

Glenn T. Harrell, Jr.
Judge
Court of Appeals of Maryland



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MEMORANDUM

TO: jbarr@johnbarr-law.com

cc: dcathell@mchsi.com

FROM: glenn.harrell@mdcourts.gov

DATE: 18 April, 2014

RE: Handout for May 8 Maryland Municipal Attorneys Luncheon at
Fisherman's Inn, Kent island

John, attached you will find the handout for duplication. I do not expect any new, worthy cases to come along before May 8. See you at Noon on the 8th.

Attachment

Maryland Municipal
Attorneys Association
Fisherman's Inn, Kent Island
8 May 2014 – Noon

Judges Glenn T. Harrell, Jr.,
and Dale R. Cathell

RECENT DECISIONS OF THE
COURT OF APPEALS
THAT MAY BE OF SOME INTERSET
TO YOUR CLIENTS

1. *State Center, LLC, et al. v. Lexington Charles Limited Partnership, et al.*, No. 12, September Term, 2013, filed 27 March 2014, Opinion by Harrell, J.

Facts: The State Center Project (the “Project”) is a \$1.5 billion, multi-phase redevelopment project intended to replace aged and obsolete State office buildings with new facilities for State use and to revitalize an approximately 25-acre property owned by the State of Maryland in midtown Baltimore (“City”), without burdening unduly the State’s capital budget. To these ends, in 2005, the State issued a public Request for Qualifications (“RFQ”) to solicit a “Master Developer” who would be granted the exclusive right to negotiate with the State to execute the entire project, which included the reconstruction of older deteriorating buildings currently on the site of the project, as well as the receipt of a 75-90 year leasehold interest. The State Center, LLC (“Developer”), was chosen as the Master Developer in early 2006, which decision was announced publicly. The Maryland Department of General Services (“DGS”), the Maryland Department of Transportation (“MDOT”) (collectively, hereinafter, “State Agencies”) and the Developer negotiated for the Project, entering into a series of agreements between 2007 and 2010 for the purpose of completing the Project in a timely manner. These agreements, thus far, are: (1) the Master Development Agreement (“MDA”); (2) the First Amendment to the MDA (“First Amendment”); (3) two Phase I ground leases; and, (4) four approved Phase I occupancy leases. The approval or execution of each agreement was announced publicly.

In 2010, fifteen plaintiffs, property owners in downtown Baltimore (many with available office space for rent) and taxpayers of the State, filed suit in the Circuit Court for Baltimore City against the State Agencies and the Developer and its subsidiaries, seeking a declaratory judgment that the formative contracts for the Project were void as procured in violation of the competitive bidding requirements of the State Procurement Law and an injunction to halt the Project. The State Agencies and the Developer moved to dismiss the Complaint (and the Amended Complaint) on multiple grounds. The Circuit Court denied the Motions to Dismiss, finding that, *inter alia*, (1) the Plaintiffs’ Amended Complaint stated sufficient facts to establish taxpayer standing; (2) the Plaintiffs were not required to exhaust administrative remedies; and (3) the

Plaintiffs' claims were not barred by laches. Nearly two years of discovery followed. In 2012, the State Agencies and Developers moved collectively for summary judgment, which the Circuit Court granted in part and denied in part. The result of the suit in the trial court on the remaining counts was the voiding of the formative contracts of the Project on the grounds that they violated the State Procurement Law.

The State Agencies and the Developers (now Appellants) appealed timely to the Court of Special Appeals, but also petitioned contemporaneously this Court for a writ of certiorari and sought expedited review of three questions. The Appellees filed a Conditional Cross-Petition for Writ of Certiorari, seeking review of a fourth question regarding the Project's "Transit-Oriented Development" ("TOD") designation. The Court of Appeals granted a Writ of Certiorari to consider the following questions: (1) Whether the trial court erred in concluding that the State Center Project violates the State Procurement Law?; (2) Whether the Circuit Court lacked jurisdiction to address Appellees' procurement law claim because such claims fall within the primary or exclusive jurisdiction of the Maryland State Board of Contract Appeals?; (3) Whether Appellees lack standing, under the taxpayer standing theory, to challenge the project; and (4) Whether the trial court erred in declining to review the belated and defective designation of the Project as a TOD?

Held: The Court of Appeals vacated the Circuit Court's judgment and remanded the case to the Circuit Court, with directions to dismiss Appellees' Amended Complaint, with prejudice.

The Court of Appeals denied the Appellees' Motion to Dismiss the appeal. The Court's discretion to dismiss an appeal is limited to certain statutory grounds by Maryland Rule 8-602(a). The alleged shortcomings (that certain arguments by Appellants were unpreserved and/or not presented properly in the Petition for Writ of Certiorari) are not proper grounds for the dismissal of an appeal. Instead, the points advanced in the Motion to Dismiss are addressed by Maryland Rule 8-131, which provides the proper context for our appellate review and governs the manner in which the Court deals with alleged arguments that are unpreserved and not presented properly in the grant of the Writ of Certiorari. The Court held that the proper scope of our appellate review under Rule 8-131 is not co-extensive with the grounds, as provided in Rule 8-602, for granting a motion to dismiss and, thus, denied the motion.

In addressing the exhaustion of administrative remedies argument, the Court of Appeals recognized the well-settled principle that, where an administrative agency has primary or exclusive jurisdiction over a controversy, the parties ordinarily must await a final administrative decision prior to resorting to the courts for resolution of the controversy. A claimant is not required, however, to exhaust administrative remedies that the claimant is not eligible to pursue. In this case, the Court concluded that the Maryland State Board of Contract Appeals ("Appeals Board"), the pertinent agency, did not have jurisdiction over the Plaintiffs'/Appellees' claims because none of the Appellees were permitted under the State Finance and Procurement Article to appeal the final action of the State Agencies in the present case. Because the Appeals Board lacked jurisdiction over the controversy, the Court held that the Appellees were not required to exhaust any administrative remedies in this case and the propriety of the Circuit Court's consideration of their claims depended solely upon whether the court had jurisdiction otherwise.

For purposes of judicial standing, the Court stated that the claimant alone is responsible for raising the grounds for which his right to access to the judiciary system exists. Because Appellees insisted that an implied private right of action (based on the State Procurement Law) was not the basis for their standing, the Court of Appeals refused to address further the argument of whether the Procurement Law provided an implied private right of action.

Next, the Court analyzed whether Appellees had standing either as property owners or taxpayers (different bases for standing, separate from the private right of action). These two doctrines are similar in that they recognize that, without special damage, a private citizen has no standing to champion the rights of the public. The doctrines, however, must be analyzed separately to avoid confusion because they otherwise have different requirements.

The property owner standing doctrine recognizes that owners of real property may be “specially harmed” by a governmental decision or action (usually related to land use) in a manner different from the general public. Traditionally, the principles governing who qualifies as a “person aggrieved” for purposes of property owner standing were limited to judicial review of the decisions of zoning bodies. The Court of Appeals held preliminarily that the MDA and the First Amendment are “land use decisions” or actions susceptible to being challenged under the property owner doctrine, but the occupancy and ground leases (present and future) are not. Despite the fact that the principles governing property owner standing apply to Appellees’ challenges to the MDA and the First Amendment, the Court held that, when applying those relevant principles to scrutinize what Appellees alleged to support such standing, Appellees’ allegations failed to allege sufficient facts to qualify as specially aggrieved, primarily due to the lack of proximity (as measured in physical distance) of their properties to the Project.

Common law taxpayer standing permits taxpayers to seek the aid of courts, exercising equity powers, to enjoin illegal and *ultra vires* acts of public officials where those acts are reasonably likely to result in pecuniary loss to the taxpayer. The Court pointed out that, under this doctrine, a complainant has standing if he/she/it meets the requirements for the doctrine; no private right of action is required additionally. To establish standing in Maryland, a taxpayer need only allege: (1) that he is a taxpayer; (2) an action by a municipal corporation or public official that is illegal or *ultra vires*; and (3) that such action may result reasonably in a pecuniary loss to the taxpayer or an increase in taxes. Appellees met these requirements in their Complaint challenging the State’s actions of entering into the formative contracts for the subject Project as illegal under the Procurement Code, but failed in their challenge to the TOD designation.

Lastly, the Court, finding that the delay in bringing the lawsuit was unreasonable and caused great prejudice to the State Agencies and Developers, concluded that the doctrine of laches (identified by the Court as the “fatal flaw”) barred Appellees’ remaining claims.

The Court did not reach, therefore, the contention that the State Procurement Law had been violated by Appellants in entering the challenged agreements.

2. *Victoria Falls Committee for Truth in Taxation, LLC et al. v. Prince George's County, Maryland*, No. 59, September Term, 2013, filed 21 March 2014. Opinion by Harrell, J.

Facts: On 10 March 2005, a developer and four builders (collectively, the “Applicants”) of a planned retirement community known as Central Parke at Victoria Falls (“Victoria Falls”), located in Laurel, Maryland, filed jointly a request (the “Request”), with the Prince George’s County Executive and the Prince George’s County Council (the “Council”), to create a voluntary special taxing district in the community (the “Special Taxing District” or “District”). At the time that the Applicants filed the Request, the Victoria Falls community was already under construction.

The purpose of the Special Taxing District was to transfer (or seek reimbursement of) the cost of public infrastructure improvements within or serving otherwise Victoria Falls, approximately seventy-five percent of which the Developer completed prior to the filing of the Request. The Applicants requested the issuance and sale by the County of special obligation bonds to finance the proposed District, which would be repaid by the ultimate owners of property within the District, through payment of the Special Taxes, over a 30-year term. The Applicants explained to the Council that although they were required to develop the improvements as part of the subdivision approval for the planned community, their initial bank loan was near its maximum loan limit and they were requesting the special obligation bonds to prevent the delay and reduction of the scope of certain amenities and landscaping within the District, as well as remaining offsite work and other improvements.

Of the 609 residential units planned to be in Victoria Falls, twenty-five dwellings and their lots, which were scattered throughout the community, were sold by the Applicants before the filing of the Request. Those twenty-five units (and the lots on which they were situated) were not included within the confines of the proposed District. As a result, the plat submitted with the Request describes the geographic region as excluding graphically the twenty-five units that were sold already, some of which shared property lines or common walls with one or more of the 584 units within the proposed District. Consequently, the owners of those twenty-five units or lots were not among the Applicants. Thus, the Applicants owned 100 percent of the property constituting the proposed District when they filed with the County the Request for its creation.

On 23 June 2005, the County Executive recommended to the Council the creation of the District. The Council introduced the County Executive’s proposal as “CR-49-2005- A Resolution Concerning Victoria Falls Special Taxing District” (the “Resolution”), which was referred to, and recommended favorably by, a Council committee. On 14 July 2005, the Council published, in four local newspapers, identically-worded notices of a 26 July 2005 public hearing before the Council regarding the Resolution. At the hearing on 26 July 2005, no one spoke in opposition to the creation of the District, and the Council adopted the Resolution. On 29 July 2005, the County Executive approved the Resolution, and it became effective on that date. The Resolution authorized special obligation bonds in an aggregate principal amount not to exceed \$12 million for the financing of the infrastructure improvements in the Victoria Falls community, and levied a special tax on the property owners within the District.

The Applicants continued to sell properties within the proposed District between the filing of the Request and the County's adoption of the Resolution. The County was aware of the ongoing sales, and in response to the County's expressed concerns about notice of the proposed District to potential homebuyers, the Applicants provided the County with details of their "program of disclosures." In particular, those parties who closed on the sale of property within the proposed District prior to the County's adoption of the Resolution all signed addendums to their land sale contracts. The addendums disclosed that the property they were purchasing was included in a proposed special taxing district that may be adopted by the county, estimated the approximate initial tax rates under the proposed district, provided for the purchasers' agreement to be liable for the full amount of the special taxes in the event that the County created the special taxing district, and included the name and phone number of a county employee who could be contacted if the purchasers had questions about the proposed special taxing district. The record contains no indication that any of the purchasers called the County employee.

After payment of the Special Taxes commenced, a group of individuals who bought property within the Victoria Falls Special Taxing District formed an umbrella organization, Victoria Falls Committee for Truth in Taxation, LLC (the "Taxpayers"), and decided to challenge the legality of the District. After some preliminary skirmishing in various courthouses, the Taxpayers acquiesced in the County's demand that they proceed via tax refund applications, rather than a pending lawsuit. Thus, the original action was dismissed.

On 31 December 2008, 279 Taxpayers within the District filed a tax refund application with the County. The County denied the application, and the Taxpayers filed timely a Petition of Appeal with the Maryland Tax Court on 15 September 2009. On 22 April 2010, 46 additional Taxpayers, whose refund claims the County denied also, filed a second Petition of Appeal. The Tax Court consolidated the two Petitions and, after briefing and oral argument, issued a Memorandum and Order denying Taxpayers' claims on 11 May 2011. The Taxpayers filed timely a Petition for Judicial Review in the Circuit Court for Prince George's County. Following briefing and argument, the hearing judge issued a Memorandum Opinion, on 1 March 2012, affirming the decision of the Tax Court.

The Taxpayers filed timely an appeal of the Circuit Court's judgment to the Court of Special Appeals. On 27 March 2013, the intermediate appellate court, in an unreported opinion, affirmed the judgment of the Circuit Court. The Taxpayers filed timely a Petition for Writ of Certiorari in the Court of Appeals, which was granted on 3 July 2013, *Victoria Falls Comm. for Truth in Taxation v. Prince George's Cnty.*, 432 Md. 467, 69 A.3d 474 (2013), to consider the following questions:

1. Did the Maryland Tax Court uphold properly the County's Resolution creating a Special Taxing District, where changes in land ownership within the District occurred after the filing of the voluntary request to be taxed, by a "super-majority" of the landowners under Md. Code, Art. 24, § 9-1301(d)(1), and before the County's subsequent approval?
2. Did the Maryland Tax Court rule properly that the County's approval of a voluntary Special Taxing District excluding 25 of the 609 properties in a planned

development is lawful, in light of the condition that the Special Taxing District must fund infrastructure improvements for “any defined geographic region within the county,” under Md. Code, Art. 24, § 9-1301(c)(2)(i)?

Held: Affirmed. The Court of Appeals held that the General Assembly did not intend, by the plain meaning of subsection § 9-1301(h)(3)(ii), to require that the County determine whether any change in land ownership (occurring after the time of application for creation of the District, but before final action on the application) may have affected the super-majority landowner(s) requirement, expressed in subsection § 9-1301(d)(1) of the Act, for applying for the District. The Court reasoned that to adopt the Taxpayers’ reading of the plain meaning of subsection (h)(3)(ii), which states a county’s enactment of a resolution creating a special taxing district “shall be subject to the request of the landowners as specified under subsection (d)(1) of this section,” would be to read the Legislature’s choice of the word “request” as including “approval” as well, or to read additional requirements into the Act. The Court also rejected the Taxpayers’ arguments that adopting the Court of Special Appeals’s conclusion would “straight-jacket” the County, that their reading of the statute is consistent with the concept of petitioner withdrawal, and that the disclosures provided to purchasers of land within the District were irrelevant.

Furthermore, the Court held that the County’s approval of the request to create a Special Taxing District that did not include 25 of the 609 lots within the planned Victoria Falls community was lawful under the Act’s requirement that the District be used to finance infrastructure improvements in “any defined geographic region within the county.” The Court reasoned that the language of § 9-1301(c)(2)(i) does not include any reference to a particular shape, level of inclusiveness, or contiguousness of properties within a proposed special taxing district.

3. *Falls Road Community Association, Inc., et al. v. Baltimore County, Maryland, et al.*, 437 Md. 115, 85 A.3d 185 (2014). Opinion by McDonald, J.

Facts: Respondent Oregon, LLC (“Oregon”) leased, for the purpose of operating a restaurant, from Baltimore County (“County”) a small parcel of land located on the grounds of a county park (the “property”). To permit that use of the property, the County (as landlord) filed several administrative petitions, which were opposed to some extent by community organizations and which culminated in a 1995 Board of Appeals order that permitted Oregon to convert an existing building in the property into a restaurant, but set conditions on that use. Among those conditions were that 1) Oregon was prohibited from hosting parties, weddings, and other outdoor events on the property; 2) Oregon was permitted to have an outdoor seating area, but was not permitted to use this area for anything other than sit-down dining; and 3) Oregon was prohibited from having “tents, canopies, or other similar overhead covering[s].”

The 1995 Board of Appeals order also incorporated the terms of a restrictive covenant agreement that Oregon had entered into with a local community organization, in which Oregon agreed that 1) there would be no outdoor bars, live music, tents or other similar overhead

coverings in the outdoor dining area, and that 2) the parking area at the restaurant would remain a non-paved surface.

In addition, Oregon and the County executed a Supplemental Lease Agreement that included Oregon's promise to comply with the 1994 administrative order as well as restrictions contained in the covenant with the local community organization.

In 2002, Oregon initiated an administrative proceeding to modify the 1995 Board of Appeals order. The resulting 2004 Board of Appeals order, however, denied Oregon's petition to permit paving of the parking lot and to allow outdoor tented events on the property.

In August 2008, the Falls Road Community Association filed a complaint in the Circuit Court for Baltimore County against the County and Oregon when it discovered that the entire parking lot had been paved, that the lot contained additional parking spaces, and that objects it described as "canopies" appeared on the outdoor dining area. (Testimony at trial established that the County parks department had ordered Oregon to pave the parking lot when the County received allegedly complaints that the lot was not compliant with the Americans with Disabilities Act ("ADA").) The first three counts of the complaint asked the court to issue writs of mandamus ordering the County to enforce limitations on the paved surface area of the parking lot, the number and location of parking spaces, and the use of the property for outdoor events. The complaint identified the basis for such enforcement action as the 1995 and 2004 orders of the Board of Appeals, the Supplemental Lease Agreement, and the County Charter, County Code and zoning regulations, including the impervious surface limitation.

The fourth and final count of the complaint was brought under the Maryland Uniform Declaratory Judgments Act § 3-401 and included a list of five desired declarations, one request for injunctive relief, and a general prayer for "other" relief. In that count, the Community Association asked the court to conclude that the ADA did not require paving of the entire paving lot and that Oregon had violated the orders, the lease agreement, and the impervious surface limitation in the County zoning regulation. The fourth count asked the court also to require Oregon to remove all paving from the parking area of the property that was not required to be paved under the ADA.

The Circuit Court awarded summary judgment in favor of Oregon and the County as to the mandamus counts of the complaint, holding that mandamus relief was not available to direct the County to enforce the orders of the Board of Appeals. The Court denied summary judgment as to the fourth count, finding that the claims for declaratory relief depended on the resolution of certain disputed facts.

In September 2010, the Circuit Court conducted a bench trial. At the conclusion of the trial, the Court indicated that the Community Association may have failed to exhaust its administrative remedies, but addressed nevertheless the merits of the claims for declaratory relief. It concluded that the objects on the patio were "very large umbrellas," rather than canopies, and that the paving of the entire parking lot did not violate the impervious surface limitation. It also found that the paving of the lot and the addition of parking spaces violated the orders of the Board of Appeals, concluding that the paving of the entire parking lot was not required by the ADA.

The trial court ruled nonetheless in favor of Oregon and the County, concluding that declaratory relief could not be granted because a declaratory judgment would not terminate the uncertainty or controversy giving rise to the action. It also concluded that it lacked the authority to issue an injunction directing Oregon or the County to "tear up the parking lot" as part of a declaratory judgment proceeding. The court noted that the complaint requested that Oregon, not the County, be ordered to remove paving from the parking lot and questioned whether a request for injunctive relief could properly be part of a declaratory judgment count. The Community Association appealed.

The Court of Special Appeals affirmed the judgments of the Circuit Court, holding that the Community Association was required to exhaust administrative remedies before seeking relief in court. It went on to address the appropriateness of mandamus and declaratory relief. The Court of Special Appeals held that a writ of mandamus may lie to compel the County to enforce the orders of the Board of Appeals because the County Code and County Charter imposed a non-discretionary duty on County officials to enforce the orders. It agreed with the Circuit Court that a declaratory judgment would not resolve the controversy and further held that the Community Association had not pled adequately or proven a claim for injunctive relief ancillary to a declaratory judgment. The Court of Appeals issued a writ of certiorari to consider the holdings on mandamus, declaratory relief and exhaustion of administrative remedies.

Held: Affirmed in part; reversed in part. The Court held that the Community Association was not required to pursue an administrative remedy prior to seeking either mandamus or declaratory relief to enforce the Board of Appeals orders, which were themselves final administrative orders.

(1) The Court held that the Circuit Court correctly decided that a writ of mandamus was not available to compel the County to take actions desired by the Community Association. The Court explained that the writ of mandamus is ordinarily not available where the decision to be reviewed is discretionary or depends on personal judgment, and concluded that enforcement of zoning violations at issue was a discretionary act.

(2) The Court held that the Circuit Court has authority to issue a declaratory judgment in the circumstances of the case. It explained that the issuance of a declaratory judgment does not depend on the specificity of a party's request for ancillary relief to enforce the declarations.

4. *Montgomery County v. Soleimanzadeh*, 436 Md. 377, 82 A.3d 187 (2013). Opinion by Harrell, J.; Dissent by McDonald, J., joined by Adkins, J.

Facts: Because the proceedings were identical in the Circuit Court in these cases, we review in detail only the facts presented in No. 25 below and, to avoid repetition, simply note that the proceedings in the Circuit Court were identical or parallel for No. 27. Moreover, this Court answered in a consolidated opinion the questions presented.

In 2007, the County took a portion of the subject properties owned by the Respondents, pursuant to “quick take” eminent domain actions. After the parties were unable to agree upon the value to be paid for either of the takings, the County filed Complaints for Condemnation in the Circuit Court for Montgomery County. After the Soleimanzadehs refused to file any responses to the County’s discovery requests, the County filed a Motion to Compel and/or for Sanctions. The Circuit Court granted the unopposed motions, entering an order in each case that directed the Soleimanzadehs to file responses to the requested discovery within ten days of the entry of the order. The orders directed further that, if the Soleimanzadehs did not do so within the ten days, they “shall not be permitted to introduce any evidence in support of their claims for just compensation and damages.” The Soleimanzadehs failed to file any responses and, accordingly, the sanctions would become self-executing had the matters come to trial.

On 26 April 2010, the scheduled date of trial, the County filed a Motion for Summary Judgment or, in the Alternative, for Judgment by Default, on the issue of just compensation and damages on the grounds that the Soleimanzadehs were unable to present any evidence of value of the taken property greater than the appraisal value proposed by the County in each case. The Circuit Court granted the motions, entering Orders condemning the properties and awarding the Soleimanzadehs the amounts proffered by the County’s expert witness in an affidavit filed with the County’s motions, as just compensation for the takings of the real properties.

The Soleimanzadehs appealed to the Court of Special Appeals the grant of the County’s motions for summary judgment. Notably, the Soleimanzadehs did not challenge in their appeals the Circuit Court’s imposition of discovery sanctions. In No. 25, the Court of Special Appeals, in a reported opinion, *Soleimanzadeh v. Montgomery County*, 208 Md. App. 107, 56 A.3d 349 (2012), reversed the Circuit Court’s grant of summary judgment, holding that “the summary judgment rule, Rule 2-501, does not apply in [condemnation proceedings] to the issue of just compensation, because a landowner cannot be deprived of the constitutional right to have a jury award just compensation.” *Id.*, 208 Md. at 134, 56 A.3d at 365. In No. 27, the Court of Special Appeals, in an unreported opinion, reversed the Circuit Court’s grant of summary judgment, adopting the reasoning of *Soleimanzadeh v. Montgomery County*, 208 Md. App. 107, 56 A.3d 349 (2012).

The County petitioned us for writs of certiorari and we granted the petitions to consider the following questions:

- (1) Where there is no genuine dispute of material fact as to the valuation of a property taken in an eminent domain proceeding, may the trial court enter judgment pursuant to MD Rule 2-501 in favor of the condemnor as a matter of law?

- (2) Does a condemnee have a constitutionally protected right to have a jury determine just compensation even when sanctions against the condemnee prohibit the condemnee from introducing evidence in support of a claim for just compensation and the condemnee fails to show the existence of a dispute of material fact as to the compensation to be awarded?

(3) Does a condemnee have a burden to produce evidence when it disputes a condemnor's estimate of fair market value?

(4) Did the award of summary judgment in favor of the condemnor impair the condemnees' right to a jury trial?

(5) Can the right to a jury trial in an eminent domain proceeding be waived by the landowner's failure to follow clearly proscribed rules?

Held: Reversed. The Court determined first that the Circuit Court was permitted to grant summary judgment on the issue of just compensation in a condemnation proceeding. Although condemnation actions are special proceedings that lack the characteristics of ordinary trials, the Court found that, as a practical matter, the condemnee must bear the burden to produce some admissible information demonstrating his theory of the value of the property. Otherwise, with all other issues decided (as was the case here), the jury had no triable issue to decide and the right to jury consideration was foregone. This conclusion does not violate any right provided in the state Constitution or the Rules. Article III, § 40 and Rule 12-207(a) provide that the condemnee have the *opportunity* to present evidence before a jury on the issue of just compensation in eminent domain proceedings. Therefore, the Court concluded that the general rules of civil procedure apply still and summary judgment is available in condemnation proceedings on the issue of just compensation where no genuine question or triable issue of value is generated for submission to a jury.

Next, the Court addressed whether summary judgment was appropriate in this case. The Court of Special Appeals found that, even though the Soleimanzadehs were precluded from introducing affirmative evidence, they might have been able to establish a value greater than the amount proffered by the County's expert witness through cross-examination of the County's appraiser or through the jury view of the property. This Court disagreed. With regard to the Soleimanzadehs cross-examining the County's expert witness, this Court doubted its efficacy at producing affirmative evidence of a higher value, even if it is capable of exposing doubts as to whether the County's valuation is just. Moreover, the jury view is not required in all cases. Because this case was a quick take case with a long time period between the condemnation and trial, the Court found a jury view was not required in this case. As such, the usual opportunity for a view was not an additional opportunity to develop material facts that would have established a triable dispute as to just compensation in these cases.

Because the jury was not required to view the properties in these cases and the landowners were precluded from presenting any evidence on value, no evidence existed upon which the jury could base an amount of damages that was greater than the amounts reflected in the appraisals by the County's expert. Thus, the Court concluded that the Circuit Court's exclusion of any evidence from the landowners regarding their view of just compensation, which was necessary to their claims being triable, rendered the granting of summary judgment a logical and necessary consequence. Accordingly, the Court reversed the Court of Special Appeals's judgments in both cases and remanded the cases with directions that the Circuit Court's grants of summary judgment be affirmed.

5. *Montgomery County, Maryland v. John Distel*, 436 Md. 226, 81 A.3d 397 (2013). Opinion by Watts, J. Dissenting opinion by Harrell, J.

Facts: Montgomery County, Maryland (“the County”), Petitioner, is a self-insured entity approved by the Motor Vehicle Administration (“the MVA”), that agreed to provide coverage for the minimum mandatory limits for: (1) bodily injury liability; (2) uninsured motorist claims; and (3) property damage liability. The County submitted to the MVA a signed Guarantee (“the Guarantee”), which provided, in relevant part: “This guarantee is limited to payment of valid claims arising from motor vehicle accidents resulting from use or operation of covered vehicles by persons authorized to use such vehicles and occurring within the scope of such authorization. Where the use of a County vehicle is prohibited by any applicable vehicle-use policy, coverage is excluded under this Guarantee for damage of any kind.”

The County and the Fraternal Order of Police, Montgomery County Lodge 35, Inc., had a Collective Bargaining Agreement (“the CBA”) in effect during 2008. Article 35 of the CBA, entitled “Vehicles” set forth policies and regulations concerning personal patrol vehicles (“PPVs”). One such regulation provided: “PPVs will not be operated within four (4) hours after the officer has ingested any amount of alcohol.”

On 9 May 2008, Officer John Distel, Respondent, was operating a PPV, while off-duty, and was involved in a single-vehicle collision, damaging the PPV. At the time of the collision, Respondent was under the influence of alcohol. As a result of the collision, the County had to pay a total of \$8,797.05 to repair the PPV. Shortly after the collision, Respondent filed a grievance against the County, seeking a determination that the CBA precluded the County from obtaining damages against him for the cost of repairs to the PPV. The grievance arbitrator decided that the matter needed to be resolved through a civil action rather than an administrative one.

Accordingly, the County filed in the District Court of Maryland, sitting in Montgomery County, a complaint against Respondent seeking to recover the costs of repairs to the PPV. Following a one-day trial, the district court ruled that the County, as a self-insurer, was entitled to relief and could recover damages against Respondent based on the “exclusion/restriction” of coverage in the Guarantee. Respondent noted an appeal to the Circuit Court for Montgomery County. After a hearing, the Circuit Court reversed the judgment of the District Court and entered judgment in favor of Respondent.

The County filed a Petition for Writ of Certiorari, which the Court of Appeals granted.

Held: Affirmed. The Court of Appeals held that the exclusion—purportedly permitting the County to disclaim or exclude coverage where an employee causes a motor vehicle collision while under the influence of alcohol—is not enforceable because it: (1) was not included effectively in the Guarantee; (2) violates Maryland’s compulsory motor vehicle insurance scheme by reducing benefits below minimum levels set by statute; (3) is not authorized expressly by the General Assembly; and (4) violates public policy.

The Court of Appeals determined that the County failed effectively to include the alcohol exclusion in the Guarantee. On their face and by their plain language, the County's self-insurance application and Guarantee contained nothing that purported to exclude coverage of an authorized individual who operated an insured vehicle after consuming alcohol or while under the influence of alcohol. The language "any applicable vehicle-use policy" included in the Guarantee was overly broad, and failed to identify with specificity the applicable vehicle use policies or where the vehicle use policies being referenced were located. In particular, neither the Guarantee nor the self-insurance application referenced or identified the CBA, Article 35 of the CBA, or the regulation prohibiting driving within four hours of consuming alcohol as the vehicle use policy pertaining to police officers. Nothing in the CBA was termed a "vehicle-use policy."

The Court held that the exclusion in the Guarantee violated Maryland's compulsory motor vehicle insurance scheme by reducing insurance coverage below the mandatory minimums (and, in fact, eliminating coverage) in the absence of express approval by the General Assembly. Nothing within the applicable titles of the Maryland Code indicated an intent on the part of the General Assembly to permit insurers to deny or disclaim insurance coverage to otherwise insured individuals based on their blood-alcohol concentration level at the time of a collision.

The Court held also that the exclusion in the Guarantee violated public policy by conflicting with Maryland's compulsory motor vehicle insurance scheme and by undermining the spirit and purpose of the insurance scheme, namely, to provide third parties a source of funds from which to obtain compensation for injuries.

The Court determined that the clause in the Guarantee is an "exclusion," rather than an omnibus clause or permissive use clause, because the clause does not extend coverage to third parties, or otherwise evince an intent to extend coverage or to provide added protection for third parties, and does not purport to limit coverage to claims arising when a third party operated a vehicle within the "scope" of permission granted or authorized.

6. *Brittany Ellis v. Housing Authority of Baltimore City*, 436 Md. 331, 82 A.3d 161 (2013); *Tyairra Johnson v. Housing Authority of Baltimore City*, 436 Md. 331 (2013). Opinion by Watts, J. Concurring opinion by Battaglia, J., joined by Adkins, J.

Facts: Brittany Ellis ("Ellis") and Tyairra Johnson ("Johnson") (together, "Appellants"), separately sued the Housing Authority for Baltimore City ("HABC"), Appellee, in the Circuit Court for Baltimore City ("the Circuit Court") for causes of action arising out of Appellants' alleged exposure to lead paint in properties that HABC owned and operated. Discovery revealed the following facts.

From birth until she was at least four-years-old, Ellis lived in properties that HABC owned and operated. When Ellis was three-years-old, a pediatric center tested Ellis's blood-

lead level and reported 14 micrograms per deciliter ($\mu\text{g/dL}$). An HABC document stated only that HABC had received the results of Ellis's blood-lead level test. Nothing in Ellis's mother's "tenant folder" indicated that Ellis's mother complained of or expressed concern about the presence of lead paint in any of the premises occupied by Ellis.

From birth until she was at least six-years-old, Johnson spent several hours each day in properties that HABC owned and operated. When Johnson was approximately three-years-old, Johnson's mother saw Johnson putting paint chips in her mouth. Johnson's mother complained to an HABC housing manager and threatened to sue HABC if it did not fix the chipping paint. Until Johnson was ten-years-old, no one from any health clinic informed Johnson's mother that Johnson had any lead in her blood.

In both cases, HABC moved for summary judgment, which the Circuit Court granted, concluding that: (1) Appellants did not comply substantially with the notice requirement of the Local Government Tort Claims Act ("the LGTCA"), Md. Code Ann., Cts. & Jud. Proc. Art. (1987, 2013 Repl. Vol.) § 5-301 et seq.; and (2) Appellants did not show good cause for their failure to comply with the LGTCA notice requirement. Appellants noted appeals. While the appeals were pending in the Court of Special Appeals, the Court of Appeals granted certiorari on its initiative.

Held: Affirmed. The Court of Appeals held that the Circuit Court concluded properly that Appellants did not comply substantially with the LGTCA notice requirement. Neither Ellis nor Johnson apprised HABC of its possible liability. The record did not indicate that, before Ellis sued HABC, she or her mother ever contacted HABC about deteriorated paint conditions in any property, or that Ellis or her mother ever alleged that property owned or operated by HABC was the cause or source of Ellis's injury (i.e., Ellis's elevated blood-lead level). Although, before Johnson sued HABC, Johnson's mother orally complained allegedly to an HABC housing manager about chipping paint and threatened to sue HABC if it did not fix the chipping paint (1) Johnson's mother advised essentially that the threatened action against HABC would be a landlord-tenant action (in which Johnson's mother sought that HABC fix the chipping paint), not a lead paint action (in which Johnson sought damages for her alleged injury resulting from exposure to lead paint); and (2) Johnson's mother did not learn of Johnson's injury (i.e., Johnson's elevated blood-lead level) until approximately six or seven years after her oral complaint; thus, at the time of Johnson's mother's alleged oral complaint, it was not possible for Johnson's mother to give notice of an injury allegedly caused by HABC.

Additionally, the Court of Appeals held that the Circuit Court did not abuse its discretion in concluding that Appellants failed to show good cause for their failure to comply with the LGTCA notice requirement. Neither Ellis nor Johnson prosecuted her claim with the degree of diligence that an ordinarily prudent person would have exercised under the same or similar circumstances, as no one in Ellis's family or Johnson's family took any action regarding the potential claims until at least eleven years after Appellants' mothers learned that Appellants had elevated blood-lead levels.

Furthermore, the Court of Appeals held that, as applied to a minor plaintiff in a lead paint action against HABC, the LGTCA notice requirement does not violate Article 19 of the Maryland Declaration of Rights, as the lead paint action arises out of a governmental—as opposed to proprietary—activity (i.e., HABC's operation of public housing). HABC's operation of public housing is a governmental activity because: (1) according to statute, HABC

exercises public and essential governmental functions; (2) HABC's operation of public housing is sanctioned by legislative authority; (3) HABC's operation of public housing tends to benefit the public health and promote the welfare of the whole public; and (4) HABC's operation of public housing does not cause profit nor does any emolument to inure to HABC.

7. *Roguell Blue v. Prince George's County, Md.*, No. 434 Md. 681, 76 A.3d 1129 (2013). Opinion by McDonald, J. Dissenting opinion by Greene, J., joined by Bell, C.J. (ret.) and Adkins, J.

Facts: On 17 June 2008, Roguell Blue was working as the head of security for Irving's Nightclub, a strip club in Capitol Heights, Maryland. Blue's employer required that he carry a handgun. During the evening of 17 June 2008, Blue came to believe there was illicit sexual activity taking place outside the club in a car in the nightclub's parking lot. Blue confronted the individuals involved, ordered a man out of the car, and attempted to pat the man down for weapons. The man ran from the scene.

Police officers from the Prince George's County Police Department arrived on the scene shortly thereafter as a result of a report that shots had been fired. Upon arrival, the officers learned that Blue was carrying a handgun. The officers asked Blue to produce a valid permit for the handgun. Blue handed the officers a copy of Maryland Code, Criminal Law Article ("CR") §4-203, and informed them that the club owner had given him permission to possess a handgun on the premises. Blue was arrested and charged with "wearing, carrying, or transporting a handgun in public" in violation of CR §4-203(a)(1). Those charges were later disposed of with the State's entry of a nolle prosequi.

On 14 September 2009, Blue filed a lawsuit in the Circuit Court for Prince George's County against the County and three of the police officers involved in his arrest. Blue alleged a violation of Article 24 of the Maryland Declaration of Rights, false arrest and imprisonment, and malicious prosecution. At trial, Blue asserted that he was legally permitted to carry the handgun under the "supervisory employee" exception of §4-203(b)(7), and that the officers did not have probable cause to arrest him. The trial court granted the defendants' motion for judgment on the malicious prosecution claim. The jury found in favor of Blue on his State constitutional claim and on the false arrest and imprisonment claim. He was awarded \$106,100 in damages. Both Blue and the defendants appealed.

The Court of Special Appeals upheld the dismissal of the malicious prosecution claim, but reversed the judgment based on the jury verdict. The intermediate appellate court reasoned that, because Blue had been carrying his handgun in the parking lot of the club and not "within the confines of the business establishment," which it construed to mean the interior of the building, the officers had probable cause to arrest him. This precluded a finding in Blue's favor on his constitutional and false arrest and imprisonment claims. Blue subsequently filed a petition for writ of certiorari in the Court of Appeals, which was granted.

Held: Affirmed. Under Maryland law, an individual may not “wear, carry, or transport a handgun, whether concealed or open, on or about the person[.]” CR §4-203(a)(1)(i). There are numerous exceptions to this prohibition. One such exception can be found in CR §4-203(b)(7), which permits “supervisory employees” to wear, carry, or transport a handgun “(i) in the course of employment; (ii) within the confines of the business establishment in which the supervisory employee is employed; and (iii) when so authorized by the owner or manager of the business establishment[.]” At issue was whether CR §4-203(b)(7) authorized Blue to carry a handgun without a permit on the parking lot of Irving’s Nightclub.

The Court found that the statute does not provide a specific definition for the phrase “within the confines of the business establishment.” Common dictionary definitions provide some direction. “Within” and “confines” are defined respectively as “in or into the interior” and “something (as borders or walls) that encloses.” “Business” is defined as “a commercial or sometimes an industrial enterprise” and an “establishment” is defined as “a place of business or residence with its furnishings and staff.” Finally, the statutory exception identifies the business establishment as the one “in which the supervisory employee is employed” – again placing the emphasis on interior space. CR §4-203(b)(7)(ii). “Within the confines of the business establishment” describes the interior space of the commercial enterprise, where one may find its furnishings and staff, enclosed by walls or other such similar bounds.

The Court also reviewed the legislative history of CR §4-203(b)(7). In 1972, the Governor submitted emergency legislation to the Legislature to curb the “widespread carrying of handguns on the streets and in vehicles by persons who have no legitimate reason to carry them.” The Legislature added a proviso to the handgun law that allowed an owner or lessor of a property to carry a handgun without a permit on owned or leased real estate. The legislative history indicates that the purpose of allowing individuals to carry firearms without a permit “within the confines” of a business establishment was to protect the business against robberies, or for self defense. The owner’s ability to endow others with the right to carry a handgun without a permit was limited to the “supervisory employees” of a business and restricted to the “confines of the business establishment,” but not real estate generally.

The Court held that the supervisory employee exception should not be construed in a way that would defeat the purpose of the prohibition in the law. It was not meant to confer on a business the power to deputize a private citizen who lacks a handgun permit as a law enforcement officer.

8. *Litz v. Md. Dept. of Environment*, 434 Md. 623, 76 A3d 1076 (2013). Opinion by Greene, J.

Facts: In approximately 1948, Litz’s parents purchased the Litz Property outside of Goldsboro, Maryland. Litz’s parents constructed a dam on the property in the mid-1950s to form a lake (“Lake Bonnie”), which receives its water primarily from two local streams, the Oldtown Branch and the Broadway Branch, and discharges a constant overflow of water directly into the Choptank River. In the 1960s, Litz’s parents opened a public campsite business known as the

Lake Bonnie Campsites, which turned a profit for Litz's parents for many years. Litz inherited the Property and Campsite in 2001.

Goldsboro does not have a public water or sewer system, relying instead on individual private wells and septic systems. Over time, the private septic systems in the Town contaminated the ground and surface water, which, in turn, contaminated Oldtown Branch and Broadway Branch, which, in turn, contaminated Lake Bonnie. Litz was notified of the lake's contamination on 12 June 1996, and was informed that the pollution was "a health threat for water contact recreation in the lake." The campsite was closed. Two months later, representatives from the Maryland Department of the Environment and the Town signed a Consent Order imposing facially mandatory obligations on Goldsboro to correct the pollution problem. No material terms of the Consent Order were followed. Because the loss of income generated by the Campsites due to the pollution of Lake Bonnie, Litz lost the Property to foreclosure in 2010.

Litz filed a Complaint against the Town, County, and State, alleging causes of action for, among other things, nuisance, negligence, trespass, and inverse condemnation. The trial court dismissed all causes of action for various reasons. The intermediate appellate court affirmed the trial court's judgment on the more limited grounds that all claims were barred by the statute of limitations. The Court of Appeals granted Litz's petition for a writ of certiorari.

Held: Affirmed in part and reversed in part. Counts for permanent nuisance, negligence, trespass, and inverse condemnation are subject to the statute of limitations articulated in Section 5-101 of the Courts and Judicial Proceedings Article of the Maryland Code, which requires that a claim must be filed within three years from the date the action accrues. In determining when the actions accrue, Maryland courts apply the discovery rule, which tolls the accrual of an action until the plaintiff knows or should have known of the injury giving rise to his or her claim.

The distinction between a temporary and a permanent nuisance is relevant to the application of the statute of limitations to a nuisance claim. A cause of action for permanent nuisance must be brought within three years of the nuisance becoming stabilized; however, for a temporary nuisance, successive actions may be brought each time a plaintiff's land is invaded because "every repetition of the wrong creates further liability and . . . a new cause of action." *Jones v. Speed*, 320 Md. 249, 260 n.4, 577 A.2d 64, 69 n.4 (1990). Whether a nuisance is permanent or temporary depends on the likelihood of abatement. Here, the Town of Goldsboro entered into a Consent Order in 1996 to remedy the pollution problem. Since that time, no material terms of the Consent Order were followed. Thus, it is unlikely that the nuisance would be abated. No reasonable trier of fact could conclude that Litz alleged anything less than a permanent nuisance, which, under the circumstances, was time-barred.

The viability of Litz's causes of action for negligence and trespass hinge on whether the statute of limitations was tolled by the "continuing harm" doctrine. The statute of limitations may be tolled for "continuing unlawful acts," but is not tolled for the continuing effects of a single act occurring earlier in time. Although an action for a continuing tort may not be time-barred, damages are limited to the harm occurring within the three years prior to filing the cause

of action. Here, Litz alleges that the Town of Goldsboro “had and has a duty to use reasonable care to control the discharge of ground and surface water onto Litz’s property,” and continually breached this duty by allowing improperly the contaminated water to enter her property. Drawing reasonable inferences in a light most favorable to Litz, a trier of fact could conclude that the Town’s duties were ongoing and continuous. Litz’s claim that Goldsboro “had and has” a duty to control the discharge of contaminated ground and surface water could be read as referring to an ongoing duty, and the allegation that the Town “breached” its duties could be read to mean that the Town breached this duty continuously. It is reasonable therefore to conclude that Litz’s causes of action for negligence and trespass, as a matter of law, were not time-barred.

Inverse condemnation is a form of a taking without just compensation. An inquiry into what constitutes a taking and when this taking occurred is important to the analysis of when Litz’s cause of action for inverse condemnation accrued. “The modern, prevailing view is that any substantial interference with private property which destroys or lessens its value (or by which the owner’s right to its use or enjoyment is in any substantial degree abridged or destroyed) is, in fact and in law, a ‘taking’ in the constitutional sense, to the extent of the damages suffered, even though the title and possession of the owner remain undisturbed.” *Md. Port Admin. v. QC Corp.*, 310 Md. 379, 387, 529 A.2d 829, 832 (1987). Also, a taking can be partial or complete, which may be crucial to Litz’s cause of action in terms of whether it was asserted timely. As the Respondents allege, Litz’s cause of action for inverse condemnation may have accrued in 1996 when it was known that there was a partial taking of her property due to the contaminated groundwater continuously entering her land. Based on the face of the allegations of the Complaint and reasonable inferences drawn therefrom, however, a complete taking of Litz’s property may not have occurred until her property was foreclosed in 2010. Because a trier of fact may conclude reasonably that Litz’s cause of action for inverse condemnation did not accrue until a complete taking occurred, the motion to dismiss should have been denied because, as a matter of law, this count would not be time-barred.

9. *The Town of La Plata, et al. v. Faison-Rosewick LLC, FCD Development LLC, Johel Limited Partnership, John D. Mitchell, III, John Latimer and Sandra Latimer*, 434 Md. 496, 76 A.3d 1001 (2013). Opinion by Greene, J.

Facts: On 27 September 2011, the La Plata Town Council passed four resolutions, one of which was an annexation resolution acquiring a 14.1 acre tract of land. On November 10, 2011, several citizens of La Plata and other interested persons (“the Referendum Supporters”), Appellants in this case, published and circulated a petition to refer the Town Council’s annexation resolution to referendum pursuant to Maryland Code (1957, 2011 Repl. Vol.), Article 23A, § 19. The petition for referendum included all four resolutions passed on 27 September 2011, relating to the annexation. On 13 March 13, the Town, through its chief executive and administrative officer, Town Manager Daniel Mears (“Mears”), issued a proclamation stating that sufficient signatures had been submitted on the petition. As such, the

annexation resolution was suspended, and all four resolutions were referred to referendum. The Town then drafted a referendum ballot for an election to be held on 18 April 2012, asking the citizens of La Plata to approve or reject “all four Resolutions.”

On 8 November 2011, several days before the petition signature pages were due for filing, Town Manager Mears published on the Town’s website an eight-page document entitled “Procedures for Validation and Verification of Signatures on Annexation Referendum Petition Signatures Submitted Pursuant to Maryland Annotated Code, Article 23A, Section 19(g)” (“procedures”). The procedures established the process and criteria to guide the Town Manager in validation and verification of signatures on a petition for the purpose of submitting the annexation question to the voters.

Appellees, a group consisting of voters and taxpayers of the Town, and some selling landowners and out-of-state contract purchasers and developers (“the Referendum Opponents”), filed in the Circuit Court for Charles County a “Petition or Complaint for Judicial Review,” of the report validating the signatures and advancing the referendum to a vote. The trial court found that Mears did not have the power to determine his own verification process under the statute and therefore his promulgation of the “procedures” was invalid. Moreover, the trial judge found that the procedures were filed too late in the referendum process and thus violated due process, which it found to taint the whole process. Accordingly, the trial judge concluded that the petition for referendum had to fail. Thereafter, the Town and Referendum Supporters appealed to the Court of Special Appeals, and Referendum Opponents cross-appealed. The Referendum Opponents filed a petition for certiorari to this Court, and the Town and Referendum Supporters filed cross-petitions, all of which were granted prior to any proceedings in the intermediate appellate court.

Held: Vacated and remanded. The General Assembly made it clear in Article 23A, § 19(g) that the petition presented to voters shall be for a “referendum on the [annexation] resolution.” The statutory scheme clarifies that the resolution refers to a decision that adds to the corporate boundaries of the municipal corporation. Section 19(g), however, does not expressly prohibit the inclusion of additional or collateral information in the petition. Based on precedent relating to sufficiency of ballot language for amendment and referendum provisions, which requires a “clear, unambiguous and understandable statement of the full and complete nature of the issues[.]” *Anne Arundel Cnty. v. McDonough*, 277 Md. 271, 300, 354 A.2d 788, 805 (1976), the Court noted that the instant case presents no real danger of confusion or ambiguity as to the subject of the petition. Although non-referable, the additional resolutions included in the petition serve only to further inform the voters on the nature of the annexation resolution that is the heart of the referendum. The Court held, therefore, that where the petition for referendum contained legislative enactments that were collateral to the land annexation resolution but did not obfuscate the subject matter of the petition for referendum, such additions did not invalidate the petition.

Additionally, § 19(g) unambiguously provides the chief executive and administrative officer of the municipal corporation, here the Town Manager, the power to “cause to be made a verification” of the signatures on the petition and ascertain that the requisite number of qualified signatures are present. Under the basic definition of “verification,” Mears’s responsibility was to “cause to be made” an authentication of the signatures presented to him

on the petition and confirm that the signatures represented enough qualified voters for a referendum election to take place. In furtherance of this duty, Mears preemptively created and published procedures for petition validation and verification. These guidelines outlined in writing, for the benefit of the public, the “reasonable means” by which he was exercising his duty to verify signatures and validate the petition. Although he did not have the express statutory authority to promulgate these procedures, the Court held that the publication of them fell within his implied authority, incident to his duty of verification and validation of the petition. Lastly, the Court held that there was no violation of due process when the procedures were published several days prior to the petition deadline, because there was no fundamental liberty or property interest at issue in the matter for due process to apply.

10. *Daryl Jones v. Anne Arundel County, Maryland, et al.*, 432 Md. 386, 69 A.3d 426 (2013). Opinion by Battaglia, J.; Dissenting Opinion by Adkins, J., joined by Barbera, C.J., and Harrell, J.

Facts: In 2010, Daryl Jones, Appellant, was re-elected a member of the Anne Arundel County Council from the First Councilmanic District. In November 2011, he was convicted of failing to file a federal tax return and sentenced to 5 months incarceration in a federal correctional facility in South Carolina. In January 2012, the six remaining members of the Anne Arundel County Council passed Bill 85-11, which stated that Jones=s seat was vacated under Section 202(c) of the Anne Arundel County Code, which provides that a councilmember=s seat shall be vacated if he “move[s] his residence from the councilmanic district in which he resided at the time of his election.” In the Circuit Court for Anne Arundel County, Jones challenged that the County Council had no authority to vacate his seat. He further contended that the County Council misinterpreted “residence” under Section 202(c) to mean a temporary place of abode, requiring a councilmember to sleep and be physically present in his or her councilmanic district, rather than domicile, which is a person=s permanent legal home. The County and County Council contended that Jones was barred by the clean hands doctrine because he concealed the criminal investigation from voters during the 2010 election. The Circuit Court granted summary judgment in favor of the County and County Council, concluding that the County Council acted within its authority under the Express Powers Act, Section 5(S) of Article 25A, Maryland Code (1957, 2011 Repl. Vol.), which provides that the County authority “to pass all ordinances . . . as may be deemed expedient in maintaining the peace, good government, health and welfare of the county.” The Circuit Court further held that “residence” under Section 202(c) means place of abode, not domicile, so that Jones vacated his seat when he left his councilmanic district to serve his sentence in South Carolina. Jones appealed and, prior to any decision by the Court of Special Appeals, the Court of Appeals granted certiorari.

Held: Reversed. Initially, the Court addressed the County and County Council=s argument that the removal of Jones was a political question, from which the Court should abstain from consideration. The Court explained that there was no provision rendering the County Council

the sole arbiter of its members' qualifications, and therefore, the political question doctrine did not require the Court's abstention.

Turning to the merits of the case, the Court held that the County Council did not have the authority, under Section 5(S) of the Express Powers Act, to remove Jones from office. The Express Powers Act, the Court explained, was enacted to pass to local governments the General Assembly's power to enact public local laws. The provision at issue, Bill 85-11, was not a local law that applied to all persons in Anne Arundel County, but instead was a special law directed and applied only to Jones.

The Court held further that "residence," under Section 202(c) means domicile, not temporary place of abode, based on the Court's longstanding jurisprudence interpreting constitutional, statutory and charter provisions to equate residence with domicile, unless contrary intent is shown.

Finally, the Court held that Jones's claim was not barred by the clean hands doctrine because the fraud alleged by the County, relating to the failure to disclose during the 2010 election, was not the source of the claim that Jones was removed unlawfully from office, which was derived from the County Council's interpretation of the residency requirement in Section 202(c) of the Anne Arundel County Charter.