UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2698

September Term, 2014

JAMES KEISER, ET AL.

V.

BOARD OF COMMISSIONERS OF

CARROLL COUNTY, ET AL.

Graeff,
Leahy,
Kenney, James A., III
(Retired, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: August 29, 2016

*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.

Appellants, James Keiser along with others,[1] challenge a zoning map amendment by appellee Board of County Commissioners of Carroll County ("The Board") reclassifying a 4.45 acre parcel ("the Property") owned by appellee Brian and Virginia DiMaggio, LLC ("DiMaggio") from B-NR ("Business Neighborhood Retail") to B-G ("Business General") based on a mistake in the original zoning.

Keiser presents three questions for our review, which we have consolidated into two:

1. Was the Board's finding of mistake in the original zoning and its rezoning of the Property from B-NR to B-G supported by substantial evidence?
2. Was the circuit court's $250 sanction of Keiser's counsel for mailing pleadings and other documents to the wrong address appropriate under the circumstances?

FACTUAL AND PROCEDURAL BACKGROUND

In the 1981 Comprehensive Rezoning, the Property was zoned B-L (Business Local). In 2006, the B-L zone was eliminated by text amendment and a new zone, B-NR (Business Neighborhood Retail), was substituted and applied to all the properties

[1] The following parties are listed as petitioners in the February 11, 2014, Petition for Judicial Review: James Keiser; Hazel McWeeney; John Benedicts; Joan and John Huff; Guy and Meg Sheetz; Lauren and Mark Jensen; Mark Wright; Miguel and Angelica Barajas; Al Mucciarone; Alice Alstatt; Brett Ebersole; Susan and William Mamakos; Steve Fleming; Rich and Sarah McCampbell; Christina Johnson; Dan and Cheryl Mack; Chad and Andrea Norfolk; Estate of Helen and Myron Almony; Linda and John Oechsler; and Donald Murdock, hereinafter, we will refer to the appellants in the singular as "Keiser" or collectively as the "opponents."

previously zoned B-L. The uses in the newly designated zone, with certain exceptions, were essentially the same uses permitted in the B-L zone.[2]

The Carrol County Zoning Code ("CCZC") establishes only two commercial or business zoning districts. The stated purpose of the B-L district (now the B-NR district) is "to provide for logical locations where the retail services needed by a neighborhood population can be made available. The areas are in communities and at locations of expected population concentrations which might be termed a neighborhood or small community." The stated purpose of the B-G district is "to provide logical locations of all businesses of a more general nature than might be expected to be found in a neighborhood. The businesses proposed include retail, wholesale, and some light processing operations."

On August 12, 2013, DiMaggio filed a revised Petition for Zoning Map Amendment to rezone the Property based on a mistake in zoning. According to the petition:

[2] DiMaggio testified that when he bought the Property in 2005, it was his understanding, based on discussions with county representatives, that his intended use, a vehicle repair business that, in addition to automobiles, involves service on larger vehicles such as trucks and buses, was permitted. Prior to 2006, Section 10.1 of the CCZC, titled Principle Permitted Uses, permitted "Local retail business or service shops," which included "service stations" (Section 10.1(a)) and uses of "the same general character" of the permitted uses (Section 10.1(i)). The current CCZC limits the gross floor area of permitted or conditional uses to 10,000 square feet. The proposed DiMaggio facility is 13,000 square feet. In the B-NR district "automobile service centers," but not including "vehicle repair shops," are conditional uses. CCZC § 158.077(D)(6). In the B-G district, "vehicle repair shops" are a permitted use. CCZC § 158.078(C)(v). We express no opinion as to whether DiMaggio's understanding of the pre-2006 zoning was correct.

> [t]he reasons to support the requested rezoning, in summary, are based upon a mistake in the current zoning classification. Specifically, the decision to zone the property with the BNR classification was predicated upon existing facts, conditions, projects, and/or trends that were either unknown to or disregarded by the County at the time that zoning classification was applied. Previously, the property's zoning classification was BusinessLocal (BL). However, this designation was deleted from the County ordinance in June of 2006, and the property (along with other similarly zoned properties) was summarily reclassified to BNR. This reclassification was done without proper consideration of the existing facts, conditions, projects, and/or trends associated with the subject property and surrounding locale.

On October 15, 2013, the Carroll County Planning Commission Staff Report was presented to the Planning Commission. The Staff Report recommended that the Planning Commission "forward an unfavorable recommendation" to the Board "based on a finding of no mistake in current zoning" and provided an overview of commercial zoning in Carroll County and its impact on the DiMaggio petition:

> The *1981 Finksburg Area and Environs Plan* land use map designated the property located at the intersection of Old Gamber and Gamber Road as Neighborhood Business. At the time of the Plan's implementation phase there were two zoning designation choices: "B-L" Local Business District and General Business with "B-L" being less the intense use [sic]. The B-L district's intent was to service areas in communities and at locations of expected population concentrations which might be termed neighborhood or small community. Though zoned B-L this particular property does not fit into the typical neighborhood or small community area as discussed in the Plan, and as referenced in the definition contained within the description of the B-L zoning district and its intent . . . . In 2006, the B-L district was eliminated and the B-NR district was established. The B-L and the B-NR are largely identical. The B-NR actually allows a greater number of uses, and in some instances, greater intensities. In a few situations, the B-NR places a greater restriction or imposes more limitations on specific uses. Since the comprehensive rezoning for the *1981 Finksburg Area Environs Plan* utilized B-L and since the B-NR is simply a substitute for the B-L district, this analysis has focused on the appropriateness of the assignment of B-L to this property. In

> essence, therefore, the question of mistake relates to the actions of the comprehensive rezoning resulting from the 1981 plan and the assignment of B-L.
>
> At the same time, however, it does not fit the General Business concept either, given that the B-G district includes uses and intensities that are not in keeping with the project's location and adjacent uses. This anomaly in the land use description and subsequent zoning of the property are demonstrative of Carroll County's zoning deficiencies where there is not necessarily a zoning district that fits the land use intensity desired.
>
> Until this adjustment of the commercial zoning district descriptions is more closely aligned with land use classifications and based on the other findings described in this report, and in consideration of Article XXX (Section 223-197) of the Code of Public Local Laws and Ordinances of Carroll County, and Section 4.05 of the Land Use Article of the Annotated Code of Maryland, staff recommends that the current zoning of the property and petition area be reaffirmed.

The Planning Commission in its Report and Recommendation to the Board of County Commissioners adopted the Staff Report and recommended that "the current zoning of 'B-NR' Business-Neighborhood Retail be reaffirmed."

The rezoning request proceeded to the Board, and, on December 5, 2013, the Board held a hearing on the request. On January 23, 2014, the Board granted the request based on a mistake in the original zoning.

In its decision, the Board explained:

> The immediate neighborhood is 151.5 acres, mostly along Gamber Road bounded by segments of Deer Park Road to the west, Clover Meadow subdivision on the south, the intersection of Old Gamber Road and Preserve Drive to the north, and it extends to include properties fronting Old Gamber Road opposite of the subject Property. The primary use within the neighborhood boundary is large lot Residential, the majority of which are comprised of single family homes in the Clover Meadow subdivision. Other zoning districts located within the neighborhood are "C" Conservation, "R-40,000", and "B-NR" Neighborhood Retail Business.

> The properties on the east side of Gamber Road are zoned Conservation and are part of the Clover Meadow Subdivision. Properties located at the intersection of Gamber Road and Deer Park Road are zoned R-20,000.
>
> The original zoning of the subject property in 1965 was "A" Agricultural and changed to "T" Transitional in 1978. As part of the implementation of the *1981 Finksburg Area and Environs Comprehensive Plan* the property was zoned B-L, Business Local. In 2006, the B-L zoning was redesignated B-NR, Neighborhood Retail Business District (with similar categories with the exact same definition).
>
> To establish a mistake, there must be evidence that the assumptions or premises relied upon by the Commissioners at the time of the zoning of the Property were invalid. In the instant case, the Commissioners have concluded that a mistake was made in 1981 when the Property was zoned "B-L" Local Business. The purpose of the B-L ("now B-NR") District "is to provide for logical locations where the retail services needed by a neighborhood population can be made available. The areas are in communities and at locations of expected population concentrations which might be termed a neighborhood or small community". . . . The Property, while in the vicinity of some large lot subdivisions, is not in fact located within a neighborhood. The Property is not interconnected to any of the nearby neighborhoods, and is not easily accessed by pedestrians. It appears that the Commissioners, in 1981, assumed that the Property would be so integrated into the surrounding neighborhoods as to be able to support "Main Street" types of businesses (i.e., barbershops, candy stores, gift or jewelry shops, etc.). This has been proven to be a mistaken assumption. The Property is far too remote from the other subdivisions to be used for a pedestrian-friendly, neighborhood-type business. The current zoning of the Property does not reflect current or future economic realities, development patterns, lifestyles, or other community needs. Because the Commissioners envisioned a commercial use of the Property in 1981, the most logical designation would be "B-G", General Business. Commercial uses that serve a specialized or regional need would be much more suitable at this location, which fronts Maryland Route No. 91 a busy state highway.

Keiser filed a petition for judicial review of the Board's decision in the Circuit Court for Carroll County on February 11, 2014. Both the Board and DiMaggio

intervened.[3] A hearing took place on August 18, 2014, at which DiMaggio submitted a motion to dismiss and a motion for sanctions regarding "some of [Keiser's counsel's] activities using the improper address." Keiser responded on August 25.

The court's memorandum opinion was entered on February 5, 2015. Regarding the request for sanctions, the court stated:

> Having reviewed the record, the Court notes that the Suffolk Road address was used in a letter dated January 24, 2006 to the [DiMaggios] by the then Zoning Administrator . . . , which was used as an exhibit at the hearing. All other address references to the [DiMaggios] were at the correct Old Westminster Pike address, including the original petition for Zoning Map Amendment filed July 23, 2013, which appears twice in the record with different formatting of the front page. After the mailing of the original Decision on May 9, 2014,[4] the [opponents] were advised multiple times of the [DiMaggios'] correct address, including the Notice of Hearing/Trial of May 22, 2014, the mailing of the [Board]'s Motion to Intervene on June 12, 2014, and actually a letter sent by the [DiMaggios] themselves to [Keiser's counsel] dated June 6, 2014.[5] Indeed, [the opponents] even state the [DiMaggios'] correct address on p. 2 of their brief.
>
> On June 4, 2014, [the DiMaggios] filed a Petition to Intervene which again stated their correct address.
>
> Intervenor, the County Commissioners of Carrol County, Maryland ("[the Board]") filed a Memorandum on July 8, 2014 certifying a copy to [the DiMaggios] at the Old Westminster Pike address. Nevertheless, when [the opponents] filed [a] Reply Memorandum on July 23, 2014, they again certified a copy to the [DiMaggios] at the Suffolk Road address. [The opponents] admit that although they had been advised between the first and

[3] The Old Westminster Pike address was included on the top of DiMaggio's June 6, 2014, Petition to Intervene and Extend Time to Respond to Case, which included a certificate of service to Kaiser's counsel.

[4] The docket entries indicate that the only document filed on May 9, 2014, was Keiser's memorandum in support of its petition for judicial review.

[5] Although the letter, which included the DiMaggios' Old Westminster Pike address at the top of the page, is dated June 6, 2014, the court stamp indicates that it was filed on June 4, 2014. The certificate of service to Kaiser's counsel, however, is dated June 6, 2014.

> second mailing of the [DiMaggios'] correct address, they had sent the Reply Memorandum to the incorrect address. . . . .
>
> Having considered the facts and timeline of this case, the Court can see how the first erroneous mailing was a matter of simple negligence, based on a failure to confirm the correct mailing address. The second erroneous mailing, however, can only be viewed as a grossly negligent act, in that it took place after a specific notification from the [DiMaggios] to [counsel] that his mailings were going to the wrong address. The issue of proper notice to opposing party is essential to the Court process and a matter not to be taken lightly. Accordingly, the Court will grant, in part, Applicants' Motion for Sanctions.
>
> The issue before the Court then becomes what is the appropriate sanction to be imposed on [Keiser] and/or their attorney. Beyond frustration and some inconvenience, the [DiMaggios] have shown no prejudice. In light of that fact, it would be unjust and improper to dismiss the Petition for Judicial Review. In recognition of the gravity of this omission, however, the Court will impose the sanction of a $250.00 fine against J. Carroll Holzer, attorney for [Keiser], payable to the Clerk within thirty days of this Opinion.[6]

This appeal was timely filed on February 24, 2015.

STANDARD OF REVIEW

"On appellate review of the decision of an administrative agency, [such as a county zoning board,] this Court reviews the agency's decision, not the circuit court's decision." *Long Green Valley Ass'n v. Prigel Family Creamery*, 206 Md. App. 264, 273 (2012) (quoting *Halici v. City of Gaithersburg*, 180 Md. App. 238, 248 (2008)); *see also Ad + Soil, Inc. v. Cnty. Comm'rs of Queen Anne's Cnty.*, 307 Md. 307, 338 (1986) (stating that a county zoning board constitutes an administrative agency). In our review, we "determine whether the agency's decision is in accordance with the law or whether it

[6] Counsel filed a Motion to Stay Enforcement of Civil Fine on March 23, 2015, and the court issued an April 22, 2015, order staying enforcement pending final disposition by this Court.

is arbitrary, illegal, and capricious." *Prigel Family Creamery*, 206 Md. App. at 274 (quoting *Md. Dep't of the Env't v. Ives,* 136 Md. App. 581, 585 (2001)). In other words, "[o]nce evidence strong enough to render the issue of rezoning fairly debatable is produced, the change in zoning will be upheld since it is not the function of the courts to substitute their judgment for that of the zoning authority." *Tennison v. Shomette*, 38 Md. App. 1, 5 (1977).

When an order involves an interpretation and application of Maryland statutory and case law, we review the circuit court's conclusions under the de novo standard of review, and we determine whether its conclusions are "legally correct." *L.W. Wolfe Enters., Inc. v. Md. Nat'l Golf, L.P.*, 165 Md. App. 339, 344 (2005); *see also Davis v. Slater*, 383 Md. 599, 604 (2004) ("[O]ur interpretation of . . . the Maryland Rules [is] . . . classified as [a] question[] of law, [and] we review the issues *de novo* to determine if the trial court was legally correct in its rulings on these matters."). We review the appropriateness of sanctions for failure to comply with the rules of procedure under an abuse of discretion standard. *See Schaller v. Castle Dev. Corp.*, 347 Md. 90, 100 (1997); *Gaetano v. Calvert Cnty.*, 310 Md. 121, 126 (1987). Although the circuit court has broad discretion, "it is not boundless." *Nelson v. State*, 315 Md. 62, 70 (1989).

The Board's Finding of Mistake and Rezoning of the Property

THE CONTENTIONS

Keiser, citing *Stratakis v. Beauchamp*, 268 Md. 643 (1973), asserts that the Board's determinations of mistake in the original zoning was not supported by "strong

evidence." More specifically, Keiser argues that what "appears" to be a "mistaken assumption" by the 1981 Board of County Commissioners—that the Property "would be so integrated into the surrounding neighborhood as to be able to support 'Main Street' types of businesses" permitted in the B-L district, now the B-NR district—cannot overcome the presumption of validity accorded to comprehensive rezoning. And, even if the finding of mistake was correct, there was neither evidence nor adequate findings to support the reclassification to B-G. In the reply brief Keiser, citing a footnote in *Prince George's Co. v. Zimmer Dev. Co.*, 444 Md. 490 (2015),[7] asserts that the Board ignored the standard for "quasi-judicial piecemeal rezoning" based on "mistake," which "requires a showing that the underlying assumptions or premises relied upon by the legislative body during immediately preceding original or comprehensive rezoning were incorrect." Regarding the rezoning of the property, Keiser argues that the Board failed to "make specific findings in order to support its rezoning of the subject property," which renders its decision "arbitrary and capricious."

The Board, citing *People's Counsel v. Beachwood I Ltd. P'ship*, 107 Md. App. 627 (1995), asserts that the presumption of validity of the 1981 comprehensive rezoning can be overcome by "probative evidence" showing "the assumptions or premises relied upon by the [Board] at the time . . . were invalid." According to the Board, citing *Mayor & Council of Rockville v. Stone*, 271 Md. 655 (1974), events occurring after a

[7] Keiser does not cite directly to the footnote, which is: *Prince George's Co. v. Zimmer Dev. Co.*, 444 Md. 490, 512 n.15 (2015).

comprehensive rezoning or "with the passage of time," may prove that the assumptions or premises on which a particular zoning classification was predicated were incorrect. It argues that substantial evidence supports the inferences drawn by the Board and its finding, and, even if there was evidence that might support a contrary finding, the issues of mistake and the subsequent reclassification were fairly debatable.

DiMaggio contends that those opposing the rezoning offered no "probative evidence" but only "general, vague, and unsubstantiated opinions." In addition, Keiser "focus[es] solely" on the Board's finding of mistake and not the reclassification of the Property to B-G. DiMaggio further argues that the Staff Report, rather than supporting Keiser's position, acknowledge that the Property "does not fit into the typical neighborhood or small community" envisioned by the Comprehensive Plan, and supports a finding of mistake in the original zoning.

ANALYSIS

Because of more frequent general or comprehensive plan and zoning updates, we recently have not had to consider many "piecemeal" zoning reclassifications based on the so-called change or mistake rule, which is now codified in Maryland Code (2012), § 4-204 of the Land Use Article ("Land Use § 4-204"). In this case, however, the last comprehensive zoning of the Property was in 1981, when it was zoned B-L, a zoning district classification that was omitted by text amendment in 2006 and the previously zoned B-L properties were zoned B-NR. The stated purposes of the B-L and B-NR zones were the same and, according to the Staff Report adopted by the Planning Commission

and considered by the Board, the permitted uses were "largely identical." According to the Staff Report, the B-NR "actually allows a greater number of uses, and in some instances, greater intensities" but in "a few situations," imposed "greater restriction[s] . . . or more limitations" on certain uses. Because the B-NR district was "simply a substitute" for the B-L district, the Staff Report and the Board focused on whether there was a mistake in the assignment of the B-L classification to the Property in the 1981 comprehensive rezoning. The parties do not argue to the contrary, and our focus on review will be the same.

If we conclude that the record supports a finding of mistake in the B-L (now B-NR) classification of the Property, we will address the adequacy of the findings and the evidence supporting its reclassification to B-G. Because the basis for the reclassification is mistake in the 1981 zoning of the Property, we are not as concerned with the delineation of the neighborhood and changes that have occurred since 1981 as we would be if the reclassification was based on a change in the character of the neighborhood where the Property is located. Nevertheless, changes that have or have not occurred may be relevant to whether there was a mistake in classifying a particular property where the classification was premised on an assumed or anticipated change.

Mistake

Several general principles guide a determination of whether a mistake in zoning was made. There is a strong presumption that the original comprehensive zoning is correct and strong evidence is required to overcome that presumption. *Stratakis*, 268 Md.

at 652-53. But, "in considering whether the presumption has been overcome a more liberal standard is applied when the property is being reclassified from one commercial subcategory to another than is applied when the classification involves a change from one use category to another." *Tennison*, 38 Md. App. at 5 (citing *Chapman v. Montgomery Cnty. Council*, 259 Md. 641 (1970)).

The Board's analysis of mistake began with the purpose of the B-L (now B-NR) district, which "is to provide logical locations where retail services needed by a neighborhood population can be made available. These areas are *in communities and at locations of expected population concentration* which might be termed a neighborhood or small community." (Emphasis added). This language offers insight into the underlying premise of the B-L designation, which was an "expected" population growth and concentration to support the commercial uses provided for in the B-L district. As the Board recognized, however, the Property is not "within a neighborhood." It is, more an isolated island in a sea of properties zoned for agriculture, conservation, and large lot, low density residential uses. In the hearing before the Board, evidence was introduced of other B-L properties that were located in or at the "mouth of the neighborhoods" of high or medium density housing, along with some examples of properties with a B-G classification in areas of low density residential and conservation zoning. In addition, the Staff Report acknowledged that the Property, though zoned B-L, "does not fit into the typical neighborhood or small community as discussed in the Plan and referenced in the definition contained within the description of the B-L district and its intent."

Keiser contends that there is no evidence of mistake, and in doing so, recognizes a distinction between a finding that a comprehensive zoning that was "wrong, ill-advised, or unsuitable," which would not be considered a mistake under zoning law, and the finding of invalid or unfulfilled assumptions or premises relied on by the zoning authority. Keiser characterizes the mistake found by the Board as merely an "appearance of an assumption that has been proven to be a mistake," but notes that, the location of the Property between two highways, and the "pedestrian barrier" resulting therefrom, along with the low density nature of the surrounding properties, "were all known and presumed to have been considered in 1981" and thus, argues that the classification of B-L was simply unsuitable or ill-advised but was not a mistake under zoning law.

We agree that the location between two highways and thus, the "pedestrian barrier" were presumably known to the Board in 1981. Nevertheless, the stated premise or assumption in designating the Property B-L, according to the stated purpose of that zoning district, was an expected population growth and concentration that would constitute a neighborhood or small community needing retail services. The record clearly establishes that some thirty years later that has not occurred. As the Staff Report acknowledged, the Property "does not fit into the typical neighborhood or small community as discussed in the plan and referenced" in the intent of the zoning classification.

Although the concept of "Main Street" types of businesses is not explicitly referenced in the Plan or the CCZC, the nature of many of the businesses and "retail

services" provided for in the B-L zone includes types of businesses that could be referred to as "Main Street" businesses. In sum, the finding of mistake based on an invalid premise or assumption which "time [has] prov[ed] to have been erroneous in fact" may be one about which reasonable people can disagree, but it is, "at least, fairly debatable," and there is probative evidence that supports the inferences drawn by the Board and its ultimate findings of mistake. *White v. Cnty. Bd. of Appeals*, 219 Md. 136, 145 (1959).

Rezoning to B-G

Having found a mistake in the original B-L zoning, the Board was required to address the issue of reclassification. Reclassification involves a two-pronged inquiry: Does the mistake warrant rezoning? And, if so, what is the appropriate zoning classification? The Board determined that the B-L zone designation "does not reflect current or future economic realities, development patterns, lifestyle or other community needs" but, it also concluded that a commercial designation was appropriate. In reaching that conclusion, the Board rejected Keiser's argument that the Property should have been and now should be designated residential and the Planning Commission's recommendation that it remain B-L or B-NR. The only other commercial category available in the CCZC is B-G.

"The [Board's], i.e., the legislative body's second conclusion is due the same presumption of validity as comprehensive rezoning and must be, when challenged, dealt with as if it were a comprehensive rezoning." *White v. Spring*, 109 Md. App. 692, 709 (1996). In other words, the conclusion, that there was a mistake in the original zoning and

the Property should be reclassified, "is due great deference, because it is clearly a legislative action." *Id.*

The Staff Report, which the Planning Commission adopted, based its recommendation for no change in zoning at that time on the limited commercial zoning districts available. The Staff Report considered as "zoning deficiencies" the overlapping intensities of use in the two commercial districts and commented on the fact that there was no zoning district that would more particularly accommodate the requested use intensity.

The Board chose not to wait for an "adjustment of the commercial zoning districts" as referred to in the Staff Report and classified the Property B-G. That was a quintessential legislative decision not to be second guessed on judicial review. Based on the limited commercial zoning districts available, and recognizing the deference owed to the Board, we are persuaded that the evidence supporting reclassification to B-G was sufficient to render the issue fairly debatable.

Findings of Fact

The opposition also contends that the reclassification of the Property to B-G "was not based on the findings required by law," citing Land Use § 4-204(b)(1) and CCZC § 58.134(c)(3)(a)-(f). The required findings relate to: (1) population change; (2) the availability of public facilities; (3) present and future transportation patterns; (4) compatibility with existing and proposed development in the area; (5) the

recommendation of the Planning Commission; and, (6) the relationship of the proposed amendment to the local jurisdiction's plan.

Population Change

Keiser argues that the Board made no findings as to population change. Although there was no express reference to population change, the Board recognized the respective zoning districts in the "immediate neighborhood," all of which involve limited density residential development. And, to the extent that there has been some population change, any change and the resulting concentration of population has not been great enough to support uses provided for in the B-L district and the only use of the Property, commercial or otherwise, was "two billboard sites." In the Board's view, the current zoning did reflect "current or future . . . development patterns . . . or other community needs." Perhaps a more detailed discussion of population change may have been necessary if the basis for rezoning was a significant change in the character of the neighborhood as a result of population change, but, here, the issue was mistake in the original zoning and the absence of an expected concentration of population to support the B-L zoning.

Availability of Public Facilities

The Board noted that the Property is in the no planned water and sewer service areas of the 2007 Carroll County Master Plan for Water and Sewage. In addition, the Board comments on the road access, which is considered in the Staff Report's public facilities comments. Nothing in the record indicates that the water or sewer designation would impact the development of the Property in either the B-L or the B-G districts.

Present and Future Transportation Patterns

The Board states that the Property is not covered in the 2013 Finksburg Corridor Plan, but notes the Property's location between two roads, one of which is Maryland Route 91, "a busy state highway," frontage on which would support commercial uses that serve a specialized or regional need.

Compatibility with Existing Use and Property Development for the Area

Keiser argues that the Board did "not find B-G to be more suitable or 'even compatible' with the existing or proposed development of the area." Keiser acknowledges, however, that the Board found that the B-L zoning district "does not reflect current or future economic realities, development patterns, life styles, or other community needs," and that "[c]ommercial uses that serve a specialized or regional need would be more suitable at this location . . . ." At the very least, this implies a finding of compatibility with the existing or proposed development for the area.

Planning Commission Recommendation

Noting that the Board "merely acknowledges . . . the Planning Commission's recommendation of denial," Keiser contends that the Board "makes no findings, conclusions, or comments" regarding that recommendation. But, as discussed above, the Planning Commission's recommendation, which followed the Staff Report, was more a recommendation to maintain the status quo until completion of the Comprehensive Plan process and refinement of the available commercial zoning districts, which the Board rejected.

Relation to the Comprehensive Plan

Keiser contends that the Board made "no findings as to the relationship of the requested B-G zoning to the [1981 Comprehensive Plan]." Focusing on the Staff Report's finding that the B-L zoning was "consistent with" that plan, Keiser concludes that "B-G zoning of the property [is] *inconsistent with*" that plan. (Emphasis in original). But, having found the premises and assumptions of that plan and the resulting B-L zoning unrealized, the Board expressly looked to the Comprehensive Plan in reclassifying the Property B-G. It stated "because the Commission envisioned a commercial use of the Property in 1981, the most logical designation would be 'B-G,' General Business," the only other commercial zone available.

The purpose of required findings is to permit parties to understand how a particular zoning decision was made and to aid the court in a judicial review of the decision. *Gough v. Bd. of Zoning Appeals for Calvert Cnty.*, 21 Md. App. 697, 703 (1974). Although the findings could certainly have been more detailed, they are sufficient to understand the basis for the Board's decision and for our review of that decision.

<u>The $250 Sanction</u>

THE CONTENTIONS

Keiser's counsel argues that the court should not have imposed the monetary sanction because the record is devoid of any evidence that "DiMaggio never received, was prejudiced, or was unaware of the Petition for Judicial Review." Counsel notes that no pleading "was ever returned to counsel;" that DiMaggio "never argued that he no

longer owned the property [to which the pleadings were sent] or that he failed to receive the pleadings;" and that, because DiMaggio was actively filing pleadings from July 9, 2014 to October 9, 2014, he must have "received, or became aware of the pleadings filed in the matter up to the Circuit Court argument." Counsel also asserts that DiMaggio "compounded the confusion over his proper address" by failing to comply with Maryland Rule 1-311.[8]

DiMaggio responds that the sanction should be upheld because Keiser's counsel repeatedly failed "to send pleadings and Court documents to . . . DiMaggio's proper address," in spite of receiving "repeated notices containing the correct address." In DiMaggio's view, "[p]rejudice should be implied when one litigant does not receive timely notice of their opponent's pleadings." The Board did not address the sanctions issue in its brief.

ANALYSIS

In its February 4, 2015 order, the circuit court imposed sanctions on Keiser's counsel stating that "the second erroneous mailing, . . . can only be viewed as a grossly negligent act, in that it took place after a specific notification from the [DiMaggios] to [counsel] that his mailings were going to the wrong address" and that "the issue of proper notice to [an] opposing party is essential to the Court process and a matter not to be taken

[8] Maryland Rule 1-311(a) provides, in relevant part "[e]very pleading and paper of a party who is not represented by an attorney shall be signed by the party. Every pleading or paper filed shall contain (1) the signer's address, telephone number, facsimile number, if any, and e-mail address, if any . . . ."

lightly." But, in so doing, the court noted that no prejudice "[b]eyond frustration and some inconvenience" had been shown by DiMaggio.

The mailing of pleadings and other filed documents is controlled by Maryland Rule 1-321, which states:

> [e]xcept as otherwise provided in these rules or by order of court, every pleading and other paper filed after the original pleading shall be served upon each of the parties. . . . Service upon the attorney or upon a party shall be made by delivery of a copy or by mailing it to the address most recently stated in a pleading or paper filed by the attorney or party, or if not stated, to the last known address.

The rule, however, does not prescribe the consequences for non-compliance. Thus, we look to Maryland Rule 1-201, which states, in relevant part, that

> [w]hen a rule, by the word "shall" or otherwise, mandates or prohibits conduct, the consequences of noncompliance are those prescribed by these rules or by statute. If no consequences are prescribed, the court may compel compliance . . . or . . . determine the consequences of the noncompliance in light of the totality of the circumstances and the purpose of the rule.

In its consideration of the consequences, a court ordinarily "discern[s] the overall purpose of the statute and then determine[s] which, if any, sanction will best further that purpose." *Tucker v. State*, 89 Md. App. 295, 299 (1991). As stated in the Maryland Rules Commentary, the "general requirement of service [in Rule 1-321] is fundamental to the adversary system and is consistent with the prohibitions against ex parte communications with the court." In other words, Rule 1-321 provides a safeguard against unfair surprise by ensuring that each party receives notice of filings in an action.

Our review of the entire record reveals that at least two documents addressed to DiMaggio, and related to the rezoning of the Property, were sent to the Suffolk Road

address: a January 24, 2006, response to DiMaggio's application for a conditional use from the Zoning Administrator, and an "Official Decision Board of Zoning Appeals Carroll County, Maryland" following February 24 and 25, 2010 hearings on a "request for removal modification or clarification of Condition . . . to allow for repair of school buses and other size vehicles . . . ." In contrast, the July 23, 2013, "Petition for Zoning Map Amendment" and the October 15, 2013, "Carroll County Planning Commission Staff Report" contained the Old Westminster Pike address. Apparently relying on the earlier documents, Keiser's counsel sent a copy of the February 11, 2014, petition for judicial review to the Suffolk Road address, and continued to send subsequent pleadings to that address into May 2014.

On May 6, 2014, Mr. DiMaggio sent a letter to the circuit court requesting his "address to be corrected" to the Old Westminster Pike address, and noting his "intention to participate in [the] case since the outcome [would] directly affect [him]." No certificate of service was included with that letter, and there is nothing to indicate either Keiser or counsel received a copy of that letter. On May 9, 2014, Keiser filed a memorandum in support of its petition for judicial review and sent a service copy to the Suffolk Road address. The circuit court takes issue with counsel's mailings after that date, stating in its Memorandum Opinion that counsel was "advised multiple times of the [DiMaggios'] correct address, including the Notice of Hearing/Trial of May 22, 2014, the mailing of the [Board]'s Motion to Intervene on June 12, 2014, and actually a letter sent by the [DiMaggios] themselves to [counsel] dated June 6, 2014."

Our review of the record reveals that, although the May 22, 2014, notice of hearing included the Old Westminster Pike address at the bottom of the page, in smaller font to indicate a copy had been sent there, counsel was not explicitly notified of the mistake in address until the letter of June 6, 2014.[9] The certificate of service to DiMaggio on the Board's June 12, 2014, motion to intervene, which the court cites as an additional notice of the correct address, was actually mailed to the Suffolk Road address. On June 16 and June 19, Keiser's pleadings were sent to the address on Old Westminster Pike. A June 26, 2014, hearing notice and a July 8, 2014, "Respondent Intervenor's Memorandum" from the Board also contained the correct address. But, for some unexplained reason, Keiser did send the July 23, 2014, "Petitioner's Reply Memorandum" to the Suffolk Road address. On August, 18, 2014, DiMaggio moved for sanctions.

The circuit court's expressed reasoning indicates two mailings by Keiser's counsel to the Suffolk Road address after receiving notice. But, it appears that Keiser's counsel mailed only one pleading, "Petitioners' Reply Memorandum," to that address after being notified of the mistake by the June 6, 2014, letter. We also note that the Board mailed one pleading, the "Motion to Intervene," to the Suffolk Road address subsequent to the June 6 letter and DiMaggio's petition to intervene, but there was no request for sanctions for its improper mailing. In addition, nearly all of DiMaggio's pleadings did not

[9] As noted previously, the DiMaggio letter notifying counsel of the mistake in address is dated June 6, 2014, but file stamped June 4, 2014.

contain his address in compliance with Md. Rule 1-311.[10] Applying the court's reasoning, one mistake was merely simple negligence rather than gross negligence, which was the basis for the sanction. Based on the totality of the circumstances and in the absence of some demonstrated prejudice, we are not persuaded that the imposed sanction furthered the stated "purpose of the rule," and was appropriate.

JUDGMENT OF THE CIRCUIT COURT FOR CARROLL COUNTY AFFIRMED WITH RESPECT TO THE REZONING OF THE PROPERTY AND REVERSED WITH RESPECT TO THE SANCTION IMPOSED ON APPELLANT'S COUNSEL. COSTS TO BE PAID ONE-HALF BY THE APPELLANTS AND ONE-HALF BY THE APPELLEES.

[10] None of the following filings by DiMaggio included his address: the May 6, 2014, letter to the court, which did not contain a certificate of service to Kaiser's counsel; the July 9, 2014 Intervenor DiMaggio's Memorandum; the August 18, 2014, Intervenor DiMaggio's Motion to Dismiss; the August 18, 2014, Intervenor DiMaggio's Motion for Sanctions; the August 22, 2014, Amended Intervenor DiMaggio's Supplement to Motion to Dismiss; the September 12, 2014, Intervenor DiMaggio's Reply to Petitioners' Opposition to His Motion to Dismiss; and the October 9, 2014, Intervenor DiMaggio's Opposition to Petitioners' Motion to Strike His Reply Memorandum.