UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2602

September Term, 2013

KENWOOD GARDENS CONDOMINIUMS, INC., ET AL.

v.

WHALEN PROPERTIES, LLC

Zarnoch,
Arthur,
Sonner, Andrew L.
(Retired, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: September 16, 2015

This case raises the general question of the appearance of impropriety in governmental decisions regarding the regulation of land use. The case specifically concerns whether a court must invalidate the approval of a Planned Unit Development ("PUD") application because the PUD's developer made illegal campaign contributions to the county councilman who formally initiated the PUD-approval process. In answering that question, we must first address whether the initiation of the PUD-approval process was a legislative action as opposed to a quasi-judicial action.

In August 2011, appellee Whalen Properties LLC sought approval for a PUD in Baltimore County. Appellant Kenwood Gardens, Inc., challenged the PUD on several grounds, including the appearance of impropriety. An ALJ rejected the challenges and approved the application, and the Baltimore County Board of Appeals affirmed. Kenwood Gardens petitioned for judicial review in the Circuit Court for Baltimore County, which affirmed the Board of Appeals. Kenwood Gardens has now taken this timely appeal.

QUESTIONS PRESENTED

Kenwood Gardens raises several overlapping issues for our review, which, for clarity and concision, we have restated as follows:

1. Did the Board of Appeals err in affirming the approval of the PUD despite the appearance of impropriety resulting from the illegal campaign contributions from the PUD's developer to the County Councilman who initiated the PUD-approval process?

2. Was Kenwood Gardens afforded its right to due process during the ALJ hearings?

3. Did the Board of Appeals improperly discount the community concerns?[1]

[1] Kenwood Gardens phrased its questions for review in the following manner:

I. The "Appearance of Impropriety" presented by Developer's illegal campaign contributions to Councilman Thomas Quirk affects the County Council's approval of PDM No.: 1-570; Resolution No. 108-11; and Bill 38-12. The PUD approval should have been denied by the ALJ and the CBA.

II. ALJ's failure to understand that he had the authority to address Appellants' issue of "Appearance of Impropriety" is an error. The County Board of Appeals likewise failed to understand it had the authority and obligation to address the "Appearance of Impropriety." Administrative Agencies are not only authorized but obligated to consider all issues raised, particularly the issue of improper influence in the development process.

III. Appellant's "due process" rights were violated by the totality of the County's actions and the ALJ's and CBA Decisions and Orders:

a. Failure to postpone the case pending the State Prosecutor's action.
b. The County withholding agency documents from Appellants hindered Appellants' ability to prepare for the case before the ALJ.
c. The County limited Appellants' cross-examination of County witnesses.
d. ALJ denied Appellants' Motion for Mistrial.
e. Developer's misrepresentation to ALJ that Whalen did *not* contribute to the 1st District Councilman.
f. Conflict of Interest and "Appearance of Impropriety" and "undue influence" of Developer's witness Monk as a member of the County's Architectural Review Board.
g. Passage of Bill 38-12 to support and provide for the approval of this PUD.
h. Bill 38-12 deprives Appellants of the rights provided for other PUDs relative to compatibility.
i. The CBA's failure to Reverse the ALJ and deny the PUD.

IV. County Council Bill 38-12 passed to specifically support the approval and implementation of this PUD. It is a Special Law.

(continued…)

For the reasons that follow, we affirm.

FACTUAL AND PROCEDURAL HISTORY

A. The Parties

Whalen Properties develops properties primarily in Baltimore County. It has been particularly active in developing properties in the Catonsville area. Whalen Properties is owned by Stephen W. Whalen, Jr.

Kenwood Gardens is comprised of a local condominium group and various other persons with an interest in that community. Kenwood Gardens has consistently opposed the proposed PUD.[2]

B. The PUD Application Timeline

In August 2011, Whalen Properties sought approval from Baltimore County to develop a PUD on a parcel of vacant land near the Beltway in Catonsville – a project designated as the Southwest Physicians' Pavilion. The Pavilion was to be a four-story medical office building, which would sit atop a three-story parking garage. The total

---

V. State Prosecutor's *Statement of Facts* submitted in open court at criminal trial of the Developer provides evidence of a "nexus" between illegal campaign contributions and approval of this PUD. Standard of proof is different for a criminal case versus and administrative proceeding. The State Prosecutor's exercise of Prosecutorial discretion not to proceed on the issue of "*quid pro quo*" as a matter of discretion and part of a plea bargain does not in any way alter the clear *quid pro quo* revealed in the State's Statement of Facts.

VI. Community Issues.

[2] Kenwood Gardens has co-appellants, but they are not designated by name in the briefs. At least some of them appear to be officers or directors of Kenwood Gardens itself.

development would encompass an area of nearly 90,000 square feet, and the parking garage would have approximately 400 parking spaces. Most of the proposed uses would be for "medical occupancy," such as physicians' offices, surgical centers, urgent care facilities, and the like.

The PUD application process requires that projects be submitted to the county councilperson in the district in which the PUD is to be located and that a public input meeting be held before the formal PUD approval process can commence. *See* Baltimore County Code ("BCC") § 32-4-242(c). In this case, Whalen Properties submitted an application to First District Councilman Thomas Quirk on August 9, 2011. Notice of the PUD was publicly posted, and on September 1, 2011, a community meeting was held to allow comments from community members.

On September 19, 2011, Councilman Quirk introduced Resolution No. 108-11, which concerned the proposed PUD. The Council unanimously approved that resolution on October 17, 2011. The PUD-approval process could not proceed unless the County Council approved the resolution. BCC § 32-4-242(d)(1). Councilman Quirk, as the councilperson for the district in which the proposed PUD was located, was the only councilperson who could introduce the resolution. *Id.* at § 32-4-242(a).

As part of the application process, Whalen Properties engaged in a "pre-concept plan conference" with the relevant agencies on October 24, 2011, and on October 29, 2011, those parties held a "concept plan conference." On December 22, 2011, the County held a formal community input meeting to solicit detailed comments from local community members. For several months thereafter, various interim adjustments were

made to the development plan based on comments from the community impact meeting and the County Design Review Panel. On June 8, 2012, Whalen Properties submitted its final Development Plan to the County, and, on August 1, 2012, it engaged in a Development Plan Conference with various County agencies.

C. Passage of Bill 38-12

Meanwhile, on June 6, 2012, the County Council passed Bill 38-12, which applied to PUDs in certain specific areas, including the area where the Whalen Properties PUD was to be located. The bill, which is now codified as BCC section 32-4-402.1, exempted these PUDs from the general compatibility requirements in section 32-4-402 of the BCC and eliminated certain other requirements, including the requirement, in section 32-4-402(d)(8), that the "scale, proportions, massing, and detailing of the proposed buildings are in proportion to those existing in the neighborhood." At the same time, the legislation imposed a number of "compatibility objectives" with which a proposed PUD must substantially comply.

Bill 38-12 applied to all potential PUDs for which a hearing before an ALJ commenced after June 6, 2012. Consequently, the bill applied to the Whalen Properties PUD.

D. The State's Investigation of Whalen's Campaign Contributions

From August 23 to December 3, 2012, an ALJ conducted a five-day hearing on the Whalen Properties PUD. The hearing included the testimony of various experts, local agency department heads, and other interested parties.

On August 17, 2012, just before the hearing began, the Baltimore Sun reported that the State Prosecutor had served subpoenas on eight County agencies for records pertaining to the Whalen Properties project. Kenwood Gardens requested a postponement, which the ALJ denied.

On November 16, 2012, in the midst of the hearing, the Sun reported that the State investigators had subpoenaed records of email, text messages, and telephone communications between Whalen and County employees. The article also reported that the investigators had subpoenaed zoning files, as well as records from Councilman Quirk's office. In response to the disclosures, Kenwood Gardens moved for a "mistrial," which the ALJ denied.

On December 20, 2012, after the hearing had ended but before the ALJ had ruled, the State charged Whalen with five counts of violating Maryland campaign finance laws. The first three counts alleged that Whalen made unlawful contributions through third parties to Councilman Quirk's campaign finance entity, "Friends of Tom Quirk." The fourth count alleged that Whalen had violated the individual contribution limit by funneling his contributions through third-parties. The fifth count alleged that, because of the amounts that he was deemed to have given to Friends of Tom Quirk, Whalen had exceeded the aggregate limit on contributions to all candidates when he contributed

$4,000 to the Committee for Kevin Kaminetz, the County Executive, and $250 to Councilman David Marks.[3]

On January 3, 2012, Whalen pleaded guilty to these charges in Baltimore County Circuit Court. As agreed in the "Statement of Facts" that was read into the record during his plea hearing, Whalen had withdrawn $8,500 from Whalen Properties' bank account on August 30, 2011. Whalen distributed this money to several persons, who were instructed to deposit the sums into their own accounts and to write checks in those amounts to Friends of Tom Quirk. Whalen made the contributions to Quirk in late August 2011, a few weeks before the councilman introduced Resolution No. 108-11, which allowed the PUD-approval process to proceed.

The circuit court sentenced Whalen to one year of probation and imposed a fine of $53,000.

E. <u>The Email Correspondence</u>

In the charging papers, the prosecutor specifically stated that he had uncovered no evidence that either Councilman Quirk or his campaign officers knew that the campaign contributions were unlawful or were even from Whalen himself. Nonetheless, the statement of facts exposed a series of email communications, in which Whalen and Quirk discussed campaign contributions and the PUD application. The following exchanges began the day before Whalen filed the PUD application and concluded three weeks before Quirk introduced Resolution No. 108-11:

[3] Councilman Marks was one of the four sponsors of Bill 38-12, which relaxed some of the requirements for PUDs like the Whalen Properties PUD.

On August 8, 2011, Mr. Whalen sent Councilman Quirk an Email declining an invitation to attend an event at the Maryland Association of Counties meeting in Ocean City, Maryland on August 18, 2011, saying "Thanks, Tom, but I have too much darn work to do in the next 30 days. . . something about a PUD. . . whatever that is. . . ."

Councilman Quirk replied on the same day, saying "Here's another event I'm doing in Landsdowne on 8/27 at Leadership Through Athletics if you can stop by or help sponsor. How do things look with the PUD? How's Planning?" A copy of a flyer announcing a fundraising event for Councilman Quirk to be held on August 27, 2011, was attached.

On August 24, 2011, at about 10:21 p.m., Councilman Quirk, via Email to Mr. Whalen, expressed concern about how his campaign fund report would look next to that of Councilman David Marks, saying in part, "Steve – let's meet up real soon and talk about Marks' event and how his report will look vs. mine. . . ."

At around 10:27 p.m. Mr. Whalen replied, in part, "Happy to do so whenever you'd like, Tom. Pick one day next week . . . if you want to jump on this soon, it should be next week, unless you want to wait until the last few days of September . . . . Whatever I can do, of course, Steve." Councilman Quirk replied, "I was hoping all the new members would be close in reports. That clearly has been unbalanced now."

At 10:55 p.m. Mr. Whalen responded, in part: "Wait a minute. Tom, you HAVE a fundraiser this Saturday. That is a big opportunity. . . IF you want to make it so, even at this late date. We can help you, completely legally of course within the bounds of campaign finance requirements, raise $$$ to boost the returns shown form this event. Maybe it takes an extra week or two for $$ to trickle in afterwards, but, so what? Let me find out what Scott raised for our Fifth District friend tonight, and see if we can't get you to approximately the same ballpark. . . .[4]"

On August 25, 2011, at around 6:15 p.m., Mr. Whalen sent an Email to Councilman Quirk, saying, "Whenever you want, Tom. You da boss. And, FYI, I talked to Scott B. a couple of hours ago. The DM "David Marks" fundraiser brought in 'just under $15K.' More than I thought but less than you did. The truth usually resides somewhere in the

[4] "Scott" may refer to G. Scott Barhight, Mr. Whalen's attorney. "[O]ur Fifth District friend" appears to refer to Councilman David Marks.

> middle, right? H will be calling you to talk a bit about the rec component at SGHC "Spring Grove State Hospital" apropos of the upcoming MEDCO study, and. . . your favorite topic. If you want us to raise some $$ for you by next Wed, you need to let me know asap. . . like by tomorrow."
>
> At about 8:50 p.m. that night, Councilman Quirk replied, "Yes. . . that would be great."

Five days later, on August 30, 2011, Whalen withdrew the $8,500 that he distributed to the others so that they could make the campaign contributions in their names rather than his. After Whalen distributed the money to those persons, he received an email from Councilman Quirk, who wrote:

> Today is the last day for checks to be dated. We just made a deposit. I think we could prob deposit tomorrow if needed (as long as the checks are dated today?). Let me know if you were successful with Scott or John helping or have any other ideas. Right now I'm coming in 4th. Johnny first, then Cathy Bivens, then David Marks (thanks to Scott), then me. . . . I think. Thanks, Tom.

On August 31, 2011, Whalen personally delivered the unlawful contributions to Councilman Quirk.

F. The Administrative Approvals

On January 9, 2013, the ALJ approved the PUD. After 19 pages of analysis of the voluminous testimony and the governing legal principles, the ALJ concluded that Whalen Properties had presented sufficient evidence to meet the requirements for PUD approval. On the subject of the illegal campaign contributions, the ALJ condemned Whalen's conduct, but noted the absence of evidence that the councilman knew of the illegality. In addition, the ALJ concluded that he did not have the authority to strike down the

resolution that allowed the PUD-approval process to proceed or Bill 38-12, which relaxed some of the requirements for the PUD.

On June 7, 2013, the Board of Appeals affirmed the ALJ's decision and granted the application for the PUD. On the issue of the appearance of impropriety, the Board, like the ALJ, condemned Whalen's conduct and noted the absence of any evidence that the councilman knew of the illegality. Ultimately, however, the Board concluded that the introduction and passage of the ordinance was a legislative act, which the Board had no power to review. On the merits, the Board upheld the ALJ's detailed factual findings and legal conclusions.

G. The Circuit Court Decision

On review of the Board's decision, the circuit court concluded that Councilman Quirk's introduction of Resolution No. 108-11, and the Council's approval of it, constituted a quasi-judicial action, which was not immune from review for "the appearance of impropriety." Nonetheless, the court rejected the challenge, citing *Workers' Comp. Comm'n v. Driver*, 336 Md. 105, 119 (1994), a case that concerns the impropriety of judicial review of the motives underlying legislation. The court affirmed the Board's other decisions on the merits.

DISCUSSION

I. PUD Application and Review Process

As this case requires us to examine an administrative land-use decision, it is necessary first to review the PUD-approval process as it operates in Baltimore County, including the rules governing the introduction and review of any PUD application.

Generally speaking, PUDs are a planning tool employed to allow increased flexibility in the development process. *See Maryland Overpak Corp. v. Mayor and City Council of Baltimore*, 395 Md. 16, 22 n.4 (2006). Specifically, PUDs "are a legislative creation in response 'to changing patterns of land development and the demonstrated shortcomings of orthodox zoning regulations.'" *Tomlinson v. BKL York, LLC,* 219 Md. App. 606, 616 (2014) (quoting *Rouse-Fairwood Dev. Ltd. P'ship v. Supervisor of Assessments for Prince George's Cnty*, 138 Md. App. 589, 624 (2001) (citation omitted)).

As this Court explained in *Tomlinson*, 219 Md. App. at 616 (quoting *Rouse-Fairwood*, 138 Md. App. at 623-34):

> "Generally, [a PUD] is a zoning technique that encompasses a variety of residential uses, and ancillary commercial, and . . . industrial uses. . . . Currently, the improvement of land is in control of developers who assemble large tracts and improve the land for resale or rental. Given this modern pattern of land development, planners and legislators conceived a technique of land-use control which was better adapted to the realities of the marketplace . . . . Planned unit developments make it possible to insure against conflicts in the use of land while permitting a mix of use in a single district . . . . The PUD concept has freed the developer from the inherent limitations of the lot-by-lot approach and thereby promoted the creation of well-planned communities."

Similarly, the Baltimore County Master Plan states:

> The [PUD] represents an alternative development approval process that increases and specifies benefits to the immediate community that the PUD will impact, in exchange for an enhanced plan. . . . Under the PUD process, redevelopment can occur in forms not permitted by the standard application of the [extant] zoning and development regulations. The PUD process can streamline the review process for projects that utilize a site efficiently, are compatible within the community and demonstrate a high degree of design, quality, materials and finish. The flexibility provided by the PUD process makes it an important tool to react to the changing market needs and conditions in the County, and this vital function should be maintained.

Baltimore County Master Plan 2020, p. 178. http://resources.baltimorecountymd.gov/Documents/Planning/masterplan/masterplan2020.pdf (last viewed August 5, 2015) [http://perma.cc/YF8V-GLTP].

In Baltimore County, PUD approval is governed by BCC § 32-4-241 *et seq.* and by the Baltimore County Zoning Regulations ("BCZR"), §§ 430 and 502.1. The process is initiated through a detailed application, which the applicant submits to the county councilmember for the district in which the PUD is to be located. BCC § 32-4-242(a). The application must then be posted on the County Council website, and a community meeting must be held; notice of that meeting must be posted and mailed to all adjoining property owners. *Id.* at § 32-4-242(c)(2)(i)(1). At the discretion of the councilmember, a second, post-submission community meeting may be held.

The pertinent councilmember must then submit the application to the Department of Permits, Approvals and Inspections, which in turn transmits it to the Departments of Planning, Public Works, and Environmental Protection and Sustainability. These departments each review the application and provide written evaluations, which also must be posted on the County's website. *Id.* at § 32-4-242(b)-(c).

Following this preliminary review, the matter is referred to the full County Council for action:

> If the Council finds that the [PUD] will achieve a development of substantially higher quality than a conventional development would achieve and that the proposed site for the [PUD] is eligible for County review, the Council, by adoption of a resolution, may approve the continued review of the [PUD application] in accordance with the procedures of this title and the requirements of the zoning regulations.

> The Council shall give public notice of the resolution, and the Department of Permits, Approvals and Inspections shall post the property, at least 10 business days prior to final vote on the resolution.

Id. at § 32-4-242(d).

If a PUD application survives the "continued review," an ALJ is required to conduct a narrow and fact-specific review for overall compliance with the requirements of, among other things, the BCZR, and the County Development Regulations. *See* BCC § 32-4-245(c)(1)-(5).[5] A "person aggrieved or feeling aggrieved" (*id.* at § 32-4-281(a)) may appeal the ALJ's approval or denial of a proposed PUD to the Board of Appeals (*see id.* at § 32-4-245(d)), which hears the case on the record. *Id.* at § 32-4-281(d). The Board may either:

[5] Section 32-4-245(c)(1)-(5)(c), titled "*Basis for Approval*," provides that "[t]he ALJ may approve a proposed PUD development plan upon finding that:

> (1) The proposed development meets the intent, purpose, conditions, and standards of this section;
>
> (2) The proposed development will conform with Section 502.1.A, B, C, D, E and F of the Baltimore County Zoning Regulations and will constitute a good design, use, and layout of the proposed site;
>
> (3) There is a reasonable expectation that the proposed development, including development schedules contained in the PUD development plan, will be developed to the full extent of the plan;
>
> (4) Subject to the provisions of § 32-4-242(c)(2), the development is in compliance with Section 430 of the Baltimore County Zoning Regulations; *and*
>
> (5) The PUD development plan is in conformance with the goals, objectives, and recommendations of one or more of the following: the Master Plan, area plans, or the Department of Planning.

(i) Remand the case to the ALJ;

(ii) Affirm the decision of the ALJ; *or*

(iii) Reverse or modify the decision of the ALJ if the decision:

1. Exceeds the statutory authority or jurisdiction of the ALJ;

2. Results from an unlawful procedure;

3. Is affected by any other error of law;

4. Is unsupported by competent, material, and substantial evidence in light of the entire record as submitted; or

5. Is arbitrary and capricious.

BCC § 32-4-281(e).

II. Standard of Review

When this Court reviews an administrative agency's final decision, including a land-use decision by a board of appeals, we look "through the circuit court's . . . decisions, although applying the same standards of review, and evaluate[] the decision of the agency." *People's Counsel for Balt. Cnty v. Loyola College*, 406 Md. 54, 66 (2008) (quotation marks and citation omitted).

The scope of review is narrow. *See Md. Aviation Admin. v. Noland*, 386 Md. 556, 571 (2005). It "is limited to determining whether there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law." *Id.* at 571 (quoting *United Parcel Serv., Inc. v. People's Counsel for Baltimore Cnty*, 336 Md. 569, 577 (1994)). As to the former inquiry, we defer to the regulatory body's fact-finding and

drawing of inferences if they were "supported by such evidence as a reasonable mind might accept as adequate to support a conclusion. . . ." *People's Counsel for Balt. Cnty v. Surina*, 400 Md. 662, 681 (2007) (quotation marks and citation omitted).

The reviewing court exercises no such deference where it determines that the agency decision is based on an erroneous conclusion of law. *See Catonsville Nursing Home, Inc. v. Loveman*, 349 Md. 560, 568-69 (1998). In reaching that conclusion, however, we give considerable weight to the agency's expertise in the matter. *See W.M. Schlosser Co. v. Uninsured Employers' Fund*, 414 Md. 195, 205 (2010) ("[A]n . . . agency's interpretations and application of the statute which the agency administers should ordinarily be given considerable weight by reviewing courts"); *accord McCullough v. Wittner*, 314 Md. 602, 612 (1989) (same).

III. "Appearance of Impropriety"

Kenwood Gardens' primary claim is that the Board of Appeals erred in approving the Whalen Properties PUD application because Councilman Quirk's involvement with Whalen created an "appearance of impropriety" that tainted the application and demanded its denial. In particular, Kenwood Gardens contends that this "appearance" was created by the emails in which Whalen and Quirk discussed campaign contributions in the same conversations in which they discussed the PUD; by the contributions' illegality; and by the Council's subsequent passage of Bill 38-12, which was approved

during the review of the PUD application, and which relaxed compatibility restrictions in a way that, Kenwood Gardens argues, helped the PUD gain eventual approval.[6]

A. Authority to Review Quasi-Judicial Acts

In affirming the ALJ's approval of the PUD application, the Board of Appeals asserted that it lacked authority to inquire into the alleged impropriety of Councilman Quirk's or the County Council's actions. It stated:

> [T]he unique procedural nature of the PUD process directly affects the power of both the [ALJ] and this Board to weigh the influence of such alleged impropriety. Unlike any other County Development procedure, a PUD is initiated by a legislative act of the County Council which passes a Resolution which then initiates the PUD review process. The events uncovered by the State Prosecutor's investigation . . . are not reviewable by the [ALJ] or this Board as they are a function of the [] Council, whose inter-workings [sic] are also beyond the review of the ALJ and this Board . . . .
>
> . . . [The ALJ] was correct in barring further inquiry into the alleged *quid pro quo* between Mr. Whalen and members of the County Council. To allow such an inquiry, the ALJ and the Board would be questioning the validity of legislation already passed by the County Council, a power neither the ALJ nor this Board possess. The [Board] does not possess any supervisory power over actions of the County Council. Therefore, the Board may not substitute its judgment for that of the County Council.

We agree with the Board of Appeals that the resolution was a legislative act, and not a quasi-judicial one. The Board did not err in ruling that it lacked the authority to inquire into any "appearance of impropriety" with respect to Councilman Quirk's role in

[6] Among other things, Bill 38-12 removed the requirement that the "scale, proportions, massing, and detailing of the proposed buildings [be] in proportion to those existing in the neighborhood." It appears that, by removing that requirement, the bill removed one basis for Kenwood Gardens' challenges to the PUD.

the PUD-approval process. Although Resolution No. 108-11 clearly addressed a particular parcel of land, in which there was particular community interest, the resolution process lacked the requisite level of fact-finding sufficient to qualify it as a quasi-judicial act under Maryland law.

B. Legal Standards

Legislative acts, when committed by legislative bodies or quasi-legislatively by administrative agencies, are ordinarily subject to extremely limited scrutiny by reviewing courts. *See Md. Overpak Corp. v. Mayor and City Council of Baltimore*, 395 Md. 16, 32-33 (2006) (citing *Armstrong v. Mayor & City Council of Baltimore*, 169 Md. App. 655, 666 (2006) ("*Armstrong III*")); *Gisriel v. Ocean City Bd. of Supervisors of Elections*, 345 Md. 477, 490 n.12 (1997); *see also Dept. of Natural Res. v. Linchester Sand & Gravel Corp.*, 274 Md. 211, 224 (1975) ("In those instances where an administrative agency is acting in a manner which may be considered legislative in nature (quasi-legislative), the judiciary's scope of review of that particular action is limited to assessing whether the agency was acting within its legal boundaries . . .").

When legislative entities exercise their legislative prerogatives within their prescribed zones of power, a presumption of correctness attaches to their judgment. That presumption may be overcome only under very limited circumstances. As the Court of Appeals stated in *Linchester Sand*, 274 Md. at 218, in discussing judicial review of acts of the General Assembly:

> [W]e are mindful of the fact that enactments of the Legislature are presumed to be constitutionally valid and that this presumption prevails until it appears that the enactment under consideration is

> invalid or obnoxious to the expressed terms of the Constitution or to the necessary implication afforded by, or flowing from, such expressed provisions.

(citations omitted); *accord Cnty Council of Prince George's Cnty v. Offen*, 334 Md. 499, 507 (1994) (stating that "'zoning is a legislative function, and. . . [w]hen a comprehensive map designed to cover a substantial area is adopted, it is entitled to the same presumption of correctness as an original zoning.' This presumption of correctness is particularly difficult for a property owner to overcome") (quoting *Ark Readi-Mix Concrete Corp. v. Smith*, 251 Md. 1, 4 (1968)).

For these reasons, courts are loath to question the motives of that legislative body or the myriad factors that may have animated it in the exercise of its collective judgment. "[W]hen the 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." *Workers' Comp. Comm'n*, 336 Md. at 118; *see also Bethel World Outreach Church v. Montgomery Cnty*, 184 Md. App. 572, 598 n.17 (2009) (quoting *Cnty Council for Montgomery Cnty v. Dist. Land Corp.*, 274 Md. 691, 704 (1975)) ("In reviewing legislative action, we refrain from 'institut[ing] an inquiry into the motives of the legislature in the enactment of laws'").[7]

[7] This approach is consistent with that of the majority of jurisdictions, which generally do not apply conflict-of-interest review (such as that brought by Kenwood Gardens here) to purely legislative acts, in part because of a concern for separation of powers and a reluctance to inquire into legislators' individual motives. *See, e.g., DiRico v. Town of Kingston*, 458 Mass. 83, 95-96 (2010)) (stating that, for any (continued...)

In comparison to legislative actions, quasi-judicial actions are subject to greater review and are accorded considerably less deference. *See Bucktail, LLC v. Cnty Council of Talbot Cnty*, 352 Md. 530, 543 (1999) (stating that "even absent [legislative authority], the judiciary has an undeniable constitutionally-inherent power to review, within limits, the decisions of . . . administrative agencies"); *see also Linchester*, 274 Md. at 224 ("[W]hen an agency is acting in a fact-finding capacity (quasi-judicial) the courts review the appealed conclusions by determining whether the contested decision was rendered in an illegal, arbitrary, capricious, oppressive or fraudulent manner").

"Although many relevant appellate cases refer to quasi-judicial decisions derived from pure administrative agencies, fundamentally legislative bodies . . . similarly may act in a quasi-judicial capacity." *Overpak*, 395 Md. at 37 (internal citation omitted) (citing *Prince George's Cnty v. Beretta U.S.A. Corp.*, 358 Md. 166, 175 (2000)); a*ccord Bucktail*, 352 Md. at 545-48 (County Council of Talbot County acted quasi-judicially in denying application for growth allocation under Critical Areas legislation); *Mayor and Council of Rockville v. Woodmont Country Club,* 348 Md. 572, 585 (1998) (Rockville City Council acted quasi-judicially in imposing special assessment); *Armstrong III*, 169 Md. App. at 672 (Baltimore City Council acted quasi-judicially in enacting ordinance that granted permission to establish, maintain, and operate specific parking lot).

---

arguably reasonable zoning bylaw, "the judgment of the local legislative body responsible for the enactment must be sustained . . . . Such an analysis is not affected by consideration of the various possible motives that may have inspired legislative action") (internal citations and quotation marks omitted).

Therefore, in this dispute, the permitted scope of judicial review of the Baltimore County Council's passage of Resolution 108-11, following Councilman Quirk's introduction of it, hinges on the precise nature of that resolution: whether it was a quasi-judicial or a legislative act.

"[W]hat is quasi-legislative and what is quasi-judicial is sometimes difficult to discern." *Armstrong III*, 169 Md. App. at 671. The Court of Appeals, in *Overpak*, reiterated the current standard for determining whether an act is legislative or quasi-judicial in nature:

> The outcome of the analysis of whether a given act is quasi-judicial in nature is guided by two criteria: (1) the act or decision is reached on individual, as opposed to general, grounds, and scrutinizes a single property; and (2) there is a deliberative fact-finding process with testimony and the weighing of evidence.

Overpak, 395 Md. at 33 (citing *Armstrong III*, 169 Md. App. at 666-71); *accord Reese v. Dept. of Health and Mental Hygiene*, 177 Md. App. 102, 147 (2007) (quoting *Overpak*).[8]

With respect to the first element, the Court explained: "[P]roceedings or acts that scrutinize individual parcels or assemblages for the consideration of property-specific proposed uses, at the owner's or developer's initiative, ordinarily suggest a quasi-judicial process or act." *Overpak*, 395 Md. at 37; *see also id.* at 39; *accord Bethel*, 184 Md. App. at 588. The Court distinguished such individualized determinations "from acts that primarily have broader, community-wide implications which encompass considerations

[8] The parties' briefs were unhelpful in evaluating this dispositive issue. Kenwood Gardens assumed that the adoption of the resolution was a quasi-judicial ordinance because it affected only one property. Whalen and Whalen Properties did not analyze the issue at all.

affecting an entire planning area or zoning district." *Overpak*, 395 Md. at 36; *see also Armstrong III*, 169 Md. App. at 668; *compare Bethel*, 184 Md. App. at 596 (holding that County Council's denial of church's request to change "water and sewer plan category" was "based on general policy grounds and not on the particular characteristics of the property in question, and therefore fails to meet *Maryland Overpak*'s test for a quasi-judicial action") (citing *Overpak*, 395 Md. at 33, 39).

In addressing the second element, the Court explained that the requisite fact-finding process usually entails "the holding of a hearing, the receipt of factual and opinion testimony and forms of documentary evidence, and a particularized conclusion as to the development proposal for the parcel in question." *Overpak*, 395 Md. at 38 (citing *Woodmont*, 348 Md. at 585). "[S]ite-specific findings of fact are necessary not only to inform properly the interested parties of the grounds for the body's decision, but also to provide a basis upon which judicial review may be rendered." *Overpak*, 395 Md. at 40 (internal citations omitted). The fact-finding process is "'the most weighty criterion.'" *Id.* at 33 (quoting *Armstrong III*, 169 Md. App. at 668-69 (citation omitted)).

In *Overpak*, the Court of Appeals concluded that the Baltimore City Council's amendment of a previously-approved PUD amounted to quasi-judicial rather than legislative action, because the amendment dealt with a specific property and its unique circumstances, and because the City Council, in enacting the ordinance that amended the PUD, made an extensive body of factual findings following comprehensive, adversarial hearings. *See Overpak*, 395 Md. at 40-44.

The Court first noted that, under the particular statutory framework in Baltimore City, the Council based the decision to create and to amend the PUD "upon grounds focused on a development plan for that plot of land only." *Id.* at 40-41. In other words, the Council made its decision "on an individualized basis." *Id.* at 41. The Court continued: "This property alone was singled out for proposed amendment to its zoning, rather than the entire zoning district or planning area in which it is located." *Id*. at 41.

Turning next to "the quality of the proceeding employed to examine the PUD amendment proposal[,]" the Court observed that the City Council complied with State and local enactments that require a hearing so that parties in interest and the public have an opportunity to voice concerns. *Id.* (citations omitted). The Court emphasized that the City Council undertook an expansive and highly specific fact-finding process, in which it was charged with assessing the amendment in light of numerous statutory criteria and "points of consideration" under the Zoning Code. *Id.* (citing Baltimore, Md., Zoning Code §§ 9-112 and 14-205(a)).

The overall process involved in-depth review of and comments from eight city agencies or governmental actors; an advertised public hearing by the Land Use and Planning Committee of the City Council, which heard oral testimony from "the developer and members of the public" with respect to the PUD and its potential benefits and community effects; and, "concurrent with this hearing and referral process," ultimate approval of the development plan by the City Council, "which is required to address thirteen separate considerations affecting the site of the proposed PUD or any substantive amendment to an approved PUD." *Id.* at 43-44 (citations omitted).

In light of this extensive process, the Court concluded that:

> The gravamen of these standards and the inquiry surrounding them is a detailed and thorough examination of the unique circumstances of a specific PUD proposal for a specific parcel, including the potential for adverse impacts on adjacent properties. . . . [F]indings of fact were made based on reports from governmental agencies and departments and a public hearing, wherefrom the final governmental decision-maker drew its findings as to the pending matter affecting a particular piece of property. We are satisfied that the process for the approval of PUDs, and substantive amendments thereto, in Baltimore City is of sufficient quasi-judicial character[.]

Id. (internal citations omitted); *accord Armstrong III*, 169 Md. App. at 670 (concluding that City Council's act was quasi-judicial based on testimony of several concerned community members, questions of several Committee members directed to developer regarding parking lot's economic impact, and Council's final consideration of several "fact-intensive" site-specific factors).

Similarly, in *Armstrong III*, 169 Md. App. at 670, this Court held that the Baltimore City Council had acted in a quasi-judicial or adjudicative capacity when it enacted legislation that permitted a landowner to construct a parking lot. A City Council committee heard testimony from residents regarding the effect that the lot would have on their properties and other nearby properties. *Id.* The committee also heard from the landowner about the impact of improving the property by constructing the parking lot. *Id.* The ordinance concerned a single property, and the Council's decision involved the application of statutory criteria (regarding need and aesthetics) to the facts of this particular case. *Id.* at 670-71. Accordingly, the ordinance met the criteria for a quasi-judicial act.

C. Analysis

In this case, the process – beginning with Councilman Quirk's introduction of Resolution No. 108-11 to the County Council, and culminating in the Council's adoption of the resolution – was legislative rather than quasi-judicial in character. *Overpak*, 395 Md. at 44. While the resolution arguably entails a small measure of fact-finding, it falls well short of the extensive, detailed, and deliberative processes that characterize quasi-judicial actions under our precedent.

Admittedly, some factors do weigh in favor of the conclusion that the process was quasi-judicial rather than legislative. The process concerned one development project, whose approval hinged on concerns unique to that property. In that respect, the resolution satisfies the first factor of *Overpak* and differs from the legislative "acts that primarily have broader, community-wide implications which encompass considerations affecting an entire planning area or zoning district." *Overpak*, 395 Md. at 36.

The resolution fails, however, to satisfy the second factor, as it entails only the most bare, minimal fact-finding process. In contrast to the fact-finding hearings that occurred in *Overpak* and *Armstrong III*, which involved the presentation of testimony and other evidence before an arbiter, the County Council conducted no hearing, let alone any adversarial hearing, in this case. The County Council certainly considered no documentary evidence or opinion testimony, as the Baltimore City Council did in *Overpak*. At most, the County Code required a "post-submission community meeting," where Whalen Properties informed interested persons about the PUD and interested community members could "ask questions or make comments." *See* BCC § 32-4-

242(c)(1)-(2). After that meeting, the County Code permitted members of the public to submit "written input and comments" to the County Council. *See id.* at § 32-4-242(c)(2)(iii). Although this limited process allowed members of the public to express their views about the PUD, it bears no resemblance to the evidentiary hearings that mark the quasi-judicial determinations in *Overpak* and *Armstrong III*. Indeed, the provision for public comment bears a striking resemblance to the public comments regularly permitted following the ordinary proposal of agency regulations.

Second, the review process here was minimal and preliminary. Under BCC § 32-4-242(c)(2)(ii)(4)), the applicant must compile comprehensive minutes of the community meeting and forward them "to the Council member and to the Department of Permits, Approvals and Inspections[.]" The application must then go through a "preliminary review," wherein four county departments review the application and together provide to the Council member a "written preliminary evaluation" of the application. *Id.* at § 32-4-242(c)(3)). In clear contrast to the statutorily-required, factually-intensive review by the many city departments in *Overpak*, four departments in this case provided a "preliminary evaluation," with no apparent guiding criteria and with no apparent further required communication with the Council to which the evaluations were first submitted.

Lastly, the County Council's eventual adoption of the resolution, while resting on certain nominal findings that are embedded in the recitals in the resolution, falls far short of the fact-intensive determinations in decisions such as *Overpak* and *Armstrong III*. The findings, which would be more accurately described as conclusory factual assertions, required little or no factual inquiry. They consist of the name and proposed location of

the PUD, a superficial and cursory review of the procedural and statutory factors that inform the decision, and a declaration that the proposal "meets the objectives of the Baltimore County Master Plan 2020." Tracking the language of the BCC, the resolution concludes that "the proposed [PUD] will achieve a development of substantially higher quality than a conventional development would achieve and that the proposed site for the [PUD] is eligible for county review[.]" On that basis, the Council resolved that the PUD was "eligible for County review" in accordance with the applicable regulations. The resolution is so rote and formulaic that it may well have originated in a form that the Council employs whenever it considers a resolution to authorize review of any PUD application.

The resolution's "findings," coming on the heels of the threadbare process outlined above, do not reflect either substantive or fact-intensive review or the weighing of opposing testimonial or physical evidence. The resolution makes no reference to the substance or conclusions of any reports or reviews by any agency departments, aside from its cursory mention of the statutorily-prescribed "preliminary evaluation" required by the BCC. Nor does the resolution rest its findings on any of the numerous guiding statutory criteria and standards, such as the 13 separate criteria that the Baltimore City Council was statutorily required to consider in *Overpak*, 395 Md. at 44.

Finally, unlike all of the recognized quasi-judicial decisions, Resolution 108-11 was not the final determination that established whether Whalen Properties' PUD would be built; rather it was a mere preliminary finding of eligibility that allowed for the "continued review" of that PUD proposal by the County. This continued review, in turn,

consisted of all of the substantive, fact-intensive elements clearly missing from the resolution process; involved a five-day hearing that provided both parties with opportunity to present testimony and evidence, including cross-examination and rebuttal arguments; and culminated in a final conclusion by an ALJ charged with determining facts on the record according to numerous statutory and regulatory standards. That final decision, unlike the preliminary resolution here, provided for continued review on appeal by way of challenge to the Board of Appeals. The final decision, by the ALJ, was the quasi-judicial determination in this case.

For these reasons, we hold that the process that culminated in Resolution 108-11 was legislative, and not quasi-judicial, in nature. Accordingly, the Board of Appeals (and the ALJ) properly determined that Councilman Quirk's motivations were beyond the scope of review. The courts are not the place to adjudicate allegations of the "appearance of impropriety" in the legislative process. *Workers' Comp. Comm'n*, 336 Md. at 119.

In reaching this conclusion, we do not condone or excuse the conduct of the persons involved. When the public reads email exchanges in which a developer and an elected official discuss the developer's campaign contributions in virtually the same breath as a pending project that cannot proceed without the official's approval, it reinforces every base suspicion about latent corruption in the political process. When the public learns that the developer illegally circumvented the contribution limits in State law in order to assist the elected official in meeting his stated fundraising goals, it can only inspire corrosive cynicism about the operation of government. Still, if the conduct in question violates the criminal law, a prosecutor can pursue the violator, as happened here.

If the conduct violates election law, the relevant civil authorities can pursue it as well. If it violates neither, then the elected official, at least, is still answerable to his constituents, who remain free to exercise their democratic prerogatives.[9]

IV. Due Process Challenge

Kenwood Gardens argues that its "'due process' rights were violated by the totality of the County's actions and the ALJ's and [Board's] Decisions and Orders." In essence, Kenwood Gardens collects a disparate array of allegedly erroneous rulings, none of which on its own would likely require reversal, and argues that, in the aggregate, they effectuated a denial of due process rights. This argument has no merit.

"Procedural due process, guaranteed to persons in this State by Article 24 of the Maryland Declaration of Rights, requires that administrative agencies performing adjudicatory or quasi-judicial functions observe the basic principles of fairness as to parties appearing before them." *Regan v. State Bd. of Chiropractic Examiners*, 355 Md. 397, 408 (1999) (quoting *Md. State Police v. Zeigler*, 330 Md. 540, 559 (1993)); *accord Schultz v. Pritts*, 291 Md. 1, 7 (1981).

In administrative proceedings, the scope of due process "is flexible and calls only for such procedural protections as the particular situation demands." *State v. Cates*, 417 Md. 678, 698 (2011) (citing *Mathews v. Eldridge*, 424 U.S. 319 (1976)). Yet, at

[9] Under the Maryland Public Ethics Law, Md. Code (2014) § 5-807(a)(1) of the General Provisions Article, each county must enact provisions to govern conflicts of interest for local officials. Section 5-505 of the General Provisions Article generally prohibits officials from soliciting or accepting gifts. Section 5-101(p), however, contains a loophole that excludes campaign contributions from the definition of "gifts."

minimum due process requires "notice and opportunity for hearing appropriate to the nature of the case." *Canaj, Inc. v. Baker and Div. Phase III*, 391 Md. 374, 424 (2006) (citation and quotation marks omitted); *see Cates*, 417 Md. at 699 ("it is sufficient if there is at some stage an opportunity to be heard suitable to the occasion and an opportunity for judicial review") (citation omitted). Such hearings must afford parties reasonable rights to cross-examine witnesses against them. *See, e.g., Woodmont Country Club*, 348 Md. at 582.

Consistent with these broad requirements, the ALJ conducted an extensive, five-day hearing that afforded Kenwood Gardens an ample opportunity to present its case against the PUD application. Kenwood Gardens made full use of those opportunities. Indeed, the record reflects that in the many months leading up to the hearings, Kenwood Gardens played a substantial role in a full and participatory PUD review process. Nevertheless, Kenwood Gardens now claims that the County withheld important PUD-related documents that hindered its ability "to prepare a case before the ALJ," and that the County prevented agency witnesses from revealing the contents of these important materials. We disagree.

In connection with its grand jury investigation into Whalen's campaign finance violations, the State Prosecutor subpoenaed eight County agencies. The subpoenas required the agencies to produce a range of information, including all communications between Whalen and agency employees regarding his PUD application. Later, just before the start of the hearings, the County Attorney sent a letter to the ALJ, in which he confirmed the existence of the subpoena requests and reported that, according to the State

Prosecutor, "any further disclosure of information related to the subpoenas would interfere with their investigation and not be in the public interest." The County Attorney added that "disclosure of the subpoenas, if requested under the state Public Information Act, may be denied under sections 10-618(a) and (f) of the State Government Article . . . , which authorizes the custodian of a record to deny disclosure of certain records of investigations if [it] would be contrary to the public interest."

In accordance with the County Attorney's letter, some agency witnesses refused to disclose information specifically related to the investigation or the related subpoena requests.[10] In addition, the ALJ stated that he would not require those witnesses to disclose the files that the State Prosecutor had subpoenaed. Contrary to Kenwood Gardens' contentions, however, the record reflects that at no time did the County instruct agency heads to withhold any other substantive materials or information pertaining to their review of the PUD application for overall statutory and regulatory compliance. Furthermore, at no time did those witnesses refuse to disclose any such aspects of the County's files – including, among other things, all of the agencies' reports and comments on the PUD application throughout all prior stages of the review process.

Moreover, under BCC § 32-4-227(c)(1), the Department of Permits, Approvals, and Inspections must compile and maintain "complete files with respect to *all*

[10] The Board observed that, after one County witness refused to allow Kenwood Gardens to examine the Department of Planning's file, the Director of the Department of Planning wrote to the ALJ and "indicated" that Kenwood Gardens could review the entire file. Kenwood Gardens did not recall the witness after obtaining the opportunity to review that file.

[Development Plan] hearing proceedings" over which a ALJ presides.[11] Upon request by any person, the Department of Permits, Approvals, and Inspections must also "make available . . . copies of *any portion of the Development Plan file*[]" (emphasis added). BCC § 32-4-227(c)(3). The County made this information available to Kenwood Gardens even after the State Prosecutor had issued his subpoenas. The information was also available for Kenwood Gardens' review, without any limitation at all, in the many months of the PUD review process before the prosecutor issued the subpoenas.

In short, Kenwood Gardens enjoyed abundant process in this dispute and was afforded broad access to PUD-related agency files. Kenwood Gardens was not, however, entitled to discovery of agency materials narrowly related to an ongoing grand jury investigation, no matter what Kenwood Gardens believed those protected materials *might* have contained.

We reject Kenwood Gardens' attempt to confect a due process violation out of the "totality" of the alleged errors. The ALJ's initial denial of Kenwood Gardens' request to postpone the start of the hearings, for instance, was unproblematic. The ALJ reasonably concluded that it would be premature to stay the hearings because of an investigation whose subject was, at that time, at most a matter of speculation. A party cannot conjure a

[11] These Development Plan files "shall include at least the following documents: (i) The Development Plan; (ii) Reports or comments or proposed or requested conditions relating to the plan from county agencies, the community input meeting, community groups, or any person; (iii) Exhibits introduced in evidence at the hearing; (iv) The final decision rendered by the Hearing Officer; and (v) Papers, records, and dockets required under §§ 32-3-106 and 32-3-109 of this article. BCC § 32-4-227(c)(2).

constitutional violation out of routine discretionary rulings. *McAllister v. McAllister*, 218 Md. App. 386, 405-06 (2014).

We also reject Kenwood Gardens' contention that Bill 38-12 was an improper "special law" that the Council enacted for the sole purpose of ensuring the passage of Whalen Properties' PUD application.[12] Bill 38-12, which is now codified at BCC § 32-4-402.1, addresses a broad category of PUD applications. A cursory review of the bill's text reveals that it was intended to provide alternative compatibility requirements not just for this PUD development, but for any future PUD developments that were to be located in a number of specified areas of Baltimore County. We are unwilling to conclude, as Kenwood Gardens insists we must do, that because the bill applied to this PUD application, the law must have been designed specifically to assist the passage of *this* application alone. This Court requires a stronger basis to invalidate duly-enacted legislation on the ground that it is a special law.

Lastly, we fail to see any due process violation in Whalen's allegedly false testimony that he had not given campaign contributions to Councilman Quirk. It is less

[12] The Maryland Constitution prohibits the General Assembly from passing special laws in certain enumerated cases, *see* Md. Const., Art. III § 33, and this prohibition flows through to Baltimore County via the Express Powers Act. *See* Md. Code (2013, 2013 Repl. Vol.), § 10-202 of the Local Government Article. A special law within that prohibition is "one that relates to particular persons or things of a class, as distinguished from a general law which applies to all persons or things of a class." *Cities Svcs. Co. v. Governor*, 290 Md. 553, 567 (1981) (quoting *Prince George's Cnty v. Baltimore & O.R. Co.*, 113 Md. 179, 183 (1910)). The Court of Appeals has stated that the purpose of the prohibition on special laws is to prevent the legislature from passing private acts for the benefit of particular persons or individual cases. *See Potomac Sand & Gravel v. Governor*, 266 Md. 358, 378 (1972).

than entirely clear that the testimony even relates to the 2012 election, in which Whalen made the illegal contributions, as opposed to an earlier election in 2010. Nonetheless, even if the testimony did relate to the 2012 election, the introduction of one item of false testimony ordinarily cannot give rise to a due process violation: otherwise, many, if not most, trials, hearings, and administrative proceedings would be subject to this kind of post hoc challenge.[13]

V. Community Issues

Kenwood Gardens also challenges the Board of Appeals' affirmance of the ALJ's rulings on various community concerns raised at the Whalen Properties PUD hearings – specifically, concerns related to noise, traffic, and the modifications of certain compliance standards.

The Board reviewed these community concerns in Kenwood Gardens' appeal of the ALJ's decision. The Board observed that, with respect to all three issues, the ALJ had opportunity to see and judge the credibility of various witnesses with opposing views and to weigh their testimony, but that the ALJ found that Kenwood Gardens had failed to rebut the opposing expert testimony on those issues. Noting its strict standard of review (*see* BCC § 32-4-281(e)), the Board concluded that the ALJ's decisions did not exceed his statutory authority or jurisdiction or result from an unlawful procedure or other error

[13] We decline to take issue with the ALJ's denial of Kenwood Gardens' motion for mistrial (also argued on due process grounds) or its final approval of the PUD application, or with the Board of Appeals' subsequent approval of the application on appeal.

of law; that the decision was not arbitrary and capricious; and that the ALJ's findings were supported by substantial evidence in light of the record submitted before it.

The Board thus affirmed the ALJ's rulings. In light of our review of the record, we see no error in the Board's judgment.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.[14]

[14] After oral argument, the panel, on its own motion, raised a potential ground for disqualification of Judge Arthur. Through its review of the record, the panel discovered that Judge Arthur's former law firm, Kramon & Graham, P.A., represented Mr. Whalen in the criminal proceedings relating to the illegal campaign contributions that are involved in this case. Judge Arthur had no involvement in the representation of Mr. Whalen and did not know of the representation at the time when it was occurring or at any time before the panel learned of it. Pursuant to Rule 2-11(c) of the Maryland Code of Judicial Conduct, the panel disclosed the ground for disqualification and asked the parties whether they agreed that Judge Arthur should not be disqualified. Both parties agreed in writing that Judge Arthur should not be disqualified.