Patuxent Riverkeeper v. Maryland Dep't of Environment,* 422 Md. 294, 29 A.3d 584 (2011)). However, "'[t]he taxpayer plaintiff is not required to allege facts which **necessarily** lead to the conclusion

that taxes will be increased; rather the test is whether the taxpayer reasonably **may** sustain a pecuniary loss or a tax increase—whether there has been a showing of **potential** pecuniary damage.'" *Id.* at 559 (internal quotation marks omitted) (quoting *Inlet Assocs. v. Assateague House Condo. Ass'n,* 313 Md. 413, 441 (1988)) (emphasis in *Inlet Assocs.*). Nevertheless, there must be "'a clear showing of [that] potential pecuniary damage' and of a nexus between that potential damage and the challenged act[.]" *Id.* (quoting *Gordon v. City of Baltimore,* 258 Md. 682, 687-88 (1970)).

Here, Appellants' amended complaint fails to provide a clear showing of a potential tax increase or other pecuniary damage. The amended complaint merely states:

> [Appellee] MDE's procedural and substantive failures, coupled with [Appellee] CBAC Gaming's and [Appellee] City's cursory and inadequate environmental investigation and 'cleanup' of the Subject Properties adversely impact [Appellants'] rights as taxpayers of Baltimore City by creating the **potential** for their taxes to increase **if** CBAC Gaming terminates the [Ground Lease Agreement and Land Disposition Agreement] and declines to complete the necessary remediation at the Properties, thereby leaving [Appellee] City to pay for the cleanup.

(Emphasis added). Appellants' hypothetical course of events, potentially leading to an increase in taxes, does not establish that Appellees alleged actions or omissions "**reasonably** may result in a pecuniary loss to the taxpayer or an increase in taxes," *Kendall,* 431 Md. at 605 (citation and internal quotation marks omitted; emphasis added), or provide "a clear showing of . . . potential pecuniary damage," *State Center*, 438 Md. at 559.

d) Nexus

Finally, to establish taxpayer standing, the taxpayer must show a nexus between the remedy sought and the burden on taxpayers; that is "the 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." *State Center*, 438 Md. at 572. For example, in *Citizens Committee of Anne Arundel County, Inc. v. County Commissioners of Anne Arundel County*, the Court of Appeals held that the taxpayer failed to show that his request for injunctive relief—to prevent the issuance of licenses under county ordinances and resolutions authorizing the operation of gambling devices or activities pursuant to such licenses—if granted, would decrease the burden on taxpayers. 233 Md. 398, 405 (1964). *See also Carroll Park Manor Cnty. Ass'n v. Bd. of Cnty. Comm'rs*, 50 Md. App. 319, 324 (1981) (concluding that appellants were not entitled to bring suit because they failed to show how the county's *ultra vires* failure to honor a charitable trust may result in their sustaining an increased tax burden or a pecuniary loss).

Here, because we have determined, *supra*, that Appellants failed to sufficiently establish the potential for an increase in taxes or other pecuniary loss to themselves or other similarly situated taxpayers, and it is unclear whether the action is being pursued as a derivative taxpayer claim, it follows that Appellants have not established a nexus between the relief sought and an alleviation of the tax burden on similarly situated taxpayers.

CONCLUSION

Appellants have failed to establish that their claims assert anything more than an "abstract, generalized interest" in enforcing their interpretation of the public participation

process in Envir. § 7-509. Appellants have not established that they "'suffered some special damage from such wrong differing in character and kind from that suffered by the general public.'" *See Kendall*, 431 Md. at 593 (quoting *Weinberg*, 189 Md. at 280). Therefore, we hold that Appellants general statutory interest is not sufficient to confer standing in this case.

Similarly, Appellants' amended complaint fails to meet the requirements to establish taxpayer standing. Although Appellants are taxpayers, it is not clear that their action is brought on behalf of all similarly situated taxpayers, they have failed to show the reasonable potential for an increase in taxes or pecuniary loss, and they failed to demonstrate that the relief sought (ultimately, requiring MDE, CBAC, and Baltimore City to re-do the entire VCP and RAP) would alleviate the burden on taxpayers. Accordingly, we hold that Appellants have not established standing for their claims as taxpayers.

Appellants lack standing to bring their claims and the circuit court was correct in granting Appellees motions to dismiss. *See City of Frederick v. Pickett*, 392 Md. 411, 424 (2006) (stating that an appellate court may affirm a dismissal "on any ground adequately shown by the record, whether or not relied upon by the trial court." (quoting *Berman v. Karvounis*, 308 Md. 259, 263 (1987)). Because we determine that Appellants lack standing to bring their claims before the courts of Maryland, we need not reach their other arguments.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED.

COSTS TO BE PAID BY APPELLANTS.