Circuit Court for Anne Arundel County
Case No. C-01-69418

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1299

September Term, 2016

HALLE DEVELOPMENT, INC. *et al.*

v.

ANNE ARUNDEL COUNTY

Nazarian
Beachley,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: November 22, 2017

*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.

The hit musical *Les Misérables*[1] ran more than sixteen years on Broadway. This litigation has lasted even longer. This class action grew out of Anne Arundel County's ("the County") unlawful retention of development impact fees from property owners in the County between 1988-1996. The property owners' action to recover refunds of impact fees, has spanned more than sixteen years, resulting in numerous orders of the Circuit Court for Anne Arundel County and appellate opinions from this Court and the Court of Appeals. Most recently, the circuit court, on remand, decided in favor of the class of property owners, requiring the County to pay refunds of impact fees, interest, and counsel fees. On appeal to this Court, Phillip F. Scheibe ("Scheibe"), as counsel for appellants and named class members,[2] challenges the court's determination of available impact fee refunds and interest, its designation of John R. Greiber ("Greiber") as lead counsel for the Class and its division of attorneys' fees. However, in prior opinions, we have already addressed all but one of the arguments raised by the appellants.

BACKGROUND AND PROCEDURAL HISTORY

Legal Foundations

A "development impact fee" is a tax authorized in the Maryland Code that is imposed by a county ordinance for the purpose of reimbursing the county for the effects of new property development on local infrastructure. *See Anne Arundel Cnty. v. Halle Dev.,*

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1 *Les Misérables* (March 12, 1987—May 18, 2003).

2 We refer to the current property owners to whom the County may owe impact fee refunds as "the Class" or "the property owners." We refer to the named class representatives, who are represented by Scheibe, as "the appellants" in this appeal.

Inc., 408 Md. 539, 548-49 (2009) (hereinafter *Halle Dev. 2009*); *see also Waters Landing Ltd. v. Montgomery Cnty.*, 337 Md. 15, 24-25 (1994) (holding that Montgomery County's similar development impact fee constituted an excise tax, authorized by the Legislature). The Anne Arundel County Council enacted such an ordinance in 1987 for property development in the County. *See* Anne Arundel County Code (AACC) § 17-11-201 *et seq.*[3] The County's impact fee ordinance required certain building permit applicants proposing a new development to pay impact fees to the County. Section 17-11-202, in relevant part, provides the following:

> This title is adopted for the purpose of promoting the health, safety, and general welfare of the residents of the County by:
>
> (1) requiring all new development to pay its proportionate fair share of the costs for land, capital facilities, and other expenses necessary to accommodate development impacts on public school, transportation, and public safety facilities . . . .

AACC § 17-11-202. Section 17-11-203 specifies who must pay fees -- "any person who improves real property and thereby causes an impact upon public schools, transportation, or public safety facilities . . . ." The amount of each impact fee is set forth in §§ 17-11-204 and 17-11-205.

Consistent with the purpose of collecting these fees, the ordinance required the County, in turn, to use the funds "solely for capital improvements for expansion of the

[3] The County's impact fee ordinance, was recodified in 2006 without substantive changes. During the pendency of this case, on May 22, 2007, the County Council amended the ordinance (Bill No. 27-07) to codify the County's procedures for recording expenditures and encumbrances. As we did in our February 2008 opinion in this case, we quote from the 2006 codification for the convenience of the reader.

capacity of public schools, roads, and public safety facilities and not for replacement, maintenance, or operations." AACC § 17-11-209(a). Moreover, the ordinance stated that the funds must be spent on capital improvement projects within the fee district to "reasonably benefit" the property for which it was collected. § 17-11-209(d). The Council also included a refund provision[4] in the impact fee ordinance, which permitted those required to pay impact fees to recoup those fees with interest if the County failed to expend or encumber the fees on eligible projects in accordance with § 17-11-209 within six fiscal years[5] following payment of the fees. Section 17-11-210 provided:

> (a) If fees collected in any district during a fiscal year have not been expended or encumbered by the end of the sixth fiscal year following collection, the Office of Finance shall give notice of the availability of a refund of the fees and refund the fees as provided in this section.
>
> (b) Within 60 days from the end of a fiscal year during which fees become available for refund, the Controller shall cause to be published once a week for two successive weeks . . . a notice that development impact fees collected within a particular district for a preceding fiscal year are available for refund on application by the current owner of the property for which the fee was originally paid. The notice shall set forth the time and manner for making application for the refund.
>
> (c) An eligible property owner shall file an application for a refund within 60 days of the last publication of notice. On proper application and demonstration that the fee was paid, the Controller shall refund the fees to the property owner with interest at the rate of 5% per year.

[4] Bill No. 71-08, which became effective January 1, 2009, amended the ordinance, prospectively removing the refund provision provided in § 17-11-210. *See Dabbs v. Anne Arundel Cnty.*, 232 Md. App. 314, 320, *cert. granted sub nom.*, 454 Md. 677 (2017). However, the refund remedy in the previous versions of the ordinance applies to this case.

[5] The County's fiscal year begins on July 1 and ends on June 30.

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> (e) The Planning and Zoning Officer may extend for up to three years the date at which the funds must be expended or encumbered under subsection (a). An extension shall be made only on a written finding that within a three-year period certain capital improvements are planned to be constructed that will be of direct benefit to the property against which the fees were charged.

AACC § 17-11-210.

Beginning in 1988 until 1996, the County collected millions of dollars in impact fees from property owners in Anne Arundel County. In 1994, the County had not expended or encumbered all of the 1998 fees on eligible capital improvements. In an attempt to extend the time period to expend or encumber the fees, the County issued an interoffice memorandum ("extension decision"), which stated that the impact fees would be used on an upcoming capital improvement project. The memo, however, failed to identify the properties that would be directly benefitted by the planned improvements, as required by AACC § 17-11-210(e). The County issued similar extension decisions with the same deficiencies in the years following.[6] Because the County assumed the extension decisions were effective when it issued them, it did not publish notice to the Class that a refund of impact fees was available. The County's final publication of notice that a refund was

[6] The circuit court found, in its December 8, 2003 order, that the 1994 extension decision was ineffective, because it failed to identify specific properties that would be directly benefitted by the planned capital improvements it referenced. Because the subsequent extension decisions followed a similar pattern, the court's finding on the first extension decision effectively invalidated the others.

available, however, was the event that commenced the ordinance's limitations period for applying for a refund. *See id.*

Procedural History

As we noted above, this case has had a long life in our courts; we, therefore, address only the most relevant procedural facts to answer the questions raised in this appeal. The case began in February of 2001 when the appellees filed a class action complaint in the circuit court on behalf of all "current owners of real property located within the boundaries of Anne Arundel County . . . who have been deprived of refunds for 'developers impact fees.'" The putative class of property owners claimed that the County failed to refund impact fees as required by the impact fee ordinance, and in doing so, it was unjustly enriched. The circuit court initially dismissed the complaint, finding the property owners failed to exhaust their administrative remedies, but we reversed that decision on appeal. There, we held that the appellants could maintain an action in assumpsit due to the absence of an effective administrative remedy following the County's failure to publish a refund notice. On remand, the circuit court conditionally certified the class action pursuant to Md. Rule 2-231(b)(3).[7]

On December 15, 2006, the circuit court issued its decision on the merits, finding that $4,719,359 in refunds were "due to the current owners of specified fee paying properties," with "5% interest . . . from the date of each initial fee's payment." The court

[7] We address Md. Rule 2-231(a) through (b) in Part I(B) of our discussion section.

included fees collected in 1988 through 1996.[8] The circuit court's ruling in favor of the property owners was based on its determination that the extension decisions issued by the County's Planning and Zoning Officer were invalid. The amount due for impact fee refunds was based, in part, on its conclusion that the County could not offset the amount available for refund with encumbrances not accounted for in its annual budget process. Both parties appealed to this Court.

On appeal, the County argued that the circuit court erred by refusing to permit the County to count the encumbrances in calculating the refund. In their cross-appeal, the appellants contended that (1) the circuit court improperly calculated the amount of impact fees available for refund by excluding funds that were spent on ineligible development projects; and (2) counsel for the property owners were entitled to the 40% contingency fee provided by their fee agreement with the named class representatives. The property owners (including the appellants herein) did not contest the circuit court's award of only 5% interest as provided in AACC § 17-11-210.[9]

In our February 7, 2008 opinion and May 7, 2008 supplemental opinion, we held that the circuit erred by excluding fees that were encumbered within six years following collection. *See Anne Arundel Cnty. v. Halle Dev., Inc.*, No. 2552, Sept. Term, 2006 (Feb.

[8] Additionally, the court ordered attorneys' fees of 30% of each refund, including interest, which the court determined after reviewing the factors listed under Maryland Rules of Professional Conduct (MRPC) 1.5(a).

[9] We discuss the language of AACC § 17-11-210 in detail below.

7, 2008, *on reconsideration*, May 7, 2008).[10] In response to the property owners' arguments that the County was attempting to retroactively encumber impact fees, we said:

> [T]here was a time limit prior to which the fact-finding of extension must be made, and made in the required format, in order to effect an extension. Section 17-11-210 does not mandate any format for effecting an encumbrance. . . . Funds are encumbered when the purchase order or contract becomes effective as an executory contract. Funds either have been encumbered or not within a given fiscal year. Demonstrating that historic fact from the records utilized by the County to record encumbrances is not retroactively encumbering impact fee funds.

We therefore remanded the case to the circuit court "on the encumbrance issue for a determination of the amount of impact fees that had been encumbered, but unexpended, within six years following their collection."

Regarding the property owners' cross-appeal, we said that "the remand will include recalculating the refund to account for funds that were expended for purposes beyond the authority of the impact fee ordinance . . . . The ineligible expenditures will have to be restored, conceptually, to the appropriate fund, as of the time of the expenditure." Upon motions for reconsideration, we clarified, in our May 2008 supplemental opinion, our February 2008 remand instructions on the issue of ineligible expenditures. We limited the circuit court's task on remand to recalculating the refund after accounting for timely encumbrances. We said:

> [T]he opinion of February 7, 2008[] is modified, at page 52, in the first paragraph, by deleting "(1)" and by deleting ["]

[10] We refer to our 2008 unreported opinions as our February 2008 opinion and our May 2008 supplemental opinion. In some cases, we refer to both the February and May opinions as our 2008 opinions.

> increase the recovery by the refundable amount of school impact fees expended for ineligible purposes . . . .["]

In light of our express modifications, our remand instructions became "The circuit court, on remand, based on the record and any additional evidence that the court, in its discretion, may allow, shall . . . reduce the recovery by the amount of any timely encumbrances." We instructed the circuit court to determine the amount the County had expended or encumbered for eligible projects, including both transportation and school improvements. *See Halle Dev. 2009*, 408 Md. at 559, n. 7 (reiterating our holding).

The County petitioned and the plaintiffs cross-petitioned for review by the Court of Appeals, which issued its opinion May 6, 2009. *See id.* at 539. Among other issues, the property owners requested review of whether the circuit court should apply encumbrances made within six years of collection and whether funds spent on ineligible development should be added to the amount available for refund. *See id.* at 559, n. 7. The Court, however, declined to review those issues, and our prior holdings became the law of the case. Thereafter, the Court affirmed our 2008 decision on all issues on which it granted certiorari.

On September 15, 2009, the circuit court appointed John R. Greiber as lead counsel for the Class and denied Scheibe's Motion to Strike Greiber as counsel. The circuit court allowed Scheibe to stay on as counsel only for the named class representatives. Later, he filed a Supplemental Motion to Strike Counsel, which the circuit court denied on March 2, 2011.

On March 25, 2011, following a fifteen-day bench trial, the circuit court issued its order and opinion, finding that property owners were due $1,342,360 in impact fee refunds, plus 5% interest for each property owner from the date of each impact fee payment to the date of the refund. The circuit court, citing to our prior opinion as the law of the case, accepted the County's calculation of fees that were expended or encumbered on eligible projects. On July 24, 2012, the circuit court entered its order as a final judgment, and the property owners appealed to this Court again. In our July 29, 2013 opinion, we held that "the circuit court did not err or abuse its discretion in entering the March 25, 2011 order." *Halle Dev., Inc. v. Anne Arundel Cnty.*, No. 0327, Sept. Term, 2011 (July 29, 2013) (hereinafter referred to as our 2013 opinion). Additionally, we stated, "the circuit court did not abuse its discretion in designating Greiber as lead counsel."

On May 13, 2014, the circuit court awarded counsel fees in the amount of 39% of the $1,342,360 in refunds plus 5% interest on each refund. From that 39%, the County was ordered to pay Greiber 67.6% and Scheibe 32.4%, but withhold 20% of Scheibe's fee to the benefit of those entitled to a refund.[11] On August 8, 2016,[12] following the circuit

[11] Scheibe was County Attorney for Anne Arundel County from December 1994 to May 1999 -- part of the relevant time period for which this lawsuit was filed. After hearings held in 2005 and 2006, the Anne Arundel County Ethics Commission concluded that Scheibe participated in impact fee matters while County Attorney and had information not available to the public. The Commission ordered him to "accept no further compensation for the assistance he has already provided." In our February 2008 opinion, we required the circuit court to reconsider its award of counsel fees and to determine an appropriate manner of enforcing the Commission's order. Thus, 20% of Scheibe's fees were withheld pursuant to orders by the circuit court issued on June 8, 2010 and November 9, 2011.

[12] The opinion was docketed on August 18, 2016.

court's rulings on various other motions, the court issued its final order and on November 7, 2016, the County paid as directed.

DISCUSSION

I. All But One of the Appellants' Arguments on Appeal are Barred by the Law of the Case Doctrine.

The appellants now appeal the circuit court's August 8, 2016 order, raising the following questions, which we have reworded for clarity: (1) Whether the trial court erred in its determination of eligible encumbrances through the County's financial records; (2) whether the trial court erred by failing to consider the appellants' argument that fees expended on ineligible projects should be added to the amount available for refund; (3) whether the trial court erred in rejecting the appellants' claims for post-judgment interest; (4) whether the trial court erred in denying the appellants' motion to strike Greiber as counsel, and in designating Greiber as lead counsel for the Class; and (5) whether the trial court erred in its May 13, 2014 opinion and subsequent August 8, 2016 order granting contingency fees to Greiber as lead counsel for the Class. The appellants' arguments for the first four of the five issues listed above pertain to four issues that have been, or could have been, litigated and decided in a prior appeal. These arguments, therefore, are barred by the law of the case doctrine.

Regarding the first two issues, the appellants contend that "both [this Court] and the lower court have repeatedly failed to follow the proper application for determining 'impact fee encumbrances' or rule on substantive claims for impact fee refunds emanating from ineligible expenditures of fees . . . which the Maryland Court of Appeals remand

instructions clearly specified." We have reviewed these issues on two prior occasions. The Court of Appeals declined to address the contentions regarding encumbrances and ineligible expenditures, leaving our 2008 holdings as the law of the case. *See Halle Dev. 2009*, 408 Md. at 559, n. 7. In our 2013 opinion, we addressed these questions again and affirmed the decision of the circuit court. We, therefore, decline to address the merits of these issues again.

The law of the case doctrine operates to bar litigants from raising arguments on issues that have been decided previously or could have been decided in that case by an appellate court. *See Baltimore Cnty. v. Fraternal Order of Police, Baltimore Cnty. Lodge No. 4*, 449 Md. 713, 729 (2016). "Once an appellate court rules upon a question presented on appeal, litigants and lower courts become bound by the ruling, which is the law of the case." *Id.* As we have explained:

> Once [an appellate court] has ruled upon a question properly presented on an appeal, or, if the ruling be contrary to a question that could have been raised and argued in that appeal on the then state of the record, as aforesaid, such a ruling becomes the "law of the case" and is binding on the litigants and [courts] alike, unless changed or modified after reargument, and neither the questions decided [nor] the ones that could have been raised and decided are available to be raised in a subsequent appeal.

Nace v. Miller, 201 Md. App. 54, 68 (2011) (quoting *Kearney v. Berger*, 416 Md. 628, 641 (2010)). The purpose of the doctrine is to promote the uniformity of appellate decisions within a particular case and to "ensure[] that 'litigants cannot try their cases piecemeal.'" *Kearney*, 416 Md. at 641 (2010) (quoting *Dill v. Avery*, 305 Md. 206, 213 (1986)).

The doctrine applies to previously decided questions of law that are based on the same facts and are identical to those presented on the prior appeal. *See Reier v. State Dep't of Assessments & Taxation*, 397 Md. 2, 21–22 (2009) (Citations omitted). "Factual determinations undergirding or mixed with conclusions of law," however, "may become the law of the case." *Id.* at 22. Regarding our level of review, "[w]hether the law of the case doctrine should be applied in a particular circumstance is a legal question; accordingly, we review a lower court's invocation of that doctrine without any special deference. *See Fraternal Order of Police*, 449 Md. at 731 (Citation omitted).

A. The Circuit Court Did Not Err in its Award of $$1,342,360 in Impact Fee Refunds and Five Percent Interest Per Annum on Each Refund, or in its Designation of Greiber as Lead Counsel for the Class.

1. The Appellants' Argument that the Circuit Court Erred in its Consideration of Encumbrances in Calculating the Impact Fee Refunds is Barred by the Law of the Case Doctrine.

The appellants dispute whether the circuit court adhered to our remand instructions in our 2008 opinions on the issue of encumbrances. In raising this argument, however, the appellants completely ignore our 2013 opinion, in which we already addressed the circuit court's consideration of evidence of encumbrances in reaching its calculation of the refunds due. Instead, the appellants make old arguments, such as that the County did not adequately demonstrate encumbrances for eligible projects and that the circuit court retroactively applied legislation enacted several years after the refund period when the property owners' rights to the refunds were vested. Because the appellants merely raise arguments that we addressed and decided in our prior opinions, our 2013 analysis of this issue bears repeating here:

On appeal, we held that the County was not "attempting retroactively to encumber funds." Accordingly, we ordered "remand on the encumbrance issue for a determination of the amount of impact fees that had been encumbered, but unexpended, within six years following their collection." Similarly, in remanding the case to the circuit court, the Court of Appeals observed that:

> [T]he circuit court's task on remand will only require that the court determine whether and how much refund is due, in total, after considering all impact fee amounts that the County has timely encumbered for eligible capital projects.

[*Halle Dev. 2009*, 408 Md. at 571-72]. The Court of Appeals also pointed out that:

> The Court of Special Appeals held in its May 7, 2008 unreported opinion that the Circuit Court, on remand, should re-determine the amount that the County had timely encumbered for eligible capital improvements, and in doing so, "should consider not only encumbrances for transportation projects, but for school projects as well when applying the six-year test." We did not grant certiorari as to this issue, and thus the decision of the intermediate appellate court is law in this case. Accordingly, the determination by the Circuit Court as to the amount of the refund may be modified on remand, and the Owners' rights in any specific refund award are not vested.

Id. at 559, n. 7.

Here, Owners raise issues relating to the determination of impact fee encumbrances to determine refunds. As set forth, *supra*, our comprehensive 2008 opinion addressed this issue as a question of law. Accordingly, the circuit court was bound by the law of the case as to this legal issue.

To the extent that Owners challenge factual conclusions of the circuit court as to the adequacy of the County's financial

> records, we apply the clearly erroneous standard of review. A trial court's factual findings will not be reversed unless they are clearly erroneous. *Noffsinger v. Noffsinger*, 95 Md. App. 265, 285 (1993); Md. Rule 8-131(c). If there is any competent evidence to support the factual findings, those findings cannot be held to be clearly erroneous. *Fantasy Valley Resort, Inc. v. Gaylord Fuel Corp.*, 92 Md. App. 267, 275 (1992).
>
> The circuit court, in its March 25, 2011 opinion, made specific and detailed findings regarding the encumbrances. The opinion reflects that the circuit court considered evidence submitted by the County, as well as Owners' opposition to this evidence.

As we observed in our 2013 opinion, the circuit court considered the testimony of witnesses for the property owners, who stated that the County's financial records and summaries conflicted with its impact fee claims, included figures representing encumbrances that had not yet occurred, and contained clerical errors. The court also heard the testimony of the County's assistant budget officer regarding his calculations of encumbrances derived from "a manual count of purchase orders, change orders, and invoices that have been kept on file," and "payments that were made against those purchase orders to see how much is open and still a commitment to that vendor on the part of the County at that specific point in time." Further, the budget officer "testified at length regarding the definition of an 'encumbrance' and how eligible impact fee encumbrances are documented and recorded," "the procedures employed in compiling the six-FY charts," and "provided detailed testimony regarding the specific data contained in the six-FY reports." During the trial, the County also submitted its County Revenue Summary reports, Appropriations Statements, Capital Projects Transaction Listings, and an exhibit providing

a manual count of purchase orders entered as encumbrances for each relevant fiscal year. Based on this evidence, we concluded the following:

> In sum, the circuit court considered the evidentiary issue of refunds over the course of a 14 day trial. As discussed *supra*, [the County's assistant budget officer] testified regarding how the County's reports formed the basis for impact fee encumbrances. Thus, there is competent evidence to support the circuit court's factual findings regarding the impact fees. Accordingly, we hold that the circuit court's findings are not clearly erroneous.

We added that "[i]n our 2008 opinion, we observed that the instant case does not implicate retroactive encumbrance of funds." We reiterated that "we have previously held that the retroactivity provision of Bill 27-07[13] is not implicated, and does not alter how impact fee encumbrances are counted for purposes of this case." Finally, we noted that

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13 As we explained in *Dabbs*, "[b]ecause Bill No. 27–07 did not effect a substantive change in policy, the County Council made Bill No. 27–07 retroactive to fees collected in FYs 1988–1996." 232 Md. App. at 320. In our 2013 opinion, discussing our 2008 opinions, we said,

> We also observed in our prior opinion that the retroactivity provision of Bill No. 27–07 was not relevant to the case. In particular, we cited the definition of an "encumbrance" as set forth in § 17–11–201(2) of the County Code. At that time we observed that, "[a]though this statutory definition, enacted by Council Bill No. 27–07, was not effective until May 22, 2007, long after the events with which we are concerned here, the definition conforms to generally accepted accounting principles (GAAP)." Further, we pointed out that we had no occasion to consider the validity of the retroactivity provision of the amended ordinance because the only relevant issue was the definition of "encumbrance," and the ordinance was cited "simply to state the pre-existing, generally accepted meaning of the term, 'encumbrance[.]' "

"the Court of Appeals has made clear that the retroactivity provision of Bill 27-07 is of no consequence here." To the extent that appellants attempt to reargue that the circuit court retroactively applied Bill No. 27-07 because of our use of its definition of "encumbrance" in our 2008 opinion, we have already explained, in both our 2008 and 2013 opinions, that we cited the ordinance "simply to state the pre-existing, generally accepted meaning of the term, 'encumbrance[.]'" Similarly, we addressed the appellants' argument regarding the circuit court's encumbrance analysis as impeding the property owners' vested rights:

> In conducting the retroactivity analysis, a court must determine whether the retroactive application of the statute or ordinance would interfere with vested rights. [. . .] Here, the Court of Appeals held that the instant case was not about vested rights, and that Owners had no vested rights in impact fee refunds.

The Court of Appeals flatly stated, "This case is not about vesting" and "the Owners' rights in any specific refund award are not vested."

Based on an analysis of the same arguments raised in this appeal, we held in our 2013 opinion that "[t]he law of the case doctrine compelled the circuit court to determine impact fee encumbrances pursuant to our 2008 prior holding. We discern no error by the circuit court." As there has been no change in the facts underlying our 2013 opinion, our holding that the circuit court did not err in its consideration of funds that were encumbered within six years following collection is still the law of the case. The circuit court, therefore, did not err in determining that the funds were timely encumbered, and applying that amount to the sums available for refund.

2. The Appellants' Argument that the Circuit Court erred in its Treatment of Ineligible Expenditures Under §17-11-210(b) is Barred by the Law of the Case Doctrine.

Despite our 2013 holding on the issue of ineligible expenditures, the appellants assert that, "it is undeniable this Court did not address the issue of improper use of ineligible expenditures of impact fees assessed between FY 1988-1996." The appellants argue that the mandate instructions in *Halle Dev. 2009* "specifically required ineligible expenditures to be reviewed on remand." The appellants, however, misconstrue the opinion of the Court of Appeals, in which it declined to review the issue of ineligible expenditures, noting that we had already instructed the circuit court on this issue. Finally, the appellants continue to dwell on our remand instructions in our February 7, 2008 opinion, arguing that we ordered the circuit court to increase the amount available for refund by the value of ineligible expenditures from the impact fee funds. Instead, we required any ineligible expenditures to be conceptually restored to the appropriate fund before eligible expenditures and encumbrances were applied against the fund, year-by-year. We noted, however, that the County did not dispute that some "expenditures were made from school impact fee special funds for public purposes that were not permissible special fund purposes. As explained [later in the opinion], the [$4,719,359] judgment does not include these funds."[14]

[14] In fact, the circuit court stated in its December 15, 2006 opinion that "[t]he total amount of impact fees . . . made available for refunds will be $4,719,359. This total is composed of $679,514 school impact fees and $4,035,845 highway impact fees which were not properly used."

Critically, in our May 7, 2008 supplemental opinion, we clarified that the circuit court's previous determination of the funds available for refund was consistent with our instructions to conceptually restore any ineligible expenditures. We said that our February 7, 2008 opinion responded only to the parties' arguments made on appeal. The property owners had contended that ineligible expenditures should be added to the recovery. The County's response was that the property owners had no right to a refund of impact fees that were expended, whether or not those expenditures were for ineligible projects. We found the County's response unpersuasive, and in our remand instructions, we required,

> ineligible expenditures to be restored, conceptually, to the appropriate fund, as of the time of the expenditures. Then the impact fees can be applied, year by year, on a first out basis, to the eligible expenditures and encumbrances for the district under consideration.

In our reconsideration, we explained:

> The motions for reconsideration have clarified the positions of the parties. Owners seek to have $5,581,981 in ineligible expenditures added, dollar for dollar, to the $4,719,359 principal amount of refund ordered by the circuit court, without regard to whether those expenditures, conceptually restored to fee receipts, were expended or encumbered within six years following actual collection. **The County submits that this Court's remand instructions direct the circuit court to do that which it had done already in computing the judgment. The County's position is correct.** The answer lies in the methodology of applying the six-year test.
>
> In early November 2006, the County had submitted to the circuit court a six-year test of 180 [page] charts from which the County concluded that the principal amount of the refund would be $4,715,359. The test did not offset ineligible expenditures against fee receipts, but the charts did not expressly so state. The circuit court was not satisfied that the expenditures used in applying the six-year test *excluded*

> ineligible expenditures. To satisfy the circuit court's concerns, the County prepared another 180-page six-year test which contained on each chart for each school district for each year, an added box heading, "Excluded Disbursements (Ruled Ineligible)." In those boxes were itemized by years, expenditures . . . [which] did *not* duplicate the expenditures used as offsets against fee receipts in computing the impact fees that remained unexpended in a particular district six years after collection. Thus, the refund amount remained $4,715,359. The circuit court accepted this six-year test when entering judgment.
>
> **Excluding ineligible expenditures from the expenditures used to reduce impact fee receipts under the six-year test results in conceptually restoring the ineligible expenditures** to the appropriate fund, as directed by our remand instructions.

(Emphasis added).

Because we concluded that the circuit court had already excluded ineligible expenditures from the expenditures used to off-set the available refund, we modified our remand instructions to clarify that the circuit court was no longer instructed to "*increase the recovery* by the refundable amount of school impact fees expended for ineligible purposes." (Emphasis added). In other words, the calculations the circuit court had previously relied on did not offset the available refund with ineligible expenditures. Given our subsequent clarification, it is not clear why the appellants continue to argue that our 2008 holding required the circuit court to recalculate the refund by *adding* to the recovery any ineligible expenditures made from the fund during the relevant time period. We have already said that the ineligible expenditures were not used to offset the figure relied on by

the circuit court in determining the amount available for refund.[15] The Court of Appeals did not grant certiorari on this issue, and therefore, our holding became the law of the case.

In its March 25, 2011 decision on remand, the circuit court relied on the same calculations that we said were consistent with our holding that ineligible expenditures must be conceptually restored to the appropriate fund. In the property owners' cross-appeal from that decision to this Court, they argued that the circuit court improperly calculated the amount of fees available for refund by omitting fees that were expended for ineligible purposes. We rejected that argument in our 2013 opinion. There, we held that "[t]here is ample evidence on the record from which the circuit court could conclude that the impact fees [excluded from the amount available for refund] were expended on *eligible* capital projects." (Emphasis added). Based on this conclusion, and our affirmance of the circuit court's exclusion of properly encumbered fees from the total, we affirmed the court's determination of the funds available for refund. Because we have already reviewed and decided the issue of the circuit court's treatment of ineligible expenditures (twice) and held that the circuit court followed our instructions on remand in our 2013 opinion, our prior holdings on this issue are the law of the case.

We believe that the appellants' contention -- that "the CA mandate instructions specifically required ineligible expenditures to be reviewed on remand" -- is derived from the Court's footnote reiterating our February 2008 remand instructions. *See Halle Dev. 2009*, 408 Md. at 559, n. 7. In that footnote, the Court of Appeals observed that we required

[15] In addition, we plainly stated, "We reject the Owners' position that the refund must be increased, dollar for dollar, by the amount of the ineligible expenditures."

the circuit court "to account for funds that were expended for purposes beyond the authorization of the impact fee ordinance." Further, the Court quoted from our supplemental opinion, which clarified that the property owners are entitled to a refund of fees "only if the conceptually restored impact fees remained unexpended or unencumbered after six years from collection." By reiterating our holding, the Court of Appeals merely restated what we instructed the circuit court to do on remand; its mandate did not require that "ineligible expenditures . . . be reviewed on remand" beyond computing the available refund in accordance with our instructions. As we said in our May 7, 2008 supplemental opinion and in our 2013 opinion, the circuit court followed our instructions regarding its treatment of ineligible expenditures.

3. The Appellants' Argument that the Class was Entitled to Post-Judgment Interest in Excess of the Five Percent Required by the Ordinance is Barred by the Law of the Case.

For the first time in an appeal before this Court, the appellants argue that the circuit court should have awarded post-judgment interest to the Class in addition to the 5% required by § 17-11-202(d). The appellants' contention is that "[t]o merely assign County Code interest of 5% does not adequately compensate the Appellants for the Appellee's unlawful confiscation of their property (impact fee refunds) and, in many cases withheld for years beyond the refund period." The appellants have had the opportunity to raise this issue in a prior appeal, but they have not done so until now.

The property owners requested interest in excess of the 5% provided in the ordinance prior to the circuit court's entry of its December 15, 2006 opinion. There, the property owners requested "'all interest accruing to the special [impact fee] fund' and not

just interest as to fees not timely or properly spent or encumbered." The circuit court, "[b]ased on [supplemental memoranda requested by the court]," provided a final judgment "as to damages and other relief necessary to the class action." The circuit court made the following findings in its December 2006 memorandum:

> The Court agrees that, pursuant to Anne Arundel County Code, sec. 7-110(c),[16] class plaintiffs individually will be entitled only to 5% interest of refunds which are due to them on their individual refunds. [. . .] Thus, interest accrued to properly used impact fees or to unclaimed refunds will remain with the County and will not be subject to claims by other class plaintiffs who, themselves, did not pay the fees generating the interest.
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> * * *
>
> [T]he County objects to Plaintiff's "six year grouping" calculations as erroneous because of Plaintiffs' alleged errors, especially as to interest or investment income, outlined above. The Court agrees with the County that Plaintiffs err in assuming that interest should be added to the entire amount of impact fees held prior to disbursements.
>
> * * *
>
> In addition to . . . prorated refunds, the County must also add 5% interest per annum on the amount to be refunded. This interest for each current owner would run from the date each impact fee originally was paid.

In its accompanying order, the circuit court found that "impact fee refunds are due . . . in the total amount of $4,719,359, subject to the addition of 5% interest to the amount of refunds due from the date of each initial fee's payment . . . ." All other relief requested by the parties was denied. The order was intended to "substantially resolve all material

16 This section was recodified as § 17-11-210(d).

issues between the parties." Both parties appealed to this Court, resulting in our February and May 2008 opinions.

Neither the appellants nor the Class contended that the circuit court should have awarded additional post-judgment interest. Instead, the property owners argued they were entitled to investment income earned on the funds. We addressed that argument as follows:

> The circuit court dispatched [the property owners'] argument by citing §17-11-210(c), which provides: "[T]he Controller shall refund the fees to the property owner with interest at the rate of 5% per year." We agree. In enacting the impact fee ordinance, the County Council recognized that, if the impact fees were not timely used for a permissible purpose, and a refund was to be made, Owners should be compensated for the loss of use of their money. The ordinance sets the return at five percent per annum. This is a much more manageable way of reimbursing Owners for the loss of use of their funds than the complex calculation for which the Owners contend.

After we remanded the case for the circuit court to consider eligible encumbrances, the circuit court awarded a "total amount of $1,342,360, subject to the addition of 5% interest per annum to the amount of refunds date of each initial fee's payment . . . ." When the case returned to us in 2012, the appellants did not appeal the circuit court's decision to award only the 5% interest provided by the ordinance. Accordingly, the circuit court, on May 14, 2014, denied "[t]he Class and Named Plaintiffs' Post-Judgment interest.[17]

[17] Because we affirmed the circuit court's decision to appoint Greiber as lead counsel, and Scheibe was not permitted to file a brief on behalf of the Class, we focused our analysis of the issues on those issues raised in Greiber's brief. However, as we explained, "the [substantive] questions raised by Greiber and Scheibe are substantially the same, except that Scheibe's brief presents an additional question regarding identification and notice to absent class members." In addition, Scheibe challenged the circuit court's designation of

The appellants had multiple chances to challenge the lack of post-judgment interest in addition to the 5% provided by the ordinance. They did not raise this issue in either the 2007 or 2012 appeals to this court, however. The law of the case doctrine "extends to questions that 'could have been raised and argued' in the prior appeal, but were not, so long as the ruling resolves them." *Fraternal Order of Police*, 449 Md. at 730. We agree with the County that the appellants' argument is barred by the law of the case doctrine,[18] which functions to prevent exactly this sort of "piecemeal litigation." *Id.*

B. The Appellants' Arguments that the Circuit Court Erred in Denying their Motion to Strike Greiber and Designation as Lead Counsel is Barred by the Doctrine of the Law of the Case.

On September 15, 2009, after a hearing on the issue, the circuit court denied the motion to strike the appearance of Greiber and other attorneys from the class action, and instead, appointed Greiber as lead counsel for the unnamed plaintiffs' class. Following the circuit court's March 25, 2011 order, both Scheibe and Greiber appealed on behalf of their respective clients. One challenge posed by Scheibe was that the circuit court abused its discretion in its designation of lead counsel for the unnamed class members. In our

Greiber as class counsel as a cross-appeal. Neither the Class, nor the appellants, however, appealed the absence of an award of post-judgment interest.

[18] Accordingly, we need not address the parties' dispute as to whether the ordinance constitutes a tax for which additional pre-judgment and post-judgment interest must be permitted by statute.

2013 opinion, we explained the facts relevant to the circuit court's designation of Greiber as lead counsel[19]:

> Initially, both named plaintiffs in the class were represented by Greiber and Scheibe, who had a law firm together. After an ethics action was brought against Scheibe by the Anne Arundel County Ethics Commission, the law firm disbanded and Greiber associated with his current firm. Scheibe filed a motion to strike the appearance of Greiber and other attorneys. Scheibe attached two letters to the motion, which were written by named plaintiffs to the action, and requested Greiber to cease further representation in the litigation.
>
> The circuit court made the following observations in its September 15, 2009 opinion and order . . . :
>
> > The undersigned has compared and considered the role of both original Plaintiffs Counsel. While Scheibe has the confidence of more named Plaintiffs, this Court finds that it is more appropriate to name Greiber as "Lead Counsel" for various reasons: Greiber actually has been involved in this litigation from its outset in February, 2001, while Scheibe entered his appearance nearly two years later in December, 2002. Greiber consistently has signed and argued the majority of motions at hearings. [. . .] [Hearing] difficulties have been demonstrated when Scheibe participated in prior hearings and were corrected only with assistance of Greiber whispering directly into Scheibe's ear. Last but not least, comparing the legal analysis and argument of Counsel (for example, in the current motions to require . . . deposit of uncontested impact fee refunds and for summary judgment), the Court has found that Scheibe emotionally repeated some arguments previously rejected by this Court and the Appellate Courts, while

[19] As the appellants' argument on the issue of the court's division of Counsel fees relies on a similar argument, many of these facts are pertinent to the final issue of the court's apportionment of fees.

> Greiber somewhat more coolly displayed more familiarity with substantive issues and class action law and better recall of details in the extensive record in this case. Considering these factors this Court finds that Greiber as Lead Counsel should serve class action members better than Scheibe, including as yet unnamed class members, even though the named Plaintiffs personally favor Scheibe.
>
> The circuit court permitted Scheibe to remain as "personal attorney of the named plaintiffs who have indicated that they wish for him to do so."
>
> * * *
>
> Thereafter, Scheibe filed eighteen motions and [p]etitions in multiple courts, challenging Greiber's designation as lead counsel.

Again, Scheibe, on behalf of the appellants, challenges the circuit court's designation of Greiber as lead counsel. For this appeal, he cites to MRPC 1.9, arguing Greiber's appointment resulted in a conflict of interest, apparently between himself and his former clients -- the named class members. *See* MRPC 1.9(a)-(b).[20] He argues, as he did

[20] MRCP 1.9 provides the following, in pertinent part:

> (a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client consents after consultation.
>
> (b) Unless the former client consents after consultation, a lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated has previously represented a client
>
> (1) whose interests are materially adverse to that person, and

in the appellants' previous appeal, that designating Greiber as lead counsel for the unnamed class members created "an obvious conflict of interest clearly adverse to the interest[s] of the Appellants and their former lawyer." Scheibe adds that "possible conflicts of interest . . . surfaced again and again as a result of the complex nature of the issues pending before the lower court." As we observed in our 2013 opinion, "[b]eyond these bare allegations, Scheibe does not explain how Greiber's representation of [the unnamed class members] constitutes an act against the interest of [the named class members]."

In this case, the circuit court designated Greiber as lead counsel for class members who, by definition, shared the same interests as the named class members in the outcome of the litigation. The circuit court certified the class under Md. Rule 2-231(b)(3), which provides that a class action may be maintained "if . . . the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members . . . ." [21] In support of its conclusion that common questions

> (2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter.

[21] Maryland Rule 2-231(b)(3) provides:

> Unless justice requires otherwise, an action may be maintained as a class action if the prerequisites of section (a) are satisfied, and in addition:
>
> * * *
>
> (3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. [. . .]

predominated across the class, the circuit court "reiterate[d] its findings as to the commonality of the putative class plaintiffs' claims." The court noted,

> If [the plaintiffs] are successful, all plaintiffs will be entitled to the same relief. The only differences between the plaintiffs will be based on the fees paid on the properties they now own and the amount of funds, if any, available for refund in their respective school and transportation districts.

The County focused its argument on the superiority of administrative remedies and did not dispute that common questions predominated under these circumstances. In affirming the circuit court's decision to grant class certification, the Court of Appeals observed,

> [t]here is no indication in this case that current property owners will lose some benefit if unable to individually prosecute their cases. The issue on remand is whether the County timely encumbered fees -- a shared burden of proof for all potential refund claimants. Litigation of this issue does not involve a wide range of strategy and tactics that might favor the maintenance of separate suits . . . . This is not a case, moreover, in which there are potentially divergent forms of relief available. Once the court determines the overall amount of fees available for refund, each individual owner's share will be identifiable from County records.

Halle Dev. 2009, 408 Md. at 569-70 (Citations omitted).

Sheibe repeats the same argument rejected in our 2013 opinion that the designation of Greiber, rather than himself, was "adverse" to the interests of the named class members. He points to his differing view of the most appropriate trial strategy that he believes would

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Subsection (a) provides four criteria for certification, including that "there are questions of law or fact common to the class" (i.e. "commonality"), and "the claims or defenses of the representative parties are typical of the claims or defenses of the class (i.e. "typicality"). Md. Rule 2-231(a).

have resulted in a more favorable outcome for the Class. It would take a lot more than that to overrule the determination of the circuit court. We conclude that the circuit court did not abuse its discretion by appointing Greiber to act as lead counsel.

More importantly, Scheibe and the appellants have previously challenged the circuit court's designation of Greiber as lead counsel and as counsel for the unnamed class members before this Court. In our 2013 opinion, we affirmed, specifically, the circuit court's designation of Greiber as lead counsel, noting that, "in accordance with Md. Rule 2-231, a circuit court may exercise its discretion to impose conditions ' . . . on the representative parties . . .'" We observed there, as in this opinion, that Scheibe provided no support for his argument that the circuit court abused its discretion in designating Greiber as lead counsel for the Class.

Here, the appellants assert that "the May 13, 2014 lower court opinion, in arriving at its conclusions simply recited the prior lower court findings of [the] March 25, 2014 [opinion] and the unreported COSA Opinion of July 29, 2013." In following our July 29, 2013 holding, however, the circuit court did exactly what it was required to do. *See Corby v. McCarthy*, 154 Md. App. 446, 478 (2003) (citing *Stokes v. Am. Airlines, Inc.*, 142 Md. App. 440, 446 (2002) (explaining that the circuit court has no authority to reconsider issues previously resolved by an appellate court); *see also* Md. Rule 8-606 ("Upon receipt of the mandate, the clerk of the lower court shall enter it promptly on the docket and the lower court shall proceed in accordance with its terms."). The appellants' arguments on the issues of whether to include encumbrances and how the court must treat ineligible expenditures, the denial post-judgment interest, and the court's designation of lead counsel -- all of which

we have previously addressed and decided or were not properly raised in a prior appeal -- are barred by the doctrine of the law of the case.

II. The Circuit Court Did Not Err in its Apportionment of Counsel Fees.

Finally, we address the appellants' argument that the circuit court abused its discretion in its award and apportionment of counsel fees. Much of the appellants' argument regarding the circuit court's award of counsel fees is based on Scheibe's assertion that Greiber was not entitled to remain as counsel for the Class or to be designated lead counsel, and therefore, should receive no fees. This issue is arguably one that we might choose to apply the law of the case doctrine, as well, since we have already addressed the circuit court's designation of Greiber as lead counsel -- both in our 2013 opinion and in our discussion above.[22] Scheibe's remaining argument on this issue is that, because Greiber had no written contingency agreement with the unnamed class members, the circuit court abused its discretion in awarding contingency fees to Greiber.[23]

"We review a trial court's award of attorneys' fees under an abuse of discretion standard." *Monmouth Meadows Homeowners Ass'n v. Hamilton*, 416 Md. 325, 332

[22] As we explained in *Andrulonis v. Andrulonis*, "[W]hile the doctrine binds a Maryland trial court to a prior decision of this Court in the same case, this Court may, but need not, invoke the doctrine . . . ." 193 Md. App. 601, 614 (2010) (quoting *Chesley v. Goldstein & Baron*, 145 Md. App. 605, 633 (2002)). To the extent that we address the substance of the appellants' challenge to the circuit court's designation of Greiber as lead counsel, we elect not to apply the law of the case doctrine to this issue.

[23] In addition, Scheibe argues in his brief that, because Greiber requested contingency fees as high as 50%, his "flagrant misconduct and serial disregard for rules of professional conduct must be addressed by the Courts or the Maryland Attorney Grievance Commission." We decline to address that contention in this appeal.

(2010); *see also Garcia v. Foulger Pratt Dev., Inc.*, 155 Md. App. 634, 662 (2003) (Citations omitted) (explaining "the abuse of discretion standard is the appropriate standard of review"). This is because "[t]he award of attorney's fees by the court is a factual matter which lies within the sound discretion of the trial judge and will not be overturned unless clearly erroneous." *Garcia*, 155 Md. App. at 662 (Citations and internal quotations omitted). The guiding principle for the circuit court is the reasonableness of the fees. *Id.* at 663 (Citations omitted). MRPC 1.5(a) provides:

> (a) A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee. A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee. The factors to be considered in determining the reasonableness of a fee include the following:
>
> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
> (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
> (3) the fee customarily charged in the locality for similar legal services;
> (4) the amount involved and the results obtained;
> (5) the time limitations imposed by the client or by the circumstances;
> (6) the nature and length of the professional relationship with the client;
> (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
> (8) whether the fee is fixed or contingent.

MRPC 1.5(a); *cf.* Md. Rule 2-703(f)(3). Specific to contingency fees, MRPC 1.5(c) provides that "[a] contingent-fee agreement shall be in writing and shall state the method by which the fee is to be determined."

Even where the named plaintiffs in a class action have agreed in writing to a particular fee schedule, however, that fee agreement is not controlling as it pertains to the Class as a whole. *See United Cable Television of Baltimore Ltd. P'ship v. Burch*, 354 Md. 658, 687–88 (1999). The Court of Appeals in *United Cable* cited the Supreme Court of Florida as persuasive authority on this issue:

> [I]f the court allowed the written fee agreements to control the fee to be awarded from the common fund, it would be enforcing fee agreements to which the vast majority of class members did not consent. Thus, the fact that class counsel and the named parties agreed that attorney fees would be calculated on a percentage basis cannot control what approach the court should use in exercising its inherent power to determine reasonable attorney fees to be paid from the common fund.

Id. at 688 (quoting *Kuhnlein v. Dep't of Revenue*, 662 So.2d 309, 314 (Fla. 1995)). Clearly, once the substantive relief has been awarded in a common-fund class action, an attorney for the plaintiffs has an inherent interest in the percent of the common fund he or she is awarded in fees. Because the defendant is ordinarily unaffected by the percentage awarded from the common fund to the plaintiffs' attorney, "it becomes the duty of the court to insure that the interests of the class members are protected." *Id.* Moreover, "[b]ecause the common-fund doctrine[24] is an equity-based judicially-created exception, it follows that the application of the doctrine is vested within the discretion of the trial judge." *Garcia*,

[24] *See United Cable*, 354 Md. at 688-89 (discussing the "common-fund doctrine").

155 Md. App. at 671 (citing *Mills v. Electic Auto-Lite Co.*, 396 U.S. 375 (1970)). As we recognized in *Garcia*, "a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Id.* at 661 (quoting *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980)).

On May 14, 2014, the circuit court entered the following order with regard to counsel fees:

> The Class and Named Plaintiffs are awarded 5% interest per annum from the date the impact fee was paid until the date of the refund. The County shall pay Attorney's Fees to Greiber and Scheibe in the amount of 39% of $1,342,360.00, plus 5% interest per annum . . . . The County shall pay Scheibe 32.4% of said 39% of $1,342,360.00, plus 5% interest per annum from the date the impact fee was paid until the date of refund. The County shall withhold 20% of Scheibe's fee to the benefit of those entitled to a refund. The Requests for Expenses by the Named Plaintiffs and the Class are Denied.

In its memorandum opinion, the circuit court, first, reiterated our holding affirming the circuit court's designation of Greiber as lead counsel. Thus, Greiber was entitled to receive attorney's fees for his work as lead counsel and representation of the unnamed class members. The court then explained its application of MRPC 1.5(a), providing a detailed analysis for each of the eight factors. Additionally, the court took note of Scheibe's constant attempts to remove Greiber as lead counsel:

> While some of the delay has been due to . . . multiple appeals by both the County and the Plaintiffs, on the other hand, some of the delay has been due to the numerous motions and pleadings filed by Scheibe attempting to remove Greiber as lead counsel. [. . .] The Court finds, as Judge Caroom did, that "the class plaintiffs should not be required to pay" for this delay.

Regarding Scheibe's contention that the absence of a written fee agreement with the named plaintiffs at the time of the court's award prevented Greiber from receiving a percentage of the common fund, the circuit court pointed out: "[i]f Scheibe's argument is taken one step further, he too would be entitled to no fee for his representation of the Class from 2001-2009, because he does not have a fee agreement with the Class, only with the Named Plaintiffs." As we explained above, once a common fund is awarded to the Class, the percentage of a contingent fee in an agreement between an attorney and one or more named plaintiffs is not controlling. *See United Cable*, 354 Md. at 687–88. The circuit court did not abuse its discretion in designating Greiber as lead counsel for the Class, and we affirmed its decision to do so in our 2013 opinion.

It was within the trial court's discretion to apportion reasonable attorneys' fees in the absence of a written fee agreement signed by the named class representatives. The circuit court engaged in a detailed analysis of the factors listed in MRPC 1.5(a), and others, to determine a reasonable percentage of the common fund in counsel fees, and it considered the work of both Greiber and Scheibe in apportioning those fees between them. The court's findings were not clearly erroneous. Accordingly, we hold that the circuit court did not abuse its discretion in awarding a percentage of the common fund as counsel fees to Greiber as lead counsel for the class, or in its division of fees.

During the course of this litigation, both the County and the property owners have attempted to go back in time to either return to arguments previously lost on appeal or to remedy past procedural failures. The County, eventually, accepted its fate and it has complied with the circuit court's final disposition of this case. The appellants, on the other

hand, have raised arguments that we have already rejected.[25] The law of the case doctrine bars almost every argument the appellants raise in this appeal. Similarly, the challenge to the circuit court's division of counsel fees returns to the same grounds relied on in arguing that the circuit court erred in its designation of Greiber as lead counsel, which we addressed in 2013. For the same reasons we have explained in our prior opinions, we affirm the order of the circuit court entered on August 8, 2016.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.

[25] We do not question Scheibe's sincerity and his desire to further the interests of the plaintiffs in this case. But most of the issues raised by the appellants in this appeal, have been raised, decided, and resolved.