Circuit Court for Montgomery County
Case No. 425210-V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 302

September Term, 2018

JACKSON BENNETT, *ET AL.*

v.

MONTGOMERY COUNTY, MARYLAND, *ET AL.*

Nazarian,
Wells,
Adkins, Sally D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: September 3, 2019

* This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This appeal concerns an update to a 1982 master plan for an area in Montgomery County known as Westbard. The Westbard Sector Plan (the "Plan") was adopted on May 3, 2016 by the County Council for Montgomery County sitting as the District Council. A group of residents (the "Residents") who live within and near Westbard filed this declaratory judgment action in an attempt, among other things, to have the Plan declared void. They complain *first* that Montgomery County failed to comply with requirements under County law to assess and consider the Plan's potential impact on greenhouse gas emissions. *Second*, they assert violations of due process from the County's alleged failure to comply with certain public hearing requirements. *Third*, and finally, they claim that a developer and a public housing agency engaged in contract zoning with the County by promising to build in Westbard a greater than required percentage of affordable housing units in exchange for the County's promise to make certain zoning concessions. They contend that they will suffer a potential decrease in their property values and a potential increase in their taxes if the Plan remains in effect.

After hearing argument on motions to dismiss and cross-motions for summary judgment, the Circuit Court for Montgomery County entered judgment on the greenhouse gas and public hearing claims in favor of the County and the two intervenor defendants and dismissed the third count for failure to state a claim. The Residents appealed and Montgomery County cross-appealed. We hold that the Residents failed to establish standing to bring their claims, vacate the circuit court's order, and remand with instructions to enter an order dismissing the Third Amended Complaint.

I. BACKGROUND

A. The Legal Framework

1. Planning and Zoning in Montgomery County, Generally

Counties in Maryland get their authority to regulate land use from legislation passed by the General Assembly. *County Council of Prince George's Cty. v. Zimmer Dev. Co.*, 444 Md. 490, 503–04 (2015). Montgomery County's land use authority derives from the Maryland-Washington Regional District Act ("RDA"), which is codified in Division II of the Land Use Article of the Maryland Code ("LU").[1] *See id.* at 523–24. The RDA, as well as the Montgomery County Code, govern the requirements and procedures at issue here. *See id.*

The RDA divides land use control into three broad categories: land use planning, zoning, and subdivision regulation. *See Board of Cty. Comm'rs of Cecil Cty. v. Gaster*, 285 Md. 233, 246 (1979). This case concerns land use planning, a process Maryland has "long recognized" as being distinct from zoning. *County Council of Prince George's Cty. v. Chaney Enters. Ltd. P'ship*, 454 Md. 514, 522 (2017). Planning includes "the development of a community, not only with respect to the uses of lands and buildings, but also with respect to streets, parks, civic beauty, industrial and commercial undertakings, residential developments and such other matters affecting the public convenience and welfare as may be properly embraced within the police power." *Gaster*, 285 Md. at 246 (*quoting* 1 E.E.

[1] The "Regional District" consists of most of Montgomery and Prince George's Counties. *See* LU § 20-101, §§ 20-701–706; *see also Zimmer*, 444 Md. at 525.

Yokley, *Zoning Law and Practice* § 1–2 (4th ed. 1978)); *see also Chaney*, 454 Md. at 522 (observing that plans "serve as a guide for long-term land use and development goals and propose zoning changes to implement these aims"). Zoning, on the other hand, "is 'the process of setting aside disconnected tracts of land varying in shape and dimensions, and dedicating them to particular uses designed in some degree to serve the interests of the whole territory affected by the plan.'" *Id.* (*quoting Zimmer*, 444 Md. at 505).

The RDA assigns the primary responsibility for planning to the Maryland-National Park and Planning Commission ("M-NPPC"), a non-partisan body of ten members chosen equally from Montgomery County and Prince George's County. LU § 15-102. The five M-NPPC members from each county also serve as the "Planning Boards" for their respective counties. LU § 20-201.

At the direction of a county's District Council, the M-NPPC is charged with "initiat[ing] and adopt[ing]" a global "general plan" for each county. LU § 21-103(a); *see also* LU § 21-104. The District Council may direct the M-NPPC to adopt plans that are smaller in scope, including "a functional master plan" or "an area master plan." LU § 21-103(c)(2); *see also* LU § 21-105, § 21-106. This case concerns an "area master plan," which the parties also call a "sector plan." An area master plan differs from a general plan in that it "govern[s] a specific, smaller portion of the County and [is] often more detailed in [its] recommendations than the countywide General Plan as to that same area." *Maryland-Nat'l Capital Park & Planning Comm'n v. Greater Baden-Aquasco Citizens Ass'n*, 412 Md. 73, 89 (2009) (*quoting Garner v. Archers Glen Partners*, 405 Md. 43, 48

n.5 (2008) (brackets omitted)).

2. Land Use Planning in the Montgomery County Code

Chapter 33A of the Montgomery County Code sets forth planning procedures for the County. The subsections relevant to this case are (1) MCC § 33A-8 (titled "District Council action"), which outlines the procedures for public hearings before the District Council concerning a "Planning Board draft plan" and (2) MCC § 33A-14 (titled "Greenhouse Gas Emissions"), which provides that the Planning Board must "assess" and "consider" various factors related to greenhouse gas emissions.

First, MCC § 33A-8(a)[2] provides that, after receiving the Planning Board's draft plan, the District Council may schedule a public hearing, and also that such a hearing is not required if the District Council does not intend to propose changes to the draft:

> **Sec. 33A-8. District Council action.**
>
> (a) (1) The Council, under its Rules of Procedure, must set the date for a public hearing on the Planning Board draft plan no later than 105 days after the Council receives the plan or amendment from the Planning Board.
>
> (2) The Council must hold its hearing on the Planning Board draft plan at least 30 days, but not more than 60 days, after the hearing was advertised in at least one newspaper of general circulation in the County.
>
> (3) A public hearing is not required if the District Council does not intend to propose any revisions, modifications, or amendments to the Planning Board draft plan.

[2] MCC § 33A-8 was last revised in 2009. *See* Montgomery County Ord. No. 16-36, § 1 (2009).

The next subsection, (b), is not relevant to this dispute—it outlines notice requirements for the public hearing not at issue here. The next and final subsection, (c), provides for the next step in the process: after the public hearing takes place, the District Council "must" approve or disapprove the Planning Board draft plan, "with any modifications or amendments" it finds appropriate:

> (c) (1) After public hearing, the District Council must approve or disapprove the Planning Board draft plan or amendment with any modifications or amendments that the District Council finds appropriate.
>
> (2) The District Council must not act on any plan after October 31 of any year in which a general election for County Council is held until the first day of a new Council's term. The applicable deadline for approval or disapproval under subsection (c)(3) is not suspended by this subsection.
>
> (3) Within 180 days after receiving the Executive's fiscal impact analysis, or within 240 after the Planning Board draft is transmitted to the County Council if the Executive does not submit a fiscal impact analysis, the District Council must approve, modify, or disapprove the plan or amendment. The District Council may extend this deadline by one or more 60-day periods by a vote on each extension of two-thirds of those members present and voting.

MCC § 33A-8.

Second, MCC § 33A-14, a standalone section in an article titled "Components of the Plan," requires the Planning Board to "assess" and "consider" various factors related to greenhouse gas emissions when it prepares the draft plan:

> **Sec. 33A-14. Greenhouse Gas Emissions.**
>
> As part of the factors and conditions outlined in § 7-108 of the Regional District Act and § 1.01 and § 1.03 of Article 66B,[3] in preparing the Plan, the Planning Board must:
>
> (a) assess the Plan's potential impact on greenhouse gas emissions in the County, including a carbon footprint analysis;
>
> (b) consider ways to reduce vehicle miles traveled in the County; and
>
> (c) consider options that would maximize greenhouse gas emissions.

3. Rezoning

As noted above, the District Council's adoption of a sector plan does *not* implement rezoning. Zoning is a separate function, implemented through a different process, even though the District Council conducts that process as well. LU § 22-104; LU § 22-104(a)(2) (authorizing the Montgomery County District Council to, among other things, "adopt and amend any map accompanying the text of the zoning law"). Chapter 59 of the MCC is referred to as the County's "Zoning Ordinance." The Zoning Ordinance defines a "Sectional Map Amendment" as a document that "rezones or confirms the zoning of a

[3] MC § 33A-14 was enacted in 2008 (2008 L.M.C., ch. 11, § 1) and references sections of the Maryland Code that have since been recodified and/or repealed. *First*, § 7-108 of the Regional District Act concerned the procedures for the district councils of Prince George's and Montgomery Counties to initiate and adopt general master plans, area master plans, and plan amendments. Md. Code (1957, 2005 Repl. Vol., 2008 Supp.), § 7-108 of Article 28. That section was revised and recodified as Title 21 of Land Use Article in 2012. 2012 Md. Laws, Chap. 426. *Second*, section 1.01 of Article 66B concerned land use planning generally and was revised and recodified as § 1-201 of the Land Use Article in 2012. *Id.* And *third*, Section 1.03 of Article 66B concerned requirements for comprehensive plans for charter counties and was repealed in 2012. *Id.*

substantial area of the County." Zoning Ordinance § 7.2.3(A)(1).

The Land Use Article provides a statutory opportunity to challenge the District Council's adoption of a sectional map amendment: a petition for judicial review which must be filed in the circuit court "within 30 days after the district council takes the final action." LU § 22-402(a)(2); *see also id.* § 22-402(a)(1). The District Council did adopt a sectional map amendment that rezoned the Westbard area (hereinafter, the "SMA"), but it is undisputed that the Residents did not file a petition for judicial review, and the Residents do not challenge the SMA in this case.

In contrast, neither the Land Use Article nor the MCC provide expressly for judicial review of a general or area master plan in Montgomery County. *Compare Chaney*, 454 Md. at 530 (holding that judicial review of a master plan amendment in *Prince George's* County was provided for under LU § 22-407(a)(1) and observing that, in contrast, LU § 22-402 "limits judicial review in Montgomery County" to individual map amendments and sectional map amendments). However, as we discuss further below, the absence of an express provision for judicial review doesn't necessarily preclude a challenge of a Montgomery County area master plan in the circuit court.

4. Sketch Plans

Finally, the Residents' complaint contains references to a "sketch plan," although they have since represented that the sketch plan referenced in the complaint was withdrawn. Nevertheless, for context, Zoning Ordinance § 7.3.3 defines a "sketch plan" as a developer's preliminary development plan for a project:

> A sketch plan describes a project at an early stage to provide the public and the Planning Board the chance to review the proposed development for general design, density, circulation, public benefits, and relationship to the master plan before a developer is required to expend significant resources on design and engineering.

Zoning Code § 7.3.3(A)(2). The developer submits the sketch plan to the Planning Board for approval. Zoning Ordinance § 7.3.3(B)–(F). Before approving a sketch plan, the Planning Board must schedule a public hearing on it. Zoning Ordinance § 7.3.3(C). The sketch plan must, among other things, "substantially conform with the recommendations of the applicable master plan." *Id.* § 7.3.3(E)(2).

B. Factual Background

1. The Parties

The Residents are approximately twenty-two individuals who live in Bethesda or Chevy Chase. Some, but not all, live within or near the Westbard area, and some are alleged to have children who attend Montgomery County Public Schools.

One type of harm the Residents seek to redress is reduced property values, which they allege the Westbard Sector Plan would cause through the following: a "loss of open space and open visual vistas" due to increased building heights and densities after rezoning; increased traffic congestion; and adverse environmental impacts, including increased greenhouse gas emissions.

Another type of harm they allege is a potential increase in taxes from capital improvement projects associated with the Plan. They allege that the Plan would require (1) "about $42 million in capital costs to the County over the next few decades," including

costs for road, bikeway, and sidewalk projects, and costs for additional roadwork and "park-related improvements"; (2) $5.5 million in annual expenses for additional students in the school system; and (3) additional costs resulting from (unidentified) "publicly funded financing sources" that the intervenor defendants "will use to facilitate construction of multifamily housing units" in the area. They also allege that any of these costs has "the potential to lead to an increase in the Plaintiffs' taxes."[4]

The County defendants include Montgomery County, the Montgomery County Council, and the Montgomery County District Council.

Equity One (Northwest Portfolio), Inc. ("Equity One") is an intervenor defendant and owns parcels of land within the area at issue. The Housing Opportunities Commission for Montgomery County ("HOC") is an entity established by state law. Md. Code, (2005, 2019 Repl. Vol.) § 16-105 of the Housing and Community Development Article. Equity One and HOC intend to develop properties within the Westbard Sector Plan area. Among other things, the Residents allege that Equity One and HOC agreed surreptitiously to build in Westbard a greater percentage (15%) of affordable housing units than required in exchange for the County's agreement to make certain zoning concessions.

Neither the M-NPPC nor the Planning Board—*i.e.*, the five Montgomery County

[4] It's not clear whether the Residents still are pursuing claims based on potential tax increases—they neither included argument about nor identified evidence about potential tax increases in their response to the summary judgment and dismissal motions in the circuit court or in their briefs in this Court. But as we discuss further below, we consider those allegations anyway in connection with the County's cross-appeal of the denial of its motion to dismiss, which was grounded in part on the argument that the Residents failed in the Third Amended Complaint to allege facts sufficient to support standing.

members of the M-NPPC—is named as a defendant.

2. Timeline of Relevant Events

The Plan at issue is an update to a 1982 area master plan for the Westbard area.[5] The updated Westbard Sector Plan, which spans over 100 pages, makes recommendations for zoning changes and covers a broad range of other topics. For example, it contains subsections covering recommendations for "Community Facilities" (which include child care services, civic space, and public schools); "Transportation" (which include roadways, public transit, and bicycle facilities); and "Urban Design, Parks and Open Space" (which include parks, roads, and pedestrian ways). The Plan does not explicitly include information about the potential impact on greenhouse gasses, nor does it include a carbon footprint analysis.

The M-NPPC began its efforts to update the 1982 Westbard Sector Plan in or about July 2014. About a year later, in August 2015, M-NPPC staff members presented a draft plan to the Montgomery County Planning Board. On September 24, 2015, the Planning Board held a public hearing on that draft. *See* MCC §§ 33A-5 and 33A-6 (describing procedures for the M-NPPC to conduct a public hearing on a draft plan). The Planning Board held additional meetings and updated the draft, and on December 21, 2015, submitted the draft to the District Council. *See* MCC § 33A-7 (outlining procedures for the Planning Board's revisions to a draft plan and subsequent submission of the draft plan to

[5] The Westbard Sector Plan area is bounded generally by Massachusetts Avenue to the south, Little Falls Parkway to the east, Dorset Avenue to the north and a residential neighborhood to the west.

the District Council for review, as well as procedure for the County Executive to create "a fiscal impact analysis" of the draft plan); *see also* LU § 21-210; § 21-211.

The next phase of the plan approval process is the subject of one of the parties' disputes: the Residents assert that the Plan should be declared void for the District Council's failure to comply with the public hearing requirements in MCC § 33A-8. In this case, the Montgomery County Council held meetings on February 2 and 4, 2016, which the public attended and at which the Westbard Sector Plan was discussed. At least one of the Residents attended the hearing. The Residents assert that the *District* Council never held the public hearings required by MCC § 33A-8 because the February 2 and 4 meetings were presided over by the *County* Council, even though the two bodies consist of the same people. The Residents argue that this difference deprived the County Council of jurisdiction to approve the Plan. The Residents assert further that there was no indication at the hearings that any further amendments were to be made, although later they were.

After the February 2 and 4, 2016 public meetings, the County's Planning, Housing, and Economic Development ("PHED") Committee held several work sessions on the Planning Board draft. On March 22, 2016, the Council reviewed the draft plan and the PHED Committee's recommendations. Approximately two months later, on May 3, 2016, the District Council approved the Plan with amendments that encompassed over forty pages. *See* LU § 21-212(a) (providing that District Council "shall approve, modify, or disapprove the master plan or master plan amendment" within certain time periods). No additional hearings were held. But as noted above on page 5, MCC § 33A-8(c) requires the

District Council to approve or disapprove the draft plan "with any modifications or amendments" it finds appropriate, and we did not identify any requirement for an additional hearing beyond the initial hearing provided for in MCC § 33A-8(a), even when the District Council intends to make further changes to the draft. MCC § 33A-8(c)(1) (providing that the District Council "must approve or disapprove the Planning Board draft plan or amendment *with any modifications or amendments* that the District Council finds appropriate") (emphasis added); *see also* MCC § 33A-8(c)(3) (providing that the District Council "must approve, *modify*, or disapprove the plan or amendment" within certain time periods) (emphasis added). The amendments included the addition of a section concerning "affordable housing", a section concerning "Montgomery County Public Schools", and modifications to the recommendations for land use and zoning changes in Westbard.

Finally, on June 15, 2016, the M-NPPC adopted the Westbard Sector Plan by resolution. *See* MCC § 33A-9 (providing that the draft plan or amendment must be "adopted" by the M-NPPC "in the form approved by the District Council" within 60 days of the District Council's approval).

The next stage of the process was rezoning, which, again, is a separate process with its own set of procedures. *See Zimmer*, 444 Md. at 505. On July 22, 2016, the M-NPPC on filed the SMA (*i.e.*, Westbard Sector Plan Sectional Map Amendment H-116). On November 8, 2016, the District Council adopted a resolution approving the SMA. *See* LU § 22-209 (providing that a zoning amendment application in Montgomery County "shall be granted only by the affirmative vote of at least five members of the district council").

As part of the rezoning process, the Residents allege that Equity One filed a sketch plan application on or about July 11, 2016. The Residents allege that the sketch plan included proposed "uses, heights and densities" that were "**not** consistent with the standards of the applicable zone then **in** effect" (emphasis in complaint), but instead were consistent with proposed zoning changes in the Westbard Sector Plan yet to be implemented (the Westbard SMA was not adopted until several months later). But in their reply brief in this appeal, the Residents assert that the sketch plan referenced and challenged in the Third Amended Complaint is no longer at issue because Equity One has withdrawn it from consideration: "[t]he Sketch Plan that was on appeal before the Circuit Court (Montgomery County Civil Action No. 433077V) has been dismissed, as Appellee Equity One withdrew the then-pending [sketch] plan from Planning Board consideration."

C. Procedural History

On September 19, 2016, the Residents filed their original complaint, which named the County as the defendant. On November 9, 2016, the circuit court granted Equity One's motion to intervene.

On January 18, 2017, the Residents filed a First Amended Complaint. On May 3 and May 10, 2017, respectively, Equity One and the County filed motions to dismiss, or in the alternative for summary judgment. On June 5, 2017, discovery closed.

On June 14, 2017, the Residents filed a Second Amended Complaint that, among other things, added HOC as a defendant. Equity One and the County again moved to dismiss or in the alternative for summary judgment, on June 30 and July 3, 2017,

respectively.

On July 12, 2017, the circuit court entered orders striking the First and Second Amended Complaints for failure to file a comparison copy, in violation of Maryland Rule 2-341(c). The circuit court granted the Residents leave to file another amended complaint.

On July 21, 2017, the Residents filed the Third (and now operative) Amended Complaint. Like the first three pleadings, it contained three counts, but it also contained lengthy additions to the factual allegations.

On August 2 and August 3, 2017, the County and Equity One filed motions to strike, dismiss, or, in the alternative, for summary judgment. On August 10, 2017, the Residents opposed those motions, and filed their own motion for summary judgment on Counts I and II. On August 9, 2017, HOC filed a motion to enforce service requirements, to be provided filings, and for an extension of time to answer, to which the Residents ultimately consented.

On August 16, 2017, the circuit court heard argument on all outstanding motions and took them under advisement. On September 7, 2017, HOC filed a motion to dismiss and in the alternative for summary judgment.

On March 20, 2018, the circuit court entered a Memorandum and Order denying the Residents' motion for summary judgment and granting each of the defendants' motions for summary judgment. The Residents appealed the judgment entered against them, and the County cross-appealed the circuit court's denial of its motion to dismiss.

D. The Residents' Claims And The Circuit Court's Decisions As To Each

Because, as we will discuss later, this appeal turns on the claims before the circuit

court and who, if anyone, has standing to raise them, the complaint and the court's decisions merit a close look. The Third Amended Complaint alleges three counts, but the Residents seek essentially the same relief for each: (1) a declaration that the entirety of the Westbard Sector Plan is void and (2) an injunction against Equity One and HOC preventing them from pursuing approval of the (now withdrawn) Sketch Plan.

Count I alleges that the District Council's approval of the Westbard Sector Plan was illegal and *ultra vires*[6] because the Planning Board failed to "assess the Westbard Plan's potential impact on greenhouse gas emissions," including a carbon footprint analysis, as required by County law, and because the District Council acted illegally in adopting it. The circuit court held that Count I "fails to state a claim for which relief can be granted" on the ground that MCC § 33A-14 "does not legally mandate particular action"—and specifically includes no requirement that the Plan include the steps taken in connection with a greenhouse gas analysis or documentation of a carbon footprint analysis:

> In essence, Count I contends that the Plan fails to recite expressly that a greenhouse gas emissions with carbon footprint analysis was done in preparing the Plan and did not set forth a consideration of the reduction of vehicle miles to minimize greenhouse gas emissions. Section 33A-14 does not contain such a requirement. While the Code provision uses the word "must," that word does not legally mandate particular action, such as specific language in the Plan setting forth steps taken in connection with a greenhouse gas analysis, and there is no sanction for failure of a plan to articulate such actions. The Section does require that the matters set forth therein be addressed in the planning process. It appears clear that was done as the Plan does reflect recommendations regarding

[6] "Ultra vires" means "[u]nauthorized; beyond the scope of power allowed or granted by a corporate charter or by law." *Black's Law Dictionary* (10th ed., 2014).

> emissions and options because, for example, a bicycle network and related options were contained in the Plan.

In the alternative, the court held that even if the Residents had interpreted MCC § 33A-14 correctly, "the Land Use Article of the Maryland Code provides that a master plan is not void or voidable for technical defects." The court didn't cite the provision of the Land Use Article upon which it relied, but we infer from the parties' arguments that it was LU § 21-104(b)(4), which provides that an area master plan "may not be deemed void, inapplicable, or inoperative" on the ground that it is inconsistent with the RDA.

In Count II, the Residents allege that the District Council "failed to hold the statutorily required hearing in violation of [MCC § 33A-8]." They allege that, although the *County* Council held public hearings on the draft plan on February 2 and 4, 2016, the County Council was not sitting as the District Council, and therefore did not satisfy MCC § 33A-8's requirement that the *District* Council hold hearings. The Residents allege further that the District Council failed to hold hearings after the PHED committee made its recommendations. (*But see* above, pages 11–12.)

The circuit court granted judgment in defendants' favor on Count II, reasoning that "the Plaintiffs <u>were</u> afforded substantive due process" (emphasis in original) through the public hearings on the Westbard issues, and that the Residents' assertion that the "District Council" never held the appropriate hearings was "over reaching based on semantics":

> In Count II of the Third Amended Complaint, Plaintiffs contend the Plan is void because the <u>District Council</u> failed to hold a public hearing on the draft plan created by the Planning Board. The record reflects and Plaintiffs admit that a public hearing on the draft was held before members of the Council.

> Plaintiffs admit that a two-day public hearing was held on the draft by the Council, but contend that the "District" Council did [not] hold a public hearing. The District Council is defined as "the County Council sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County." [MCC § 33A-2]. In other words, the members of the County Council and District Council are identical. First, a review of the "County Council Agenda" for February 2 and 4, 2016 reflects both County Council and District Council business and public hearings, including the Westbard hearings. The minutes for those days also set forth business for both Councils, including that the Westbard hearings took place.
>
> Plaintiffs contend that they were "deprived of their procedural and substantive due process rights" because a public hearing was not noted specifically as a District Council hearing. Rather, the Plaintiffs were afforded substantive due process. Hearings were held and the public was heard on the Westbard issues before the members of the District Council. The Court agrees with Defendants that Plaintiffs here are over reaching based on semantics.

(Underlining in original.)

Finally, Count III, titled "Illegal Contract Zoning," runs for 130 paragraphs and almost fifteen pages and is difficult to decipher. Illegal contract zoning "occurs when an agreement is entered between the ultimate zoning authority and the zoning applicant/property owner which purports to determine contractually how the property in question will be zoned, in derogation of the legal prerequisites for the grant of the desired zone." *Mayor and Council of Rockville v. Rylyns Enters., Inc.*, 372 Md. 514, 547 (2002). The gist of the Residents' complaint seems to be that Equity One and HOC agreed to provide more affordable housing than required by law in exchange for the County's agreement to rezone Westbard in the ways reflected in the Westbard Sector Plan. The

Residents assert that the County—and specifically the District Council—agreed to include the following recommendations in the Plan as a result: certain increased allowances for height and density requirements; the reduction of a stream buffer width; and concealment of a cemetery "to help facilitate unimpeded development over [it]."

The Residents assert that the Westbard Sector Plan is a "contract" that "memorializes" illegal contract zoning. They allege that the Plan was not a mere recommendation, but a binding contract between the District Council on the one hand and Equity One and HOC on the other, based on the timing of Equity One's Sketch Plan application. The Residents claim that the zoning in effect at the time Equity One filed its Sketch Plan application was not the zoning that would have allowed the substance of the Sketch Plan to be implemented, but the zoning recommended in the Westbard Sector Plan and ultimately adopted by the District Council in the Sectional Map Amendment. The Residents infer that the Westbard Sector Plan was "binding" because the Sketch Plan approval process could not have gone forward if the District Council had adopted an SMA that deviated from the recommendations of the Westbard Sector Plan.

As to Count III, the circuit court held that the Residents failed as a matter of law to state a claim, that the Plan is not a zoning decision, and the Plaintiffs failed to allege the existence of a contract:

> The fundamental legal flaw in Plaintiff's Count III, is that the Plan does not zone any property. It is a Master Plan. As such it is a general outline and serves as a planning and zoning guide. It is subject to modification at any time. The Plaintiffs seek to convert the Plan into a zoning decision in order to contend that illegal contract zoning voids the Plan. The Court of Appeals

> has pointed out the substantive distinction between planning and zoning functions . . . . Count III fails to set forth a viable claim as a matter of law. Because the Plan does not zone or alter zoning, the Plan and its approval process cannot constitute contract zoning. Additionally, Plaintiffs have not alleged the existence of a specific "contract" that could constitute contract zoning.

The Court also addressed the Residents' targeting of the Sketch Plan and the SMA, noting that "to the extent that Plaintiffs seek to enjoin the 'Sketch Plan'/ Sector Map Amendment [] via its contract zoning claim, they have failed to timely pursue the exclusive statutory remedy available to challenge the SMA." The Court declined to address the defendants' arguments that the complaint should have been dismissed for failure to join the Montgomery County Planning Board as a necessary party and that the Residents lack standing.

We supply additional facts as necessary below.

II. DISCUSSION

The parties frame the questions presented for review in different ways,[7] but we

[7] The Residents phrase the Questions Presented as follows:

> A. Should Summary Judgment Be Granted In Favor Of Appellees On Count I Of Their Complaint Because:
>
> 1. The Planning Board Failed To Conduct Specific Environmental Assessments As Required By Section 33A-14 of County Law; and
>
> 2. Maryland's Land Use Article Does Not Insulate A Violation Of County Planning Law From Judicial Review?
>
> B. Should Summary Judgment Be Granted In Favor of Appellees On Count II Of Their Complaint Because:
>
> 1. The Distinction Between The "District" and the

"County" Council Is One [Of] Jurisdiction and Not Of "Semantics;" and

2. The February 2 and February 4 Public Hearings Were Held Prior To Council Intent To "propose any revisions, modifications, or amendments" To The Sector Plan?

C. Did The Circuit Court Err As A Matter of Law In Finding That Appellees Failed To Set Forth A Cognizable Claim Of Illegal Contract Zoning?

The County phrases the Questions Presented as follows:

I. Did the Circuit Court Err by Failing to Grant the County's Motion to Strike?

II. Did the Circuit Court Err by Failing to Grant the County's Motion to Dismiss?

[III]. Did the Circuit Court Commit Reversible Error by Granting the County's Motion for Summary Judgment?

The intervenor defendants, Equity One and HOC, phrase the Questions Presented as follows:

I. Did the Circuit Court Correctly Declare that Equity One, the County, and HOC were Entitled to Judgment as a Matter of Law on Count I of the Third Amended Complaint because:

A. Under County Law, a Greenhouse Gas Analysis is not Mandatory;

B. Greenhouse Gas Emissions were Considered in the Sector Plan; and

C. State Law Provides that a Master Plan is Not Void for Technical Defects?

II. Did the Circuit Court Correctly Declare that Equity One, the County, and HOC were Entitled to Judgment as a Matter of Law on Count II of the Third Amended Complaint because the District Council Held the Required Public Hearing on the Sector Plan?

III. Did the Circuit Court Correctly Declare that Equity One, the County, and HOC were Entitled to Judgment as a Matter of Law on Count III of the Third Amended

ultimately need only decide one threshold question: Did the circuit court err in declining to grant the County's motion to dismiss on the ground that the Residents failed to allege facts to support that they have standing? We hold that it did, and we vacate the judgment and remand with instructions for the circuit court to enter an order dismissing the Third Amended Complaint.

In reviewing a trial court's decision on a motion to dismiss, "we accept all well-pled facts in the complaint, and reasonable inferences drawn from them, in a light most favorable to the non-moving party." *Kendall v. Howard Cty.*, 431 Md. 590, 601 (2013) (*quoting Converge Servs. Group, LLC v. Curran*, 383 Md. 462, 475 (2004)). "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." *State Center, LLC v. Lexington Charles Ltd. P'ship*, 438 Md. 451, 497 (2014) (*quoting RRC Ne., LLC v. BAA Maryland, Inc.*, 413 Md. 638, 644 (2010)). "Although it is 'rarely appropriate' to dismiss a declaratory judgment action, dismissal is proper 'when the party seeking such judgment has no standing and there is no justiciable controversy properly before the court.'" *Kendall*, 431 Md. at 602 (*quoting Roper v. Camuso*, 376 Md. 240, 246–47 n. 3 (2003)).

A. The Residents Were Not Required To Exhaust Administrative Or Statutory Remedies.

Before addressing standing, though, we first must determine whether the Residents

Complaint because the Sector Plan is Neither a Contract nor Rezones Properties?

were required to exhaust administrative or statutory remedies to challenge the Westbard Sector Plan before bringing their declaratory judgment claims. We hold that they weren't.

The declaratory relief that Residents seek is grounded in Maryland Code (1974, 2012 Repl. Vol.) § 3-409 of the Courts and Judicial Proceedings Article ("CJ"). Subsection (a) provides the underlying authority for a court to grant a declaratory judgment (provided that there is a justiciable controversy between the parties).[8] Subsection (b) states that where "a statute provides a special form of remedy for a specific type of case, that statutory remedy shall be followed in lieu of [a declaratory judgment proceeding]." *See Renaissance Centro Columbia, LLC v. Broida*, 421 Md. 474, 491 (2011) ("We have consistently held that, where the General Assembly has provided an exclusive or primary administrative remedy and judicial review remedy, [CP § 3-409(b)] precludes a declaratory judgment."); *Utilities, Inc. of Md. v. Washington Suburban Sanitary Comm'n*, 362 Md. 37, 45 (2000) ("It is well settled in Maryland that when there is a special statutory remedy for a specific type of case, and that remedy is intended to be exclusive or primary, a party may not

[8] CJ § 3-409(a) provides:

> (a) Except as provided in subsection (d) of this section, a court may grant a declaratory judgment or decree in a civil case, if it will serve to terminate the uncertainty or controversy giving rise to the proceeding, and if:
>
> (1) An actual controversy exists between contending parties;
>
> (2) Antagonistic claims are present between the parties involved which indicate imminent and inevitable litigation; or
>
> (3) A party asserts a legal relation, status, right, or privilege and this is challenged or denied by an adversary party, who also has or asserts a concrete interest in it.

circumvent those special statutory proceedings by a declaratory judgment action.") (cleaned up)).

The County argues that the relief the Residents seek here is not available because they failed to pursue the applicable statutory remedy, which the County asserts is the provision under LU § 22-402 for judicial review of sectional map amendments. And that would be a compelling argument if the Residents were seeking to challenge a sectional map amendment. But they're not: the Residents seek to challenge an area master plan. Although it is undisputed that the Residents missed the thirty-day deadline for a petition for judicial review of the Westbard SMA under LU § 22-402(a)(2), it does not follow that the Residents also missed any opportunity to challenge the area master plan. Simply put, the remedy set forth under LU § 22-402(a)(2) does not apply here and the Residents' failure to challenge the sectional map amendment does not by itself bar them from seeking declaratory relief under CJ § 3-409 relating to the area master plan.[9]

[9] The parties cited, and we found, only one case in which the plaintiffs challenged a Montgomery County area master plan by way of a declaratory judgment action. *Boyds Civic Ass'n v. Montgomery Cty. Council*, 309 Md. 683, 696–97 (1987). We discuss *Boyds* in more detail below in footnote 11, but observe here that the propriety of using a declaratory judgment to challenge a master plan was not at issue in that case, so it does not offer much guidance on exhaustion one way or the other.

That said, one recent Court of Appeals case provides support, at least indirectly, for the procedural propriety of challenging a Montgomery County area master plan via a declaratory judgment action. In *Chaney*, the Court of Appeals observed that the RDA does not provide for judicial review of master plans in Montgomery County, whereas it does for Prince George's County. 454 Md. at 530 (LU § 22-402 "limits judicial review in Montgomery County" to individual and sectional map amendments" but LU § 22-407 extends judicial review in Prince George's County to planning and zoning decisions, including the area master plan at issue in that case). As such, a declaratory judgment action may be the *only* procedural mechanism a litigant could challenge an area master plan in

B. The Residents Do Not Have Standing.

"[T]he existence of a justiciable controversy is an absolute prerequisite to the maintenance of a declaratory judgment action." *Boyds Civic Ass'n v. Montgomery Cty. Council*, 309 Md. 683, 690 (1987) (*quoting Hatt v. Anderson*, 297 Md. 42, 45 (1983)). From a bird's eye view, the standing inquiry requires a court to ask "whether the plaintiff has shown that he or she is entitled to invoke the judicial process in a particular instance." *Id.* at 502 (cleaned up); *see also Kendall*, 431 Md. at 603 ("The doctrine of standing is an element of the larger question of justiciability and is designed to ensure that a party seeking relief has a sufficiently cognizable stake in the outcome so as to present a court with a dispute that is capable of judicial resolution.") (*quoting Hand v. Mfrs. & Traders Trust Co.*, 405 Md. 375, 399 (2008)). In a declaratory judgment action, the standing analysis is the same as for other cases: the plaintiff must have "a legal interest such as one of property, one arising out of a contract, one protected against tortious invasion, or one founded on a statute which confers a privilege." *Committee for Responsible Dev. on 25th St. v. Mayor & City Council of Balt.*, 137 Md. App. 60, 72 (2001) (internal quotations and citation omitted). The plaintiff must satisfy the court that the interest in question "is arguably within

Montgomery County. *See Reid v. State*, 239 Md. App. 1, 10–11 (2018) (explaining the nature of a declaratory judgment as "supplemental" to traditional relief, and that the purpose of a declaratory judgment is to help litigants resolve controversies for which immediate relief is not otherwise available).

As we discuss below, though, the Residents in this case may not pursue declaratory relief because they lack taxpayer standing. *Cf. Chaney*, 454 Md. at 533, n.14 (it was not necessary for litigants to establish taxpayer standing where the RDA "create[d] independent statutory grounds—separate from the common law taxpayer standing doctrine—to seek judicial review.").

the zone of interests to be protected or regulated by the statute or constitutional guarantee in question." *Kendall*, 431 Md. at 604 (*quoting Association of Data Processing Serv. Orgs., Inc. v. Camp*, 397 U.S. 150, 153 (1970)).

At a ground-level view, to determine whether standing exists, we ask whether the plaintiff is "aggrieved," "which means whether a plaintiff has an interest such that he or she is personally and specifically affected in a way different from the public generally." *Kendall*, 431 Md. at 603 (cleaned up). In land use cases, there are two analytical paths to aggrievement. *Id.* at 604–05; *accord State Center*, 438 Md. at 517; *Anne Arundel Cty. v. Bell*, 442 Md. 539, 556–57 (2015). The first is "property owner standing," the second is "taxpayer standing," and either will "permit a property owner or taxpaying inhabitant to bring a claim" when "an alleged *ultra vires* or illegal governmental act" injures their interest(s) in their property. *State Center*, 438 Md. at 517; *see also Bell*, 442 Md. at 556 ("Taxpayer and property owner standing provide the 'cause of action' standing sufficient for justiciability: when asserted properly, the doctrines provide both the cause of action (or claim) and the right of the individual to assert the claim in the judicial forum." (cleaned up)).

In this case, the Residents attempt to assert both property owner and taxpayer standing. We conclude that property owner standing isn't available as a basis to challenge the Plan and that the Residents failed to plead facts that could support taxpayer standing.

1. Property Owner Standing

"The property owner standing doctrine recognizes that owners of real property may

be 'specially harmed' by a decision or action (usually related to land use) in a manner different from the general public." *State Center*, 438 Md. at 519. Put another way, "a party's proximity to the area affected by a local land use decision may, under certain circumstances, satisfy th[e] 'specially damaged' standing requirement." *Kendall*, 431 Md. at 605.

Property owner standing allows a plaintiff to challenge certain "land use decisions." *State Center*, 438 Md. at 524 (*quoting 120 West Fayette St., LLLP v. Mayor of Balt.*, 426 Md. 14, 30 (2012)). The Court of Appeals also has held that "comprehensive zoning legislation" is not a "land use decision" and therefore is not subject to challenges grounded in property owner standing. *Bell*, 442 Md. at 569–71. At issue in *Bell* was a comprehensive zoning ordinance that changed the zoning classification of 264 parcels (of a total of 59,045 parcels) in Anne Arundel County. *Id.* at 547. While comprehensive zoning legislation is not at issue in this case, we find that there are sufficient parallels between such legislation and master plans so as to make property owner standing unavailable to challenges to such plans.

Bell defined "comprehensive zoning" as "encompass[ing] a large geographical area" and the result of a process "initiated generally by a local government, rather than by a property owner or owners." *Id.* at 553. The Court explained that the considerations of comprehensive zoning[10] are broad in scope:

[10] *Bell* observed that "comprehensive rezoning" is one of three processes through which zoning or rezoning may be achieved:

> Decisions whether to zone or rezone properties are made by

> During the comprehensive zoning process, the local zoning authority (which typically is comprised of local legislators wearing perhaps a different governmental "hat" when acting as the local zoning body) considers broad policy considerations, including "whether the comprehensive rezoning takes into account future public needs and purposes; whether it is designed to provide an adequate potential for orderly growth in the future and to satisfy local and regional needs; and ultimately whether it bears the requisite relationship to the public health, safety and general welfare."

Bell, 442 Md. at 553–54 (*quoting Montgomery Cty. v. Woodward & Lorthrop, Inc.*, 280 Md. 686, 713 (1977)). The Court ultimately held that "[t]he principles underlying property owner standing . . . should not be extended to apply to challenges to comprehensive zoning legislative actions." *Id.* at 551.

Bell distinguished comprehensive rezoning decisions from the types of land use decisions that *are* subject to challenge based on property owner standing, *i.e.*, decisions that involve "administrative" and "quasi-judicial" land use actions that encompass "piecemeal rezonings, special exceptions, variances, and nonconforming uses . . . ." *Id.* at 554. As opposed to being decided by a legislature, such decisions are determined by "local administrative hearing officers, boards of appeal, or the local legislative body by donning its land use authority 'hat' . . . ." *Id.* at 554–55. And, after reviewing the case law, the Court

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> local zoning authorities in Maryland through three primary processes: establishment of original zoning through adoption of a zoning map, comprehensive rezoning of substantial areas of the jurisdiction through a legislative-type process initiated by the local government, and piecemeal rezoning of individual properties (by application of the owner or contract purchaser) through a quasi-judicial process.

442 Md. at 553 (citing *Rylyns*, 372 Md. at 532).

observed that property owner standing applies to such decisions, but has not, and should not, be applied to legislative land use processes and actions:

> [T]he doctrine of property owner standing may apply to administrative land use decisions and other land use actions undertaken as executive functions. We have not applied heretofore the doctrine to purely legislative processes and actions, nor does our body of case law on the subject warrant applying the doctrine to judicial challenges to legislative acts reached through solely legislative processes.

Id. at 569.

In this case, the Westbard Sector Plan is more like comprehensive zoning legislation and less like a local zoning board's or administrative body's decision on piecemeal zoning, variances, and special exceptions. Like comprehensive zoning, planning has a broad focus: it concerns the development of a whole community, including use of land and buildings, streets, parks, and public transportation. *See Gaster*, 285 Md. at 246. And the process by which an area master plan is adopted is a legislative one. As described above, the Planning Board and the County legislature draft and amend a plan according to the procedure set forth in the County's code. In this case, the resulting document spans over 100 pages, makes recommendations for zoning and in a broad range of other areas, including child care services, civic space, public schools, roadways, public transit, bicycle facilities, parks, roads, and pedestrian ways. Accordingly, *Bell* applies in this case and property owner standing is not available to the Residents as a form of aggrievement from this Plan.[11]

[11] The Residents rely on *Boyds*, 309 Md. 598, to support their argument for property owner standing. As noted above in footnote 9, *Boyds* is the only case the parties cited and that we found in which plaintiffs challenged a Montgomery County master plan by way of a

2. Taxpayer Standing

The "[t]axpayer standing doctrine permits a taxpayer to 'invoke the aid of a court of equity to restrain the action of a public official, which is illegal or *ultra vires* and may injuriously affect the taxpayer's rights and property.'" *George v. Baltimore Cty.*, 463 Md. 263, 275 (2019) (*quoting Inlet Assocs. v. Assateague House Condo. Ass'n*, 313 Md. 413, 440–41 (1988)). "The taxpayers, in essence, are asserting the rights of their government against local administrators. Thus, [the Court of Appeals] has likened the taxpayer suit to a derivative shareholder suit, the shareholders of a government being the taxpayers." *Id.* (*citing State Center*, 438 Md. at 541).

"There are two broad requirements to successfully assert taxpayer standing." *Id.* The

declaratory judgment action. After reviewing *Boyds* in depth, we conclude that it does not support the Residents' position. In *Boyds*, Montgomery County amended a master plan to include a recommendation to rezone an area so that a company, Rockville Crushed Stone, would be permitted to operate a quarry on land it owned in the area. *Id.* at 687. Rezoning the area in question could not proceed unless the master plan was amended to include such a recommendation, and the County, at Rockville Crushed Stone's request, accordingly amended the plan. *Id.* A local civic association and seven individual property owners challenged the amendment. *Id.* at 686. But the County and Rockville Crushed Stone did not challenge the case on standing grounds, and instead argued that the case was not ripe and that the plaintiffs were precluded from bringing the case under the Administrative Procedure Act. *Id.* at 700–04.

The Court held, *first*, that the case was ripe because the master plan amendment was a prerequisite to the granting of the rezoning desired—but not yet achieved—by Rockville Crushed Stone, and that therefore "[t]he prospect of a controversy [] lay well beyond the realm of matters 'future, contingent and uncertain.'" *Id.* at 697. The Court held *second* that the land use planning functions carried out by the County government could not be "contested case," and were not subject to appeal under the Administrative Procedure Act. *Id.* at 704.

Although it involved the question of justiciability, *Boyds*'s focus was ripeness, not standing, and the case does not apply here.

first broad requirement is taxpayer status, which requires plaintiffs to allege that they are taxpayers and that the suit is brought on behalf of all other taxpayers. *Id.* The County does not contest that the Residents have pled this element sufficiently. "The *second* broad requirement is . . . a 'special interest,' alternatively referred to as the 'special damage' requirement." *Id.* (emphasis added). "Special interest requires a taxpayer to allege: (1) an action by a municipal corporation or public official that is illegal or *ultra vires*, and (2) that the action may injuriously affect the taxpayer's property, meaning that it reasonably may result in a pecuniary loss to the taxpayer or an increase in taxes." *Id.* at 275–76 (*quoting Kendall*, 431 Md. at 605) (cleaned up)). "These are known as the (1) 'illegal or *ultra vires* act' prong and (2) the 'specific injury' prong." *Id.* at 276.

"The illegal or *ultra vires* act prong 'has been applied leniently and seems rather easy to meet." *Id.* (*quoting State Center*, 438 Md. at 556). "Plaintiffs must simply 'allege, in good faith, an *ultra vires* or illegal act by the State or one of its officers." *Id.* (*quoting State Center*, 438 Md. at 556). The Residents have made good faith claims of illegality in Counts I and II by alleging that the District Council failed to comply with greenhouse gas emissions and public hearing provisions of the Montgomery County Code. Whether the allegations in Count III—namely that the County's agreement to make certain zoning concessions in exchange for Equity One and HOC's agreement to provide more affordable housing than is required by law constituted improper "contract zoning"—are also sufficient to allege illegality is not apparent, but we assume for purposes of the standing analysis that they are.

The Residents' assertions of taxpayer standing ultimately break down at the specific injury prong, which "is more opaque, and often proves a 'stumbling block.'" *Id.* (*quoting State Center*, 438 Md. at 572). The Residents can establish a specific injury only by alleging facts establishing "the appropriate type of harm, a nexus between the illegal or *ultra vires* act and the alleged harm, and some modest showing regarding the degree of harm." *Id.* As to the first two requirements, "[t]he harm alleged must be particularized and pecuniary, as opposed to harms to the general public (e.g., changes to the neighborhood, increased traffic, or increased noise), and caused potentially by the comprehensive rezoning." *Floyd v. Mayor and City Council of Balt.*, 463 Md. 226, 243–44 (2019) (*quoting Zimmer*, 444 Md. at 509 n.10). And with regard to the third, the "monetary burden does not need to be calculable," but "there must be a 'clear showing' that a monetary burden is alleged." *George*, 463 Md. at 282 (*quoting State Center*, 438 Md. at 580).

The Residents have not alleged facts satisfying the sufficient injury prong because they fail to allege facts supporting the second element—a nexus between their alleged harm and the state's illegal act. As to the first element, although most of their alleged harms don't take the appropriate form,[12] the Residents do allege two appropriate types of harm.

[12] The Residents' other alleged harms cannot support taxpayer standing: generalized harm from the "loss of open space and open visual vistas"; "increased traffic congestion"; "[a]dverse environmental effects caused by increased vehicle miles travelled including increased greenhouse gas emissions"; and an increase in schoolchildren Montgomery County Public School system. *Bell*, 442 Md. at 585 ("Frustration with increased traffic, annoyance with increased noise, and violations of a right (if any) to participate in zoning changes are not the sort of harms with which taxpayer standing is concerned."); *see also Floyd*, 463 Md. at 243.

Specifically, the Residents allege *first* that taxes could increase as a result of (1) "about $42 million in capital costs to the County over the next few decades," including costs for road, bikeway, and sidewalk projects, and costs for additional roadwork and "park-related improvements"; (2) $5.5 million in annual expenses for additional students in the school system; and (3) additional costs resulting from (unidentified) "publicly funded financing sources" that the intervenor defendants "will use to facilitate construction of multifamily housing units" in the area. They go on to allege that any of those costs has "the potential to lead to an increase in the Plaintiffs' taxes." A potential increase in taxes is an appropriate type of harm for taxpayer standing purposes. *See Floyd*, 463 Md. at 255 ("a plaintiff must show 'that the action being challenged results in a pecuniary loss *or an increase in taxes*") (cleaned up) (emphasis added). Even though the Residents do not include in their appellate briefing any argument about a potential increase in taxes, we assume, without deciding, that their allegations are sufficient because, as explained below, their allegations fail at the nexus step.

The *second* type of alleged harm is a potential decrease in the property values for Residents who live in proximity to the Westbard Sector Plan area. The Residents claim that their property values will go down due to a loss of open space and visual vistas, increases in traffic, the addition of commercial and retail space, and adverse environmental conditions (including increased greenhouse gas emissions). *See Inlet Assocs.*, 313 Md. at 442 (1988) (holding taxpayer standing existed where, among other things, property owner plaintiffs alleged that the value of their (Ocean City) properties would be lessened by a

proposed restaurant that would obstruct a view of the bay from their properties).

The sufficiency of these allegations is questionable, but again, we will assume, without deciding, that they're sufficient because the Residents fall well short at the next step: they fail to allege facts that create "a nexus between 'the potential pecuniary damage and the challenged act[s].'" *George*, 463 Md. at 281 (*quoting Floyd*, 463 Md. at 579). "As part of this showing, 'the taxpayer must be asserting a challenge and seeking a remedy that, if granted, would alleviate the tax burden on that individual and others." *George*, 463 Md. at 281 (*quoting State Center*, 438 Md. at 572). Put simply, the Residents must allege facts supporting a connection between their injuries and the County's wrongdoing, and that the remedy they seek, if granted, will alleviate their injuries. This complaint fails to do so. Like the plaintiffs in *Floyd*, 463 Md. at 255, the Residents' "theory of pecuniary loss or increase in taxes is vague and not easily understandable." We have searched the Residents' Third Amended Complaint in vain for an explanation of *how* the County's alleged wrongdoing—including its failure to comply with the MCC's greenhouse gas provisions and public hearing requirements and its allegedly improper agreement to make zoning concessions to Equity One and HOC—will lead to an increase in taxes or a decrease in property values. In addition, the allegations do not support that the remedies they seek—specifically, a declaration that the Westbard Sector Plan is void and an injunction preventing Equity One and HOC from pursuing approval of the Sketch Plan (which is no longer pending in any event)—will alleviate their alleged injuries (*i.e.*, an increase in taxes and a decrease in property values). *See George*, 463 Md. at 281. If anything, requiring the Plan to add

greenhouse gas mitigation provisions would be more likely to increase taxes than approving a plan that left them out.

Nevertheless, in fighting the County's standing challenge, the Residents do not attempt to identify allegations in the Third Amended Complaint that support their position. Instead, they argue that they fulfill the nexus requirement because approval of the "site plan"—which is not mentioned in the complaint but which they represent is currently pending before the Planning Board—depends upon its consistency with the Westbard Sector Plan. They argue that if the Westbard Sector Plan is declared void, their alleged injuries will be alleviated because "the pending development plans in their current form would need to be considered by the Planning Board under the prior master plan recommendations, or [the County would] need to adopt a new Sector Plan in accordance with County law."

But again, we struggle to understand how voiding the Plan and requiring pending projects to be measured against a prior plan (that is not alleged to comply with the greenhouse gas emissions requirements of the county code either) mitigates any of the Residents' alleged harms. Even if we were to assume that the Residents' assertions about a pending site plan (and any other future sketch plans or preliminary plans) were true, their Complaint fails altogether to explain *how* their property values will be reduced or their taxes will increase if the Westbard Sector Plan is not declared void. (And again, *see* footnote 4 above, the Residents make no argument whatsoever about a potential increase in taxes in their appellate briefing.) In short, the Residents' allegations do not support that

they are "aggrieved" in the way that standing requires—namely that they were "personally and specifically affected in a way different from the public generally." *Kendall*, 431 Md. at 603 (cleaned up). The harms alleged and the remedies the Residents seek are not connected sufficiently to their alleged injuries, and they have not established taxpayer standing to bring their claims.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY VACATED AND CASE REMANDED WITH INSTRUCTIONS TO ENTER AN ORDER DISMISSING THE THIRD AMENDED COMPLAINT. APPELLANTS TO PAY COSTS.