UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2159

September Term, 2013

FRIENDS OF FREDERICK COUNTY ET AL.

v.

COUNTY OF FREDERICK, MARYLAND

Graeff,
Kehoe,
Friedman,

JJ.

Opinion by Kehoe, J.

Filed: August 11, 2015

> [J]udges have not been commissioned by the people to survey the conditions existing in the state or city from time to time, and decide what governmental regulation is desirable and wise for the future. To the legislative branch of the government . . . that function has been given in its entirety.

Goldman v. Crowther, 147 Md. 282, 312 (1925) (Bond, C. J., dissenting).

In this appeal, we consider whether the Circuit Court for Frederick County erred when it concluded that the Board of County Commissioners of Frederick County (the "Board") acted lawfully when it adopted changes in 2012 to the County's Comprehensive Zoning Map and its Countywide Comprehensive Plan. The appellants are Friends of Frederick County, a non-profit community advocacy association, the Chesapeake Bay Foundation, the Audubon Society of Central Maryland, Inc., and seventeen individuals claiming tax payer and/or aggrieved property owner status.[1] The appellee is the Board.[2]

Appellants filed an action in the circuit court asserting that the Board's actions were invalid and illegal. They sought a declaratory judgment to that effect as well as related injunctive relief. The Board filed a motion to dismiss the complaint, which the circuit court granted. Appellants have appealed and present us with the following issues, which we have reworded:

---

[1]*See Anne Arundel County v. Bell*, 442 Md. 539, 586 (2015) (Aggrieved parties do not have standing to contest comprehensive zoning ordinances.).

[2]Various additional parties intervened as additional defendants at the circuit court level. None of the intervenors participated in the appeal.

1. Did the circuit court apply the correct legal standard when ruling on the Board's motion to dismiss?

2. Was the 2012 Comprehensive Zoning Map the result of comprehensive rather than piecemeal rezoning?

3. Were the purposes of the 2012 versions of the Comprehensive Plan and the Comprehensive Zoning Map lawful?

4. Was the Board required to amend the 2010 Comprehensive Plan prior to amending the 2010 Comprehensive Zoning Map and was the Board required to conduct comprehensive surveys and studies prior to amending the 2010 Comprehensive Plan?

We will affirm the judgment of the circuit court. Appellants' concerns regarding the procedure followed by the circuit court are not a basis to reverse the court's judgment. Our substantive analysis begins with an indisputable premise—that the Board acted in its legislative, as opposed to its administrative or executive, capacity when it adopted the 2012 Zoning Map and the 2012 Comprehensive Plan. The scope of review that Maryland courts can exercise over legislative actions by elected bodies is very limited. When we apply the appropriate standard of judicial review to the facts as alleged by appellants, there is no basis for us to conclude that the 2012 Map was anything other than what it purports to be, namely, the product of a comprehensive re-zoning process. Although adopting a comprehensive zoning map simultaneously with approving an amended comprehensive plan may be unusual, such a procedure is not prohibited by the applicable provisions of State law. There is nothing in the legislation that adopted the 2012 Map or the 2012 Plan that indicates that the Board was acting with an

improper—that is, an illegal—purpose and we will not examine the subjective motivations of the members of the Board.

Background

The trial court dismissed the complaint. In reviewing the court's decision, "we must assume the truth of the well-pleaded factual allegations of the complaint, including the reasonable inferences that may be drawn from those allegations." *Adamson v. Corr. Med. Servs.*, 359 Md. 238, 246 (2000) (citations omitted).

A. Frederick County's 2012 Comprehensive Rezoning Process

In 2010, the then-existing Board of County Commissions adopted a revised Countywide Comprehensive Plan (the "2010 Plan").[3] The Board also adopted a Comprehensive Zoning Map (the "2010 Map") in accordance with the 2010 Plan. The 2010 Map "downzoned" more than 200 properties within the County—that is, the zoning classifications of the properties in question were changed from intensive to less intensive zoning districts. These zoning changes were consistent with the terms of the 2010 Plan.

As a result of the 2010 general election, the composition of the Board changed significantly. Shortly after the newly-elected commissioners took office, the Board announced that the County was "'developing a process for owners of properties that were downzoned [by the 2010 Map] to have the ability to petition the [Board] to have their zoning reinstated.'" Complaint ¶ 12 A (quoting a Frederick County Government news

[3]The 2010 revisions updated the 1998 comprehensive plan.

release). Blaine Young, the president of the newly-elected Board, stated during a Board meeting that the owners of properties downzoned by the previous Board had been "robbed" of their property rights. Moreover, Mr. Young "reminded three of the other four Commissioners of pledges they [had] made during their election campaign[s] to increase developable [sic] zoning." Complaint ¶12 B–C. These same commissioners "pledged that they would 'restore' the property rights to 'the relatively small group of property owners who had their properties downsized or down-classified" by the 2010 Map but that they "'had no intent to repeal at least 96 percent'" of the 2010 Map. Complaint ¶ 12 C. (quoting a letter to the editor of the Frederick News Post).[4]

In April, 2011, the Frederick County Attorney advised the Board that simply assigning different zoning classifications to the properties that had been downzoned by the 2010 Map would be unlawful. In his opinion, such a process would constitute piecemeal rezoning and would be valid only if the Board concluded that the 2010 zoning classifications had been the result of a "mistake" in the 2010 comprehensive zoning process or if there had been a "change" in the neighborhood after the enactment of the 2010 Zoning Map.[5] The County Attorney recommended that a valid rezoning would have to occur in the context of a comprehensive rezoning, which "must 'be well thought out

[4]The complaint does not identify who actually signed the letter.

[5]"Change" and "mistake" are terms of art in Maryland land use law. Informative discussions of these concepts may be found in *Rockville v. Rylyns*, 372 Md. 514, 538–39 (2002), and *People's Counsel for Baltimore County v. Beachwood I Ltd. Partnership,* 107 Md. App. 627, 643–44 (1995).

and the product of careful consideration and extensive study,' including 'constraints imposed by roads, sewer facilities and environmental factors,' and 'cover a substantial geographic area . . . to accomplish the most appropriate use of land.'" Complaint ¶ 14 (quoting a memorandum from the County Attorney to the Board).

We now come to the crux of appellants' complaint. In support of their contention that enactment of the 2012 Zoning Map was illegal, appellants point to allegations that the Board's process for the rezoning "began by application of individual property owners."Appellants state that the County's Plan and Zoning Review was "initiated by individual property owners submitting . . . applications for rezoning specified parcels[.]" Complaint ¶ 16 A.

The complaint alleges that the Planning Commission staff, upon reviewing these property owner applications, recommended that no changes be made to the 2010 Comprehensive Plan and voted to suspend the review. Complaint ¶ 16 B. Moreover, the Board held two work sessions in February, 2012, for the purpose of reviewing each individual property owner's request and conducting preliminary votes on whether the property in question should be reclassified. Complaint ¶ 16 C. The Board then held a joint public hearing with the Planning Commission in July, 2012, during which the Planning Commission recommended approval of the decisions made by the Board, subject to minor modifications. *Id.* In August, 2012, the Board met to discuss additional requests from property owners, and voted preliminarily on each of these as well. *Id.*

Appellants' claims of illegality also are based upon allegations describing a series of statements issued by Mr. Young regarding his motivations and intentions behind amending the 2012 Map and Plan. Appellants assert that the Board's primary criterion for assessing the property owner applications was "whether the classification of the property which was the subject of the request had been altered by the 2010 Plan and Map to permit less development." Complaint ¶ 16 G. They further assert that: "The [Board] separately reviewed and approved the requested increased development rights with virtually no regard for their impacts beyond the boundaries of the properties involved." *Id.*

They contend that the label of the process as "comprehensive":

> did not change the Board's original intent and purpose of the majority of Commissioners in undertaking the 2012 Comprehensive Plan and Zoning Review—to amend the 2010 Plan and Map so as to restore to a small group of property owners the development rights that they had prior to the adoption of the 2010 Plan and Map. To that end, at the [Board] September 8, 2011 meeting, President Young requested the Planning Manager to have the individual property owners' applications summarized in a format that would make it easier to see 'what they had and what they lost.'

Complaint ¶ 15 A.

With regard to Mr. Young's statements, appellants cite several instances in which Mr. Young articulated that his intent was to focus on those property owners who were "downzoned" by the previous Board. During the September 8, 2011 meeting, Mr. Young informed the Planning Manager that they were only interested in "the properties for which development was restricted by the prior Board." Complaint ¶ 15 B. After the meeting, Mr.

Young explained to the public that the "only thing that the Board of County Commissioners are (sic) doing are giving those that were robbed, by the stroke of a pen, of their property rights." Complaint ¶ 15 C (quoting Radio Broadcast, Sound Off, WFMD, Sept. 11, 2011) (parenthetical comments in complaint).

About a month later, the Frederick News-Post, a local newspaper, published an article written by Mr. Young. In the article, he wrote "the process recently undertaken by the Board of County Commissioners [would] allow property owners who suffered the theft of their property rights by the prior [Board] to apply to have their zoning or comprehensive plan designations restored." Complaint ¶ 15 D (quoting *Why is Zoning a Problem Now?,* Frederick News-Post, Oct. 9, 2011). The same article also stated that the process was consistent with the previously stated positions of three of the four Commissioners. *Id.*

A few days later, the Board held another meeting discussing the Board's rezoning process. During that meeting, Mr. Young stated:

> [E]ven though the process allowed anyone to apply, anyone to make a request, the intent was always to allow those that were affected through a down classification or zoning by the prior Board to have an opportunity to come before [the] new Board and, you know, make their case and then we would act accordingly based on the information that we have.

Complaint ¶ 15 E (quoting County/Municipalities Meeting (FCG TV, October 13, 2011 at 0:20).

In September, the Board adopted the 2012 Map and the 2012 Plan during the same meeting. The Map rezoned over 160 properties to allow for increased development on those properties. Complaint ¶ 16 D. The changes covered approximately 4,000 acres, reclassifying them for residential, commercial or industrial uses. Complaint ¶ 16 E. These areas had been designated as farmland or open space under the 2010 Map. *Id.* The Plan maps were amended to reflect the changes made in the Zoning Map. Complaint ¶ 16 D. Furthermore, the Plan's water and sewer categories were amended to accommodate the changes in the zoning and expanded those areas designated for future growth. *Id.*

Appellants state that these zoning changes will significantly impact public services, "such as fire and police, and public facilities such as roads and schools, requiring substantial public funds to maintain, expand and improve the County's services and facilities." Complaint ¶ 16 F. They further state that the Board's adoption of the Plan and Map were:

> made without findings, consideration, mistake or explanation of a change in circumstance since 2010 which would provide a lawful basis for amending the 2010 Plan and Map. The Maryland Department of Planning, in commenting upon the draft 2012 Comprehensive Plan by letter of May 30, 2012, concluded that "[i]t remains unclear to MDP what conditions have changed in Frederick County over the past two years to warrant proposing such a dramatic shift in policy on the comprehensive plan."

Complaint ¶ 16 H.

Finally, they summarize that the changes to the Map and Plan were made:

> i. Without the benefit of comprehensive studies or surveys;
>
> ii. Without consideration of the impacts of the increased development, including but not limited to the need for and cost of public services and facilities;
>
> iii. Without any, or adequate, consideration of the relationship of increased development to other plan elements as required by 66B §3.05(a)(3)(ii)(1) and (2) ([now codified as] Land Use §3-202(b)(2));
>
> iv. Without any, or adequate, consideration of whether the changes implement the Visions as required by 66B § 1.01 ([now codified as] Land Use § 1-201);
>
> v. Without any, or adequate, consideration of all properties in specific geographic areas;
>
> vi. Without any, or adequate, consideration of the appropriate use of land for coordination and harmonious development throughout the County, Consistent with the public health, safety and general welfare of the residents of the County.

Complaint ¶ 16 I.

Appellants allege that the Board expressly acknowledged that the changes to the Map and Plan were not based on any new Comprehensive Plan, but that the Board plans to initiate amendments to the Plan at a later date. They quote the County's website, which states: "In January 2013 staff will be formally initiating amendments to the 2010 County Plan text document to reflect the mapping revisions in 2012." Complaint ¶ 16 J. (quoting Frederick County Maryland Official Website: http://frederickcountymd.gov/index.asp?nid=4601).

C. The Complaint and the Board's Motion to Dismiss

In 2013, appellants brought suit against the Board for declaratory judgment and injunctive relief. The complaint contained three counts, each setting out a different legal basis for the relief sought.

In Count I, appellants contended that Frederick County exercises land use and planning authority "solely for the purpose of 'promoting the health, safety, morals and general welfare of the community."' Complaint ¶ 19 (quoting former Md. Ann. Code Article 66B § 4.01(b)(1) (now recodified as Land Use Article § 4-102)). Appellants claimed that the 2012 Map is unlawful because it was passed for an improper purpose, namely increasing the property values of those properties downzoned in 2010.

Count II asserted, in effect, that the 2012 rezoning process was not comprehensive rezoning but rather was piecemeal rezoning on a grand scale. They contended that the Board failed to comply with procedural requirements for piecemeal rezoning applications and failed to make findings that the existing zoning classifications, i.e., those imposed in 2010, were mistakes or were justified by substantial changes in the neighborhoods in which the properties were located.

In Count III, appellants alleged that the 2012 rezoning process was illegal because the Board failed to comply with various provisions of state law when it enacted the 2012 Map and approved the 2012 Comprehensive Plan. This argument is important to the parties' appellate contentions and we set it out in detail:

Appellants contend that pursuant to the Land Use Article—§§ 3-303 and 4-202—and case law, "a comprehensive plan must be prepared and adopted prior to adoption of a zoning map. The comprehensive plan provides the basis for the zoning map and the zoning must . . . be consistent with this plan." They contend that the Board did not comply with these requirements. Complaint ¶ 17. Relatedly, they contend that the Board unlawfully applied the reverse procedure by first adopting changes to the zoning map and subsequently amending the comprehensive plan to reflect these "already-made zoning changes." They contend that the Board proposes to "undertake a process in 2013 to amend the 2010 Comprehensive Plan to retroactively justify the zoning changes." *Id.*

Appellants cited the following facts in support of these contentions:

> 1. The County's announcement on its webpage that in January, 2013, it will "initiate the planning process for amending the 2010 Plan. Complaint ¶ 18.
>
> 2. Resolution No. 12-19 only amends the Plan insofar as to reflect the changes adopted in the 2012 Map.
>
> 3. The Map amendments were initiated to increase the property values of those properties which were "downzoned" in the 2010 amendments to the Plan and Map. The Board did not conduct any comprehensive studies or surveys prior to enacting the 2012 amendments, and did not give adequate consideration to the effects the increased development capability would have on schools, traffic, water and sewer facilities, or on neighboring properties. Nor did the Board "comprehensively assess present and future growth conditions to ensure 'the coordinated, adjusted and harmonious development of the local jurisdiction and its environs' to achieve the most appropriate land use consistent with the interest of the general public[.]" *Id.*
>
> 4. The 2012 amendments did not consider all properties in the geographic area; it was limited to the consideration of those properties for which the Board received an application. *Id.*

> 5. The 2012 amendments "do not describe how the substantial additional development authorized by the new zoning is 'interrelated' to each of the elements of the plan as required by [LU § 3-202(b)(2)]." Nor do they address how the changes "implement the Visions as required by [LU §1-201]. Complaint ¶ 19.
>
> 6. The Planning Commission did not "prepare and distribute proposed comprehensive plan changes at least 60 days prior to its public hearing on those proposals scheduled for November 17, 2011, as required by law. [LU §3-203(c)]. Nor were any proposals prepared and distributed before the July 31, 2012 hearing on the same subject. At no time prior to its adoption of the amendments to the 2010 Comprehensive Plan and Map did the county disclose for review and comment the final version of the amendments." *Id.*

In response, the Board filed a motion to dismiss the complaint, setting out four reasons for the dismissal:

First, as to all counts, the Board asserted that it had acted in a legislative capacity when it enacted the 2012 Comprehensive Map and approved the 2012 Comprehensive Plan and that accordingly, "the court has no jurisdiction or right to interfere with the BOCC's legislative Comprehensive Planning and Comprehensive Zoning decisions."

Second, as to Count I, the Board stated that it had the "clear authority . . . to engage in comprehensive planning and to comprehensively zone[.]"

Third, the Board asserted that Count II "fails as a matter of law because the [Board] conducted Comprehensive Rezoning, not piecemeal zoning."

Fourth, as to Count III, the Board argued that "there was nothing 'unlawful' about the 2012 Comprehensive Plan and Comprehensive Zoning process . . . . On this issue: a) plaintiffs erroneously assert that the Zoning Map was adopted first; b) contrary to plaintiffs' assertions, the Plan Revision process involved comprehensive studies and

gave adequate consideration to matters of public concern; c) plaintiffs incorrectly contend that the County's review process was limited to a select number of parcels; d) contrary to plaintiff's view, the elements of the Plan are 'interrelated'; e) the 2012 Plan implements the Visions as required by the Land Use Article; and f) contrary to plaintiffs' contention, the Planning Commission timely submitted proposed Comprehensive Plan changes and added opportunity for public input, which is not required by the Land Use Article."

Accompanying the motion were 671 pages of exhibits. These documents included: the resolution and ordinance that passed the 2012 Plan and Map; the Board's minutes during meetings discussing the proposed changes to the 2012 Plan and Map; a report that analyzed the viability of approving the rezoning requests from property owners; the judicial opinion and order by the Honorable Julie Solt of the Circuit Court for Frederick County in the case *Friends of Frederick County v. New Market*, No. 10-C-11-003193 (June 21, 2012); Resolution 10-06—which enacted the 2010 Plan—and the 2010 Plan itself; and an affidavit and memos from Jim Gugel, the Planning Manager for Frederick County.

D. The Court's Opinion

The circuit court granted the Board's motion. Pertinent to the issues before us, the court dismissed Count I with prejudice because there was "No evidence within the pleadings or judicially noticed documents, [that the Board enacted the 2012 Zoning Map]

for the purpose of raising property values." The court similarly dismissed Count II because it concluded that the rezoning process undertaken in 2012 was comprehensive, as opposed to piecemeal. The court found Count III to be defective because it concluded that the comprehensive rezoning process "was performed properly." Accordingly, the court entered a declaratory judgment to the effect that the Board's actions were valid.

Analysis

Standard of Review

When a court considers a motion to dismiss a complaint, a court "look[s] only to the allegations in the complaint and any exhibits incorporated in it and assume[s] the truth of all well-pled facts in the complaint as well as the reasonable inferences that may be drawn from those relevant and material facts.'" *Worsham v. Ehrlich*, 181 Md. App. 711, 722 (2008) (quoting *Smith v. Danielczyk*, 400 Md. 98, 103–04 (2007)). "The well-pleaded facts setting forth the cause of action must be pleaded with sufficient specificity; bald assertions and conclusory statements by the pleader will not suffice." *RRC Northeast, LLC v. BAA Maryland, Inc.*, 413 Md. 638, 644 (2010) (citing *Adamson v. Corr. Med. Servs., Inc.*, 359 Md. 238, 246 (2000)).

Our review of the circuit court's decision is *de novo. Id.* at 644. We may affirm the circuit court decision to grant the motion to dismiss for any reason appearing in the record, as long as the parties' rights are not unfairly prejudiced. *See, e.g., A Guy Named*

Moe v. Chipolte Mexican Grill, ___ Md. App. ___, 2015 WL 3440472 at *3 (2015); *Monarc Const., Inc. v. Aris Corp*., 188 Md. App. 377, 385 (2009).

I. The Scope of Judicial Notice

We will first address appellants' contentions that the circuit court misapplied the scope of judicial notice. In granting the Board's motion to dismiss, the court did not clarify what documents attached to the Board's motion it did and did not consider. However, the court noted that its "decision relie[d] on documents that are within the pleading, or that are judicially noticeable. The matters outside of the pleading that the court will consider are readily available to the public, and therefore the court may take judicial notice of them." Appellants contend that the circuit court erred by taking judicial notice not only of the *existence* of the public records attached as exhibits to the Board's motion to dismiss but also of the *accuracy* of the contents of those records.

The distinction that appellants draw is valid in most cases. *See Abrishamian v. Washington Medical Group, P.C.*, 216 Md. App. 386 (2014) (There are generally, two types of categories of documents that are judicially noticeable, the "everybody around here knows that" category, and the "look it up" category." What unites the various classes of documents that are judicially noticeable "is not so much their nature as public or widely-known, but more their nature as *undisputed* . . . ." *Id.* at 414 (emphasis in

original)).[6] Courts, however, can take a more expansive approach when a party asks a court to take judicial notice of public records as a means of discerning legislative intent. *See Park v. Bd. of Liquor License Comm'rs*, 338 Md. 366, 383 n. 8 (1995) (taking judicial notice of letters and memoranda in a bill file because they "become relevant parts of the legislative history and indicia of the legislative intent" in enacting the statute in question.).

In any event, we are not convinced that any suppositional error on the part of the circuit court affected the outcome of this case. This is because there was evidence before the circuit court that was incontrovertibly judicially noticeable and that evidence provides a basis for the court's conclusions.[7] For the purposes of our *de novo* review of the circuit court's judgment, we will take judicial notice of Frederick County Resolution No. 12-19—which adopted the 2012 Comprehensive Plan; Frederick County Ordinance No. 12-22-617—which enacted the 2012 Zoning Map; and both the 2010 and 2012 zoning maps and comprehensive plans.

[6]In fairness to the circuit court and the parties, we note that *Abrishamian* was filed on March 4, 2014, after the circuit court entered judgment.

[7]Additionally, as appellants concede in their briefs, the circuit court provided them with an opportunity to provide additional documents.

II. Did the Board Engage in Comprehensive or Piecemeal Rezoning?

Appellants contend that the circuit court erred when it concluded that the Board engaged in comprehensive, as opposed to piecemeal, rezoning when it enacted the 2012 Map. We disagree. We begin with some basic terminology.

As the Court of Appeals explained in *Mayor & Council of Rockville v. Rylyns Enterprises,* 372 Md. 514, 535 (2002) (citations omitted):

> [T]he act of zoning either may be original or comprehensive (covering a large area and ordinarily initiated by local government) or piecemeal (covering individual parcels, lots, or assemblages, and ordinarily initiated by the property owner). The requirements which must be met for an act of zoning to qualify as proper comprehensive zoning are that the legislative act of zoning must: 1) cover a substantial area; 2) be the product of careful study and consideration; 3) control and direct the use of land and development according to present and planned future conditions, consistent with the public interest; and, 4) set forth and regulate all permitted land uses in all or substantially all of a given political subdivision, though it need not zone or rezone all of the land in the jurisdiction.

"'Comprehensive rezoning is a vital legislative function, and in making zoning decisions during the comprehensive rezoning process, the [zoning authority] is exercising what has been described as its 'plenary' legislative power.'" *Anderson House v. Mayor & City Council of Rockville*, 402 Md. 689, 723 (2008) (quoting *Stump v. Grand Lodge of Ancient, Accepted and Free Masons*, 45 Md. App. 263, 269 (1980) (bracketed material added by *Anderson House*)). As a result, courts afford a strong presumption of validity and correctness to comprehensive zoning and rezoning legislation. *See, e.g.,*

Anderson House, 402 Md. at 723; *Rylyns*, 372 Md. at 535. Overcoming this presumption of validity is not impossible but it is very difficult. A party seeking to do so:

> carries the heavy burden of establishing, by clear and affirmative evidence, that [the ordinance] is invalid. Even where reasonable doubt exists, the [o]rdinance must be sustained. In other words, the legislature is presumed to have acted within its police powers so that if any state of facts reasonably can be conceived that would sustain [the ordinance], the existence of that state of facts as a basis for the passage of the [ordinance] must be assumed.

Anderson House, 402 Md. at 724 (citations and footnote omitted).[8] We now turn to the merits of appellants' contentions.

We have set out relevant allegations in appellants' complaint previously. We read them as alleging, in effect, that the 2012 comprehensive rezoning was pretextual and that the members of the Board who voted in favor of Ordinance No. 12-22-617 did so on the basis of pre-conceived notions. Appellants argue that, to the extent that the Board purported to engage in a comprehensive rezoning process, the Board's actions were a mere formality and empty of meaning.

To support these conclusions, appellants rely on allegations regarding the statements made by Mr. Young and the other members of the Board before and during the rezoning process. This sort of evidence, however, is irrelevant. As this Court explained in *MDE v. Days Cove*, 200 Md. App. 256, 270 (2011): "'[i]t is well-settled that when the

[8]The presumption that a comprehensive zoning is valid carries over into piecemeal rezoning proceedings. *See, e.g.*, *Rylyns*, 372 Md. at 538; *Beachwood,* 107 Md. App. at 640-41.

judiciary reviews a statute or other governmental enactment, either for validity or to determine the legal effect of the enactment in a particular situation, the judiciary is ordinarily not concerned with whatever may have motivated the legislative body or other governmental actor.'" (quoting *Workers' Comp. Comm'n v. Driver*, 336 Md. 105, 118 (1994)). *See also*, *Pack Shack, Inc. v. Howard County*, 138 Md. App. 59, 72 (2001) ("It is a familiar principle of constitutional law that this Court will not strike down an otherwise constitutional statute on the basis of an alleged illicit legislative motive . . . . What motivates one legislator to make a speech about a statute is not necessarily what motivates scores of others to enact it, and the stakes are sufficiently high for us to eschew guesswork."); *see also* 2A SUTHERLAND STATUTORY CONSTRUCTION § 48:17 (7th ed.) ("[W]hat motivates one legislator to make a comment about a law is not necessarily what motivates fellow legislators to enact the law.").

Appellants also rely on allegations that property owners seeking reclassification submitted applications to the Board. They allege that since the rezoning was initiated by property owner application, and since the Board's rezoning focused on these applications, the rezoning was piecemeal rather than comprehensive. First, we note that, by appellant's own admission in its factual discussion in the complaint, the rezoning process *was not* initiated by property owners, but was initiated by the Board. Although the Board may have focused its rezoning process on property owner applications, the application process was developed *by the Board* at the outset of the process. The distinction is important

because, as stated in *Rylyns*, comprehensive rezoning is "ordinarily initiated by the local government[,]" while a piecemeal rezoning is "ordinarily initiated by the property owners." *Rylyns*, 372 Md. at 535.

That the Board created a process for property owners to submit rezoning request applications does not change our analysis. A zoning action is not piecemeal simply because property owners apply for a rezoning classification. In fact, several county codes, including Prince George's, Howard, and Talbot County, contain explicit references to property owner rezoning applications as part of the comprehensive rezoning processes.[9]

[9]Section 27-225 of the Prince George's County Code states that during a "sectional map amendment" (the equivalent to a comprehensive rezoning, *see* Prince George's County Code § 27-220(a)), "any person may request that specific zones . . . be considered for specific properties . . . ."

Section 16.203(b)(2)(iv) of the Howard County Code, governing comprehensive zoning, states that the Department shall notify the public of a deadline for requests for zoning map and zoning regulation amendments; and § 16.203(b)(6)(iii) states that the Planning Board shall consider all requests for zoning map and zoning regulation amendments.

Section 190-174 of the Talbot County Code, governing amendments to the official zoning maps, states that: "Applications to amend the Official Zoning Maps shall be submitted and processed in accordance with the requirements of this article for County Council Applications." Although subsection C(1) provides for an adjudicative fact-finding process for an application for a piecemeal rezoning, subsection C(2) states that the findings in subsection C(1) do not apply when the County is approving a comprehensive or sectional zoning map amendment—thus it is clear that applicants may apply for a zoning map amendment during either a piecemeal or a comprehensive rezoning.

Appellants' allegations, if proven at trial, would not constitute "clear and affirmative evidence, that [the ordinance] is invalid." *Anderson House*, 402 Md. at 724. This is because "the legislature is presumed to have acted within its police powers so that if any state of facts reasonably can be conceived that would sustain [the ordinance], the existence of that state of facts as a basis for the passage of the [ordinance] must be assumed." *Id.* Facts can reasonably—and readily— be conceived that support the conclusion that the 2012 rezoning was comprehensive. The 2012 rezoning meets all of the factors outlined in *Rylyns*: the rezoning covered over 4,000 acres, and thus covered a substantial area of Frederick County; the Board considered the rezoning modifications over the course of 16 months, during which time it held a number of hearings, work sessions, and workshops, and received input on its rezoning modifications by the Planning Commission; it not only reclassified properties, but also adjusted the sewer and water categories for properties in the County, and expanded areas for future growth; and finally, the County amended 113 pages of the comprehensive zoning map, setting out the specific reclassifications.[10] Overall, these facts indicate that the Board engaged in

[10]The local legislation approving the 2012 Plan recited that the 2012 Plan "replace[d] all previous region plans and maps the [Board] [] adopted pursuant to Article 66B, of the Annotated Code of Maryland." It amended "atlas pages 1 through 113 . . . containing the specific land use plan designations for the subject parcels for Frederick County as shown thereon," Frederick County Resolution No. 12-19 at 3, and amended the designated water and sewer service areas. *Id.* at 4.

Similarly the 2012 Zoning Map also amended atlas pages 1 through 113. Frederick County Ordinance No. 12-22-617 at 3. The ordinance stated that:

(continued...)

comprehensive rezoning, and appellants' factual allegations do not provide "clear and affirmative evidence to the contrary.

III. Was the Board's Rezoning *Ultra Vires*?

Appellants claim that the Board's rezoning action was *ultra vires* because the purpose of the Board's rezoning was to raise the property values of individual parcels rather than to "promote the general welfare" of the community as a whole. This argument is based on the principle that local governments can exercise their police power to impose zoning restriction upon properties to "promote the health, safety, and general welfare of the community[.]" Md. Code Ann. (2012) § 4-102 of the Land Use Article ("LU"). Appellants allege that the Board exceeded the scope of its statutory authority by enacting a zoning ordinance primarily aimed toward raising property values rather than benefitting the community.

Appellants primarily cite to statements made by Mr. Young in support of their contention. Secondly, they cite to the fact that the Board developed a process by which property owners could submit an application to have their zoning changed, and that this

---

[10](...continued)

> Except as otherwise expressly provided in this Ordinance, those parcels which were rezoned prior to the date of this Ordinance and which have retained that prior zoning classification as part of this comprehensive rezoning, shall remain subject to any and all conditions which were imposed at the time of the prior zoning change.

Id. at 4.

application process was focused on those property owners whose properties were down-zoned by the previous Board.

Neither of these assertions provide a basis for us to conclude that the Board's rezoning primarily aimed to raise property values. As we have explained, one legislator's subjective intentions cannot be imputed onto the legislative body as a whole; thus, Mr. Young's statements regarding his motivations for rezoning the properties do not provide a factual basis to support appellants' contention. The same is true for the application process; nothing in the complaint or legislative documents indicate that the property owner application process was developed to increase the property owners' property values. Without any factual basis for their assertion, appellants have only a conclusory assertion that the Board was motivated to rezone properties in order to increase their value. This is insufficient to support their claim. *See RRC Northeast*, 413 Md. at 644 ("[B]ald assertions and conclusory statements by the pleader" are insufficient to support a claim).

IV. The Comprehensive Plan

Appellants' final claim relates to the Plan, and its relationship to the Map. They assert three arguments related to the Plan: 1) that the Board was required to enact the Plan prior to the Map; 2) that, by failing to amend the Plan prior to amending the Map, there was no basis for the Map amendments; and 3) there was no lawful basis for

modifying the 2010 Map and Plan. The first two arguments are interrelated. We will address them together, and the third argument separately.

A. The Map as it Relates to the Plan

Appellants first argue that the Board was required to amend the 2010 Plan prior to amending the 2010 Map in order to ensure that the Map was consistent with the Plan. They assert that the 2010 Plan provides no basis for the 2012 modifications to the Map, and thus the Board was required to first amend the 2010 Plan to provide a basis for the modifications to the Map. They contend that the Land Use Article and case law requires that modifications to a comprehensive plan be enacted prior to modifications to a comprehensive rezoning map.

Appellants' rely on the following language in *Rylyns* for support:

> We repeatedly have noted that plans, which are the result of work done by planning commissions and adopted by ultimate zoning bodies, are advisory in nature and have no force of law absent statutes or local ordinances linking planning and zoning. Where the latter exist, however, they serve to elevate the status of comprehensive plans to the level of true regulatory device.

372 Md. at 529. They argue that LU §§ 4-202(a)[11] and 3-303[12] elevate the status of the Plan to the level of a regulatory device, and that, pursuant to these statutes, the Plan must be adopted—or in this case amended—prior to the modification of the Map. We do not fully agree with appellants' interpretation of Maryland's very complex statutory scheme regarding the relationship between comprehensive planning and comprehensive zoning.

[11]LU § 4-202(a) states:

(a) Adoption. — The legislative body shall adopt zoning regulations:
(1) in accordance with the plan;
(2) with reasonable consideration for, among other things, the character of the district or zone and its suitability for particular uses; and
(3) with a view to conserving the value of property and encouraging orderly development and the most appropriate use of land.

[12]LU § 3-303 states (emphasis added):

Periodic review; implementation.
(a) *Required review.* — At least once every 10 years, which corresponds to the comprehensive plan revision process under § 3-301 of this subtitle, a local jurisdiction shall ensure the implementation of the visions, the development regulations element, and the sensitive areas element of the plan.
(b) *Implementation.* — A local jurisdiction shall ensure that the implementation of the requirements of subsection (a) of this section are achieved through the adoption of the following applicable implementation mechanisms that are consistent with the comprehensive plan:
(1) zoning laws;
(2) planned development ordinances and regulations;
(3) subdivision ordinances and regulations; and
(4) other land use ordinances and regulations.

We begin with the concept of "consistency," a term of art in Division I of the Land Use Article with a very specific statutory meaning. LU § 1-303[13] provides that, when a statute in Division I requires a land use decision to be "consistent" with the local comprehensive plan, the decision must "further and not be contrary to" parts of the plan pertaining to land use and related matters. Moreover, LU §§ 1-303[14] and 3-303,[15] when read together, support the conclusion that "zoning laws" must be consistent, that is, "further, and not be contrary to" various aspects of the comprehensive plan. Finally, LU § 4-402(a) requires that land use *regulations* must be "in accordance with" the comprehensive plan.

[13]LU § 1-303 states (emphasis added):

> **Consistency—General requirement.**
> [W]hen a provision in a statute listed under § 1-302 of this subtitle requires an action to be "consistent with" or have "consistency with" a comprehensive plan, the term shall mean an action taken that will further, and not be contrary to, the following items in the plan:
>
> (1) policies;
> (2) timing of the implementation of the plan;
> (3) timing of development;
> (4) timing of rezoning;
> (5) development patterns;
> (6) land uses; and
> (7) densities or intensities.

[14]Text of LU § 1-303 is provided in footnote 12.

[15]Text of LU § 3-303 provided in footnote 11.

The statutory authority for enacting comprehensive zoning *maps*, as opposed to zoning *regulations*, is set out in LU § 4-401.[16] In contrast to LU § 4-402, which, as we have noted, requires zoning regulations to be consistent with the comprehensive plan, § 4-401(a) authorizes local legislative bodies to "divide the local jurisdiction into districts and zones of any number, shape, and area that the legislative body considers best suited to carry out the purposes of this division." (Emphasis added.) It is not necessary for us to resolve the tension, if indeed, there is any, between § 4-401(a) and the provisions of the Land Use Article requiring consistency with the comprehensive plan. It is enough for us to conclude, as we do, that there is nothing in the Land Use that prohibits a legislative body from enacting a comprehensive zoning map at the same time that it amends the comprehensive plan to be consistent with the zoning map. We will not read additional limitations into LU § 4-402(a), especially given the "plenary" scope of the Board's legislative authority to enact comprehensive rezoning legislation. *Anderson House*, 402 Md. at 703; *see also Stoddard v. State*, 395 Md. 653, 662 (2006) ("We neither add nor delete words to a clear and unambiguous statute to give it a meaning not reflected by the words the Legislature used or engage in forced or subtle interpretation in

[16]LU § 4-201 states in pertinent part:

> **Districts and zones.**
> (a) *In general*. -- A legislative body may divide the local jurisdiction into districts and zones of any number, shape, and area that the legislative body considers best suited to carry out the purposes of this division.

an attempt to extend or limit the statute's meaning.") (quoting *Taylor v. NationsBank, N.A.*, 365 Md. 166, 181 (2001)).

B. Lawfulness of the Plan Revisions

Finally, appellants contend that the 2012 modifications to the Plan were unlawful. They assert that the provisions in the Land Use Article, specifically §§ 1-201[17], 3-

[17]LU § 1-201 states:

Visions.

In addition to the requirements of § 3-201(a) and (b) of this article, a planning commission shall implement the following visions through the comprehensive plan described in Title 3 of this article:

(1) quality of life and sustainability: a high quality of life is achieved through universal stewardship of the land, water, and air resulting in sustainable communities and protection of the environment;

(2) public participation: citizens are active partners in the planning and implementation of community initiatives and are sensitive to their responsibilities in achieving community goals;

(3) growth areas: growth is concentrated in existing population and business centers, growth areas adjacent to these centers, or strategically selected new centers;

(4) community design: compact, mixed-use, walkable design consistent with existing community character and located near available or planned transit options is encouraged to ensure efficient use of land and transportation resources and preservation and enhancement of natural systems, open spaces, recreational areas, and historical, cultural, and archaeological resources;

(5) infrastructure: growth areas have the water resources and infrastructure to accommodate population and business expansion in an orderly, efficient, and environmentally sustainable manner;

(6) transportation: a well-maintained, multimodal transportation system facilitates the safe, convenient, affordable, and efficient movement of people, goods, and services within and between population and business centers;

(7) housing: a range of housing densities, types, and sizes provides

(continued...)

201(a)(2) & (b)[18], and

[17](...continued)

residential options for citizens of all ages and incomes;
(8) economic development: economic development and natural resource-based businesses that promote employment opportunities for all income levels within the capacity of the State's natural resources, public services, and public facilities are encouraged;
(9) environmental protection: land and water resources, including the Chesapeake and coastal bays, are carefully managed to restore and maintain healthy air and water, natural systems, and living resources;
(10) resource conservation: waterways, forests, agricultural areas, open space, natural systems, and scenic areas are conserved;
(11) stewardship: government, business entities, and residents are responsible for the creation of sustainable communities by collaborating to balance efficient growth with resource protection; and
(12) implementation: strategies, policies, programs, and funding for growth and development, resource conservation, infrastructure, and transportation are integrated across the local, regional, State, and interstate levels to achieve these visions.

[18]LU § 3-201(a)–(b) states:

In general
(a)(1) A planning commission shall prepare a plan by carefully and comprehensively surveying and studying:

(i) the present conditions and projections of future growth of the local jurisdiction; and
(ii) the relation of the local jurisdiction to neighboring jurisdictions.

(2) A planning commission shall make the plan with the general purpose of guiding and accomplishing the coordinated, adjusted, and harmonious development of the local jurisdiction and its environs.
(3) The plan shall serve as a guide to public and private actions and decisions to ensure the development of public and private property in appropriate relationships.

(continued...)

3-102 through 3-11 requires that comprehensive plans be the product of careful and comprehensive study, and that they must consider a wide range of factors in order to assure the harmonious development of the county's growth.

There is a disconnect between appellants' cited law and their argument. The sections of the Land Use Article appellants rely on pertain to the general requirements for a comprehensive plan, as well as a county's development and adoption of a plan. *See* LU Subtitles 1-2. However, appellants do not cite LU § 3-301,[19] which pertains to revisions

---

[18](...continued)
Scope and purposes of plan
(b)(1) In accordance with present and future needs, a plan shall promote:
(i) good civic design and arrangement;
(ii) a healthy and convenient distribution of population;
(iii) the health, safety, and general welfare of the local jurisdiction; and
(iv) efficiency and economy in the development process.
(2) A plan shall:
(i) include any areas outside the boundaries of the plan that, in the planning commission's judgment, relate to the planning responsibilities of the commission; and
(ii) provide for:
1. transportation needs;
2. the promotion of public safety;
3. light and air;
4. the conservation of natural resources;
5. the prevention of environmental pollution;
6. the wise and efficient expenditure of public funds;
7. adequate public utilities; and
8. an adequate supply of other public requirements.

[19]LU § 3-301 states:
Plan Revision.

(continued...)

of comprehensive plans. We believe it is significant that LU § 3-301 does not state that *new* comprehensive surveys and studies are required plan revisions that occur within the ten year planning cycle mandated in that statute. Nor do we see why the Board and the County Planning Commission would be unable to refer to the surveys and studies that the previous Board conducted and reviewed in its enactment of the 2010 Plan, and, subsequently, draw its own conclusions from these studies in implementing revisions to the Plan. Given that appellants cite no source of law indicating that the Board must conduct new surveys and studies to revise a comprehensive plan, we conclude that the Board's alleged failure to do so was not unlawful.

CONCLUSION

In summary, if the allegations of the complaint are credited, appellants have at best identified procedural irregularities that occurred during the process of the Board's development and enactment of the 2012 Map and Plan. We consider these irregularities to be matters of form rather than substance, and they do not amount to "clear and

[19](...continued)
(a) *Periodic review.* — At least once every 10 years, each planning commission shall review the comprehensive plan and, if necessary, revise or amend the comprehensive plan to include all:
(1) the elements required under Subtitle 1 of this title; and
(2) the visions set forth in § 1-201 of this article.
(b) *Geographic section or division.* — The planning commission may prepare comprehensive plans for one or more geographic sections or divisions of the local jurisdiction if the plan for each geographic section or division is reviewed and, if necessary, revised or amended at least once every 10 years.

affirmative evidence" that the Plan and Map are invalid. *See Anderson House*, 402 Md. at 724 ("[Plaintiffs] carr[y] the heavy burden of establishing, by clear and affirmative evidence, that [the legislation] is invalid."). Appellants have failed to meet their burden in this case. Their recourse lies with the legislature and not the courts.

THE JUDGMENT OF THE CIRCUIT COURT FOR FREDERICK COUNTY IS AFFIRMED. APPELLANTS TO PAY COSTS.